

**Trans Mountain Pipeline ULC (Trans Mountain)
Onshore Pipeline Regulations and Filing Manuals Update
Phase 2 – Engagement Overview
Due Date: March 31, 2025**

K. OPR – Filing Manuals – Environmental and Socio-Economic Assessment Topic Paper

As noted in the [Backgrounder](#), the CER is seeking your feedback on possible changes to the “Environmental and Socio-Economic Assessment” (ESA) section in the Filing Manuals (i.e., section A.2 of the [Filing Manual](#), and chapter 6 of the [Electricity Filing Manual](#)). The CER seeks your comments on the following topics, however any suggestions for improvement with regard to these sections are welcome.

Subtopic 1: Restructuring the ESA Section

As described in the [Backgrounder](#), the Commission has been focused on improving the assessment of project effects on the rights and interests of Indigenous Peoples in recent application assessments. The CER has heard that increasing the emphasis, robustness, and detail of its consideration of potential effects on the rights and interests of Indigenous Peoples is a key part of reconciliation.

The ESA section has grown longer and more complex through regular updating, and the CER has heard that it can be difficult to navigate in some cases. For example, general guidance (e.g., the need for incorporation of Indigenous knowledge, the need to provide evidence and rationales, etc.) is spread throughout the section, rather than being consolidated in one place.

Note: this restructuring section is similar to the restructuring section found in “Filing Manual – Rights and Interests of Indigenous Peoples” Topic Paper (see the paper for more details).

Objectives for improvement

The CER seeks to improve the overall structure and layout of the existing ESA section in the Filing Manuals by:

- seeking more detail about potential effects of proposed projects on the rights and interests of Indigenous Peoples; and
- improving the clarity and readability of the ESA section.

Proposed options

The CER is considering:

- splitting the current ESA section into two sections — an amended ESA section and a new “Rights and Interests of Indigenous Peoples” section (see the Filing Manual – Rights and Interests of Indigenous Peoples Topic Paper for more details); and
- consolidating general or common guidance into an initial sub-section, and specifying that these topics be addressed wherever they are relevant in the ESA and the new section for “Rights and Interests of Indigenous Peoples”. Such topics could include engagement results, Indigenous knowledge, and climate change resilience.

Discussion questions

k.1) Does the proposed split of the current ESA section improve clarity?

Response:

In Trans Mountain's view, splitting the current ESA section in the *Filing Manual* into two sections does not provide clarity of expectations to proponents, and may result in duplication of assessments of valued components (VCs) that may be common to both sections.

Further, neither the proponent, nor regulator, should presuppose what interests, and associated VCs, exist in relation to an Indigenous community. While some elements/VCs required for consideration in the current *Filing Manual* are unique to Indigenous groups (i.e., Traditional Land and Resource Use), any of the other elements (i.e., socio-economic or environmental) may be related to an interest of a particular Indigenous group. As part of project planning, the proponent must meaningfully engage potentially impacted Indigenous communities to help the proponent understand what the VCs are for that community, and how those VCs are potentially impacted by the activities proposed. Latitude in the *Filing Manual* must be afforded for defining VCs on a case-by-case basis in relation to rights and interests of Indigenous Peoples.

k.2) What overarching topics are important to highlight as applying throughout the applicant's ESA and "Rights and Interests of Indigenous Peoples" sections?

Response:

Please see the response to request k.1), above.

k.3) What other restructuring of the existing ESA section might improve clarity, readability, and better highlight important issues?

Response:

In Trans Mountain's view, the structure of the existing ESA section is sufficient in relaying the CER's expectations for ESAs. The *Filing Manual* is thorough and comprehensive in its current form and restructuring of it may not lend itself to improved clarity but rather add confusion to the reader.

Organization of VCs in an ESA is typically according to topic, and not by geographic area. For larger projects, an interested party or intervenor may have a focus specific to a certain geographic area, which may be challenging to locate in a larger ESA. In consideration of accessibility of information for a given community, the CER may want to consider requiring a concordance table that provides a mapping to where the VCs and assessments are discussed for a given geographic region.

Subtopic 2: Environmental and Socio-economic Assessment

The ESA section of the Filing Manuals includes filing guidance related to the assessment of anticipated project effects on environmental and socio-economic valued components. This includes the applicant's proposed mitigation measures to reduce adverse effects, proposed enhancement measures to improve positive effects, consideration of both project and cumulative effects, and the applicant's determination of the significance of effects after taking mitigation into account.

As noted in subtopic 1 above, the CER is considering creating a new section focused on "Rights and Interests of Indigenous Peoples" which is further discussed in the Filing Manual – Rights and Interests of Indigenous Peoples Topic Paper.

The CER is seeking your input on this amended ESA section, as follows.

2.1 Valued component identification and selection for the ESA

The CER's Filing Manuals rely on a valued component (VC)-based approach to effects assessment. Assessments are focused on those biophysical or socio-economic VCs that may be affected by a project

and are of concern or value to the public, including Indigenous Peoples. Examples of VCs could include biophysical elements such as “vegetation” and “fish and fish habitat”, and socio-economic elements such as “human health” and “infrastructure and services”. Currently, applicants must identify VCs for which effects are predicted and explain why and how the VCs were identified. Each VC can have a number of indicators that are used to evaluate a project’s potential effects on that particular VC.

In recent hearings, the Commission has heard that the selection of VCs is a key initial decision that affects much of the applicant’s ESA, and that input on the choice of VCs needs to be carefully considered. The Commission has heard that Indigenous knowledge systems should be brought together with western knowledge systems to better understand project impacts. The Commission has also heard that VCs can be chosen too narrowly, missing overall effects on a vulnerable population or entity. On the other hand, VCs can also be chosen too broadly, missing specific effects on a particular subset of a relatively broad VC (e.g., considering effects on a general wildlife VC may overlook unique effects on a particular species of concern).

Objectives for improvement

The CER wants to clarify the selection of VCs, to help ensure that Indigenous knowledge and engagement informs the selection of VCs and to help ensure that VCs can cover both broad concerns (such as overall community well-being) and narrow concerns (such as effects on a single species).

Proposed options

The CER is considering:

- adding filing guidance to help ensure that applicants incorporate Indigenous knowledge and engagement results in the selection of VCs. Including, demonstration of how the VCs chosen reflect both, what was heard from engagement and include probable project-related effects; and
- adding discussion of narrow versus broad VCs (or single versus multi-variate VCs) and requirements to help ensure that VCs of various breadths are selected to appropriately cover issues of concern.

Discussion questions

k.4) To what extent should Indigenous knowledge and engagement be explicitly addressed in the selection of VCs? How should applicants demonstrate that Indigenous knowledge and engagement informed the selection of VCs?

Response:

The current *Filing Manual* lists Indigenous Knowledge (IK) as one of several information sources of information in establishing a baseline environmental and socio-economic setting.¹ The *Filing Manual* also requires a company’s engagement approach to include an Indigenous engagement policy or specific related policies and principles, such as for the collecting of IK or traditional use information, and where available and applicable to the effects of the project, to include local and IK.²

Trans Mountain supports continued incorporation of IK into the *Filing Manual*. The manner in how IK is incorporated is dependent on the nature of the project, its spatial disturbance, and how project activities interface with features of significance as informed by IK or otherwise and as determined by the proponent. Indigenous Knowledge, where provided by the Indigenous community, is obtained through proactive engagement with the potentially impacted community. The methodology for the application of

¹ CER *Filing Manual*, pdf page 55.

² CER *Filing Manual*, pdf pages 18, 20.

IK, in consultation with the Indigenous community, is determined by a socio-economic professional either in-house, or by a third-party socio-economic consulting firm.

It is important that proponents tailor the effects assessment to the specific context of each project, ensuring that the assessment accurately reflects concerns and sensitivities of potentially impacted groups, while capturing the full range of potential impacts. Industry professionals understand the intricacies of project scope, from large-scale infrastructure initiatives to localized developments.

Trans Mountain notes that the assessment of project effects is an evolving field of study, and it is important that the *Filing Manual* continues to provide to flexibility in its application. The ability to adapt VCs as projects or understanding evolves ensures that assessments remain relevant and effective throughout the project lifecycle. Prescriptive methodology for the use of IK may limit the needed flexibility required for meaningful assessment of VCs.

The *Filing Manual* in its current state allows for methodological latitude to integrate IK into the selection of VCs.

k.5) What factors should guide the choice of VCs in terms of their breadth?

Response:

Please see the response to request k.4), above.

k.6) Can VCs be 'nested' to cover both specific and more general concerns (e.g., a general VC that sums the effects on a number of narrower VCs)? Are there any methodological considerations or approaches regarding the 'summing' of effects of individual VCs?

Response:

Projects with larger geographical footprints and more complex potential interactions will have a more extensive volume of VCs. With the intent to simplify, there may be circumstances where it is appropriate to group or nest VCs – or in some methodologies identify specific indicators within a VC to explore unique or more specific interactions – but the evaluation of this option, and its resulting impact to the assessment should not be fully prescribed, as assessment professionals need the flexibility to address project specific characteristics.

Creating nested VCs can lead to oversimplification, where the complexity of interdependent relationships between different socio-economic and environmental factors is reduced to a summation of effects, potentially obscuring important interactions. There is also the potential risk of double counting or misrepresenting impacts, as overlapping effects might be inaccurately inflated, or unique aspects of each value component might be underrepresented. Methodologically, challenges may include difficult in scaling and comparing impacts across different value components. Furthermore, nesting might dilute stakeholder engagement. If VCs are aggregated into a broader generalized framework, it may become more difficult for stakeholders to see how their specific concerns and the unique impacts they face are being addressed.

Should the CER consider creating parameters within the *Filing Manual* for the nesting of VCs, the unintended consequence is that such nesting may adversely impact the assessment or the value of the assessment. Further, such prescription may limit flexibility in approaches in what is a continually evolving area. The assessment of VCs either individually or as a group should be determined on the case-by-case basis and by a qualified professional.

k.7) What other improvements or clarifications can be made to the discussion and selection of VCs?

Response:

The existing classification of VCs in the *Filing Manual* offers adequate adaptability for meaningful evaluations. Narrowing these components could overlook more expansive community issues. Socio-economic evaluations should consider the community's overall wellbeing comprehensively, since a

narrowly focused definition of value components might not fully represent broader community interests. Trans Mountain encourages the development of a VC approach that is guided by best practice principles, relying on the expertise of qualified professionals as permitted by the current *Filing Manual*.

2.2 Socio-economic valued components

The CER Act requires the Commission to consider the health, social, and economic effects of projects. This is accomplished by analyzing, monitoring, and managing the intended and unintended social consequences, both positive and negative, of projects. The CER's Filing Manuals describe the socio-economic VCs that must be considered by the applicant. Currently, applicants identify the VCs for which effects are predicted and provide specific details in the assessment when circumstances and interactions necessitate detailed information.

Given the proposed creation of a new consolidated "Rights and Interests of Indigenous Peoples" section (as explained in the Filing Manual – Rights and Interests of Indigenous Peoples Topic paper), VCs focused on the rights and interests of Indigenous Peoples would be consolidated within the new section, and the remaining socio-economic VCs would stay in the ESA section.

Objective for improvement

The CER wants to clarify its guidance for assessing socio-economic effects, which requires consideration of what stays in the ESA section and what is moved into the proposed "Rights and Interests of Indigenous Peoples" section, and avoiding duplication between the two.

Proposed options

- renaming "Socio-economic Elements" to "Socio-economic Valued Components"; and
- focusing the socio-economic VCs on health, social, and economic effects related to non-Indigenous peoples and communities; such that an applicant would consider the following socioeconomic VCs within their application: employment and economy, human health, human occupancy and resource use, infrastructure and services, and navigation and navigation safety

Discussion questions

k.8) Would having separate sections in the Filing Manual (e.g., one describing socio-economic VCs and another describing VCs focused on the rights and interests of Indigenous Peoples) improve clarity?

Response:

Having separate sections in the *Filing Manual* describing socio-economic VCs and VCs for rights and interests of Indigenous Peoples does not improve clarity and may result in duplication of VCs. Please also see the response to request k.1), above.

k.9) How would such a split impact the assessment of biophysical VCs, socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?

Response:

Understanding the holistic impact to VCs for biophysical, socio-economic, and rights and interests of Indigenous Peoples is within the skillset of a qualified professional. Splitting impact between the biophysical, socio-economic and Indigenous rights and interest VCs as a *Filing Manual* requirement may result in a duplication of impact and assessment between VCs or create an artificial delineation where

one may not exist, burdening the assessment for little benefit. Please also see the response to request k.1), above.

k.10) What VCs should stay in the ESA section versus which should move to the “Rights and Interests of Indigenous Peoples” section?

Response:

Trans Mountain does not support splitting the assessment between ESA and rights and interests of Indigenous Peoples. Please see the responses to requests k.1) and k.9), above.

k.11) What other improvements can be made to the guidance for socio-economic VCs?

Response:

Trans Mountain is of the view that the *Filing Manual* is appropriate in its current form, is robust in its expectations and permits flexibility of the wide range of circumstances for which a socio-economic assessment may be undertaken. Socio-economic assessments are undertaken within the guidance of the *Filing Manual* by qualified professionals will result in an appropriate assessment of potential impacts which will inform measures to avoid or mitigate, where appropriate.

For clarity, the CER may wish to clarify or confirm that workplace conduct issues are not in scope for an ESA and are subject to other statutory requirements like the *Canada Labour Code* and *Canada Occupational Health and Safety Regulation*. In compliance with these statutes, companies will typically have in place workplace codes of conduct and respectful workplace policies. Trans Mountain encourages the CER to ensure that any socio-economic assessments required under the *Filing Manual* or conditions placed on the proponent are not duplicative of other federal or provincial requirements.

2.3 Mitigation and enhancement measures

The Commission considers both adverse and positive effects in its assessment of proposed projects. This means that, in addition to mitigation measures that reduce adverse effects, enhancement measures for positive effects are also relevant. Enhancing positive effects is an opportunity for the benefit of people, communities, and the biophysical environment. For example, there is an opportunity to enhance the positive effects a project, such as employment and economic activity, through targeted training that enables local and regional communities, Indigenous Peoples and businesses to share in these positive effects. Training can also be considered a positive effect by itself.

Various types of offsets have been proposed in recent applications. The Commission has heard much input on offsets, such as the need to follow the mitigation hierarchy before relying on offsets (i.e., preferring avoidance, minimization, and restoration onsite, before considering offsets), and to ensure proper offset principles are followed (e.g., to only rely on offsets where their effectiveness is reasonably reliable, and to ensure that risk factors are accounted for).

In addition, the Commission has heard various concerns about the transparency of mitigation measures to be implemented after a project has been approved. For example, an environmental protection plan (EP Plan) details measures to protect the environment that are to be implemented during and immediately after construction. EP Plans are often imposed as a condition, submitted by companies and available online. In contrast, there is typically no similar plan submitted for site-specific mitigation measures to be implemented during operations, nor for socio-economic protection measures. Likewise, post-construction environmental monitoring and reporting (PCEMR) is often imposed in a condition, but there is no similar regime for monitoring and reporting on the implementation of socio-economic protection measures.

Objective for improvement

The CER wants to clarify guidance related to mitigation and enhancement measures.

Proposed options

The CER is considering modifying the ESA part of the Filing Manual to specify that applicants should:

- describe enhancement measures in addition to mitigation measures;
- demonstrate how the mitigation hierarchy has been followed and justify the offset principles applied if proposing offsets;
- document and monitor socio-economic protection measures equivalent to an EP Plan and PCEMR (see the OPR Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement Topic Paper for details); and
- ensure that site-specific environmental and socio-economic protection measures relevant to the operations phase are maintained and implemented after construction (see the OPR Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement Topic Paper for details).

Discussion questions

k.12) What considerations concerning enhancement measures should be included? Are there different considerations for enhancement measures for biophysical VCs versus socio-economic VCs?

Response:

The current *Filing Manual* includes aspects such as procurement, training, and employment, which are appropriate forms of enhancement measures and are already incorporated as socio-economic VCs. Enhancement measures tend to be most effective when tailored to the unique conditions of a project, and Trans Mountain is supportive of the flexibility currently offered by the *Filing Manual*.

In Trans Mountain's experience, delivering enhancements to a community as a part of the development of a project can inadvertently result in adverse impacts. As an example, offering project employment opportunities to members of a small community may result in an adverse impact to local services, where individuals temporarily leave their current place of employment to pursue a project-specific position. In this case, an enhancement of project employment results in temporary loss of a local service. For these reasons, enhancements need to be carefully contemplated by the proponent, based on assessments conducted and results of community engagement. Prescribed measures in the *Filing Manual* may limit the proponent's ability to undertake enhancement measures in a manner that is fit for purpose.

Assessments in relation to biophysical VCs and application of avoidance, mitigation and enhancement measures are currently included in the impact assessment by way of definition and no other considerations are required.

k.13) What principles and other considerations concerning offsets should be included? Are there different considerations for offsets for biophysical VCs versus socio-economic VCs?

Response:

The mitigation hierarchy: avoidance, mitigation (with the goal of no net loss), and offsetting where there is net loss is contemplated in the proposed options and is a long-standing methodology used in project-specific ESAs, particularly for biophysical VCs. Offsets for biophysical VCs would typically take the form of habitat enhancements or land conservation whereas offsets is not a typical term used in context of socio-economic VCs except those that are landscape based (i.e., TLU). Trans Mountain would caution

against requiring socio-economic VCs to employ the offset terminology as used in the biophysical reference where there are units on the landscape that can be measured and replicated by the proponent. In the context of some socio-economic (human impact) VCs, outcomes can be dynamic and attributable to factors beyond the control of the project. Rather than offsets, Trans Mountain recommends using concepts of enhancement and accommodation strategies to reflect a similar principle through a socio-economic lens. The types of enhancement or accommodation strategies that can be used to address socio-economic impacts can vary and may include: Indigenous mutual benefit agreements, community agreements, training and education programs and investments, landowner/tenure holder agreements, crossing agreements, enhanced engagement/communication, infrastructure improvements, and contribution to local economy through business opportunities and project-related spending. It is important to note that offsets or enhancement/accommodation strategies may not be determined or finalized at time of application and may evolve due to ongoing engagement during the lifecycle of the project.

- k.14) What is the best way to document, monitor, manage, and report on socio-economic protection and enhancement measures?

Response:

Qualified professionals are tasked with documenting, monitoring, managing and reporting in relation to project impacts on VCs.

Monitoring, management and reporting is site and project specific, and the *Filing Manual* should contemplate a wide variety of circumstances ranging from limited to no socio-economic impact to extensive socio-economic impact. For example, the construction of a booster pump within a facility fence line of company-owned land designated for industrial use is typically short-term, and likely to generate no socio-economic impact, as there is no disruption to traffic or major impacts to local economy. In this case the extent of monitoring, management and documentation would be limited. Alternatively, construction of a new pipeline through a municipality is a perceptible activity for many community members and may have measurable socio-economic impacts in relation to local economy/ services due to the influx of workers (depending on size and nature of local/regional economy), as well as to local traffic patterns due to temporary road closures. This type of a project will require application of a variety of measures to mitigate adverse impact or to enhancement benefits to the community, all of which would be documented. These two examples demonstrate the variety in project scopes, and the need for flexibility with respect to documentation, monitoring, management and reporting of the socio-economic protection measures. Trans Mountain notes that the approach to socio-economic monitoring would also be influenced by the interests and availability of data at the community/regional level and level of other industrial/development activity in the region.

- k.15) How can information relevant to environmental and socio-economic protection measures best be documented to ensure site-specific information and relevant commitments are maintained and implemented during operations?

Response:

Documentation of the assessment and resulting protection measures would be a minimum requirement of any socio-economic assessment and ensuring that commitments that endure through the operational phases is a part of responsible governance and need not be described in the *Filing Manual*.

- k.16) What other improvements can be made to the discussion and guidance for mitigation and enhancement measures?

Response:

Trans Mountain is of the view that the current *Filing Manual* affords the ability to construct tailored approaches for development of mitigation and enhancement measures, that are specific to the site, the community and given the nature of the project. The *Filing Manual* should continue to permit companies to adopt adaptive mitigation and enhancement approaches that ensure that they exhibit a high degree of contextual responsiveness and situational agility.

In relation to enhancement, it may be helpful for the *Filing Manual* to explicitly identify elements such as employment or training as examples of enhancements/accommodations.

2.4 Cumulative Effects

Cumulative effects assessment considers the environmental and socio-economic effects of a proposed project in combination with past, present, and reasonably foreseeable future effects of other nearby or otherwise linked projects and activities. Only adverse effects are typically considered. The Filing Manuals specify that applicants conduct cumulative effects assessment and provide an overview of the methodologies used, i.e., how other relevant projects and activities were identified, and how the accumulation of effects was assessed.

Some aspects of cumulative effects assessment have been emphasized in recent Commission hearings, including:

- whether the effects of environmental events and changes that affect a VC (e.g., forest fires and climate change impacts on wildlife habitat) should be included in a cumulative effects assessment for that VC;
- what is the appropriate baseline against which to consider cumulative effects; and
- whether a cumulative effects assessment is required if offsets are to be implemented with the aim of counterbalancing residual adverse Project effects.

Objective for improvement

The CER wants to clarify filing guidance related to specific issues of importance in cumulative effect assessment.

Proposed options

The CER is considering guidance that:

- relevant environmental events (e.g., wildfires) and climate change should be considered in cumulative effects assessments, so that all cumulative effects relevant to the sustainability of particular VCs are assessed;
- applicants justify the baseline used for cumulative effects assessment, considering that a short timeframe may suffice in some cases (e.g., if the designation of a species at risk included consideration of its population decline over past decades, or if current forest fragmentation represents the cumulative effects of past development), whereas it may be necessary to use a longer, historical baseline in other cases necessitating discussion of past activities or past state of the environment; and
- acknowledges that a cumulative effects assessment for a valued component is not needed if an applicant can demonstrate that their proposed offsets will confidently achieve no net loss for that valued component, taking into account risks and uncertainties such as delay, effectiveness and equivalency.

Discussion questions

k.17) To what extent should environmental events and climate change be included in cumulative effects assessments?

Response:

The *Filing Manual* currently contemplates consideration of greenhouse gas (GHG) emissions and climate change in environmental assessments. Proponents are specifically required to consider the impacts of direct emissions, construction and operational emissions from acquired energy sources, a credible plan to achieve net zero (for projects with a lifetime beyond 2050), climate change resilience assessment, and impact on the project on Canada's efforts to reduce GHG emissions.³

Trans Mountain encourages the CER to consider the larger regulatory framework in place for the resource industry inclusive of upstream producers to evaluate where consideration of cumulative impacts in relation to climate change for pipeline projects are appropriate. For example, the construction of a new pipeline may be driven by a new upgrading facility, as means to transport product to a downstream refinery. The pipeline will be subject to assessment under the *Impact Assessment Act (IAA)* or the *Canadian Energy Regulator Act (CER Act)*, as applicable. As a part of either assessment, the proponent will be required to undertake an estimate of the GHGs for the project and undertake an assessment of the project on Canada's efforts to reduce GHG emissions, inclusive of upstream GHG emissions due to upgrading operations. Further, if the new upgrading facility is considered a designated project under the *Physical Activities Regulations*, the new upgrading facility would also need to undertake the same assessment. If both projects proceed, there will be GHG emissions from the construction of the pipeline, for which the CER/IAA can apply conditions to require accounting for and offset of GHG emissions. For a product pipeline, as it moves into operations, the GHG emissions are typically low. GHG emissions for the upgrading and refining of petroleum are accounted for and reported for in accordance with Environment and Climate Change Canada (ECCC) *Emissions Reduction Plan*, which has emissions limits and cap and trade options. Natural gas pipelines are also subject the requirements of the *Emissions Reduction Plan*. In Trans Mountain's view there is an extensive and complex regulatory framework in place to account for an minimize impacts to climate change in a holistic manner.

There are many contributors to climate change: deforestation, burning of fossil fuels and farming of livestock. It is challenging for any one proponent to consider or calculate the totality of these contributors in relation to one proposed project, and the requirement to do so may inadvertently shift responsibility to the proponent to understand the climate change impact from activities for which they have control over, into the impact assessment process. This is ultimately the responsibility of government through carefully considered regulatory mechanisms.

Environmental events such as floods or fire are difficult to predict, and for this reason, challenging to incorporate into a cumulative effects assessment. Trans Mountain suggests that further investment should be made in resources and approaches to protect health and safety of people and the environment. Examples include:

- ensure that the company has designed the asset to withstand loadings from environmental events (i.e., has thicker-walled pipe in high consequence areas)
- reduce impact as a result of an environmental event (i.e., appropriate valve placement to reduce the extent of release)
- respond to an environmental event (i.e., well placed access points, response equipment and appropriately trained personnel)

Incorporating wildfires and climate change into cumulative effects is intricate, hindered by unpredictability and predictive complexities in the development of impact estimations. Impact assessments need to be practical, acknowledging the reasonable constraints of evaluating over an extended period is crucial, as

³ CER Filing Manual, pp.88-92.

well as the limitations of including *all* variables that potentially constitute the broad composite of cumulative effects. Furthermore, in the context of pipeline projects, the emissions are typically minor compared to those of larger upstream producers, which may render their inclusion resulting in marginal effects.

For these reasons, Trans Mountain believes that cumulative effects assessments should not be extended to include climate change or environmental events, and the CER should instead look to the broader policy and legislative framework in relation to climate change.

k.18) How is the cumulative effects assessment relevant to positive effects as well as adverse effects?

Response:

Cumulative effects assessment is relevant to both positive and adverse effects of a proposed project. The IAA contemplates consideration of positive effects in how it defines an effect, which means, unless the context requires otherwise, changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes (section 2).⁴ Trans Mountain is of the view that this is appropriate as energy projects may generate both positive and negative effects – which ought to be considered in the broader assessment by the CER or the IAA where appropriate, and currently required by the IAA, the legislative standard for impact assessments.

k.19) What factors are important in choosing the appropriate baseline for cumulative effects assessment?

Response:

The IAA and guidance such as [Analyzing Health, Social and Economic Effects under the *Impact Assessment Act*](#) provides direction on the appropriate baseline for cumulative effects. Trans Mountain is of the view that all projects, whether assessed by the CER or the IAA should be assessed using the same legislative standard, provided that such assessment is commensurate or scalable to the project being assessed. The baseline is typically constructed using the most recent data available prior to project construction reflect the present state of the biophysical environment, and health, social and economic conditions for Indigenous and non-Indigenous peoples.

k.20) To what extent should the use of offsets and the applicant's confidence in achieving no net loss relieve an applicant from having to include a cumulative effects assessment in their ESA?

Response:

It is necessary to undertake a thorough assessment to determine no net loss, or net loss that would require the application of offsets. If a qualified professional can reasonably justify no net loss through offsetting, there should be no further requirement to undertake a cumulative effects assessment.

k.21) What other improvements can be made to the discussion and guidance for cumulative effects?

Response:

Trans Mountain offers that the IAA should continue as the legislative standard for all cumulative effects assessments required by the CER, however such assessments should be commensurate to the scale and extent of the project. The *Filing Manual* currently permits this flexibility, which in Trans Mountain's view, should continue.

⁴ Also see [Policy Framework for Assessing Cumulative Effects under the *Impact Assessment Act*](#)

2.5 Significance

In its assessment of proposed projects, the Commission broadly considers and balances the significance of positive and negative effects when determining whether a project is in the public interest. The CER Act does not, however, require an explicit determination of significance. In contrast, the Impact Assessment Act (IA Act) requires the public interest determination for a designated project to consider “the extent to which” adverse effects are significant (i.e., a sliding scale significance determination). In addition, for any projects that are located on federal lands, the IA Act (section 82) requires a federal decision-maker to determine whether the project is, or is not, likely to cause significant adverse environmental effects (i.e., a binary significance determination, similar to what used to be required under the predecessor legislation, the Canadian Environmental Assessment Act, 2012).

The Filing Manuals currently describe the binary approach for determining project effects and cumulative effects. The Commission has evolved its approach to significance in recent hearings, however, by adopting a sliding scale for effects on VCs together with a modified set of criteria and ratings. The Commission is still required to make a binary significance determination if a proposed project crosses federal lands

Objective for improvement

The CER is considering updating the Filing Manuals to reflect its most recent approach to determining significance.

Proposed options

The CER is considering:

- including a templated framework, similar to the sliding scale and the criteria and ratings from the Commission’s recent NEBC Recommendation Report, resulting in a sliding scale significance determination for each VC (see [C26744-1](#) Appendix 7 and “Evaluation of Significance” tables for each VC in Chapters 7 and 8); and
- requiring the applicant to consider whether IA Act section 82 applies with regard to federal lands, and if so, to provide their evaluation of whether the proposed project “is” or “is not” likely to cause significant adverse environmental effects on federal lands.

Discussion questions

k.22) Would a framework similar to the significance tables used in the NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?

Response:

The framework presented in the NEBC Recommendation Report is reasonable and reflects the evaluation of impact of the required elements of an effects assessment. If the CER is looking to create a standardized format to document the results of the environmental and socio-economic assessment, this is a reasonable manner to do so.

Currently the *Filing Manual* permits for scaled application depending on the scale and spatial extent of the project. For example, the installation of a new pipeline connection within the fence line of a company-owned terminal located in an industrial park would likely have little to no environmental impact. As such, a qualified professional would likely not recommend a full environmental and socio-economic assessment. Whereas a pipeline expansion project which interfaces with sensitive environmental features and Indigenous rights would potentially have an extensive environmental and socio-economic impact. Despite

any standardization of documentation, companies should continue to have the latitude to undertake and document effects assessments in a manner reflective of impact of the activity.

k.23) What considerations should apply when making the significance determination for federal lands?

Response:

Effects assessment for federal lands is no different than the effects assessment for non-federal lands. The difference between federal v. non-federal lands is that there may additional legislative requirements and protections due that will factor into the effects assessment (i.e., species at risk)

k.24) What other improvements can be made to the discussion and guidance for significance?

Response:

Trans Mountain is of the view that the *Filing Manual* offers the appropriate level of structure and flexibility for a wide variety of projects that may be considered by the CER and is appropriate in its current form and combined with the expertise of a qualified professional leads to robust assessments of project impacts. Trans Mountain is open to a standardized format of documenting assessments, such as that referenced in the NEBC Recommendation Report, for projects that have an extensive impact.