



Date April 4, 2025

**COMMENTS ON THE CANADA ENERGY REGULATOR (“CER”)  
REVIEW OF THE ONSHORE PIPELINE REGULATIONS AND FILING MANUAL  
SUBMISSION OF IAMC-TMX: INDIGENOUS CAUCUS**

**EXECUTIVE SUMMARY**

This submission is provided on behalf of the Indigenous Caucus of the Indigenous Advisory and Monitoring Committee of the Trans Mountain Pipeline and Expansion Project.

The Canada Energy Regulator (CER) initiated a review of the Onshore Pipeline Regulations (OPR) and updates to the Filing Manuals in January 2022, focusing on safety, transparency, and reconciliation with Indigenous Peoples including the integration of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>1</sup>

The submission guides the CER in implementing UNDRIP and developing robust rules for environmental stewardship and protection of Aboriginal and Treaty rights in respect of CER-regulated projects and activities.

In doing so, we emphasize the need for the CER to integrate UNDRIP into its regulatory framework, enhance environmental stewardship, and expand cultural protections.

A major part of the application of UNDRIP is the expansion of Indigenous decision-making. In this submission we advocate for forums for Indigenous decision-making, as identified in Action Plan Measure 34,<sup>2</sup> and the co-development of consent models with First Nations and Métis groups.

The submission further highlights the need for robust compliance and verification measures, citing past regulatory failures and the importance of Indigenous monitoring. Recommendations include expanding quality control and compliance verification activities, improving communication, and enhancing training for CER inspectors.

Significant changes are required to the CER’s regulations and guidance documents to ensure effective regulatory oversight that aligns with the rights and interests of First Nations and Metis

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<sup>1</sup> United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295, UN GAOR, 61st Sess, Supp No 49 Vol III, UN Doc A/61/49 (2007).

<sup>2</sup> Department of Justice Canada, United Nations Declaration on Rights of Indigenous Peoples Act Action Plan 2023-2028 (2023), [Link](#) [Action Plan]



groups. The Indigenous Caucus looks forward to continued work with the CER to finalize the OPR and Filing Manuals and related legislation, regulation, and policy.

## INTRODUCTION AND OPENING COMMENTS

### *Overview*

1. On January 2022, the Canada Energy Regulator (“CER”) undertook: (1) a comprehensive review of the *Onshore Pipeline Regulations* (the “OPR”) – the rules that companies with authorizations to build and operate CER-regulated pipelines must follow; and (2) an update to the Environmental and Socio-Economic Assessment and Lands Portion of the Filing Manuals (the “Filing Manuals”), which sets out the what is to be included in an application to the CER for a potential project.
2. After the first phase of the review, the CER published a What We Heard Report that identified five common themes:
  - a. **Advance Reconciliation and Implement the UN Declaration:** meaningfully advance Reconciliation with Indigenous Peoples through the CER’s Regulatory Framework, using the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) as a framework.
  - b. **Increase Indigenous involvement and incorporate Indigenous knowledge in lifecycle oversight:** enhance the involvement of potentially affected Indigenous Peoples and incorporate Indigenous knowledge in all phases of lifecycle oversight.
  - c. **Improve clarity and transparency:** define terms, improve communication, and share information with regulated companies, Indigenous Peoples and interested parties.
  - d. **Enhance competitiveness:** incorporate flexibility and scalability into regulatory requirements without compromising safety, security and environmental protection, and pursue opportunities for jurisdictional alignment.

- e. **Update guidance and improve how the OPR is implemented:** supplement rules for regulated companies with guidance, improve audit and compliance verification processes, and coordinate updates to relevant filing requirements.
3. As we engage in the second phase of this review, we seek to provide additional clarity and detail on how the OPR and Filing Manuals must change to produce better outcomes for First Nations and Métis groups. We also seek to address the CER's stated goals to: (1) support the highest level of safety, security, and environmental protection; (2) advance reconciliation with Indigenous peoples; (3) address transparency and inclusive participation; (4) provide for predictable and timely oversight; and (5) encourage innovation.

*Maintain the progressive and transformative approach*

4. As we get into the detailed review of proposed changes to the OPR and Filing Manuals we ought not lose sight of the progressive and transformative approach prioritized by the CER. In the "Path to advancing reconciliation at the CER" document, the CER stated:

*"We aim to transform the way we work with the Indigenous peoples of Canada, with a commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples, by enhancing their involvement in how we discharge our mandate recognizing their unique cultures, knowledge and histories; building renewed relationships based on the recognition of rights, respect, co-operation and partnership; improving the cultural competency of the CERF and its staff; and driving meaningful change in the CER's requirements and expectations of regulated industry."*

5. Our submission expects that you will follow through on this commitment on each and every change made to the OPR and Filing Manuals and the eventual implementation of these changes. Further, when the CER Act is made compliant with UNDRIP, we expect this same progressive and transformative energy and approach.

*IAMC-TMX engagement on OPR and Filing Manuals*



6. This Indigenous Caucus' submission is informed by: (1) engagement with the members of the IAMC-TMX during a workshop at the 2024 Line-Wide Gathering (hosted by the CER);<sup>3</sup> (2) an Indigenous Monitoring workshop hosted by the Indigenous Caucus held March 10<sup>th</sup>-11<sup>th</sup>, 2025; and (3) discussions with and feedback received from members of the Indigenous Caucus and the IAMC-TMX across several years. For many Indigenous Caucus members, their commentary is based on 10-plus years of engagement and consultation on the Trans Mountain Pipeline and Expansion Project ("TMX") alone – not to mention a diverse suite of skills, qualifications, and experiences that many bring to the table.
7. Supporting these submissions will also be a submission prepared by the Indigenous Caucus' Socio-Economic Subcommittee.

#### **THE INDIGENOUS CAUCUS OF THE IAMC-TMX**

8. The IAMC-TMX brings together thirteen (13) Indigenous representatives and six (6) senior federal government representatives to provide advice to regulators and monitor TMX and the previously existing pipeline. The 13 Indigenous members represent the 129 Indigenous communities from across the full span of the pipeline route and make up the *Indigenous Caucus*.
9. The Indigenous Caucus is not a rights-holding entity and our engagement on this, or any project or proposed activity, does not and is not intended to fulfill any obligations under the Duty to Consult nor do we speak directly on behalf of the First Nations and Metis groups along the Trans Mountain pipeline route. The Indigenous Caucus does, however, hold substantial experience dealing with federally regulated pipeline projects and has seen many of the successes and failures of TMX from project approval through construction and into operations. Further, As the work of the IAMC-TMX and the Indigenous Caucus has expanded into issues-specific subcommittees, engagements, and administering funding programs for Indigenous communities, our relationship and

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<sup>3</sup> Note: we will share with the CER the final line-wide report when it is publicly available.

connection to individual Nations along the pipeline route has expanded. This means that we have a direct connection to many First Nations and Métis groups.

10. We have a clear goal under our terms of reference: to form the basis of a new relationship between Indigenous communities, government, and the CER in respect of activities that may be undertaken in the Trans Mountain corridor relating to the existing Trans Mountain pipeline, the TMX Project, the Westridge Marine Terminal, and marine shipping associated with each of the Trans Mountain pipelines.
11. In providing these comments we are working towards this clear goal and expect it to be shared with the CER.

## OUTLINE

12. In making this submission, we hope to support the CER to improve the OPR and Filing Manuals and specifically:
  - a. guide the CER to implement the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the “UNDRIP Act”)<sup>4</sup> and the *United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan* (the “Action Plan”)<sup>5</sup> in a manner that respects and reconciles the inherent jurisdiction and authority of First Nations and Métis groups;
  - b. develop a robust set of rules to ensure proper stewardship of the environment that can sustain the practice of Aboriginal and Treaty rights; and
  - c. highlight the substantial gaps that exist between what companies are supposed to do, what they say they do, and what *happens*.
13. To further these goals, we provide an overview and set of recommendations on: (1) applying UNDRIP and the Action Plan; (2) developing a robust set of rules that focus on

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<sup>4</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 [UNDRIP Act].

<sup>5</sup> Action Plan. [Link](#)

impacts to Aboriginal and Treaty rights and impacts on First Nations and Métis groups; and (3) aligning the on-the-ground reality with the best intentions of the rules.

14. Appended to this submission are comments from the Indigenous Caucus on relevant proposals from the topic papers provided as part of the second phase of engagement.
15. Many of these same themes and comments were raised in our 2022 submission during phase 1 of the review. We ask that you review these comments in tandem with that submission.
16. We thank you for your consideration of this submission and look forward to working with you in the months to come to integrate these comments and to continue the work of advancing the OPR and Filing Manuals.

## RECOMMENDATION 1: IMPLEMENT UNDRIP AND THE ACTION PLAN

### *Overview of UNDRIP and the Action Plan*

17. On June 21, 2021, the federal government’s UNDRIP Act received royal assent and came into force. The UNDRIP Act states that “[t]he Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with UNDRIP” [emphasis added].<sup>6</sup> To do this, the UNDRIP Act mandated the preparation of an action plan now completed.<sup>7</sup>
18. The Action Plan set out dozens of measures (“Action Plan Measure” or “APM”) each pointed at one or more federal departments in Canada. Advancing reconciliation means, among other things, implementing the following APMs:

APM No.	Text
APM 12	Partner with Indigenous communities and organizations, industry, other federal departments and provinces and territories to develop and implement a strategy to:

<sup>6</sup> UNDRIP Act at s 5.

<sup>7</sup> UNDRIP Act at s 6.

	<ul style="list-style-type: none"> <li>• Increase safety and security of Indigenous women, girls and 2SLGBTQI+ people at all stages of resource project development;</li> <li>• Empower Indigenous women, girls and 2SLGBTQI+ people to influence and equitably benefit from resource development through increased participation across disciplines and occupations, leadership positions and throughout the supply chain; and</li> <li>• Partner and pathfind with other federal departments to identify whole of government responses to mitigate the impacts of resource development projects on Indigenous women, girls and 2SLGBTQI+ peoples. (Natural Resources Canada).<sup>8</sup></li> </ul>
APM 32	<p>Develop guidance on engaging with Indigenous peoples on natural resources projects, including in collaboration with provinces, territories, and industry, that:</p> <ul style="list-style-type: none"> <li>• Aligns with the UN Declaration, including Article 32(2), which calls for consultation and cooperation in good faith with the Indigenous peoples concerned in order to obtain free, prior and informed consent, prior to the approval of any project affecting their lands or territories and other resources;</li> <li>• Provides practical recommendations for successful free, prior and informed consent implementation (including in situations where multiple regulatory processes are involved) consistent with the outcome(s) of action plan measure 66</li> <li>• Supports the integration of specific, localized knowledge held by Indigenous peoples in the design and governance of projects; and</li> <li>• Informs improved and enhanced engagement processes with Indigenous peoples on natural resources projects. (Various departments).<sup>9</sup></li> </ul>
APM 34	<p>Work in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations to (i) enhance the participation of Indigenous peoples in, and (ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the Canada Energy Regulator (CER).<sup>10</sup></p> <p><i>The steps to achieve these objectives are contained within APM 34 and listed in full at Appendix C.</i></p>

<sup>8</sup> Action Plan at 28.

<sup>9</sup> Action Plan at 33.

<sup>10</sup> Action Plan at 34.

APM 66	<p>Develop coordinated, whole-of-government approaches to the implementation of the right to participate in decision-making related to legislative, policy and program initiatives, consistent with the UN Declaration, including Articles 18 and 19, which could include:</p> <ul style="list-style-type: none"> <li>• Elements to ensure relevant processes respect and reflect consultation and cooperation with affected Indigenous peoples to obtain their free, prior and informed consent;</li> <li>• Measures to address barriers to full and effective participation by Indigenous peoples, including, for example, in relation to access to information and capacity supports;</li> <li>• Identifying and pursuing potential legislative changes and changes to Government of Canada decision making practices and processes to implement the right to participate in decision-making; and</li> <li>• Providing guidance on identifying Indigenous representative institutions for the purposes of implementing the right to participate in decision-making.<sup>11</sup></li> </ul>
APM 67	<p>Work with Indigenous partners to ensure co-development of legislation, policies, programs, regulations and services furthers the right of Indigenous peoples to self-determination, led by priorities and strategies determined and developed by Indigenous peoples, and that co-development processes result in initiatives that comply with Indigenous rights and advance Indigenous priorities. This includes advancing concrete measures co-developed under the permanent bilateral mechanisms process such as the Inuit Nunangat Policy and distinctions-based co-development principles.<sup>12</sup></p>
APM 68	<p>Strengthen Indigenous peoples' participation in decision-making through an improved whole-of-government approach to consultation and accommodation which is aligned with the UN Declaration by:</p> <ul style="list-style-type: none"> <li>• Co-developing consultation arrangements with Indigenous partners that establish agreed-upon Duty to Consult and engagement processes, in a manner that is consistent with self-determination objectives and free, prior and informed consent;</li> <li>• Co-developing information on Aboriginal and Treaty rights through a system newly co-managed with Indigenous partners; and</li> <li>• Establishing a permanent Indigenous advisory committee to guide the federal approach to consultation and to explore considerations for an</li> </ul>

<sup>11</sup> Action Plan at 41.

<sup>12</sup> Action Plan at 41.

	Indigenous-managed consultation capacity support fund. <sup>13</sup>
APM 69	Utilizing a gender-based lens, develop a strategic and holistic approach to implementing relationship agreements with Indigenous Women’s Organizations to ensure the equality rights of Indigenous women, including First Nations, Inuit, and Métis women. The agreements support these organizations’ ability to advocate for Indigenous women’s rights, define their own priorities, and partner with federal government departments to ensure programs, policies, and legislation respect/uphold Indigenous women’s distinct rights and gendered needs.
APM 70	Increase the ability of grassroots organizations to bring forward the interests and perspectives of Indigenous women’s and 2SLGBTQI+ grassroots organizations’ voices to influence the development of federal policy, programs, and legislation. (Crown-Indigenous Relations and Northern Affairs Canada)
APM 71	Strengthen Indigenous engagement by improving bilateral mechanisms with Indigenous partners, improve linkages between federal/provincial/territorial officials and Indigenous representatives across public health and health care systems and better align the Health Portfolio and Indigenous Services Canada on strategic direction.
APM 72	Co-develop with First Nations, Inuit, and Métis right holders or their national designates, distinctions-based, whole of government policy guidelines on fully and effectively engaging Indigenous peoples on international issues affecting them, with a commitment to explore the development of policy in specific areas where appropriate. This work will seek to enhance the participation of Indigenous peoples in decision-making on matters which would affect their rights and to advance Canada’s contribution to the work of the entities of the UN system and other intergovernmental organizations in their implementation of Article 41.

19. Although these are not all directed at the CER, they provide a useful guide and lens for how to apply critical elements of UNDRIP to comply with the UNDRIP Act.
20. This also means compliance with UNDRIP, including Article 2(b), Article 11, Article 19, Article 21(2), Article 22(2), Article 24(1), Article 25, Article 31, Article 32. Full text of these articles is included as Appendix “B”.

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<sup>13</sup> Action Plan at 41.

21. One of the CER's stated goals is to "achieving reconciliation with Indigenous peoples".<sup>14</sup> This is only possible if the CER *takes all measures necessary* to ensure that the OPR and Filing Manuals are *consistent with UNDRIP* – full uptake of the APMs is a critical step in this project.
22. To give this meaning, the OPR and Filing Manuals must be future-proofed to allow for Indigenous jurisdiction, as discussed in APM 34 and the to-be-drafted *Indigenous Ministerial Arrangement Regulations*<sup>15</sup>, for decision-making, permitting, inspection, and other broader authority for Indigenous regulatory authority.

### ***UNDRIP and Canadian Law***

23. Recently, Canadian courts have confirmed that UNDRIP is part of Canadian law. The landmark decision in *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 (Kebaowek) sets out clearly that UNDRIP is law in Canada. The court also confirmed that section 35 should be interpreted in alignment with UNDRIP by stating:

*In my view, interpreting section 35 rights in a manner consistent with the UNDRIP aligns with the objectives articulated in the preambular provisions of the UNDA. Specifically, the importance of the UNDRIP as a framework for reconciliation is consistent with the Truth and Reconciliation Commission of Canada Calls to Action and the National Inquiry into Missing and Murdered Indigenous Women and Girls Calls for Justice—that all relationships with Indigenous peoples must be based on recognition and implementation of the inherent right of self-government; and that the UNDRIP is a source for the interpretation of Canadian law. ... Accordingly, this requires all decision makers, including administrative tribunals that have the authority to determine questions of law such as the Commission, to actively consider how the UNDRIP may impact the interpretation of Canadian laws, including the fulfillment of section 35 constitutional obligations.*<sup>16</sup>

24. Kebaowek stands as clear guidance for regulators and highlights the need for meaningful adoption of UNDRIP as "an important contextual factor" both directly in applying UNDRIP to decisions but also indirectly in how regulators assess impacts to

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<sup>14</sup> *Canadian Energy Regulator Act*, SC 2019, c 28, s 10 at preamble [CER Act].

<sup>15</sup> *Indigenous Ministerial Arrangement Regulations* contemplated under section 78 of the CER Act.

<sup>16</sup> *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 at 81 [Kebaowek].

Aboriginal and Treaty rights.<sup>17</sup> The court in *Keboawek* stated that “[w]hile the FPIC standard is not a veto, it requires significant robust processes tailored to consider the impacted Indigenous Nations laws, knowledge, and practices and employs processes that are directed toward finding mutual agreement”.<sup>18</sup> This is critical legal direction for the CER to follow as they seek to align the OPR, Filing Manuals, and other processes with UNDRIP.

### ***Application of UNDRIP to the CER, OPR, and Filing Manuals***

#### *Go beyond the preamble*

25. For meaningful improvements to the OPR and Filing Manuals, the CER must grapple with UNDRIP in a manner that goes beyond aspirational preambular statements. As *Keboawek* states, it must build robust processes aligned with UNDRIP “that are directed towards finding mutual agreement”.<sup>19</sup>

#### *Decisions must be made in accordance with UNDRIP*

26. The primary long-term goal of applying UNDRIP in the regulatory system is the genuine, effective, and substantial protection of Aboriginal and Treaty rights as envisioned in section 35 of Canada’s *Constitution Act, 1982*. Sharing and implementing that goal is the only means by which the CER process is to become a procedural mechanism by which Canada may seek First Nations’ and Métis groups’ free, prior, and informed consent.
27. Protecting the exercise of Aboriginal and Treaty rights requires foundational hooks in enabling legislation and regulations. It is an excellent starting point that the preamble of the CER Act affirms Canada’s commitment to “reconciliation” and implementing UNDRIP.<sup>20</sup> The review of the OPR and Filing Manual can help improve the information available to decision-makers through the assessment of applications and other means.

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<sup>17</sup> *Keboawek* at 227.

<sup>18</sup> *Keboawek* at 183.

<sup>19</sup> *Keboawek* at 133.

<sup>20</sup> CER Act at preamble.

28. One direct step in this direction can be found in a notion we have raised previously with the CER: that CER decision-makers cannot find a project that violates UNDRIP to be in the public interest. Simply put, every CER decision-maker should assess the public interest of the application against the criteria set in UNDRIP.
29. A decision that violates or infringes the *rights* provided to Indigenous groups and the *obligations* required of states under UNDRIP cannot be in the public interest. This would be an error of law subject to review. The Supreme Court of Canada in *Clyde River (Hamlet) v Petroleum Geo Services Inc.* tells us that when assessing effects on Aboriginal or Treaty rights, the Crown must not look only at “environmental effects” but rather inquire into the “impact on the right”.<sup>21</sup> This mandates the courts to directly assess and address the impacts of proposed activities on Aboriginal and Treaty rights. In this same vein and given the commitments in the preamble of the CER Act, the Rules must reflect a binding requirement for the CER to review and assess an application’s conformity with UNDRIP when making public interest determinations.
30. To ensure that decisions adhere to UNDRIP requires that CER decision-makers are equipped with the necessary legislative hooks, information, education, and rules to ensure they can and do look to UNDRIP as binding law.
31. In our view, this means the CER must:
  - a. grapple with the role of CER-regulated activities in missing and murdered Indigenous women, girls and 2SLGBTQI+ people;
  - b. implement APM 34;
  - c. develop forums for Indigenous decision-making, including developing Indigenous regulatory bodies; and

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<sup>21</sup> *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 (CanLII), [2017] 1 SCR 1069 at 45.

- d. co-develop models for how First Nations and Métis groups will provide informed consent.
32. In assessing the feasibility of the above recommendation, it is worth remembering that UNDRIP is a starting point. Article 43 clarifies that rights recognized within UNDRIP “constitute the minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world.”<sup>22</sup> It is intended to be a minimum threshold not an aspirational goal.

*UNDRIP beyond free, prior, and informed consent*

33. Although free, prior, and informed consent is foundational to UNDRIP and necessary, there are many articles in UNDRIP to be considered in decision-making by the CER.
34. Article 31(1) of UNDRIP affirms that:

Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports, and traditional games and visual performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.<sup>23</sup>
35. Heritage protection is a critical piece of the regulatory framework that must be improved to accord with UNDRIP.

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<sup>22</sup> UNDRIP, Article 17.

<sup>23</sup> UNDRIP, Article 31(1).

36. Article 31(2) requires states to take effective measures to recognize and protect the exercise of these rights. Revisions to the OPR and Filing Manuals, as guided by the UNDRIP Act, are the beginning of this process.<sup>24</sup>
37. The OPR and Filing Manuals review offer an opportunity for the CER to take on this work directly. In the submissions below and through Appendix “A” we seek to provide guidance on how the CER may fulfill these challenging requirements. These are necessary reforms to remain a legitimate and effective regulator in a legal system where the application of UNDRIP is expanding.

*Honour of the Crown*

38. On July 19, 2021, the Federal Court of Canada released its decision in *Ermineskin Cree Nation v Canada (Environment and Climate Change)*.<sup>25</sup> This decision holds that economic benefits stemming from an Impact Benefit Agreement (“IBA”) are Aboriginal rights which must be considered by the Crown when meeting its Duty to Consult obligations. Practically speaking, the lack of transparency on benefits and accommodation measures that sit in IBAs means there are often inequitable outcomes for First Nations and Metis groups. As part of the Honour of the Crown, the CER must take measures to ensure benefits and accommodation measures are transparent to the extent possible.
39. Impact assessment must clearly acknowledge that an unresolved adverse *impact* to an Aboriginal or Treaty right is a violation or infringement of that Aboriginal or Treaty right unless mitigated or accommodation. Given the role of the UNDRIP in interpreting the CER Act, these mitigation and accommodation measures must meet the free, prior, and informed consent standard in UNDRIP.

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<sup>24</sup> UNDRIP, Article 31(2).

<sup>25</sup> *Ermineskin Cree Nation v Canada (Environment and Climate Change)*, 2021 FC 758.

## **RECOMMENDATION 2: DEVELOP A ROBUST SET OF RULES**

### *Guidance for rule-making*

40. Regulation of pipeline projects must not be a rubber-stamping exercise. It must be robust, rigorous, defensible, evidence-based, and incorporate leading practices for assessing impacts to Aboriginal and Treaty rights and the environment. The CER is a lifecycle regulator and the OPR and Filing Manuals must reflect this in a meaningful way.
41. We have heard from engagements on the OPR and Filing Manuals that there are several gaps in the CER's regulatory process that leave First Nations and Métis groups out of the process. These include:
  - a. risk models that do not incorporate Indigenous sites of significance with appropriate importance;
  - b. construction planning that does not create space for design input from First Nations and Métis groups that could pro-actively address potential issues;
  - c. uncertainty and inconsistency in the definition of "reportable" events across jurisdictions;
  - d. poorly defined 'emergency work' and failure to plan for and protect Indigenous sites of significance in event of emergency;
  - e. lack of confidence in the whistle-blower process; and
  - f. failure to protect heritage, culture, and sites of significance.
42. The CER can and must improve the OPR and Filing Manuals to become a more efficient and effective regulator – one that can protect and preserve Aboriginal and Treaty rights. To do this they must take steps to:
  - a. improve the protection of heritage resources;

- b. expand training and certification program for CER staff (and proponent staff) in socio-economic assessments;
  - c. require frequent and tailored communication among CER, proponents, and impacted First Nations and Métis groups;
  - d. codify evidence-based decision-making that accepts Indigenous knowledge on par with western science;
  - e. address cross-jurisdictional issues (including: areas of concurrent federal and provincial jurisdiction, and pipeline to marine shipping hand-off);
  - f. integrate the right to a healthy environment into the OPR and Filing Manuals; and
  - g. expand involvement of Indigenous peoples in emergency management and planning.
43. More involvement of impacted First Nations and Métis groups in the full regulatory lifecycle for CER-regulated projects – from project design to reclamation – is needed.

*Efforts at streamlining cannot be at the expense of meaningful assessment of impacts to rights*

44. We wish to note that efforts at ‘streamlining’ the regulatory regime cannot be done at the expense of environmental protections, impacts to Aboriginal and Treaty rights, and protection of Indigenous sites of significance, culture, and heritage resources.

### **RECOMMENDATION 3: ALIGN RULES IN FORM VS. RULES IN USE**

45. Inadequate compliance, verification, and enforcement is a major barrier to an effective regulatory regime.
46. During the construction phase of TMX, the IAMC-TMX established a comprehensive Indigenous monitoring program that has been vital to the overall regulatory regime, particularly as it relates to impacts to First Nations and Métis groups.

47. A startling realization from the Indigenous monitoring program has been the lack of compliance by Trans Mountain to many environmental requirements, particularly those that relate to sites of significance, culture, and heritage resources.
48. For example: Indigenous monitors from the IAMC-TMX have identified multiple instances where culturally-modified trees, which were directed to be identified and protected, had been cut down without notice, or without being recorded as non-compliance. Anecdotal examples like this abound within the Indigenous monitors for the TMX.
49. As an addition example: as part of engagement on the OPR and Filing Manuals, an Elder shared that he witnessed a pipeline proponent worker destroy tipi rings. The worker was forced to stop by the Elder, but not before permanent destruction occurred. The Elder raised the concern that there were no repercussions for this callous destruction – a clear violation with no recourse for him or his community.
50. In addition, we highlight the following examples of compliance issues at TMX:

<p>TMX Pipeline: Spawning Deterrent Mats</p>	<p>In the fall of 2017, The CER notified Trans Mountain that they were non-compliant for installing spawning deterrent mats prior to the commencement of construction activities <a href="#">[A86239-1]</a>. The use of spawning deterrent mats as mitigation measures were not commonly used and there were doubts about their effectiveness. Trans Mountain’s planned use of spawning deterrent mats was captured in one sentence embedded in the CER Application that ran many thousands of pages long. It was not discussed at any length during the review process, few knew of the novel approach and were shocked when it was eventually applied prior to construction. This resulted in protesters accessing the watercourse and forcefully removing the mats <a href="#">[Link]</a>. This action itself may have resulted in habitat impacts, all because the mitigation measure wasn’t effectively known or discussed beforehand.</p> <p>The Indigenous Caucus noted in correspondence to both DFO and the CER that Trans Mountain’s failure to adequately notify, inform, and seek consensus from local Indigenous groups on the proposed use of this mitigation measure was inconsistent with the principles of UNDRIP,</p>
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	<p>perpetuated distrust, and potentially impacted the spawning habitat when third-parties conducted un-planned removal of these mats in defiance of Trans Mountain’s actions. Trans Mountain acknowledged their communications needed to be improved, though the OPR provides no obligation to do so.</p>
<p>TMX Pipeline: Destruction of Culturally Modified Trees</p>	<p>Many important sites of significance such as culturally modified trees were impacted during TMX with ‘danger tree clearing’. These sites cannot be reclaimed.</p> <p>Despite project conditions designed to protect these sites of significance, time and time again Indigenous monitors would seek out culturally modified trees that were intended to be protected and they would simply be gone. This evidenced the gap between the regulatory process and the on-the-ground reality.</p>

Lack of compliance has been a major issue for the pipeline and energy sector generally. For example:

<p>Rio Tinto Iron and Titanium Inc. repeated <i>Fisheries Act</i> violations</p>	<p>The case involves Rio Tinto Iron and Titanium Inc. (RTIT) and its officers, who were issued a direction by the Department of the Environment and Climate Change under subsection 38(7.1) of the Fisheries Act due to non-compliance with the Act and the Metal and Diamond Mining Effluent Regulations (MDMER).<sup>26</sup></p> <p>The direction was issued because RTIT had been depositing deleterious substances into the St. Lawrence River, which contravened the MDMER, and some sources of these deposits were not identified as “final discharge points” under the MDMER.</p> <p>RTIT admitted to regularly and repeatedly contravening the Act and the MDMER since 2008, with documented compliance failures and previous warnings and directions issued in 2010 and 2013. Despite warnings and directions, the company was permitted to be out-of-compliance for <i>several</i> years.</p>
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<sup>26</sup> *Rio Tinto Iron and Titanium Inc. v. Canada (Attorney General)*, 2025 FC 311.

	<p>This regulatory failure highlights fears about a lack of urgency and care for the environment and potential impacts on First Nations and Métis groups.</p> <p>Contraventions of regulations and project conditions should be addressed with more urgency and an effective regulator must quickly take steps to bring companies into compliance.</p> <p>Although this is not a CER-regulated project it demonstrates a risk of a passive and trusting regulator.</p>
<p>Kearl Oil Sands Facility tailings pond leak and groundwater contamination (Alberta Energy Regulator)</p>	<p>In 2024, Imperial Oil was fined \$50,000 after the Alberta Energy Regulator (AER) concluded the company breached environmental laws by permitting oilsands tailings to seep outside its lease boundary in 2022. It was initially reported that in May 2022, Imperial Oil told the AER that discoloured water had pooled on the surface near the boundary of its lease.</p> <p>First Nations were notified at the time but further updates were not provided for nearly one year when a second more substantial release of 5.3 million litres was discovered. Later documents were found that confirmed both the AER and Imperial knew the leakage years prior to the incident becoming public.</p> <p>A clear regulatory failure, this story highlights the importance of regular communication, transparency, and monitoring.</p>

51. It is our view that the issues we know about represent a fraction of the total number of projects that are out of compliance with regulatory standards.
52. These examples point to the startling distinction between the form of the rules and the reality on the ground. Well-intentioned mitigation measures, reasoned and evidenced-based regulation, and stringent project conditions are rendered meaningless by lack of compliance and the compounding effects of inadequate audits, verification, and enforcement.
53. Existing compliance verification activities conducted by the CER include: (1) inspections of facilities under construction or in operation; (2) emergency exercise evaluations; (3)

emergency procedures manuals reviews; (4) formal compliance meetings; (5) management system audits; and (6) reviews of post-construction monitoring reports.<sup>27</sup> The CER's webpage for Condition Compliance & Lifecycle Approach highlights that "[e]ach year the CER conducts more than 250 Compliance Verification Activities of regulated companies".<sup>28</sup> This is not enough. The CER regulates 73,000 km of pipeline.

54. Lack of compliance is a foundational threat to the regulatory regime. In truth, many First Nations and Métis groups and individuals have an outsized but well-earned lack of trust in federal and provincial governments. The Duty to Consult works, in many ways, to help build trust. When functioning properly, it brings people to the table to transparently discuss the pros and cons of proposed activities. In many cases, the discussions can result in mitigation measures that form project conditions and truly alleviate concerns. These conditions can be critical for approval and acceptance of a project or activity by a First Nation or Métis group. If these conditions are not complied with, the whole exercise is moot.
55. To address these issues, we recommend the following:
  - a. expand quality control/assurance, audit, compliance and verification activities;
  - b. tackle the myth of project compliance with better communication and auditing;  
and
  - c. expand training and certification programs for CER inspectors, staff, and recommend training and certification programs for proponents.
56. Further, the OPR and Filing Manuals should require independent verification of the success of project conditions. Where applicable, this independent verification should be Indigenous-led.

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<sup>27</sup> Canada Energy Regulator, Trans Mountain Pipeline ULC – Trans Mountain Expansion – Condition Compliance and Lifecycle Approach (website), [Link](#) [TMX Website].

<sup>28</sup> TMX Website.

57. The Indigenous Caucus wishes to see the CER take a more hands-on approach to regulating project compliance – one that is well-informed by First Nations and Métis perspectives.

## **CONCLUDING REMARKS**

58. The submission from the Indigenous Caucus underscores the pressing need for the CER to integrate UNDRIP into its regulatory framework emphasizing reconciliation and Indigenous participation. Through a comprehensive review of the OPR and Filing Manuals, the Indigenous Caucus aims to enhance environmental stewardship, safeguard Aboriginal and Treaty rights, and close the gap between regulatory expectations and on-the-ground realities.
59. Key points include the necessity for the CER to implement Action Plan Measures that bolster the safety and security of Indigenous women, girls, and 2SLGBTQI+ individuals, and to develop guidance for engaging Indigenous peoples in resource projects.
60. Furthermore, the submissions calls for robust compliance and verification measures to ensure adherence to environmental and cultural protections, as evidenced by past regulatory failures. These insights aim to foster a new, collaborative relationship between Indigenous communities, the government, and the CER.
61. For further discussions or queries, please reach out to Indigenous Caucus Chair, Ray Cardinal, who can provide detailed guidance and facilitate ongoing communication regarding these critical issues.
62. Please find our detailed comments on the OPR and Filing Manuals Topic Papers included at Appendix “A”.

**APPENDIX “A”  
RESPONSE TO OPR AND FILING MANUALS PROPOSED CHANGES**

	Topic Paper
A.	Damage Prevention
	<p><b>Proposed Option:</b> “Adding a requirement to section 39 of the OPR that the company’s surveillance/monitoring program must include depth of cover monitoring for:</p> <ul style="list-style-type: none"> <li>• The purposes of section 7 of the <i>Canadian Energy Regulator Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies</i> (DPR-O) thus ensuing agricultural safety); and</li> <li>• Monitoring the areas which may be impacted by hazards and potential hazards related to normal and abnormal weather conditions and land use.”</li> </ul> <p><b>Caucus Comment:</b> The CER <i>Pipeline Damage Prevention Regulations</i> (DPR) restricts excavation to protect people, pipelines, and the environment, but they inadequately safeguard Indigenous sites, which may be less than 30 cm deep.</p> <p>Better protection of Indigenous sites of significance requires that:</p> <ol style="list-style-type: none"> <li>1. damage prevention regulations and manuals expressly apply to First Nations and Metis groups archaeological and historic sites;</li> <li>2. any ground disturbance activity require proper accounting for impacts to Aboriginal and Treaty rights;</li> <li>3. Indigenous monitors be included before activities occur;</li> <li>4. pipeline companies collaborating with affected First Nations and Métis groups to obtain consent for acceptable ground disturbances along the route, which includes defining permissible activities within agreed thresholds; and</li> <li>5. clear direction from regulation that apply principles of damage prevention for grave sites, culture, and heritage resources (look to <i>Native American Graves Protection and Repatriation Act of 1990</i> (NAGPRA) (<a href="#">25 USC 32</a>) and associated regulations).</li> </ol> <p>To assist this process, we recommend the CER establish a process to designate asserted sacred, ceremonial, historical, and cultural sites as <i>sites of significance</i> or <i>sacred sites</i> that are to be respected, recognized, and ultimately avoided as part of pipeline activities. The designation process should be determined by First Nations and Metis groups and accepted by the CER. Avoidance procedures should be jointly</p>

	<p>developed between CER, CER-regulated companies, and First Nations and Metis groups.</p> <p>With increasing changes to landforms due to extreme climatic events, natural hazards, and ecosystem shifts, the Caucus supports enhanced monitoring of pipeline depth of cover to improve safety and reduce spill risks through the traditional territories of First Nations and Métis groups.</p> <p>Indigenous-led monitoring is essential for effective depth of cover programs, incorporating local knowledge, and enabling First Nations and Métis groups to protect their rights and interests. The OPR should direct the company's depth of cover monitoring programs to include Indigenous monitors.</p> <p>Monitoring should also consider the impact of landform changes on Indigenous sites of significance near pipelines, which may be more vulnerable to damage from spills. Accordingly, emergency planning must address these concerns and plan for additional vulnerabilities.</p> <p>To ensure meaningful integration and clarify the process, the OPR should support companies to develop ground disturbance management plans with First Nations and Métis groups in advance. This approach could complement an Integrity Dig Management Plan, as outlined in the Caucus' response to Topic Paper G: Pipeline Integrity.</p>
<b>B.</b>	<b>Deactivation and End of Lifecycle</b>
	<p><i>Subtopic 2</i></p> <p><b>Proposed Option:</b> “The CER is considering making changes to section 45.1 of the OPR, in addition to changes to the definition, discussed above.”</p> <p><b>Caucus Comment:</b> Section 45.1 of the OPR should be revised to:</p> <ol style="list-style-type: none"> <li>1. Provide detailed requirements for what should be included in a decommissioning plan, including: <ol style="list-style-type: none"> <li>a. specific accounting of the potential impacts to the rights and interests of First Nations and Métis groups impacted by the proposed decommissioning or abandonment activities;</li> <li>b. applying mitigation measures to mitigate these impacts;</li> <li>c. establishing long-term site monitoring including a role for Indigenous monitors;</li> <li>d. requiring companies to restore lands to levels that are acceptable to impacted First Nations and Métis groups and to a level where the CER and</li> </ol> </li> </ol>

	<p>companies can receive the free, prior, and informed consent of the impacted First Nation or Métis group; and</p> <p>e. expanding section 39 of the OPR to include surveillance and monitoring with specific reference to Indigenous monitors leading these activities.</p> <p>2. Require that all decommissioning plans obtain the free, prior, and informed consent of impacted First Nations and Métis groups before approval of a restoration or decommissioning plan.</p> <p>3. Require detailed records on decommissioned and abandoned pipelines to be accessible to the public.</p>
	<p><i>Subtopic 3: Management System</i></p> <p><b>Proposed Option:</b> “The CER is considering the following option to meet the objective outlined above:</p> <ul style="list-style-type: none"> <li>• Changes to section 6.5 of the OPR to include decommissioned and abandoned pipelines, that is, incorporating the establishment and implementation of management system processes, as appropriate, to decommissioned and abandoned pipelines.”</li> </ul> <p><b>Caucus Comment:</b> Improved management of decommissioned and abandoned pipelines is critical to understanding their long-term effects on the environment and Aboriginal rights. The establishment and implementation of a management system is appropriate and must include First Nations and Métis groups as part of the design process.</p>
	<p><i>Subtopic 4: Notification for Deactivation</i></p> <p><b>Proposed Option:</b> “the CER is considering the following option to meet the objective outlined above:</p> <ul style="list-style-type: none"> <li>• Companies would be required to submit notifications rather than applications for deactivations.</li> <li>• Such notifications must be submitted prior to the end of a twelve (12) month deactivation period and provide reasons for the deactivation.</li> <li>• For pipelines that will be deactivated for prolonged periods, companies would be required to submit notifications to the CER before the end of every two (2) year deactivation period confirming the status of the deactivated pipeline. This requirement must be fulfilled until an application for change of status (application to reactivate, decommission or abandon the pipeline) is made to the CER.</li> </ul> <p><b>Caucus Comment:</b> We recommend the following changes:</p>

	<ol style="list-style-type: none"> <li>1. If deactivation activities could potentially impact Aboriginal and Treaty rights and the interests of First Nations and Métis groups, an application rather than a notification is required – this assessment must be done in a credible and informed manner and requires consultation with impacted First Nations and Métis groups (with sufficient time and technical supports to provide <i>informed</i> consent to that approach).</li> <li>2. For proposed prolonged deactivations, timing of status notifications should be assessed on a case-by-case basis and require consultation with impacted First Nation and Métis groups.</li> </ol>
	<p><i>Subtopic 5: Surveillance and Monitoring</i></p> <p><b>Proposed Option:</b> The CER is considering the following option to meet the objectives outlined above:</p> <ol style="list-style-type: none"> <li>1. Expansion of section 39 to include surveillance and monitoring for decommissioned and abandoned pipelines.</li> </ol> <p><b>Caucus Comment:</b> We recommend that section 39 include express provisions around surveillance and Indigenous monitoring for decommissioned and abandoned pipelines. A description of how Indigenous peoples can be involved in the monitoring of decommissioned and abandoned pipelines is included in Topic D, Environmental Protection, Sub-topic 3.</p>
<b>C.</b>	<b>Emergency Management</b>
	<p><i>Subtopic 1: CSA Z246.2 — Incorporation by Reference</i></p> <p><b>Proposed Option:</b> To meet the objectives outlined above, the CER is considering incorporating CSA Z246.2 into the OPR by reference.</p> <p><b>Caucus Comment:</b> A robust and transparent standard for emergency preparedness and response for petroleum and natural gas industry systems is required. This standard must also:</p> <ol style="list-style-type: none"> <li>1. consider the protection of Aboriginal and Treaty rights and the interests of First Nations and Métis groups; and</li> <li>2. integrate Canada’s commitments to meaningful implementation of UNDRIP.</li> </ol>
	<p><i>Subtopic 2: Priorities to be Considered within the EM Program</i></p> <p><b>Proposed Option:</b> The CER is considering the following options to meet the objectives outlined above:</p>

	<ul style="list-style-type: none"> <li>• replacing the term “safety of workers or the public” with “people”; and</li> <li>• including adverse effects on sites of historic and cultural significant in subsection 32(1). For example, the revision provided could be worded as follows:             <ul style="list-style-type: none"> <li>○ A company shall develop, implement and maintain an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect people, property, sites of historic and cultural significance, or the environment.</li> </ul> </li> </ul> <p><b>Caucus Comment:</b> We agree that it will be beneficial to incorporate a requirement for the emergency management program to be expanded as identified above. Additionally, the emergency management program should address the risks to:</p> <ol style="list-style-type: none"> <li>1. sovereignty and decision-making;</li> <li>2. relationship to the land and access to nature;</li> <li>3. transmission of knowledge to future generations;</li> <li>4. land-based traditional economies, sustenance lifestyles, food security, and access to traditional foods;</li> <li>5. the practice of culture and ceremony; and</li> <li>6. historical and cultural sites of significance.</li> </ol>
	<p><i>Subtopic 3: Consolidation of current regulatory framework requirements within the OPR</i></p> <p><b>Proposed Option:</b> To meet the objective outlined above, the CER is considering adding to the OPR the requirements contained in the above-noted CER letters, Amending Orders, Best Practices, and Information Advisory.</p> <p><b>Caucus Comment:</b> We recommend the following:</p> <ol style="list-style-type: none"> <li>1. While the CER considers whether or not emergency response plans prepared for the company and responding agencies should be shared more broadly with the public, these Plans must be shared with First Nations and Métis groups as they should be integral to the response operations. When sharing to the broader public, culturally sensitive confidential information must be protected.</li> </ol>

	<ol style="list-style-type: none"> <li>2. The Emergency Response Plans should clearly identify how First Nations and Métis groups are involved in the response and how their rights and interests will be protected.</li> <li>3. Impacted First Nations and Métis group representatives must have the opportunity to participate in joint emergency response drills, these cannot only be open to select First Nations with whom the company has pre-existing relations.</li> </ol>
	<p><i>Subtopic 4: Liaison Activities and the Continuing Education Program</i></p> <p><b>Proposed Option:</b> To meet the objective outlined above, the CER is considering clarifying requirements for “liaison activities” and “continuing education programs” by deleting those terms and replacing them with new Emergency Response Coordination and Emergency Management Information provisions. Emergency Response Coordination would focus on company interactions with those that may be involved in a response, and Emergency Management Information would focus on those that may be impacted during an emergency.</p> <p><b>Caucus Comment:</b> We recommend the following:</p> <ol style="list-style-type: none"> <li>1. Take guidance from the <i>Western Canada Marine Response Organization</i>, which has a ‘vessels of opportunity’ program that enables and expands First Nation participation in emergency response in the marine environment – similar programs should be considered along pipeline routes in the terrestrial sphere.<sup>29</sup></li> <li>2. Expand training and certification programs for First Nations and Métis groups on spill event preparedness in marine and terrestrial sphere. This follows funding that was provided under TMX for marine First Nations.</li> </ol>
	<p><i>Subtopic 5: Involvement of Indigenous Peoples in EM</i></p> <p><b>Proposed Option:</b> To meet the objective outlined above, the CER is considering adding a requirement for a plan to involve Indigenous Peoples in the EM Program.</p> <p><b>Caucus Comment:</b> We agree with the proposed change but “participation” is bare minimum. Participation must include:</p> <ol style="list-style-type: none"> <li>1. proactive communications and notice;</li> <li>2. reliance on Indigenous knowledge of the land and experience with emergency events;</li> </ol>

<sup>29</sup> Coastal Response Program, Vessel Page (website), [Link](#).

	<p>3. strategic planning sessions with impacted First Nations and Métis groups; and</p> <p>4. opportunities for lessons learned after emergency events.</p> <p>Further, we recommend that companies:</p> <ol style="list-style-type: none"> <li>1. Be required or incentivized to have pre-established relationships (incl. standing offers) with First Nations- and Métis-owned companies and contractors to support the emergency response.</li> <li>2. Work with impacted First Nations and Métis groups to proactively identify individuals that will participate in an <i>Incident Command Unit</i>.</li> <li>3. Require regular individual training and operate small-scale drills to increase preparedness, capacity, and skill.</li> <li>4. Better integrate responders from impacted First Nations and Métis groups into emergency response plans. For example: The Indigenous Caucus participated in a marine Emergency Response Exercise at Trans Mountain's Westridge Terminal and noted that the Greater Vancouver Integrated Response Plan co-developed with affected First Nations, the Coast Guard, and other municipal governments and stakeholders provided a good framework for integrating First Nation decision-makers into the response planning.<sup>30</sup></li> <li>5. Be required to develop regularly updated and integrated emergency response plans tailored to specific regions along pipeline routes that identify the companies and contractors in (1), the individuals in (2), and the training and certification programs in (3).</li> </ol>
<b>D.</b>	<b>Environmental Protection</b>
	<p><i>Subtopic 1: Duty to report and manage contamination</i></p> <p><b>Proposed Option:</b> To meet the objectives outlined above, the CER is considering adding the following requirements to the OPR:</p> <ul style="list-style-type: none"> <li>• if, at any time, a company becomes aware of contamination or potential contamination relating to the lifecycle operation of its pipeline, the company must: <ul style="list-style-type: none"> <li>○ as soon as practicable, confirm contamination with analytical testing; and</li> </ul> </li> </ul>

<sup>30</sup> Greater Vancouver Integrated Response Plan for Marine Pollution Incidents (2021 version), [Link](#).

	<ul style="list-style-type: none"> <li>○ immediately report the details of the contamination to the Regulator;</li> <li>● if contamination has migrated off the right-of-way or company owned or leased lands, a company must notify the Regulator immediately; and</li> <li>● throughout the lifecycle of the pipeline, a company must manage contamination and any potentials risks in a manner that is timely and protects human health, property, and the environment.</li> </ul> <p><b>Caucus Comment:</b> We recommend the following:</p> <ol style="list-style-type: none"> <li>1. In addition to immediately reporting to the regulator, the company must also immediately report to impacted First Nations or Métis groups.</li> <li>2. The regulations should require that the emergency planning documents outline the name and contact information to whom they should report and require the company to regularly update this with the First Nation or Métis group.</li> <li>3. Protocols for spill and contamination reporting must be individually developed with each impacted First Nation or Métis group.</li> </ol>
	<p><i>Subtopic 2: Section 21 of the OPR: Reclamation, Vegetation Management, and Restoration</i></p> <p><b>Proposed Option:</b> To meet the objectives outlined above, the CER is considering building on the requirements in section 21 with further guidance to be developed.</p> <p>These requirements would incorporate the following concepts:</p> <ul style="list-style-type: none"> <li>● After a disturbance, the rights-of-way and temporary work areas (including temporary access) associated with the pipeline must undergo reclamation in a timely manner. <ul style="list-style-type: none"> <li>○ Reclamation means the process of re-establishing a site affected by company activities to a productive use that prevents or minimizes any adverse effects on the environment, people, property, sites of cultural and historical significance and use of the land.</li> <li>○ Reclamation includes the stabilization and contouring of the surface of land, maintenance of soil, management of invasive species and weeds, revegetation, and return of the water regime to a pre-disturbance state.</li> </ul> </li> <li>● During operations, disturbance to vegetation must be minimized except as necessary to enable pipeline surveillance and monitoring, and ready access for maintenance activities and emergency response.</li> </ul>

- Vegetation must be managed in a manner that supports activities required to maintain the safe operation of the infrastructure, but also encourages revegetation in sensitive areas and allows for restoration upon abandonment.
- As part of the abandonment activities, the right-of-way must be restored to a condition similar to the surrounding environment and consistent with pre-disturbance land use, where feasible.
  - These goals must be established in consultation with potentially impacted parties, including landowners and Indigenous Peoples (see subtopic 3 of the Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement paper for further information about the CER's proposal for engagement requirements).

**Caucus Comment:**

The OPR must be revised to incorporate higher standards for companies to meet in respect of disturbances to soil and vegetation. For example, Caucus has been informed by the Indigenous monitors and the Indigenous Monitoring Sub-committee that many culturally modified trees were permanently damaged as a result of 'danger tree cleaning'.

Specifically, we recommend the following:

1. Reclamation and restoration plans need to be developed through an Indigenous lens and supported by impacted First Nations and Métis groups and must receive free, prior, and informed consent before they can proceed. The benefit of an Indigenous lens on these plans will be expanded focus on eco-system impacts, culturally significant plants, native seed, and a meaningful consideration of cumulative effects as they relate to Aboriginal and Treaty rights.
2. Establish reclamation and restoration goals agreeable to impacted First Nations and Métis groups.
3. Adequately fund Indigenous monitoring programs.

*Subtopic 3: Section 21 of the OPR – Participation in development of environmental monitoring by Indigenous Peoples*

**Proposed Option:** none provided

**Caucus Comment:** We remind the CER of the submissions made by the Caucus in 2019 on TMX's Indigenous Monitoring Program, which can be found here:

<https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3810461>

These recommendations were well-balanced and took into account interests of First Nations and Métis groups while also respected the need for Trans Mountain to advance construction activities in a timely manner.

In addition to those recommendations, we also recommend the following:

1. Improve transparency and information sharing. The Trans Mountain expansion project reporting illustrates the challenges of a lack of transparency when Indigenous monitors work for the proponent. The company's Indigenous Monitor's daily reports were submitted to the company and then summarized into a monthly Indigenous Monitoring Report Overview ([Link](#)) that was posted online but not required to be shared with the CER. These reports are too high-level for other communities to truly benefit and available far too late for any meaningful action to be taken. An independent Indigenous monitor could work for (and report to) those communities that identified them to protect their interests. They could also engage directly with the CER or the IAMC-TMX.
2. Expand the network that is available to support Indigenous monitors (e.g. knowledge keepers, elders, technicians) through capacity-building and adequate funding.
3. Expand autonomy for Indigenous monitors to go where they want, when they want (subject to safety concerns). For example, during the early days of the IAMC's Indigenous monitoring program Indigenous monitors could only access the site with a CER Inspection Officer. This defeats the purpose of independent monitoring and creates an unnecessary burden on the CER's monitoring staff.
4. Better integrate Indigenous knowledge. Consider recommendations made by Caucus on the Indigenous Knowledge Policy Framework review as part of these submissions.

As part of this review, we ask that you do not lose sight of Action Plan Measure 34. Part of a robust Indigenous monitoring program is Indigenous decision-making. Action Plan Measure 34 calls for enhancing Indigenous Peoples' participation in decision-making processes, including developing measures that could enable Indigenous Peoples to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the Canada Energy Regulator (CER). An Indigenous Energy Regulator would ensure Indigenous Peoples had a say in the development, implementation, and monitoring over the lifecycle of the pipeline.

*Subtopic 4: Environmental Protection Plan required for Construction and Operation and Maintenance Activities*

**Proposed Option:** The CER is considering the following options to meet the objectives outlined above:

- EP Plans will be developed and implemented for:
  - All construction projects; and
  - All operations and maintenance activities;
- EP Plans would only need to be submitted to the CER through a condition requirement or by request; and
- EP Plans would be scalable to the size and scope of the work, for projects that have few or no environmental interactions, the EPP could simply state there are no interactions.

**Caucus Comment:** We recommend the following:

1. Ensure Environmental Protection (EP) plans are accessible to impacted First Nations and Métis groups, regardless of CER conditions.
2. Include potential impacts on Indigenous sites, recognizing that First Nations and Métis groups may have more sensitive thresholds for impacts.
3. EP plans and Environmental Protection Programs must anticipate, prevent, manage, and mitigate impacts on Aboriginal and Treaty rights throughout the project lifecycle and include measures to address cumulative impacts.
4. Integrate the protection of Aboriginal and Treaty rights from the planning and design phase through to operation, maintenance, and abandonment, not just during construction.
5. Incorporate Indigenous laws into EP plans and programs as direction by First Nations and Métis groups. For example: The Stó:lō Nation's Heritage Policy Manual for the Trans Mountain Project<sup>31</sup> is a successful model for integrating Indigenous law into environmental protections.
6. Ensure commitments to Indigenous laws are documented and enforceable.
7. Provide capacity funding to help Nations codify their expectations regarding pipeline activities.

*Subtopic 6: Climate resiliency*

**Proposed Option:** To meet the objective outlined above, the CER is considering adding a requirement that companies must incorporate climate resiliency into their evaluation of risks and risk mitigation.

<sup>31</sup> STÓ:LŌ Heritage Policy Manual, [Link](#).

	<p><b>Caucus Comment:</b> We agree. This is an excellent space for expanded discussion with impacted First Nations and Métis groups about specific climate adaptation and resiliency measures that will be required in specific regions.</p> <p>For example, culvert design to support fish migration along pipeline routes provides a good example of the required climate adaptation that is needed. Culverts designed in the past for higher stream levels must now be reconsidered for situations where water levels have dropped and the frequency of flash flooding has increased.</p>
<b>G.</b>	<b>Pipeline Integrity</b>
	<p><i>Subtopic 1: Definition of Onshore Pipeline</i></p> <p><b>Proposed Option:</b> The CER is considering amending the definition of onshore pipeline in the OPR to include the transmission of hydrogen and carbon dioxide in a gaseous state.</p> <p><b>Caucus Comment:</b> As climate change requires a transition to cleaner energy sources, the Indigenous Caucus supports the CER in providing greater regulatory clarity, consistency, efficiency, and certainty by amending the definition of “Onshore Pipeline” to include specific gaseous non-hydrocarbon commodities such as hydrogen and carbon dioxide.</p> <p>Regulatory reviews for such pipeline use should be no less rigorous than those expected for fossil fuels and consent for such changes must be required from any affected Indigenous groups.</p>
	<p><i>Subtopic 2: Use of technologies for which no standard is set out in the OPR</i></p> <p><b>Proposed Options:</b> The CER is considering the following options:</p> <ul style="list-style-type: none"> <li>• adding a new requirement to section 5.1 to include a notification to the CER where a company plans to use a technology for components, processes, or systems: for which no standard is set out in the OPR, and which has not been independently reviewed and publicly released.</li> <li>• adding a new requirement that companies establish and implement a process for evaluating a technology for which no standard is set out in the OPR, and which has not been independently reviewed and publicly released.</li> </ul> <p><b>Caucus Comment:</b> The OPR must require companies to establish processes to evaluate technologies for which no standard is set out in the OPR by impacted First Nations and Métis groups, decisions cannot be made strictly on the bearing of western science reviews and must be informed by Indigenous knowledge (when</p>

	<p>applicable), and risk assessments that consider impacts to Aboriginal and Treaty rights includes those identified in the Caucus Comment on Topic Paper C: Emergency Management at Subtopic 2.</p> <p>It is insufficient for companies to simply notify the CER when they plan on applying new technologies to work that may impact First Nations and Métis groups. When there are concerns about the efficacy and viability of technologies, we recommend a process where impacted First Nations and Métis groups are sufficiently informed on risk and can consent to their use.</p> <p>During the construction of the TMX in the fall of 2017, the CER notified Trans Mountain they were non-compliant for installing spawning deterrent mats prior to the commencement of construction activities [<a href="#">A86239-1</a>]. The use of spawning deterrent mats as mitigation measures were not commonly used and there were doubts about their effectiveness. This novel mitigation measure was not sufficiently discussed and led to protest, delay, and potential damage (as described in more detail in the body of this submission).</p> <p>The Caucus noted in correspondence to both DFO and the CER that Trans Mountain's failure to adequately notify, inform, and seek consensus from local Indigenous groups on the proposed use of this mitigation measure was not consistent with the principles of UNDRIP, perpetuated distrust, and potentially impacted the spawning habitat when third-parties conducted un-planned removal of these mats in defiance of TMC actions.</p> <p>Improved communication on new and novel technologies that may impact First Nations and Metis groups is critical.</p>
	<p><i>Subtopic 3: Pipeline Design</i></p> <p><b>Proposed Options:</b> The CER is considering the following options to meet the objective outlined above:</p> <ol style="list-style-type: none"> <li>1. adding a requirement for pipeline design to include supporting risk assessments;</li> <li>2. adding a requirement for companies to perform geohazards assessments to determine potential risks to the pipeline; and</li> <li>3. adding a requirement for companies selecting trenchless technology for pipeline installations to notify the CER if the installation occurs under a water body or if the installation is large and occurs over land.</li> </ol>

	<p><b>Caucus Comment:</b> While it is important to perform geohazard assessments to determine potential risks to the pipeline, these must be led or supported by independent Indigenous monitors. Further, geohazard assessments are not enough as they do not focus on Indigenous sites of significance. The OPR is failing to adequately assess the risk of impacting sites of Indigenous significance along the pipeline routes.</p> <p>If the objective of new requirements is to ensure companies appropriately assess, mitigate, and manage risk from pipeline design, comprehensive Traditional Land Use studies along all pipeline rights-of-way is necessary to understand the risks of the pipeline construction, operations and abandonment have to Indigenous rights and interests.</p> <p>For example, while TMX had specific conditions requiring the preparation of a report describing pre-construction traditional land use investigations and identification of sites of significance, no such investigations have been required for the existing pipeline. To this day, in those locations where the “Line 1” right-of-way diverts from the expansion, little is known about the sites of significance that could be impacted from spills and ground disturbance activities associated with maintenance integrity digs. Operations activities can impact sites of significance, culture, and heritage resources. Most pipelines were constructed long before such impacts were considered by the CER, and it is wrong to assume today that pre-disturbed soils within a right-of-way do not contain valuable cultural artifacts. Those materials excavated in the past were often placed back within the trench. Further, the untouched trench walls also provide valuable snapshots of history with strong archaeological and cultural value to affected indigenous groups. Companies should be responsible for funding comprehensive baseline studies to identify archaeological and cultural sites of significance where these have not yet been conducted.</p> <p>To reduce the risk of impacting sites of significance, companies should be required to develop protocol agreements with affected First Nation and Métis groups that would provide greater clarity and efficiency to the companies while enhancing protection of these culturally important sites. Protocol agreements might describe the notification processes, funding mechanisms and knowledge sharing for Indigenous monitors, and the associated management and mitigation measures that would be applied for various maintenance activities of varying risks undertaken within an affected Nation’s territory.</p>
	<p><i>Subtopic 4: Storage Facilities</i></p> <p><b>Proposed Options:</b> The CER is considering the following options to meet the objective outlined above:</p>

	<ul style="list-style-type: none"> <li>• adding a requirement that storage facilities have an alternate source of power for emergency shut-down, emergency lighting for evacuation, and maintaining other essential services;</li> <li>• adding a requirement that storage facilities are designed and constructed to have a secondary containment system capable of containing ignited spills such that the fire does not expose other tanks or adjoining property to ignition;</li> <li>• adding a requirement that storage facilities are designed and constructed to have fire detection and fire protection; and</li> <li>• adding a requirement that companies have the demonstrable capability to safely extinguish a fire at their storage facilities.</li> </ul> <p><b>Caucus Comment:</b> The Indigenous Caucus agrees that companies need to improve safety for people living, working, or exercising their Aboriginal and Treaty rights near storage facilities. First Nations and Métis groups can be disproportionately impacted by incidents that could occur at these facilities. Where companies need to demonstrate their capability to improve safety to neighbouring communities, they must also understand the associated vulnerabilities of these populations in designing their systems.</p> <p>Conversely, some Indigenous communities have fully capable fire and rescue capabilities and companies should be encouraged to sign mutual service agreements to access these resources during an incident.</p>
	<p><i>Subtopic 5: Quality Assurance Program – Traceability</i></p> <p><b>Proposed Options:</b> The CER is considering the following options to meet the objectives outlined above:</p> <ul style="list-style-type: none"> <li>• adding a requirement that materials to be used in the manufacturing, fabrication, construction, and maintenance of the pipeline and pressure vessels be traceable, where traceability means the ability to trace the history, use and location of a pipeline material and its characteristics, including material properties, inspection, and testing data, through recorded identification data throughout the life of the pipeline;</li> <li>• adding a requirement that if a company verifies that it has received, installed, or has in service materials that do not meet applicable standards or company specifications, the company must notify the CER;</li> <li>• adding a requirement that companies must ensure that materials of steel pipe and components to be installed on the pipeline have proven notch toughness</li> </ul>

	<p>properties for fracture resistance, except under conditions where the pipe and components:</p> <ul style="list-style-type: none"> <li>○ have inherent notch toughness properties; or</li> <li>○ are too small to yield meaningful notch toughness results; or</li> <li>○ operate at such low stress levels that fracture is not considered to be notch toughness dependent; and</li> </ul> <ul style="list-style-type: none"> <li>● adding a requirement that all information with respect to the quality assurance program be retained for at least two years after abandonment.</li> </ul> <p><b>Caucus Comment:</b> First Nations and Métis groups should also be informed of quality assurance programs, and a fully funded independent Indigenous monitoring program should be incorporated into these programs.</p>
	<p><i>Subtopic 3: Definition of Incident — Loss of Operational View or Control of a Pipeline</i></p> <p><b>Proposed Options:</b> To meet the objective outlined above, the CER is considering amending the definition of “incident” to include a requirement to notify the CER of security incidents such as loss of operational view or operational control of a pipeline.</p> <p><b>Caucus Comment:</b> Impacted First Nations and Métis groups must be included in any notification protocols when pipeline operators lose operational view or control of a pipeline. Too often, Indigenous groups are the last to learn of an incident within their territory and CER needs to update the OPR to address this issue.</p> <p>While the CER data highlights incorrect operations as a major cause of pipeline incidents, a specific definition for "operation beyond design limits" is not provided. Instead, “incorrect operations” encompass a broader range of deviations from standard procedures, including potential over-limit operations. Understanding and mitigating these risks are crucial for enhancing pipeline safety and reliability. CER and TM have used the term operations beyond design limits in the notification process to Indigenous communities.</p> <p>Another nontransparent term that is being used would be the regulator witnessing or allowing a proponent to react to certain events or potential incidents with a “voluntary shut down”. It is not clear how this term is defined by regulator or proponent in terms of a potential compliance infraction and being allowed to correct it before an official “corrected non-compliance” tool is used by CER.</p>
<p><b>H.</b></p>	<p><b>Reporting Harm</b></p>

*Subtopic 2: Environmental Effects*

**Proposed Option:** To meet the objectives outlined above, the CER is considering a risk matrix or similar decision-making tool located within technical guidance that can assist regulated companies in assessing severity, consequence, likelihood and probability of escalation.

**Caucus Comment:** We agree with the notion of a risk matrix. In addition to supporting regulated companies, risk-based compliance and verification activities should be integrated into an expanded regulatory role for CER inspectors. Further, risk-based assessment should consider risks to:

1. sovereignty and decision-making;
2. relationship to the land and access to nature;
3. transmission of knowledge to future generations;
4. land-based traditional economies, sustenance lifestyles, food security, and access to traditional foods;
5. the practice of culture and ceremony; and
6. historical and cultural sites.

The monitoring of TMX during construction highlighted several issues in reporting impacts to culturally significant sites. Below are key points for improving incident reporting and accountability:

1. Many impacts to culturally significant sites were misreported or unreported. For example, culturally modified trees were inconsistently categorized, and some incidents were only identified by Indigenous monitors from the IAMC-TMX rather than CER inspectors.
2. During construction, incident categories were redefined, complicating trend and cumulative impact analysis. For instance, vehicle incidents were initially reported as "Other (Vehicle)" and later as "Property Damage (>\$5,000)."
3. Companies must be accountable for cumulative impacts during construction, operations, and decommissioning. The current reporting approach hinders quantification.
4. Socio-economic incidents should be reported to the CER. Trans Mountain's reports were online but not submitted for oversight, relying on a passive complaints line rarely used by Indigenous groups.

	<p>5. All incidents, regardless of jurisdiction, must be reported to affected Indigenous groups. Reporting should align with Indigenous expectations and be included in CER requirements.</p> <p>6. First Nations and Métis groups should be involved in developing decision-making tools for incident reporting, as their assessments of severity and risk may differ from those of the proponent and CER.</p>
	<p><i>Subtopic 4: Definition of Incident – Release of Substance Thresholds</i></p> <p><b>Proposed Option:</b> The CER is considering the following options to meet the objectives outlined above:</p> <ul style="list-style-type: none"> <li>• lowering the volume threshold for notifying the CER of an LVP release within the definition of incident in the OPR; and</li> <li>• changes to the reporting threshold specified within the definition of incident in the OPR regarding a gas or HVP hydrocarbon release.</li> </ul> <p><b>Caucus Comment:</b> In addition to valued components identified during the regulatory criteria, assessment of risk should consider risks to:</p> <ol style="list-style-type: none"> <li>1. sovereignty and decision-making;</li> <li>2. relationship to the land and access to nature;</li> <li>3. transmission of knowledge to future generations;</li> <li>4. land-based traditional economies, sustenance lifestyles, food security, and access to traditional foods;</li> <li>5. the practice of culture and ceremony; and</li> <li>6. historical and cultural sites.</li> </ol>
	<p><i>Subtopic 5: Reporting – High-Potential Near Misses</i></p> <p><b>Proposed Option:</b> To meet the objective outlined above, the CER is considering a new OPR reporting requirement for companies to notify the CER of any high-potential incident near miss relating to the construction, operation, or abandonment of its pipeline.</p> <p><b>Caucus Comment:</b> Reporting should also include notifying impacted First Nation and Métis groups of these types of incidents within their territory.</p>

	<p><i>Subtopic 6: Reporting – Information Sharing</i>  <b>Proposed Option:</b> To meet the objective outlined above, the CER is considering implementing processes to assist companies in their learning and continual improvement in this area.</p> <p><b>Caucus Comment:</b> Agreed. Factors to consider in assisting companies should include: (1) socio-economic impact assessment training; (2) Indigenous cultural competency training; and (3) risk-based analysis training.</p> <p>Regulatory compliance could be improved if the OPR required incidents to be captured on an accessible database. Reporting through written PDF reports alone makes it difficult for Indigenous groups to track the number and type of incidents occurring within their territory over the course of the construction or operations activities. Such an incident database could be updated in real-time, and notifications could be automatically sent to the affected Indigenous groups. The Coast Guard’s notification system for marine pollution events should be considered as a potential model for companies to apply for their pipeline infrastructure.</p>
<p><b>I.</b></p>	<p><b>Rights and Interests of Indigenous Peoples, Socio-economic Effects and Engagement</b></p>
	<p><i>Subtopic 1: Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples</i>  <b>Proposed Option:</b> The CER is considering the following options to meet the objectives outlined above:</p> <ul style="list-style-type: none"> <li>• The addition of a new protection program (e.g., Protection Program to prevent and address impacts to the rights and interests of Indigenous Peoples). A new protection program would be based on the same expectations that the CER has set out for existing protection programs under the OPR. This would require companies to develop, implement and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions that could adversely impact the rights and interests of Indigenous Peoples.</li> <li>• The inclusion of a management system requirement (OPR, s. 6.5) for companies to establish and implement a process to engage with Indigenous Peoples and to demonstrate how Indigenous knowledge, including protocols and practices, that is made available to a company and is applicable to its protection programs, is incorporated into these programs.</li> <li>• The inclusion of a management system requirement to establish and implement a process to identify Indigenous laws and policies, and where these are made available to the company and are applicable to its protection programs, demonstrate how they are addressed in their protection programs.</li> </ul>

- A new requirement to ensure that individuals working for or on behalf of a regulated company receive cultural competency training.
- Additional requirements, where necessary, to ensure that the CER's expectations are clear and regulatory objectives are met. For example:
  - a new reporting requirement in relation to damage to a site of historic or cultural significance, subject to confidentiality agreements signed by companies and Indigenous communities and any applicable provincial or territorial requirements (see Reporting Topic Paper for details);
  - a revision to current OPR requirements to ensure that sites of historic and cultural significance, both Indigenous and non-Indigenous, are considered in a company's Emergency Management Program (see Emergency Management Topic Paper for details);
  - an amendment that requires companies to establish restoration goals in consultation with potentially impacted Indigenous Peoples (see the Environmental Protection Topic Paper for details).

**Caucus Comment:** The entirety of this submission applies to this Topic Paper and subtopic and all our comments throughout could apply here. Further, as we identified in the body of this submission, Kebaowek confirms that impacts to rights should be viewed through the lens of UNDRIP. The CER process should reflect the same.

Specifically, we recommend the following:

1. Companies must create programs to prevent and address impacts on Aboriginal and Treaty rights.
2. Programs should incorporate legally-binding Indigenous laws into management systems. A framework for consensus between the CER and Indigenous groups is essential, potentially facilitated by an *Indigenous Energy Regulator* under APM 34.
3. Provide funding to support Nations in developing and implementing these programs, including a long-term Independent Indigenous Monitoring Program.
4. The CER or Indigenous Energy Regulator should enforce compliance with penalties that reflect the severity of infractions and their impact on Indigenous rights.
5. If the CER intends to regulate this space they must expand their understanding of impacts to Aboriginal and Treaty rights.

	<p>6. Training and certification programs should be required for CER inspectors, staff, and proponents.</p>
	<p><i>Subtopic 2: Managing Socio-Economic Effects</i> <b>Proposed Option:</b> The CER is considering the following options to meet the objectives outlined above:</p> <ul style="list-style-type: none"> <li>• The addition of a new protection program (e.g., Protection Program for Socio-Economic Effects). A new protection program would be based on the same expectations that the CER has set out for existing protection programs under the OPR. This would require companies to develop, implement and maintain a program that is integrated with its management system, to anticipate, prevent, manage, and mitigate conditions with adverse impacts.</li> <li>• The expansion of the existing Environment Protection Program (OPR, s. 48) (e.g., Environment and Socio-Economic Effects Protection Program).</li> </ul> <p><b>Caucus Comment:</b> Please see comments raised by the Socio-Economic Subcommittee for detailed discussion of this subtopic.</p>
	<p><i>Subtopic 3: Engaging with Potentially Affected People and Communities</i> <b>Proposed Option:</b> The CER is considering the following options to meet the objectives outlined above:</p> <ul style="list-style-type: none"> <li>• Explicit requirements for engagement related to the objectives, either through a stand-alone requirement or management system process.<sup>32</sup></li> </ul> <p><b>Caucus Comment:</b> Please see comments raised by the Socio-Economic Subcommittee for detailed discussion of this subtopic.</p>
<b>J.</b>	<b>Safety</b>
	<p><i>Subtopic 2: Safety Plans for Construction, Operations and Maintenance, and Abandonment Activities</i> <b>Proposed Option:</b> The CER is considering the following options to meet the objectives outlined above:</p>

<sup>32</sup> See Topic Paper I at p 7; Note: The objective of new requirements will be to: (1) drive consistency and clarify the requirements for communications and engagement with potentially affected people and communities<sup>7</sup> across the lifecycle; (2) help ensure appropriate information about a company's activities is provided to impacted communities; (3) help ensure that companies are engaging potentially impacted Indigenous Peoples throughout the lifecycle to identify where rights and interests may be impacted, and how they can be addressed; and (4) allow for flexibility so that companies can be responsive to, and respectful of, the unique needs, interests, and engagement preferences of Indigenous Peoples, potentially affected people and communities.

1. providing a definition of “construction” in the Interpretation section of the OPR;
2. replacing existing OPR requirements for construction and maintenance safety manuals with requirements for safety plans for construction, operations and maintenance, and abandonment activities (as part of the Safety Management Program); these plans would describe the procedures, practices, resources, sequence of key safety-related activities and monitoring measures necessary to manage related hazards and to ensure the safety of the work or activity to be undertaken; and
3. developing technical guidance to further articulate CER expectations related to safety plan content across each activity type

**Caucus Comment:** To effectively assess and manage the risks of process safety hazards on affected First Nations and Métis groups, Indigenous monitors need to be integrated into the safety inspections and monitoring programs. This monitoring needs to be fully funded with capacity training included.

1. Following the 2020 spill release at Sumas Terminal, local First Nations sought to install an air quality detection system so they could have real-time monitoring of potential spill events. The expectation to receive real-time monitoring data and notification to First Nations and Métis groups should be standard across all safety management systems.
2. The Caucus has heard concerns that regulatory compliance and enforcement are too lenient to affect desired change. Rather than repeated warning letters, increased penalties should be applied to pipeline operators where safety infractions are identified.
3. Trans Mountain’s existing pipeline has been in operation for over 70 years. First Nations and Métis groups need to be informed of the integrity of pipelines and the company’s approach to managing the risks of their aging infrastructure. Some of these conversations occurred as a result of the expansion project, but this information sharing should be required for all pipelines the CER regulate.

J. K.  
L

**Filing Manuals**

**K. Filing Manuals- Environmental and Socio-Economic Assessment Topic Paper**  
**L. Filing Manuals - Lands Topic Paper**  
**M. Filing Manuals - Rights and Interests of Indigenous Peoples Topic Paper**

**Caucus Comment on Filing Manuals:**

The proposed re-organization of the ESA Section into two sections will provide clarity towards identifying potential impacts to First Nations and Métis groups. In making this split, it is important that the CER does not compartmentalize Indigenous rights and interests into a few generally *Indigenous* overarching topics (e.g. archaeology & heritage, traditional uses, etc) but rather that these impacts be applied holistically throughout.

Impacts on Aboriginal and Treaty rights are best defined by the groups themselves and can cover all sections of an environmental and socio-economic impact assessment. For example, federal regulatory expectations for impacts to fish and fish habitat are often quite different from Indigenous laws and expectations, and these can differ vary amongst First Nations and Métis groups. Undertaking a western-science assessment of fish and fish habitat in one section and a cultural harvesting assessment in a separate section obscure the important, holistic perspective that an Indigenous lens brings to the assessment.

A consent-based process for identifying the scope of the assessment (Valued Components, associated indicators, temporal / spatial boundaries) is necessary to effectively incorporate Indigenous knowledge, and values into the assessment. The current model for VC selection and the proposed update leaves decision-making of how cultural impacts would be assessed in the hands of those ill-equipped to do so effectively (namely, companies and the CER).

As it relates to assessing 'Cultural' VCs, the OPR should avoid using a standardized methodology for characterizing effects and severity of impact as referenced in Table 6.1: Determination on the degree of severity of the effects on the rights of Indigenous Peoples" and Appendix of the NEBC Recommendation report ([C-266744-1](#)). Indigenous groups may choose different criteria that are more communicable and relevant to their communities.

An example of an Indigenous-led approach for VC selection is provided within the following research paper: Kwon K, Rutherford M, Gunton T (2024) A new model for selecting valued components in environmental assessment: Lessons from an Indigenous-led cumulative effects management program. *Environ Impact Assess Rev* 106:107519. <https://doi.org/10.1016/j.eiar.2024.107519>

The Indigenous Caucus welcomes the CER's recognition for the inclusion of Indigenous-led impact assessments and needs to share decision-making authority to the affected Indigenous groups. The Indigenous Caucus looks forward to working with the CER on developing a framework that would enable better inclusion of Indigenous perspectives into the impact assessment process.

As Indigenous groups are best able to assess the impacts to their rights, companies should be required to fund indigenous-led impact assessments, and the CER should develop a process to effectively integrate these assessments into the Project's review.

The timing of Indigenous-led assessments and studies can align with the applicant's planned timing if the applicant engages early in the process and provides sufficient funding to build community capacity to undertake the work (even before the CER's arbitrary 450-day certification process). Too often, a select few Indigenous groups receive "Mutual Benefit Agreements" with strict non-objection clauses, and others, without the resources necessary to fully engage in the process, receive information too late for meaningful change.

Funding for Indigenous-led assessments needs to be commensurate with the scope of the Project. On the Trans Mountain Project, the Caucus learned of a number of Indigenous groups that received limited funds to conduct studies to support the proponent's Impact Assessment (i.e. traditional land use studies). To undertake a comprehensive assessment of their own, Indigenous groups need meaningful funded to be provided by the proponent (through an arms-length fund or otherwise).

On long linear projects with multiple First Nations or Métis groups, an Indigenous Energy Regulator (or IAMC) could support Nations in undertaking these assessments, coordinating Nations where shared objectives and interests aligned, or undertaken the assessment work itself. The IAMC-TMX was established after the Trans Mountain project was approved, missing an opportunity to determine how this novel Committee could bring a collaborative, inclusive and meaningful Indigenous involvement into the Application Review Process.

The key to achieving a "one project, one assessment" objective is to provide an organized approach to making informed and transparent decisions. Multiple assessments, or alternative perspectives, can be evaluated in an open and transparent process against the shared objective of protecting Indigenous rights and interests. By collaboratively exploring the associated uncertainties and trade-offs through respectful deliberation process, a shared understanding of how multiple value-based assessments can integrate into one decision on Project approval.

Where uncertainty remains following an assessment, a robust, fully funded Indigenous-led compliance monitoring program is required to oversee activities. This would include IAMCs or an Indigenous Energy Regulator and the daily on-site construction monitoring.

Free, prior, and informed consent is necessary for routing and site selection processes. Further, when changes to the proposed route alignment occur, the CER must not prioritize the Applicant's interests over those of the Indigenous communities. The Caucus was concerned how the CER managed Trans Mountain's Pipsell (Jacko Lake) deviation application process in 2023. The Caucus filed a letter of comment

(<https://apps.cer-rec.gc.ca/REGDOCS/Item/Filing/C26190>) articulating how the proponent's justifications did not fully account for the irreparable harm to Stk'emlúpsenc te Secwépemc Nation's spiritual and cultural connections to the area. The hearings also did not provide an appropriate venue for knowledge keepers to articulate their concerns. Questions on the spiritual importance of the site were asked of western science experts rather than the elders who participated and left feeling unheard. The CER needs to consider the development of an Indigenous Energy Regulator (or IAMC) that could provide support towards a consent-based process and dispute resolution for route alignments and site selections. The Caucus has heard that the quasi-judicial process the Commission applies is too rigid and culturally dismissive to achieve these goals.

Where accommodations and compensation are necessary, First Nations and Metis groups must be funded to undertake their own land valuations and compensation assessments to accommodate for the impacts.

Cumulative effects assessments that evaluate regional and long-term impacts, including climate change considerations are essential to the Impact Assessment process for Indigenous groups. The current approach only considers residual impacts to First Nations but the assessment of the Project needs to be placed within the context of the cumulative impacts in the region.

**APPENDIX “B”  
RELEVANT UNDRIP ARTICLES**

Article	Text
Article 2(b)	States shall provide effective mechanisms for prevention of, and redress for: ... (b) any action which has the aim or effect of dispossessing them of their lands, territories, or resources.
Article 11(1)	Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, <b><u>such as archaeological and historical sites</u></b> , artefacts, designs, ceremonies, technologies and visual and performing arts and literature. [emphasis added]
Article 11(2)	States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.
Article 19	States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
Article 21(2)	States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.
Article 22(2)	States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.
Article 24(1)	Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
Article 25	Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.



INDIGENOUS  
Advisory and Monitoring Committee  
Trans Mountain Expansion and Existing Pipeline

Article 31(1)	Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
Article 31(2)	In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.
Article 32(1)	Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
Article 32(2)	States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
Article 32(3)	States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**APPENDIX “C”  
FULL TEXT OF ACTION PLAN MEASURE NO. 34**

*Excerpt from the Action Plan*

Work in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations to (i) enhance the participation of Indigenous peoples in, and (ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the Canada Energy Regulator (CER).

Steps to achieve these objectives include to:

- Develop regulations respecting the Minister of Natural Resource Canada’s power to enter into arrangements that would enable Indigenous governing bodies to be authorized to exercise specific powers, duties and functions under the Canadian Energy Regulator Act. Ajuinnata 33 (Inuktitut meaning: A commitment to action/to never give up)
- Amend the Canadian Energy Regulator Onshore Pipeline Regulations and Filing Manuals applicable to the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure, in a manner that:
  - incorporates specific localized knowledge held by Indigenous peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge; and
  - strengthens measures to prevent and address impacts to Indigenous rights and interests, including in relation to heritage resources and sites of Indigenous significance.
- Develop a systemic model to enhance Indigenous peoples’ involvement in compliance and oversight over the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure. The model should integrate learnings from existing structures and relationships.
- Consult and cooperate to identify and take the measures needed to support Indigenous governing bodies, and/or the potential establishment of new Indigenous decision-making



institutions, to exercise regulatory authority on projects and matters regulated by the Canada Energy Regulator, including:

- Co-develop with First Nation, Métis and Inuit communities, governments and organizations and relevant federal departments and regulators the mandate of such bodies or institutions, as well as the mechanisms required for empowering them with certain regulatory authorities; and
- Identify the actions and allocate the resources required to further develop capacity and expertise for the exercise of regulatory authority by such bodies or institutions.

This work could lead to other federal departments, regulators or institutions, similarly working in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations, to:

- enhance the participation of Indigenous peoples; and
- set the measures that could enable them to exercise regulatory authority, in respect of federally regulated natural resource projects.

**(Natural Resources Canada, Canada Energy Regulator)**