



March 31, 2025

Regulatory Policy
Canada Energy Regulator
517 Tenth Avenue SW
Calgary, AB T2R0A8

Re: Onshore Pipeline Regulations – Phase 2 Review.

Dear Sir or Madam,

Doig River First Nation (DRFN) submits the following comments regarding the Onshore Pipeline Regulations Phase 2 Review. DRFN looks forward to ongoing engagement during the OPR Review.

Background on Doig River First Nation

Doig River is a Treaty 8 First Nation, and its members are Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*. Treaty 8 was first signed on June 21, 1899 at Lesser Slave Lake in present-day Alberta between Canada and the Indigenous peoples of the surrounding area. It was ratified by Order-in-Council 363 on February 2, 1990.

Doig River’s predecessor First Nation, the Fort St. John Beaver Band (the “Band”), adhered to Treaty 8 near Fort St. John on May 30, 1900. The Band divided into Doig River and Blueberry River First Nations (“Blueberry”) in 1977. Doig River is part of the Dane-zaa cultural group. The Dane-zaa people are also referred to as Beaver and their historic territory is the Upper Peace River region of British Columbia and Alberta.



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D. OPR – Environmental Protection Topic Paper

Subtopic 1: Duty to report and manage contamination

D1. What is your feedback on the proposed requirements above?

DRFN Response: One of the fundamental problems in the drafting of environmental regulations is the use of vague language. When regulations are open to interpretation, the results are often delays in action, incorrect actions, or the provision of rationales from proponents as to why actions were not necessary under the regulation. For Doig River members (and we suspect for other communities) the perception of contamination can result in avoidance of certain areas, a reduction in traditional practices, and ultimately the ongoing infringement of rights. Responding to contamination quickly and appropriately and in a transparent manner is important to managing risk.

Doig River provides the below language as an example of the specificity in language that would clarify requirements:

- *If, at any time, a company becomes aware of contamination or potential contamination relating to the lifecycle operation of its pipeline, the company must:*
 - *Within 24 hours report the circumstances of the contamination to the Regulator and affected Indigenous communities;*
 - *Immediately implement relevant response plans;*
 - *Within 48 hours of detection, initiate analytical testing to confirm the nature and extent of the contamination;*
 - *Report the results of analytical testing within 48 hours of their receipt to the Regulator and affected Indigenous communities. The report must include any necessary modifications to the response and/or remediation plans.*
- *If contamination has migrated off the right-of-way or company owned or lease lands, a company must notify the Regulator and affected Indigenous communities immediately. The notification must include:*
 - *The extent of the migration;*
 - *The type and amount of contamination;*
 - *Proposed remediation activities; and,*
 - *Adaptive management strategy to mitigate future contamination risk.*
- *The proponent must commence remediation activities for contamination off the right-of-way within five (5) days of the notification.*
- *The proponent must provide land owners and Indigenous communities with an opportunity to visit the site to assess potential impacts and the proposed mitigations.*





Subtopic 2: Section 31 of the OPR: Reclamation, Vegetation Management, and Restoration

D2. Do these requirements enhance environmental protection and clarify CER expectations in the areas of reclamation and vegetation management?

DRFN Response: The requirements are a step in the right direction, but the lack of specificity will ultimately undermine environmental protection. It is Doig River’s experience that when there is room for interpretation, proponents will invariably apply the most cost-effective approach, which generally is not sufficient for environmental protection. Doig River recognizes that specific requirements may be captured in the conditions of approval; however, the conditions also often lack prescriptive elements that make expectations very clear and are open to interpretation. In this respect, rules, procedures, regulations, and conditions all need to align. If they do not, proponents will take advantage of any perceived loophole, to the detriment of environmental and cultural sustainability. Proponents will argue that they already follow industry best practices and that these requirements are not necessary. Doig River reminds the CER that decades of these so-called industry best practices have resulted in the cumulative effects disaster that is prevalent in British Columbia (and across Canada), directly resulting from provincial and federal regulatory processes that favor industrial efficiency at the expense of cultural and environmental sustainability. Doig River’s objective is to develop a regulatory process that reshapes this approach to achieve economic development concurrently with cultural and environmental sustainability. This requires strong regulatory leadership and elevation of Indigenous communities to that of co-managers and co-stewards of the lands and waters.

With respect to the language of the requirements:

- What is meant by ‘timely manner’?
- What is meant by ‘a productive use’?
- What is meant by ‘minimize’? What criteria will be applied to demonstrate that vegetation management has been adequately and appropriately minimized?
- Doig River recommends that the CER define the bounds for these parameters and then refine them on a project by project basis.
- Regarding the first sub-bullet, reclamation is referred to in the context of preventing or minimizing adverse effects. These effects are already occurring when reclamation is required. There is inconsistency in this definition.
- Is there a mechanism to enforce a maximum right of way and number of temporary workspaces. Proponents often refer to all their experience in developing these projects so there must be sufficient data to support a requirement to adhere to maximum disturbance levels during construction.

D3. The requirement proposed in the third bullet above states that the goals of restoration are to restore the land to a condition similar to the surrounding environment and consistent with the pre-disturbance land use. Are these appropriate goals for restoration? If not, what should be the goals for restoration?





DRFN Response: Conditions similar to the surrounding landscape and consistent with pre-disturbance land use are conflicting requirements. From a regulatory and proponent perspective, pre-disturbance refers to the condition the area was in prior to the specific development. From Doig River’s perspective, pre-development refers to a period prior to cumulative effects and when members were able to meaningfully exercise their treaty rights. For Doig River a pre-development condition extends back to approximately the 1950’s, and we recommend that the CER adopt this time period as the appropriate definition for the pre-development baseline period for industry as the basis for cumulative effects assessment. As a consequence, restoration requirements need to include both local project-specific requirements and landscape scale requirements. Local and project-specific requirements will manage restoration consistent with the surrounding areas and the ecosystem condition prior to installation of the infrastructure. However, significant pre-existing cumulative effects in Doig River’s territory mean that any new development, irrespective of size, will result in the ongoing infringement of rights. Any restoration requirement that results in restoration consistent with the surrounding environment maintains that status quo and does not improve members’ ability to meaningfully exercise their rights. As commented on during phase 1, a commitment to Reconciliation requires that any new development approval needs to contribute a positive outcome to Indigenous communities’ abilities to exercising their rights, which may or may not be in the vicinity of the proposed project. Therefore, landscape restoration requirements that promote the exercising of treaty rights needs to be developed as part of an offset policy. To date regulators have not applied meaningful offsetting conditions despite it being the culmination of the mitigation hierarchy. As a result, Doig River has developed its own offset policy to support Land Use Planning. Offsetting needs to be a blanket requirement and Doig River is happy to discuss an offsetting framework with the CER that would promote ongoing economic development along with cultural and environmental sustainability.

D4. What is your feedback on establishing restoration goals in consultation with potentially impacted parties.

DRFN Response: Doig River considers this to be a requirement. A commitment to Reconciliation requires the development of restoration goals developed in collaboration with impacted Nations. Doig River has developed a Land Use Plan to guide end land use and development objectives in portions of its traditional territory it considers to be core planning areas. The Commission of the CER should not provide approvals and associated conditions that undermine either provincial mandates to manage cumulative effects, or the planning outcomes of Indigenous communities’ planning processes. For example, during the NEBC hearing process, the Commission went against the recommendations of Indigenous intervenors and established a suite of conditions related to offsetting impacts to rights that were largely counter to the ones proposed by the actual rights holders. During permitting and in recognition of significant cumulative effects in its jurisdiction, the BCER has withheld permits from the NEBC proponent on two occasions, resulting in an application for paramountcy on the part of the proponent back to the CER. DRFN can only guess at the costs of the delay and impact on competitive position. Had the Commission afforded the proper weight to the land management directives of the host jurisdiction, and had the Commission adequately considered the Indigenous knowledge it had received during the various opportunities to receive that information, the permitting process would have been well streamlined for the proponent to construct and enter the marketplace. Ultimately, the





proponent will construct its project, but Doig River members (and many other communities) will continue to experience significant cumulative effects and ongoing infringements to their rights. This is not a reasonable outcome given the CER's commitment to Reconciliation.

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

D5. What does involvement by Indigenous Peoples in monitoring over the lifecycle of the pipeline look like to you? Please provide any applicable examples or best practices.

DRFN Response: Doig River can provide an example of what involvement in monitoring does NOT look like. For example, on the North Corridor Expansion Project, there is an offset condition to restore 183ha of legacy disturbance. The offset is to be guided by an Indigenous Working Group (IWG). The assumption from Indigenous groups was that 183ha would result in approximately 18km of linear restoration, which would be consistent with consultation during the hearing process. The proponent felt that the condition was open to interpretation and that restoration would total 2-3km, and a 500m buffer around this restoration would approximate 183ha. This is not in keeping with the intent of the condition from an Indigenous perspective and will be an inadequate offset. DRFN's experience in trying to get clarification has been frustrating. It is a significant concern that a regulator cannot easily provide clarity on its own conditions, which calls to question how the CER is positioned to undertake compliance monitoring. DRFN was instructed to file a request on the record and that the Commission 'might' consider it. That is unacceptable. DRFN was further instructed to provide comment on the implementation report, which is far too late.

Furthermore, the IWG is wholly dysfunctional and simply a mechanism for the proponent to instruct community representatives how things are going to be done and stated their preference to adhere to guidance from the Alberta government. There has been no interest or meaningful attempt to incorporate Indigenous input. There is no functional purpose for the IWG. Given the IWG was a condition, it should be a matter of concern for the CER because failure of the IWG (and other conditions) runs counter to the CER's commitment to Reconciliation.

Fundamentally, the issue is an absence of clarity around compliance monitoring, the role of Indigenous communities in monitoring, community access to compliance determinations and the interpretation of conditions. These shortcomings need to be addressed.

D6. In the context of the CER's expectations of regulated companies, how could more independent monitoring and reporting by Indigenous Peoples be effectively and safely achieved? What challenges might be involved? Please provide any applicable examples or best practices.





DRFN Response: DRFN is in the process of developing a guardianship program intended to act as independent monitors to evaluate the state of our lands and waters across our traditional territory. An additional role for DRFN Guardianship could be an expansion to liaise with CER compliance specialists to review the OPR as applied to individual projects and to collaboratively conduct inspections. Doig River also participates in the Aboriginal Liaison Program (ALP). It is our understanding that the CER provides some funding to the ALP but does not integrate the program into their monitoring regime. The ALP is a well-run program that facilitates Indigenous involvement in compliance monitoring for BCER regulated projects. It is not clear why this program has not been expanded to CER regulated projects, especially if the CER is in fact funding it. We would like to see the ALP program expanded to CER regulated projects. We wouldn't want the ALP to be replaced other monitoring because it provides meaningful employment to members.

D7. Would the proposed processes in Subtopic 1 of the Rights and Interests, Socio-Economic Effects, and Engagement Topic Paper help ensure that Indigenous Peoples are included in the development and implementation of environmental monitoring activities, or are additional requirements or guidance required specific to monitoring.

DRFN Response: The generational knowledge and oral histories of our members' relationship with the lands and waters in our territory make DRFN the only authority in a position to evaluate impacts to our Rights. The notion that the CER can dictate engagement expectations or direct proponents how to evaluate impacts to Rights is misguided. An assessment of impacts to TLRU is only one component to understanding impacts to Rights, which requires the time, space, and capacity to evaluate adequately and can only be done by our knowledge holders. DRFN is in the process of developing 1) an engagement protocol to guide both proponents and the CER around expectations for consultation and engagement, 2) an internal assessment protocol on Rights that would operate in parallel to, and ultimately inform, the CERs review process, 3) an offsetting policy to contribute to the reversal of ongoing significant adverse cumulative effects on our ability to exercise our Rights, and 4) a monitoring program and effectiveness evaluation protocols for mitigations and restoration activities.

The construction of a pipeline right of way effectively alienates members from TLRU in the area, and avoidance may extend out several kilometres. The condition of the lands and waters to which members are being displaced may also be diminished in terms of being able to practice TLRU. Offsetting is a last resort and given that avoidance never applies, offsetting is becoming our only mechanism to reverse impacts to TLRU and Rights. In the absence of provincial and federal leadership and policy on offsetting, DRFN is in the process of developing an offsetting protocol as the part of its framework for engaging with companies and the CER. The OPR seems to be one mechanism to enforce offsetting principles and prescriptions developed by DRFN.

Similarly to the assessment of impacts, Doig River members are best positioned to monitor impacts on rights during construction and operations and decommissioning, and to evaluate whether both project level mitigations and restoration and landscape level offsetting are effective or require modification.





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

D8. What are the costs or benefits of adding a requirement to develop an EP Plan that is scalable to the scope of the work for all construction, operations and maintenance activities?

DRFN Response: While Doig River cannot comment on the potential additional costs to a proponent, Doig River supports the development of EPPs. This is an evolving component in environmental assessment for major industrial projects (e.g., mining) in British Columbia. The primary benefit to EPPs is the rational collection of impact pathways and consideration of avoidance, reduction, and mitigation measures, and ultimately informing potential offsetting requirements.

D9. Are there alternative means to an EP Plan, that would help ensure that environmental protection is being considered and communicated during construction, operations and maintenance activities?

DRFN Response: Doig River looks forward to additional engagement on this topic. As part of its land use planning process, Doig River is developing engagement and assessment protocols that will consider how best to capture and communicate environmental protections throughout the lifecycle of a project that is also accessible to members. Doig River believes that a formalized process is superior to an ad hoc one, but given current cumulative effects, existing processes need to be improved and refined.

D10. Would the proposed requirements in Subtopics 1 and 3 of the Rights and Interests, Socio-Economic Effects and Engagement Topic Paper help ensure that EP Plans and the Environmental Protection Programs incorporate measures to prevent and address impacts to the Rights and Interests of Indigenous Peoples?

DRFN Response: See also response to D7. Only Doig River, as the rights holders, can develop EPPs that incorporate measures to prevent and address impacts to the rights and interests of Doig River. This is a fundamental component to Doig River's land use planning process. The challenge for Doig River has been the unwillingness of regulators to accept this fundamental principle, resulting to date in inadequate measures to protect our rights and interests and assessment outcomes that ultimately exacerbate cumulative effects and ongoing infringements to our rights and interests. Until the CER engages in this fundamental paradigm shift, Doig River fears much the same outcomes and the status quo and a failure to meet the CERs commitment to Reconciliation despite what appears to be a well-intentioned OPR engagement process.

Subtopic 5: Construction to Operations and Sale or Transfer of Assets Transition Plans.

DRFN Response: Doig River does not have additional comments at this time on this subtopic.





Subtopic 6: Climate Resiliency

D13. While events such as floods and forest fires could be considered hazards under OPR paragraph 6.5(1)(c), due to the increasing frequency of climate related events and the potential impact on all Canadians, the CER is considering a requirement that companies assess these climate related risks on a continual basis, and that infrastructure be resilient to these risks. What are the benefits and costs of a requirement related to continual assessment of climate risks and the implementation of a process to manage and mitigate these risks?

DRFN Response: Doig River considers this a requirement. As part of its land use planning process, Doig River has developed tools to monitor cumulative effects and restoration activities, and to monitor impacts of new referrals on cumulative effects and Doig River rights, values, and interests. A significant input to these tools is consideration of climate risk on long term outcomes. It is a reasonable expectation that proponents be required to engage in similar analyses. For example, Doig River is finalizing a Doig River Climate Resiliency Plan and have a Climate Change Adaptation and Mitigation Policy in our Land Use Plan that requires that climate related events and associated risks be considered in project design.

D14. Are there other options that may achieve the objective in a more effective manner? If so, please explain.

DRFN Response: Doig River does not believe that suitable alternatives exist. From our experience, much of the effort is at the front end developing the tools for continual monitoring. Following that, continual modeling should be relatively straightforward. Nothing short of quantitative approaches are acceptable in this regard.

Subtopic 7: Incorporation of ISO environmental standards.

DRFN Response: Doig River does not have additional comments at this time on this subtopic.

I. OPR – Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement Topic Paper

DRFN appreciates the opportunity to participate in the OPR review process. DRFN also appreciates the well-intentioned attempt to consider Reconciliation in the OPR and Filing Manual consistent with the principles of UNDRIP. All three mechanisms, 1) the Filing Manual, 2) the formal decision-making process, and 3) the OPR, must be consistent with how Aboriginal interests are considered throughout the life cycle of the project, from initial concept and feasibility, through the assessment process, and ultimately through development and decommissioning. The most comprehensive and well-designed set of OPRs will ultimately fail to support Reconciliation unless both Industry and the CER fully understand what section 35 Aboriginal and Treaty Rights (herein Rights) mean and the implications of ongoing infringements to those Rights for our way of life. If pipeline proponents and the CER continue to either ignore or inadequately consider the protection (and enhancement) of Rights during the assessment and decision-making processes, there is little confidence that the OPR will be a useful mechanism to capture those requirements as part of the Management System, the project specific Environmental Protection Plan or corporate Environmental Protection Program or to convey those requirements to personnel and contractors.





To illustrate, the Discussion Paper seeks input on the protection of heritage resources, traditional land and resource use (TLRU), the incorporation of Indigenous Knowledge (IK), and engagement; however, the Discussion Paper does not provide any meaningful mechanism to address infringements on Rights, which would help guide discussion on these topics. Heritage resources, engagement, IK, and TLRU are all elements that support an understanding of Rights, but the concept of Rights is much broader and requires deeper engagement with individual communities. Understanding the full breadth of Rights, understanding how the exercising of our Rights has diminished and eroded since signing of the Treaty, is fundamental to Reconciliation.

Our comments are also informed by our current participation as Intervenor in the CER review of the NorthRiver Midstream NEBC Connector Project. DRFN recently participated in a cumulative effects workshop (June 20-24, 2022) hosted by the CER and attended by the Commission, to determine how best to consider and evaluate cumulative impacts on Rights, the contribution of the NEBC Project to those Rights, and offsetting those impacts. The impetus for the workshop was the recent provincial court decision for the Blueberry River First Nation (BRFN) that concluded the province of BC had failed in its duty to manage cumulative effects and in failing to do so, resulted in the inability of BRFN to meaningfully exercise its Treaty Rights. The Commission is right to consider provincial litigation in its determinations, but the mechanisms to do so are less clear. There is potential for the OPR Review to be informed by the outcomes of the NEBC review process. The OPR Review must be considered in the context of the evolving political landscape and must result in a CER review process that is designed to meaningfully and adequately evaluate impacts to Rights, and meaningfully contribute to the reversal of those impacts. If revised accordingly, the OPR could support implementation, monitoring, and compliance outcomes relative to Rights and Reconciliation.

To support the dialogue around Rights and Reconciliation, DRFN is developing a conceptual alternative to the assessment of biophysical, cultural and socio-economic elements relating to the evaluation of impacts from proposed developments to Doig River values, interests, traditional practices, and the exercising of our Rights. Doig River recommends this alternative assessment methodology as a more appropriate mechanism than those prescribed in the CER Filing Manual. The intent is to change the assessment framework from treating Doig River as an objective of the assessment to a participant in the assessment.

This alternative is necessary for several reasons:

1. Current assessment practice tends to focus on biophysical valued components and indicators that often exclude those that are significant to Doig River.
2. Current biophysical assessment methodology tends to be of limited scope, negating potential inference to Doig River values and interest; therefore,
3. The standard practice of using the assessment of biophysical impacts as a proxy for impacts to traditional use and on the exercising of Aboriginal and Treaty rights is not appropriate as it is often misleading and inaccurate.

Further, Table A-1 of the CER Filing Manual summarizes the *Circumstances and Interactions Requiring Detailed Information* and includes guidance on the assessment of impacts to:

1. Traditional land and resource use (TLRU)
2. Rights of Indigenous Peoples





Doig River maintains that it is inappropriate for regulators and proponents to make these determinations without the direct participation of communities in the assessment. One of the objectives of Doig River’s engagement protocol is to enable Doig River to meaningfully participate in the assessment, and where necessary (determined by project) for Doig River to lead the design and implementation of the assessment of impacts to TLRU and the exercising of our Rights. It is only through our direct participation in the assessment that we can adhere to the principle of free prior and informed consent and Reconciliation as stated in UNDRIP. Restructuring the assessment and decision-making framework is a pre-requisite to incorporating Indigenous interests and values in the OPR.

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

Subtopic 1. Restructuring the ESA Section

K1. Does the proposed split of the current ESA section improve clarity?

DRFN Response: The proposed split improves clarity. It is important to elevate the Rights and Interests of Indigenous Peoples as a stand-alone discussion. However, it is not clear how proponents or the CER will collect and present the information in a culturally appropriate way. Doig River maintains that the assessment of impacts to rights and interests of Indigenous peoples and the development of appropriate protections remains the responsibility of the rights holders themselves. To this end, Doig River has been developing our own stand-alone assessment process that would operate in parallel to the CER process, and ultimately inform significance determinations, accommodations, protection, mitigation, and offsetting measures, and monitoring protocols. This requires the safe ethical space, time, and capacity for these internal processes to unfold. See also response to Topic Paper I above.

K2. What overarching topics are important to highlight as applying throughout the applicant’s ESA and “Rights and Interests of Indigenous Peoples” sections?

DRFN Response: To be determined on a project-by-project basis by the rights holders.

K3. What other restructuring of the existing ESA section might improve clarity, readability, and better highlight important issues?

DRFN Response: There needs to be a recognition that the ESA and its suite of biophysical VCs are not to be taken as proxies for impacts to the rights and interests of Indigenous peoples. Indigenous-led assessments, whether they are independent or collaborative, are vital for both the management of cumulative effects on the Rights and Interests of Indigenous Peoples and for the CER to meet its commitment to Reconciliation. A considerable amount of work will be required in addition to this review process to develop a culturally appropriate Indigenous assessment protocol that operates in parallel to the CER hearing process and also meets the CER’s legislated timelines. Doig River cannot stress enough that the assessment of impacts to treaty rights must be removed from the proponent and the regulator and given over to the rights holders. Even if this necessary restructuring were to occur, a fundamental





weakness in the CER hearing process is refusal on the part of the Commission to give proper weight to Indigenous knowledge and the Indigenous experience of the impact of cumulative effects to their rights. Doig River witnessed this repeatedly during the NEBC hearing process. CER direction on how to consider Indigenous led assessment must equally apply to the Commission as well as the proponent. Meaningful engagement and a commitment to reconciliation requires meaningful outcomes. The result of this OPR review process must be something better than the standard check box approach to engagement. Proponents will respond to effective leadership from the CER and the Commission.

Subtopic 2: Environmental and Socio-economic Assessment

K4. To what extent should Indigenous knowledge and engagement be explicitly addressed in the selection of VCs? How should applicants demonstrate that Indigenous knowledge and engagement informed the selection of VCs?

DRFN Response: With the proposed split of the ESA and the section on the Rights and Interests of Indigenous Peoples, the selection of VCs as they pertain to the Rights and Interests of Indigenous Peoples should be determined by the rights holders. In this context, however, the concept of a VC may be misguided as rights and interests represent a holistic world view that relate more broadly to concepts such as environmental balance, cultural identity expressed through relationship with the land, and the ability to engage in traditional practices such as hunting, fishing, trapping, harvesting of medicinal plants, which are typically connected to specific VCs by EA practitioners, but that are fundamental to community and personal well-being and have a much deeper meaning. At Doig River, the pillar for our land use planning processes is the search for Ke-Maah, “a good, unspoiled place in nature”, which cannot always be reduced or represented by a VC approach. Therefore, while Indigenous knowledge can and should inform the selection of biophysical VCs, it is important to keep the selection of VCs separate for the ESA and for the Rights and Interests of Indigenous Peoples sections.

K5. What factors should guide the choice of VCs in terms of their breadth?

DRFN Response: Specific to the ESA component, VCs should act as indicators for the full suite of concerns identified during an effective early engagement process. VCs can be keystone components of ecosystems, or a component that can demonstrate a functional and or numerical response to impacts arising from a project and to proposed mitigations and restoration activities. These VCs should be representative of an array of functional niches in the environment and the breadth of ecosystems exposed to various impact pathways.

K6. Can VCs be ‘nested’ to cover both specific and more general concerns (e.g., a general VC that sums the effects on a number of narrower VCs)? Are there any methodological considerations or approaches regarding the ‘summing’ of effects of individual VCs?

DRFN Response: This question highlights the fundamental differences between scientific and Indigenous approaches to assessment. Scientific reductionist approaches tend to silo impact pathways and





potentially impacted VCs into manageable bins for consideration, inferring that few impacts to isolated VCs resulting in a series of non-significance determinations, should then lead to a conclusion of negligible impacts of the project generally. Indigenous approaches tend to be more holistic, focusing on how the system will respond generally to additional disturbance. To leverage the strength of both approaches, Doig River’s land use planning process relies on tools to capture and model both scientific and cultural indicators in a way that strengthens and reinforces decision-making. The use of indicators and the criteria for their selection are key elements to the overall approach, and one that the CER might consider in the OPR.

K7. What other improvements or clarifications can be made to the discussion and selection of VCs?

DRFN Response: No additional comments at this time.

K8. Would having separate sections in the Filing Manual (e.g., one describing socio-economic VCs and another describing VCs focused on the rights and interests of Indigenous Peoples) improve clarity?

DRFN Response: Yes. See also response to K1.

K9. How would such a split impact the assessment of biophysical VCs, socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?

DRFN Response: The split will necessarily result in separate assessments for these VCs, with a post-hoc analysis of any inter-relationships or potential overlaps in the assessments.

K10. What VCs should stay in the ESA section versus which should move to the “Rights and Interests of Indigenous Peoples” section?

DRFN Response: Doig River maintains that the biophysical VCs are not to be treated as proxies for impacts to the rights and impacts of Indigenous peoples; therefore, the ESA VCs are likely to remain as prescribed and the Indigenous VCs will be determined on a project-by-project basis by the rights holders. There may be overlap, but the distinction elevates the rights holders to that of equal participants and shared decision makers, which are key components to the CER’s commitment to Reconciliation.

K11. What other improvements can be made to the guidance for socio-economic VCs?

DRFN Response: In addition to its Land Use Plan that guides landscape level planning, Doig River has developed an overarching and strategic Comprehensive Community Plan that identifies the pillars for community well-being, and the associated criteria and indicators. Doig River anticipates that other communities have similar plans. Recently Doig River also commissioned a community well-being study that involved one on one interviews and on-the-land discussions about all the factors that contribute to individual and community health. Topics covered included relationships with the land, cultural identity





and traditional practices, sense of place, economic stability, food security, knowledge transfer and language preservation, among other. These guidance documents should be consulted to inform the selection of socio-economic VCs.

K12. What considerations concerning enhancement measures should be included? Are there different considerations for enhancement measures for biophysical VCs versus socio-economic VCs?

DRFN Response: No additional comments at this time.

K13. What principles and other considerations concerning offsets should be included? Are there different considerations for offsets for biophysical VCs versus socio-economic VCs?

DRFN Response: The generational knowledge and oral histories of our members' relationship with the lands and waters in our territory make DRFN the only authority in a position to evaluate impacts to our Rights. The notion that the CER can dictate engagement expectations or direct proponents how to evaluate impacts to Rights is misguided. An assessment of impacts to Rights requires the time, space, and capacity to evaluate adequately and can only be done by our knowledge holders. DRFN is in the process of developing 1) an engagement protocol to guide both proponents and the CER around expectations for consultation and engagement, 2) an internal assessment protocol on Rights that would operate in parallel to, and ultimately inform, the CERs review process, and 3) an offsetting policy to contribute to the reversal of ongoing significant adverse cumulative effects on our ability to exercise our Rights.

The construction of a pipeline right of way effectively alienates members from TLRU in the area, and avoidance may extend out several kilometres. The condition of the lands and waters to which members are being displaced may also be diminished in terms of being able to practice TLRU. Offsetting is a last resort and given that avoidance never applies, offsetting is becoming our only mechanism to reverse impacts to Rights. In the absence of provincial and federal leadership and policy on offsetting, Doig River is in the process of developing an offsetting protocol as part of its framework for engaging with companies and the CER. The OPR seems to be one mechanism to enforce offsetting principles and prescriptions developed by Doig River.

Doig River requires both environmental and cultural offsets to address impacts to Rights. Doig River provides here a list of offsetting principles for further discussion:





1. **Free, Prior and Informed Consent** - Doig River has the right to give or withhold its consent to proposed projects that may affect its lands and waters. To ensure effective participation of Doig River in decision-making, Doig River will participate in the evaluation, selection, design, implementation and monitoring of biodiversity and cultural offsetting projects.
2. **Limits to offsetting** - Impacts to some sites, features and habitats will not be able to be offset, based on their vulnerability, irreplaceability and/or their cultural significance to Doig River (for example, sacred sites, core traditional use areas, core hunting areas, camp sites, etc.). In determining which sites should be off-limits to development, Doig River will consider its IK and sound science, according to protocols established by the community.
 - 2.1 **Cultural Significance (Values)** - In determining limits to offsetting, cultural significance to Doig River must be respected. Cultural significance may include access by elders, hunting, fishing, and gathering relationships, sacred sites, economic importance and ceremonial values.
 - 2.2 **Vulnerability** - In determining limits to offsetting, the vulnerability of the natural features or systems affected must be taken into account. Vulnerability may also have to do with the vulnerability of community relationships with the features or systems involved, including the relationships of the knowledge holders. Age, health, economics, and the number of knowledge holders all factor into these relationships.
 - 2.3 **Irreplaceability** - Some types of natural features or systems cannot in anyway be compensated for through offsetting. In such cases, the development proposal should not proceed. Significant accommodation measures will be sought by Doig River for development under these circumstances.
3. **Mitigation hierarchy** - Offsetting will be set within a clear mitigation sequence. The first step is to define areas that are off-limits to development and to be protected from negative impacts. The next step is to ensure that even where offsetting is allowed to occur, negative impacts are avoided wherever possible. Following this, any unavoidable negative impacts must be reduced. Given uncertainties associated with mitigations and quantifying residual effects (as highlighted in *Yahey*), Doig River will utilize offsetting to address and reverse significant pre-existing adverse cumulative effects in its traditional territory. As a result, the base metrics for determining offsets is the project scale after avoidance and reduction have been demonstrated, not residual effects. In implementing the mitigation hierarchy, Doig River First Nation protocols will be respected and utilized.
4. **Net gain** - Offsetting requires of an overall net gain or benefit for biodiversity based on measurable conservation outcomes. If the proposed development negatively impacts cultural values, these impacts must also be offset on a net gain basis, according to Doig River protocols and in a culturally appropriate manner that satisfies community interests and needs.
5. **Equivalency** - The destruction of a natural system or any of its components is never “equivalent” to their restoration elsewhere. Nevertheless, offsetting proceeds on the assumption that such tradeoffs can be justified in some circumstances when they result in a net benefit for nature and communities. In establishing equivalence between the impacts and the offset, the offset must consider not only quantity (**spatial extent**) but also quality with respect to the condition and biodiversity values of both the impact site and the offset site. The full range of Doig River cultural values and interests must be integrated into the determination of equivalence.
6. **Duration of offset** - The beneficial outcomes secured through an offset will extend beyond the project’s impacts and should last in perpetuity. Impacts to be considered include harm to biodiversity as well as harm to Doig River First Nation cultural values and interests.
7. **Location of offset** - The offset location will be based on desired conservation outcomes and cultural values, including the potential for long-term success and viability. The offset agreement will include ecological and cultural capacity benefits to Doig River that are negatively impacted by the development, even if the offset location is not close to the disturbed site.
8. **Equity and co-operation** - Offsets will be designed and implemented in an equitable and cooperative manner, according to Doig River protocols and with the effective participation of the community and other interested parties in all aspects of decision-making (e.g., planning, implementation, monitoring and evaluation).
9. **Transparency and communication** - Both the development proponent and the offset provider (i.e., the parties involved in negotiating, designing, implementing, and overseeing offsets) will share information in a transparent manner and according to an established timeline. They will openly communicate project plans and results with Doig River. Communication about Doig River values be generated through established Doig River protocols.
10. **Full-cost accounting of offsets** - The development proponent will cover the cost of the offset, based on a full-cost accounting approach. For Doig River, this will include the full cost of raising awareness and engaging the community (e.g., communication, education, relationship- building), of entering into an agreement (e.g., research, legal fees), of creating and maintaining the offset (including in most cases community, cultural and scientific capacity building), and of monitoring and reporting.
11. **A note on multipliers** - The most used means of managing uncertainty is the application of a multiplier, whereby the size of the offset is increased by some multiplier to compensate for the risk of failure or inadequacy. There are advantages and disadvantages to this approach. Doig River will develop a set of criteria to determine under which scenarios multipliers will be required and at what magnitude. It is anticipated that at minimum a multiplier of 2 (offset):1(total project disturbance) will set the stage for initial negotiations.





K14. What is the best way to document, monitor, manage, and report on socio-economic protection and enhancement measures?

DRFN Response: No additional comments at this time.

K15. How can information relevant to environmental and socio-economic protection measures best be documented to ensure site-specific information and relevant commitments are maintained and implemented during operations?

DRFN Response: Via Indigenous Guardianship or Aboriginal Liaison Programs that are adequately funded for each project to undertake monitoring and reporting that are linked directly back to project specific impacts and mitigations.

K16. What other improvements can be made to the discussion and guidance for mitigation and enhancement measures?

DRFN Response: Formalizing rules and procedures around offsetting requirements provides a link between project level operational objectives and broader commitments to Reconciliation. In the absence of any willingness on the part of the CER to deny proponents a recommendation for approval, offsetting is the only tool available to Doig River and other Indigenous communities to manage contributions to cumulative effects and to manage risk and uncertainty associated with project impacts on the ability to exercise treaty and aboriginal rights. Without formalized rules or policies around offsets at a regulatory level, and without the necessary leadership on the part of the Commission to impose meaningful offsets on an ad hoc basis, DRFN and other communities will continue to struggle with ongoing infringements to the exercising of rights. DRFN has put considerable effort into offsets research and the development of an offset policy as part of its own land use planning process. DRFN would welcome an opportunity to participate in more dialogue around developing a legislative offsets framework that would guide CER hearings in the future.

Whether it is in the Rules, the Guidelines, or at a legislative level, the CER and the Commission needs to restructure how it approaches environmental assessment. The mitigation hierarchy has been the cornerstone of environmental assessment for decades; however, the concept of residual effects is the single greatest enemy to environmental and cultural sustainability. Residual effects are wholly arbitrary determinations based on pseudo-scientific rationale and subsequent significance determinations are based on equally arbitrary thresholds leading to death by a thousand cuts. The resultant cumulative effects have reached a critical point in British Columbia despite decades of non-significant residual effects. As a result, Doig River is a strong advocate for offsetting at a project footprint scale, which would incentivize significant avoidance, reduction, and mitigation measures and result in offsets at a scale with measurable and tangible benefits to environmental and cultural sustainability without sacrificing economic progress.





K17. To what extent should environmental events and climate change be included in cumulative effects assessments?

DRFN Response: These are critical components and should always be considered.

K18. How is the cumulative effects assessment relevant to positive effects as well as adverse effects?

DRFN Response: Not relevant. Doig River has yet to experience a positive outcome associated with cumulative effects.

K19. What factors are important in choosing the appropriate baseline for cumulative effects assessment?

DRFN Response: Doig River’s perspective is that the appropriate baseline is the last time in memory when members could meaningfully exercise their Rights, feel safe doing so, and could trust the wildlife and the water they rely upon for survival and cultural identity. For many elders at Doig River, this dates to the landscape conditions that prevailed in the late 1960’s. Understanding how Doig River exercised their Rights at that time leads to a cumulative effects assessment that recognizes just how much has been lost in terms of the ability to exercise Rights, the types of traditional activities that have been lost, and how the sense of place which is so tightly linked to cultural identity has also been impacted. Understanding and recognizing what was lost provides a framework to establish restoration goals to revitalize relationships with the land, restore traditional practices and the enhancement of Rights elsewhere from project construction and operations. Often these restoration goals can be established as part of the environmental and cultural offsets program.

K20. To what extent should the use of offsets and the applicant’s confidence in achieving no net loss relieve an applicant from having to include a cumulative effects assessment in their ESA?

DRFN Response: Under no circumstances should an applicant be relieved from having to include a cumulative effects assessment in their EA. Doig River and other communities continue to be impacted from significant adverse cumulative effects. Any additional development, irrespective of size, will further infringe on Doig River members Rights. Furthermore, offsetting is not a panacea and should not be considered a fail safe. Offsetting is simply a tool to manage risk and uncertainty. The higher the perceived risk and uncertainty, the higher that offsetting requirements should be. Cumulative effects assessment, in addition to the internal assessment on the impacts to the Rights and Interests of Indigenous Peoples, will inform the necessary offsetting requirements, not the other way around as suggested by the question. Finally, a no net loss objective is inadequate. It is Doig River’s position that an offset should result in a demonstrable net positive outcome on the ability to exercise treaty rights. See also response to K13 and K16.

K21. What other improvements can be made to the discussion and guidance for cumulative effects?





DRFN Response: For example, during the NEBC hearing, there were process steps included for a cumulative effects workshop and an offsets workshop. These were met with cautious optimism. The objectives of these workshops were to understand the impacts of cumulative effects on the ability of Indigenous peoples to exercise their treaty and aboriginal rights, and to determine the appropriate mechanism to offset those impacts. Over 30 Indigenous intervenors and participants collaborated and agreed upon an offsets approach that would provide equitable offsets for the majority of impacted communities. Despite all this effort and all the good work that was conducted, the Commission went ahead with an offset proposal developed by the proponent that minimized their environmental obligations and ultimately benefited only one Indigenous community. This was a demonstration of the typical and blatant disregard with which the CER addresses its requirement to ‘consider’ Indigenous knowledge. It was a waste of time and effort under the façade of consultation.

The OPRs require a linkage between the provision of information and outcomes. The Commission should be required to demonstrate that they have heard and understood the Indigenous knowledge being provided and there needs to be transparency in how the Commission plans to use that information in their recommendations. By the time Indigenous communities receive the recommendations report, it is too late. Indigenous communities should be drafting this guidance for the CER and the Commission given the principle that only the rights holders can evaluate impacts to their rights, and ultimately the rights holders are best positioned to develop mitigations and offsets for those impacts.

K22. Would a framework similar to the significance tables used in the NEBC Recommendation Report be appropriate for inclusion in the Filing Manual

DRFN Response: No. Doig River disagreed with many elements of the NEBC Recommendations Report, including the mischaracterization and misrepresentation of Doig River’s evaluation of impacts to Rights and disregard for an Indigenous led mitigation and offsetting framework. Significance determination is based wholly on arbitrary thresholds and arbitrary qualitative metrics. These are typical of previous regulatory processes that have resulted in today’s cumulative effects crises, despite the repeated and consistent conclusion of non-significant effects for project after project. If the CER is interested in revitalizing a hearing process that is consistent with its commitment to Reconciliation, the CER needs to restructure significance determinations. This may require additional engagements and workshops. Doig River looks forward to further engagement on this issue.

K23. What considerations should apply when making the significance determination for federal lands?

DRFN Response: See responses to K13, K16, K21, K22.

K24. What other improvements can be made to the discussion and guidance for significance?

DRFN Response: See responses to K13, K16, K21, K22.



L. Filing Manuals – Lands Topic Paper

Subtopic 1: Routing and Site Selection Process

L1. What criteria or tools are currently used by companies in determining the location of the required lands and the proposed route within the study corridor? Are there additional criteria or tools that should be used? What additional guidance, or expansion of existing guidance should be in the Filing Manual in relation to such criteria and tools?

DRFN Response: There should be a requirement to engage Nations in the conceptual planning stages prior to project siting to reduce impacts to rights, interests and values and reduce CE of projects. The CER should ensure there is evidence of meaningful early engagement with Nations at the application stage.

L2. To what extent should Indigenous knowledge and engagement be explicitly addressed in routing and site selection?

DRFN Response: This is a requirement for Doig River. Under the current filing process, a proponent will provide an assessment ‘corridor’, with detailed routing to occur at a later phase during application review, and often detailed routing may be deferred to post-approval during permitting. This approach introduces a high degree of risk and uncertainty as many proponents rely on industry best practices to protect chance finds or mitigate unforeseen interactions with other heritage resources. These industry best practices are now known to be inadequate. It is Doig River’s perspective that siting and detailed routing should be determined during early engagement, with several options presented. The placement of the corridor between points A and B should be part of the engagement with Nations. This is of paramount importance. A proponent must come with multiple routing options or design the route in collaboration with communities. Indigenous communities require ample time to review the routing options in the context of potential heritage resources and cultural sites, traditional practices along the route, and impacts to rights. A single known route would then proceed to additional requisite environmental and socio-economic studies and assessments.

Subtopic 2: Compensation Methodology

DRFN Response: Doig River offers the following general comment. DRFN would like to see the concept of compensation evolve more generally. There is guidance around hearing compensation applications for private landowners, but there is no mechanism for compensation for the infringement of treaty rights. In fact, during final oral arguments for the NEBC hearing, the Commission asked whether it was DRFN’s opinion that the Commission could set a condition around compensation for impacts to rights. At the time, DRFN felt that compensation per se was not within the Commission's authority; however, the Commission did have the authority to set conditions with respect to offsetting impacts of oil and gas development on treaty rights.





DRFN is seeking the development of a policy, guideline, or rule that requires a proponent to offset impacts to rights. As part of DRFN’s land use planning process, and given the current state of cumulative effects in BC and AB, offsetting will be required by DRFN (and likely other Indigenous groups as evidenced during the NEBC hearing) on every CER regulated project in DRFN’s territory. Providing process steps in the Rules to collaborate with communities like DRFN in the development of the offset ultimately results in a streamlined and efficient pathway to consent and is a necessary component to meeting the CER’s commitment to Reconciliation.

In the absence of an offset, or in the case than an offset is conditioned by the Commission and shown to be inadequate, Indigenous communities, as the original lands owners, should have the opportunity to apply for compensation for ongoing rights infringements associated with these new approvals. This is a matter of procedural fairness akin to what is afforded to private landowners.

Subtopic 3: Location of Lands Required for the Project

L6. What specific guidance should be provided, in relation to companies describing the location of lands that support the studies for the Environmental and Socio-economics Assessment while incorporating Traditional Land Use and Traditional Ecological Knowledge?

DRFN Response: The first step here is the detailed routing exercise conducted during early engagement. This exercise will provide clarity on the location of lands that support the studies for the environmental and socio-economic assessment. Having this detailed routing also enables the commencement of Indigenous-led assessments related to traditional land use, heritage resources, and impacts to rights. Depending on the relationship between the proponent and communities, Indigenous-led assessments can be independent or in collaboration with the proponent. In many cases, commencing Indigenous-led assessments during early engagement, with the appropriate capacity and funding, should enable coordination of timing between the proponent assessment, the CER process, and the Indigenous assessment.

L7. What should be included in a description of the lands used by Indigenous Peoples or communities for traditional purposes that are proposed to be used for the project?

DRFN Response: This should be provided by affected communities via their own traditional use studies, or alternative approach for their own Indigenous-led assessment. The filing manual guidance should refer to early engagement as the opportunity to provide Indigenous communities with the time and capacity to conduct their assessments in parallel to the proponent assessment, coordinating the provision of the requisite information approximately with the CER legislated timeframe.





Subtopic 4: Land Rights

L8. What information is appropriate (e.g., typical drawings, estimated duration for each type of temporary workspace) for companies to describe the land rights required (or not required in the case of existing rights), and the type of ownership, for the company to demonstrate that impacted rights holders, owners and users of lands have been identified and consulted in land acquisitions and compensation matters?

DRFN Response: Just a note that these types of details would be beneficial to Doig River’s assessments, and we suspect for other communities as well, as it helps to understand the distribution of land types and legacy cumulative effects.

L9. Is it helpful to provide a description of the process to be used if agreements with utility owners cannot be reached?

DRFN Response: No additional comments at this time.

Subtopic 5: Rights Holders, Owners, and Users of Lands

L10. What might be an accurate way to describe the types of rights holders, owners and users of lands?

DRFN Response: This subtopic refers to private landowners aside from Indigenous rights holders and land users, which is captured elsewhere. Nevertheless, just a note that these types of details would be beneficial to Doig River’s assessments, and we suspect for other communities as well, as it helps to understand the distribution of land types and legacy cumulative effects.

L11. Is this information available to companies at the time companies are preparing their application?

DRFN Response: No additional comments at this time.

Subtopic 6: Land Acquisition Process

DRFN Response: No additional comments at this time.

Subtopic 7: Land Acquisition Notices and Agreements

DRFN Response: No additional comments at this time.





M. Filing Manuals – Rights and Interests of Indigenous Peoples Topic Paper

Subtopic 1: Restructuring the Filing Manual

M.1 Does the proposed split into two sections (i.e., an amended ESA section and a new “Rights and Interests of Indigenous Peoples” section) improve clarity?

DRFN Response: The proposed split improves clarity. It is important to elevate the Rights and Interests of Indigenous Peoples as a stand-alone discussion. However, it is not clear how proponents or the CER will collect and present the information in a culturally appropriate way. Doig River maintains that the assessment of impacts to rights and interests of Indigenous peoples and the development of appropriate protections remains the responsibility of the rights holders themselves. To this end, Doig River has been developing our own stand-alone assessment process that would operate in parallel to the CER process, and ultimately inform significance determinations, accommodations, protection, mitigation, and offsetting measures, and monitoring protocols. This requires the safe ethical space, time, and capacity for these internal processes to unfold. See also response to Topic Paper I above.

M.2. What overarching topics are important to highlight as applying throughout the applicant’s ESA and “Rights and Interests of Indigenous Peoples” sections?

DRFN Response: To be determined on a project-by-project basis by the rights holders.

M3. What other restructuring of the existing ESA section might improve clarity, readability, and better highlight important issues?

DRFN Response: There needs to be a recognition that the ESA and its suite of biophysical VCs are not to be taken as proxies for impacts to the rights and interests of Indigenous peoples. Indigenous-led assessments, whether they are independent or collaborative, are vital for both the management of cumulative effects on the Rights and Interests of Indigenous Peoples and for the CER to meet its commitment to Reconciliation. A considerable amount of work will be required in addition to this review process to develop a culturally appropriate Indigenous assessment protocol that operates in parallel to the CER hearing process and also meets the CER’s legislated timelines. Doig River cannot stress enough that the assessment of impacts to treaty rights must be removed from the proponent and the regulator and given over to the rights holders. Even if this necessary restructuring were to occur, a fundamental weakness in the CER hearing process is refusal on the part of the Commission to give proper weight to Indigenous knowledge and the Indigenous experience of the impact of cumulative effects to their rights. Doig River witnessed this repeatedly during the NEBC hearing process. CER direction on how to consider Indigenous led assessment must equally apply to the Commission as well as the proponent. Meaningful engagement and a commitment to reconciliation requires meaningful outcomes. The result of this OPR review process must be something better than the standard check box approach to engagement. Proponents will respond to effective leadership from the CER and the Commission.





Subtopic 2: Rights and Interests of Indigenous Peoples

Subtopic 2.2: Valued components focused on the rights and interests of Indigenous Peoples

M4. Would having separate sections in the Filing Manual (e.g., one describing VCs focused on the rights and interests of Indigenous Peoples and another describing biophysical and socio-economic VCs) improve clarity?

DRFN Response: Yes. See also response to K1/M1.

M5. How would such a split impact the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?

DRFN Response: The split will necessarily result in separate assessments for these VCs, with a post-hoc analysis of any inter-relationships or potential overlaps in the assessments. The split appropriately elevates Indigenous peoples as active participants in the assessment rather than being mere subjects, providing a mechanism to determine meaningful influence on the outcomes for the exercising of rights. Indigenous-led assessments conducted in parallel with scientific assessments should result in robust outcomes based on what is essentially a two-ways-of-knowing approach, which ultimately will benefit the proponent, Indigenous communities, and the public interest of all Canadians, which Doig River understands to be the collective goal of the CER Act.

M6. What VCs should be included in the “Rights and Interests of Indigenous Peoples” section and which should stay in or also be included in the ESA section?

DRFN Response: Doig River maintains that the biophysical VCs are not to be treated as proxies for impacts to the rights and impacts of Indigenous peoples; therefore, the ESA VCs are likely to remain as prescribed and the Indigenous VCs will be determined on a project-by-project basis by the rights holders. There may be overlap, but the distinction elevates the rights holders to that of equal participants and shared decision makers, which are key components to the CER’s commitment to Reconciliation.

M7. What is the best way to document, monitor, manage, and report on protection and enhancement measures for VCs focused on the rights and interests of Indigenous Peoples?

DRFN Response: DRFN is in the process of developing a guardianship program intended to act as independent monitors to evaluate the state of our lands and waters across our traditional territory. An additional role for DRFN Guardianship could be an expansion to liaise with CER compliance specialists to review the OPR as applied to individual projects and to collaboratively conduct inspections. Doig River also participates in the Aboriginal Liaison Program (ALP). It is our understanding that the CER provides some funding to the ALP but does not integrate the program into their monitoring regime. The ALP is a well-run program that facilitates Indigenous involvement in compliance monitoring for BCER regulated projects. It is not clear why this program has not been expanded to CER regulated projects, especially if





the CER is in fact funding it. We would like to see the ALP program expanded to CER regulated projects. We wouldn't want the ALP to be replaced other monitoring because it provides meaningful employment to members.

Cautionary note: The CER need to consider a process to access the Commission for clarification on issues of compliance and adherence to the project conditions, or straight forward matters related to the interpretation of conditions. For example, on the North Corridor Expansion Project, there is an offset condition to restore 183ha of legacy disturbance. The offset is to be guided by an Indigenous Working Group (IWG). The assumption from Indigenous groups was that 183ha would result in approximately 18km of linear restoration, which would be consistent with consultation during the hearing process. The proponent felt that the condition was open to interpretation and that restoration would total 2-3km, and a 500m buffer around this restoration would approximate 183ha. This is not in keeping with the intent of the condition from an Indigenous perspective and will be an inadequate offset. DRFN's experience in trying to get clarification has been frustrating. It is a significant concern that a regulator cannot easily provide clarity on its own conditions, which calls to question how the CER is positioned to undertake compliance monitoring in collaboration with communities. DRFN was instructed to file a request on the record and that the Commission 'might' consider it. That is unacceptable. DRFN was further instructed to provide comment on the implementation report, which is far too late. A post-approval check-in process should be created.

Furthermore, the IWG is wholly dysfunctional and simply a mechanism for the proponent to instruct community representatives how things are going to be done and stated their preference to adhere to guidance from the Alberta government. There has been no interest or meaningful attempt to incorporate Indigenous input. There is no functional purpose for the IWG. Given the IWG was a condition, it should be a matter of concern for the CER because failure of the IWG (and other conditions) runs counter to the CER's commitment to Reconciliation. If a working group is going to be considered as a mechanism to document, monitor, manage, and report on protection and enhancement measures for VCs focused on the rights and interests of Indigenous Peoples, then the role of the working group needs to be clearly mandated and opportunities to liaise with the Commission created.

Fundamentally, the issue is an absence of clarity around compliance monitoring and community access to compliance determinations and the interpretation of conditions. DRFN sees opportunity to address this shortcoming through this engagement process.

M8. How can information relevant to the rights and interests of Indigenous Peoples best be documented to ensure site-specific information and relevant commitments are maintained and implemented during construction and operations?





DRFN Response: See response to M7 above. General comment follows: During the NEBC hearing and to date during the Pouce Coupe Taylor to Gordondale hearing process, DRFN has found that there is adequate opportunity to provide both written and oral Indigenous knowledge. While not directly applicable to DRFN at the time, the Commission did provide flexibility to communities struggling with capacity to submit Indigenous knowledge reports or other information as requested. The opportunity to provide information, however, is a very different issue from how that information is used to make decisions, recommendations, and compliance monitoring. Time and again DRFN has observed that Indigenous information is received under the guise of consultation but ultimately ignored or certainly not considered in any meaningful way.

For example, during the NEBC hearing, there were process steps included for a cumulative effects workshop and an offsets workshop. These were met with cautious optimism. The objectives of these workshops were to understand the impacts of cumulative effects on the ability of Indigenous peoples to exercise their treaty and aboriginal rights, and to determine the appropriate mechanism to offset those impacts. Over 30 Indigenous intervenors and participants collaborated and agreed upon an offsets approach that would provide equitable offsets for the majority of impacted communities. Despite all this effort and all the good work that was conducted, the Commission went ahead with an offset proposal developed by the proponent that minimized their environmental obligations and ultimately benefited only one Indigenous community. This was a demonstration of the typical and blatant disregard with which the CER addresses its requirement to ‘consider’ Indigenous knowledge. It was a waste of time and effort under the façade of consultation.

A linkage between the provision of information and outcomes is required, both during the hearing process itself and for the protection of rights post-decision. The Commission should be required to demonstrate that they have heard and understood the Indigenous knowledge being provided and there needs to be transparency in how the Commission plans to use that information in their recommendations and any proposed follow-up programs. By the time Indigenous communities receive the recommendations report, it is too late. Indigenous communities should be drafting this guidance for the CER and the Commission given the principle that only the rights holders can evaluate impacts to their rights, and ultimately the rights holders are best positioned to develop mitigations and offsets for those impacts, and engage in monitoring.

Subtopic 2.2: Integrating the applicant’s assessment and Indigenous-led assessments and studies

DRFN Response for M9-M12: As a general response to the integration of the applicant’s assessment and Indigenous-led assessment, Doig River has appended its DRAFT assessment and offsetting protocol, complete with rationale and a decision-tree to visualize the process.





M9. What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous Peoples (e.g., timing, funding, scoping, integration)?

M10. What are the opportunities and challenges of Indigenous-led assessments and studies for applicants (e.g., timing, funding, scoping, integration)?

M11. How can Indigenous-led assessments and studies be integrated with the applicant's assessment and still support the objective of "one project, one assessment"?

M12. When the timing does not match, how can Indigenous-led assessments and studies be integrated with the applicant's assessment and still meet the CER's legislated time limits of 450 days for pipeline and power line certificate applications?

Subtopic 2.3: Clarifying the CER's guidance for assessment effects on the rights of Indigenous Peoples

DRFN General Comment: Doig River disagrees that it is the Commission's responsibility to determine severity of impacts to Indigenous rights and interests. This perpetuates a colonial and patriarchal approach to environmental assessment, and will undermine any good works leading up to the final determination. The Commission has repeatedly gotten this wrong and demonstrated an unwillingness to accurately reflect Indigenous feedback in impact characterizations, significance and severity determinations, and recommendations for mitigation measures, resulting in ongoing infringements to rights. As the various Topic Papers correctly state, the rights holders are best positioned to determine impacts to rights. This statement must necessarily extend to significance and severity determinations, and the development of culturally appropriate mitigations and offsetting measures.

M13. What are the opportunities and challenges for Indigenous Peoples with the CER's existing guidance?

DRFN Response: Formalizing rules and procedures around offsetting requirements provides a link between project level operational objectives and broader commitments to Reconciliation. In the absence of any willingness on the part of the CER to deny proponents a recommendation for approval, offsetting is the only tool available to DRFN and other Indigenous communities to manage contributions to cumulative effects and to manage risk and uncertainty associated with project impacts on the ability to exercise treaty and aboriginal rights. Without formalized rules or policies around offsets at a regulatory level, and without the necessary leadership on the part of the Commission to impose meaningful offsets on an ad hoc basis, DRFN and other communities will continue to struggle with ongoing infringements to the exercising of rights. DRFN has put considerable effort into offsets research and the development of an offset policy as part of its own land use planning process. DRFN would welcome an opportunity to participate in more dialogue around developing a legislative offsets framework that would guide CER hearings in the future.





Whether it is in the Rules, the Guidelines, or at a legislative level, the CER and the Commission needs to restructure how it approaches environmental assessment. The mitigation hierarchy has been the cornerstone of environmental assessment for decades; however, the concept of residual effects is the single greatest enemy to environmental and cultural sustainability. Residual effects are wholly arbitrary determinations based on pseudo-scientific rationale and subsequent significance determinations are based on equally arbitrary thresholds leading to death by a thousand cuts. For example, the resultant cumulative effects have reached a critical point in British Columbia despite decades of non-significant residual effects. As a result, DRFN is a strong advocate for offsetting at a project footprint scale, which would incentivize significant avoidance, reduction, and mitigation measures and result in offsets at a scale with measurable and tangible benefits to environmental and cultural sustainability without sacrificing economic progress. For additional information, Doig River has appended its DRAFT assessment and offsetting protocol, complete with rationale and a decision-tree to visualize the process.

M14. What are the opportunities and challenges for applicants with the CER’s existing guidance?

DRFN Response: Proponents should recognize opportunities for significant relationship building and social license to operate by enabling communities to conduct culturally appropriate, Indigenous-led assessments.

M15. What additional guidance, if any, should the Filing Manuals provide to applicants to identify the potential effects of the project on the exercise and practice of the rights of Indigenous Peoples?

DRFN Response: See our comments throughout this review. For additional information, Doig River has appended its DRAFT assessment and offsetting protocol, complete with rationale and a decision-tree to visualize the process.

M16. Would a framework similar to the severity table used in the Commission’s NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?

DRFN Response: No. Doig River disagreed with many elements of the NEBC Recommendations Report, including the mischaracterization and misrepresentation of Doig River’s evaluation of impacts to Rights and disregard for an Indigenous led mitigation and offsetting framework. Significance determination is based wholly on arbitrary thresholds and arbitrary qualitative metrics. These are typical of previous regulatory processes that have resulted in today’s cumulative effects crises, despite the repeated and consistent conclusion of non-significant effects for project after project. If the CER is interested in revitalizing a hearing process that is consistent with its commitment to Reconciliation, the CER needs to restructure significance determinations. This may require additional engagements and workshops. Doig River looks forward to further engagement on this issue.





M17. Should applicants submit a draft determination of the severity of the project effects on the rights of Indigenous Peoples? This would be similar to the CER's expectations that applicants submit draft determinations of the significance of valued components in the applicants' ESA, which helps inform the Commission's determinations about significance in the Commission's ESA.

DRFN Response: NO. See response to M16 above and opening general comment to this subtopic. Similarly to the Commission, applicants are not in a position to make severity determinations for project effects on the rights of Indigenous Peoples. This is the sole purview of the rights holders.

M18. How should applicants integrate their assessment of the potential effects of a project on the rights of Indigenous Peoples with their VC-based assessments? For example, how should applicants demonstrate the overlaps and interconnections between the potential effects of a project on the rights of Indigenous Peoples and VC-based assessments (i.e., the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples)?

DRFN Response: Doig River has appended its DRAFT assessment and offsetting protocol, complete with rationale and a decision-tree to visualize the process. Please review this as an example for a potential path forward.

Subtopic 2.4: Clarifying the CER's guidance for monitoring and oversight by Indigenous Peoples

M19. What are the opportunities and challenges for Indigenous Peoples of being involved in the applicant's inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?

DRFN Response: See for example response to M7 above.

M20. What are the opportunities and challenges for applicants of involving Indigenous Peoples in their inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?

DRFN Response: Proponents should recognize opportunities for significant relationship building and social license to operate by enabling communities to conduct culturally appropriate, Indigenous-led assessments and follow-up monitoring programs.

M21. How should applicants involve Indigenous Peoples in monitoring and managing the effects of the project on the rights and interests of Indigenous Peoples during construction and operation?

DRFN Response: Specific to Doig River, the best mechanism is via our Guardianship Program and the Aboriginal Liaison Program. Indigenous oversight committees have potential provided their mandates and terms of reference are clearly laid out, with open communication with the Commission. See also response to M7.





Subtopic 2.5: Clarifying the CER’s guidance for Sites of Indigenous Significance

M22. How does the concept of “sites of Indigenous significance” compare with heritage resources and traditional land and resource use? Where might there be overlap (including with existing legislative responsibilities by jurisdictions)?

DRFN Response: Doig River supports the concept of “sites of Indigenous significance” as an umbrella term that requires consideration for heritage resources, archeological sites, cultural sites such as ceremonial sites or teaching camps, historic and current trails, and areas of traditional land and resource use (e.g., trapping, plant harvesting). These specifics would be determined through early engagement, particularly during early detailed route siting. See also response to L1 and L2 as examples, and Doig River’s DRAFT assessment and offsetting protocol, complete with rationale and a decision-tree to visualize the process. This assessment process will help identify potential risk to sites of Indigenous significance very early in the process, providing sufficient time to evaluate and make adjustments as necessary.

M23. What are the opportunities and challenges for Indigenous Peoples of integrating the concept of “sites of Indigenous significance” into the applicant’s assessment?

DRFN Response: See response to M22 above.

M24. What are the opportunities and challenges for applicants of integrating the concept of “sites of Indigenous significance” into their assessment?

DRFN Response: Identifying these sites early prevents surprises and delays later in the process, and even during permitting. Doig River’s goal is ultimately to develop pathways for approval that are protective of rights at the same time, including the protection of specific sites of significance. Doig River’s assessment process aims to reduce risk and uncertainty, creating confidence in our consent, and increasing proponent and regulatory certainty consistent with the CER’s goal of regulatory efficiency and competitive positioning in the marketplace. All of these factors combined should be considered as part of the public interest and necessity. Proponents should recognize opportunities for significant relationship building and social license to operate by enabling communities to conduct culturally appropriate, Indigenous-led assessments and follow-up monitoring programs.





Best Regards

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Doig River First Nations

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Doig River First Nation Assessment and Offset Policy

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DOIG RIVER ASSESSMENT AND OFFSETTING POLICY

Preamble

Doig River First Nation (DRFN) is an adherent to Treaty No. 8 and has rights enshrined within the oral and written terms of Treaty No. 8, as well as rights recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

The Province has affirmed its commitment to meaningful and lasting reconciliation, including through the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* and the *Declaration on the Rights of Indigenous Peoples Act*.

On June 29, 2021 in *Yahey v. British Columbia*, 2021 BCSC 1287 (“*Yahey*”), the BC Supreme Court provided guidance on the scope of Treaty 8 rights and found that the Province had breached its obligations under Treaty No. 8.

As a result of the breach of Treaty No. 8, cumulative effects in DRFN traditional territory have progressed to an extent that DRFN members can no longer meaningfully exercise their treaty rights.

Cumulative effects from the combined effects of industrial development and natural disturbance (e.g., fire and climate change) have resulted in observed declines in water quality and quantity, changes in the health of our forests and muskeg, declines in wildlife health and abundance, and changes in wildlife distribution.

DRFN rely on healthy lands and waters to exercise treaty rights. The exercising of treaty rights is fundamental to community well-being, cultural identity, our way of life, and the sustainability of our culture for generations to come.

DRFN has developed a Land Use Plan (LUP) to manage cumulative effects and future resource development, with the goal of restoring our traditional territory to enable the exercising of treaty rights as intended under Treaty No. 8.

Environmental assessment practice has failed to adequately consider project-level contribution to cumulative effects, if at all. Assessment of cumulative effects on Doig River members’ ability to exercise Treaty Rights is equally negligent.

An offset policy is just one tool that supports operational project-level decision-making, and is a component of DRFN’s Rights Assessment Protocol. Offsetting must be considered in the context of the broader regional goals and objectives set out in the LUP, which is designed to be protective of our Treaty Rights.

In standard Environmental Assessment (EA) practice, offsetting is the last step in the mitigation hierarchy. The mitigation hierarchy has not been implemented adequately, rarely culminating in offsetting due to an arbitrary set of rules related to the significance of “residual effects”. Standard EA practice, which in principle is designed to be protective of the environment, has resulted in the current cumulative effects crisis.

The outcomes of analyses that have relied on the mitigation hierarchy, and assumptions therein, are rarely monitored and evaluated for their effectiveness.

By way of this policy, DRFN sets out a revision to EA practice that transitions towards a process that evaluates risk to the ongoing infringement of rights and subsequent impacts to community well-being. DRFN’s goal is to develop an effective means to enable sustainable resource development without compromising the exercising of treaty rights.

Offsetting is not a panacea. Offsetting does not replace the requirement for other project-level best practices and mitigations. In some cases, development should not proceed, irrespective of offsetting proposals.

The assessment and offset policy will be reviewed and revised as necessary as new data, advancements, technologies, and methodologies emerge.

Vision

“We, the Tsáá ché ne dane, dream of a future where our community is healthy, strong and prosperous. As original people, we will continue to practice our treaty rights and protect the land while using our Dane-zaa language, stories and cultural traditions to prepare our future generations for their pathways in a modern world.”

Guiding Tenets

The health of the planet is intrinsically tied to the wellbeing of Indigenous peoples. When Indigenous peoples have their land, culture and sovereignty, they are more likely to have greater wellbeing.

Relationality is the concept that we are all related to each other, to the natural environment, and to the spiritual world, and these relationships bring about interdependencies.

Indigenous philosophies are underlain by a worldview of interrelationships among the spiritual, the natural and the self, forming the foundation or beginnings of Indigenous ways of knowing and being.

Alternative Assessment Process to Evaluate DRFN Valued Components.

The following is a risk-based alternative for the assessment of impacts from proposed developments to DRFN values, interests, traditional practices, and the exercising of our Aboriginal and Treaty Rights. This alternative assessment methodology is a more appropriate mechanism than those prescribed in standard regulatory filing manuals and application guidelines. The intent is to change the assessment framework from treating DRFN as an object of the assessment to a valued participant in the assessment. This is submitted as supplemental information to DRFN’s engagement protocol and is a companion document to DRFN’s Land Use Plan.

This alternative is necessary for several reasons:

1. Current assessment practice tends to focus on biophysical valued components and indicators that often exclude those that are significant to DRFN;
2. Current biophysical assessment methodology tends to be of limited scope, negating potential inference to DRFN values and interest;
3. Current biophysical assessment methodology relies on industry proponents and their consultants to develop rationales for arbitrary metrics for significance determinations that are based on residual effects;
4. Standard EA practice can be (and often is) designed by proponents and their consultants to invariably result in determinations of non-significance, despite the pre-existence of cumulative effects and infringement of rights;
5. Standard EA practice typically relies on the assessment of biophysical impacts as a proxy for impacts to traditional use and on the exercising of Aboriginal and Treaty Rights, which is not appropriate as it is often misleading and inaccurate.
6. Only the rights holders can evaluate impacts to those rights. It is inappropriate for regulators and proponents to make these determinations without the direct participation of DRFN in the assessment.
7. DRFN is working with BC to develop a consent-based shared decision-making framework, the foundation for which requires a transition to a robust and defensible assessment process.

DRFN’s engagement protocol is designed to enable DRFN to meaningfully participate in consent-based shared decision making. Determined on a project basis, DRFN may choose to either lead or guide the design and implementation of the assessment of impacts to the exercising of our Aboriginal and Treaty Rights. It is only through meaningful engagement and our direct participation in the assessment that the principle of free prior and informed consent (FPIC) can be achieved.

A risk-based assessment follows the process steps identified in Figure 1, and includes the following elements:

Early Engagement

1. DRFN agrees with emerging regulatory guidance requiring early engagement. For DRFN, early engagement with the proponent commences at the initial concept phase.

2. During this phase, the proponent will provide to DRFN all information relevant to the proposal, including need for the project, preliminary plans, including potential locations/routing, and anticipated infrastructure requirements, timelines, etc.
3. DRFN Lands Department will engage with members, either separately or in collaboration with the proponent, to review the preliminary project plans. The proponent will provide capacity funding to enable this process to occur.
4. DRFN members will provide a preliminary evaluation of risk to the ongoing infringement of rights. Risk will fall into three categories. In general, these categories are:
 - i. Low risk – refers to projects that:
 - a. Are proposed in areas identified by DRFN as suitable for development (for example the LUP southern planning unit); and/or,
 - b. Are proposed in areas with high density of pre-existing disturbance; and/or
 - c. Are proposed in areas where members no longer have an interest in exercising their rights.
 - ii. Moderate to higher risk – refers to projects that:
 - a. Are proposed in the LUP central or northern planning units; and/or,
 - b. Are proposed in an EPA3 unit; and/or,
 - c. Are proposed near to or adjacent to EPAs 1 and 2; and/or,
 - d. Involve the disturbance of intact habitat areas or landscape features of importance to DRFN; and/or,
 - e. Are proposed in areas where members currently exercise their rights, or have an interest in exercising their rights in those areas in the future.
 - iii. Unacceptable risk – refers to projects that:
 - a. Have the potential to adversely impact areas of cultural, historical, or ecological significance to irrevocable detriment to community well-being and cultural sustainability;
 - b. Are proposed within 20km of KTP. Additional sites may be located throughout DRFN LUP area.
5. Based on the preliminary risk determination, DRFN will propose a set of conditions:
 - i. Low risk conditions:
 - a. Lower offset ratios consistent with offsetting principles
 - b. Standard mitigations agreed to by DRFN
 - c. Support for cultural enhancement activities elsewhere in DRFN territory
 - ii. Moderate to higher risk:
 - a. Higher offset ratios consistent with offsetting principles
 - b. Enhanced mitigations, including more stringent monitoring and effectiveness evaluation procedures, and adaptive management.
 - c. Support for cultural enhancement activities elsewhere in DRFN territory
 - iii. Unacceptable risk – impacts of these projects cannot be mitigated or offset and for certainty for both the proponent and DRFN, these should not proceed to detailed assessment phase and regulatory process.

Initial Decision Point

6. Proponents and DRFN will collaborate on a preliminary set of conditions. Upon agreement to the conditions, DRFN will provide consent to the proponent to proceed to detailed assessment phase and commence with the regulatory process steps.
7. Failure to reach agreement on the preliminary conditions will result in the withholding of consent.
8. Under no circumstances will DRFN provide consent to projects deemed to pose unacceptable risk to our rights, values, and interests.
9. Decision point 1 is intended to provide clarity and a measure of certainty for the proponent and DRFN regarding the proposed development. However, the detailed assessment phase may provide additional information that may adjust the risk determination and associated conditions.

Detailed Assessment

10. The detailed assessment phase includes two (2) parallel processes:
 - i. Technical biophysical studies and impacts statement, lead by the proponent and its technical team. This process is designed to meet regulatory application guidelines and legislative requirements.

- ii. Evaluation of impacts to Aboriginal and Treaty Rights, lead by DRFN, its members, and technical support team, as required. This process is designed to meet the requirements for FPIC under a consent-based shared decision-making framework.

These processes should not operate in isolation. Information should be shared across both streams to ensure a robust assessment from both perspectives.

11. Environmental and Cultural Context – As part of a two-eyed seeing approach, biophysical studies and the collection of Indigenous Knowledge (IK) provide context for the assessment.

- i. The concept of baseline encompasses two (2) timescales, 1) pre-development condition and 2) current condition.
 - a. Pre-development – refers to a time prior to extensive development when DRFN members could safely exercise their Aboriginal and Treaty Rights, trusting both the quantity and quality of the natural resources that they rely on for community and cultural wellbeing. This period provides a reasonable guidepost for future restoration.
 - b. Current condition – describes the aquatic and terrestrial landscapes as they are today, relative to pre-development conditions. The standard EA practice of considering current conditions as baseline is misleading because it assumes that current conditions are the norm, ignoring the significant changes that have occurred that lead to these conditions.
 - c. Evaluation of Risk – cumulative effects in DRFN’s land use planning area are significant, and the addition of any new project must result a conclusion of a significant adverse risk. The evaluation (magnitude) of risk will focus on the resolution of four (4) process steps:
 1. To what extent will the proposed project perpetuate or contribute to the suboptimal functioning of aquatic and terrestrial ecosystems and the ongoing infringement of rights currently?
 2. To what extent will the proposed project prevent the area from returning to a state that approximates pre-development conditions and enable the exercising of rights sometime in the future?
 3. To what extent can the project reduce, restore, and mitigate the outcomes associated with numbers 1 and 2 to manage risk and uncertainty?
 4. To what extent can the proposed project offset the outcomes associated with numbers 1, 2, and 3 above to manage risk and uncertainty?

12. Values and Interests – to support a fulsome understanding of the potential of the project to infringe on Aboriginal and Treaty Rights:

- i. The proponent will collaborate with DRFN on identifying interests and values to consider during the assessment process, in addition to those prescribed by the regulator.
- ii. The proponent will collaborate with DRFN on the design of the biophysical studies required to assess these values and interests.
- iii. These studies will be comprehensive, adhering to all applicable scientific standards, accounting for all possible sources of variation (e.g., seasonal, habitat types, disturbance, etc) and irrespective of the scale of a project.
- iv. The proponent will collaborate with DRFN to implement the biophysical studies, providing opportunities and training for DRFN members as environmental technicians and biologists.
- v. By participating in the biophysical assessment, DRFN increases confidence that its values and interests are adequately and appropriately considered in the biophysical assessments. DRFN will then consider this information during its internal cultural assessment and evaluation of impacts to Aboriginal and Treaty Rights.

13. Risk Assessment on the Infringement of Rights – in parallel with the biophysical studies, DRFN Lands will engage with members to understand how rights may have been practiced in the past, what traditional practices may have been lost, and the pathways to restore the exercising of rights and traditional practices, either in the project area or elsewhere in DRFN’s planning area. Enabling this assessment requires the following:

- i. The proponent and regulator will provide capacity funding to DRFN to conduct this assessment.

- ii. Due to the sensitive and confidential nature of IK, DRFN will conduct this assessment internally with the support of community members and other technical advisors, as necessary.
- iii. DRFN will submit a report to the proponent and the regulator that summarizes its findings on the risks to the ongoing infringement of rights and traditional practices, relying on both its internal studies and the results of the biophysical studies, and in the context of cumulative effects on our traditional territory.
- iv. The report will also provide a recommended set of conditions to manage risk and uncertainty that would be required to achieve consent.
- v. Adhering to the principles of early engagement and the detailed assessment process helps to ensure that DRFN has sufficient time and capacity to complete its internal assessment and report submission within regulatory timelines.

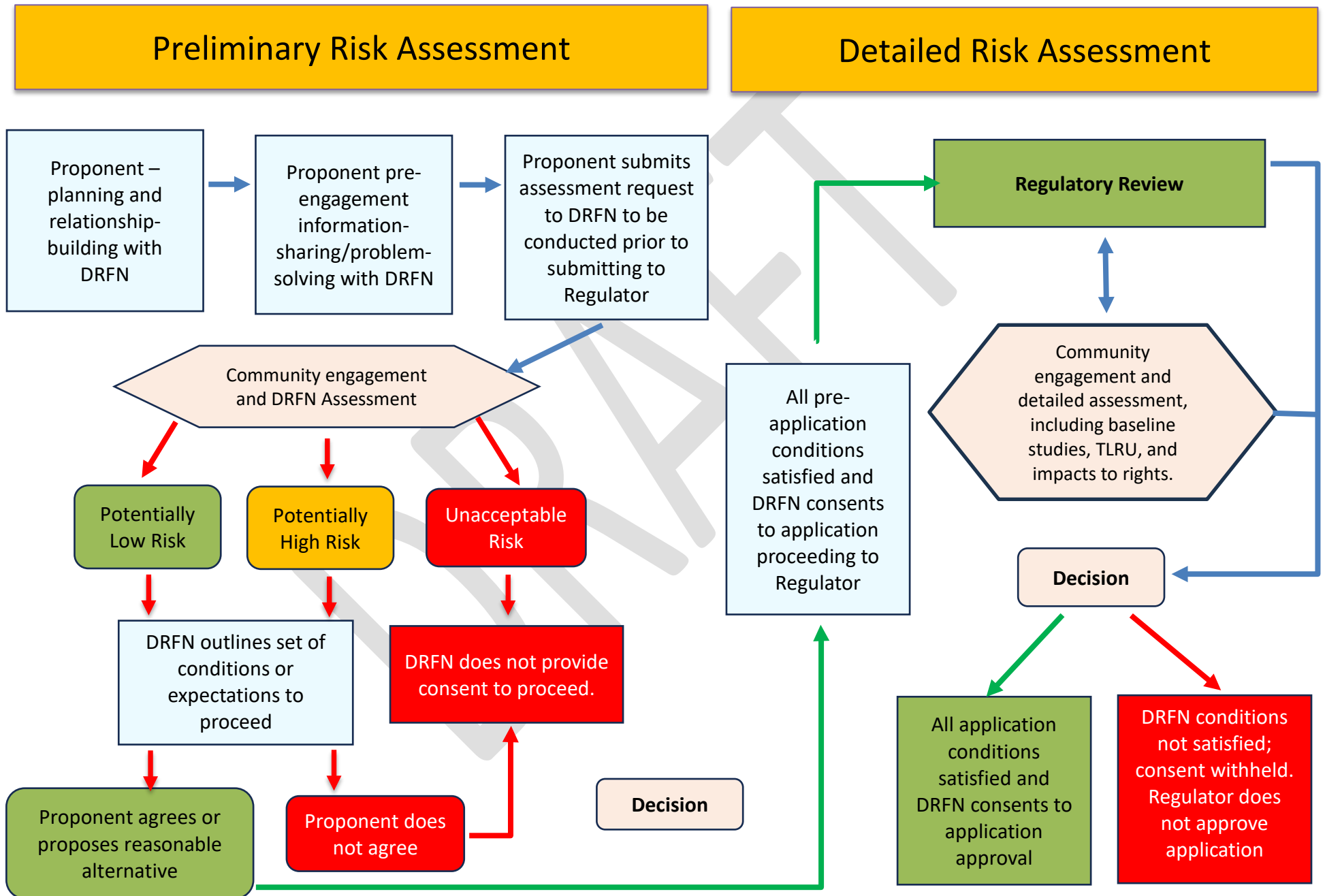
Final Decision Point - Steps 1 – 13 are modeled on a two-eyed seeing approach to manage risk and uncertainty in a way that leads to DRFN consent for regulatory approval of a proposed project. For the final decision statement:

- vi. DRFN and the regulator will collaborate on the final assessment outcomes, and work through project specific avoidance, reduction, and mitigation options to manage risk at a project scale.
- vii. Similarly, DRFN and the regulator will collaborate on offset conditions relative to the final risk determination.
- viii. Project-specific mitigations and contributions by the proponent to regional offsetting initiatives are both required to manage and ultimately reverse cumulative effects in DRFN planning area.
- ix. From DRFN's perspective, mitigation, restoration, and offsetting are applicable to all values and interests of our members, including cultural, not just valued components considered at risk or by the regulator.
- x. The successful conclusion of the assessment requires DRFN and the regulator to collaborate on assessment methodology and terminology in a way that meets regulatory requirements and DRFN objectives. For example, DRFN recognizes that the concept of residual effects is embedded in EA practice as the basis for significance determination. However, this approach fails to recognize significant adverse pre-existing cumulative effects in our planning area and ultimately contributes to 'death by a thousand cuts'. Standard EA practice is inconsistent with the holistic approach to lands and water stewardship taken by DRFN.

The opportunity to participate during every step of the assessment process, from project concept and baseline studies to final determinations, increases DRFN's confidence that the project can proceed in a sustainable manner. This same process also provides regulatory certainty for proponents. Steps 1 – 14 provide an holistic risk-based approach to environmental assessment that is more robust and defensible than the standard residual effects approach that has led to the current cumulative effects crisis. DRFN deems these steps necessary to critically inform details within a project application, including information pertaining to matters prescribed in regulatory guidance materials, such as:

- the quality, quantity or distribution of resources involved in interests identified, or required for the exercise of the right (for example, any preferred wildlife or plant species utilized, the cultural, ceremonial or nutritional uses or importance of resources, and perception of quality, cultural connections to a particular species);
- access to the resources used or required in relation to the interests identified or to the exercise of the right (for example, physical access or travel ways to access culturally important or harvesting locations, and distance from communities of residence);
- timing and seasonality in relation to the interests identified, or for the exercise of rights, including how often the Indigenous right may be practiced or exercised;
- locations or areas of cultural importance where interests are identified or Indigenous rights are exercised.

Figure 1. Doig River First Nation Proposed Consent-Based Decision Process



Detailed (Final) Risk Assessment

Regulatory Review

Proponent-led Technical Assessment
VC determination,
baseline studies

DRFN Assessment
Community engagement
and detailed assessment,
including baseline studies,
TLRU, and impacts to rights.

Project Specific Activities

Avoid
Construct only what is necessary
Alternative routing and site options

Reduce
Utilize existing disturbance
Efficiencies in design

Mitigate
On-site restoration
Access management
Noise management
Monitoring and adaptive management

Lower Risk

Moderate to Higher Risk

Biophysical and/or Cultural Offsetting; or alternative management tools
Footprint Scale
Lower risk – lower ratios
Higher risk – higher ratios, enhanced mitigations

All application conditions satisfied and DRFN consents to application approval

Unacceptable Risk

DRFN conditions not satisfied; consent withheld. Regulator does not approve application

Proponent disagrees or fails to provide reasonable alternative

Principles

DRFN's Offsets Policy is grounded on a growing set of principles and learnings from domestic and international case studies and guidance documents. These principles include, but are not limited to, the following:

- 1. Offset Requirement** – Every new development proposed in DRFN's land use planning area, irrespective of its size, will be reviewed for a requirement for an offset plan. Offsetting requirements will be determined on a project basis and relative to the goals of each of the three (3) management zones within the planning area and the level of risk to ongoing infringement that members assign to a proposed development.
- 2. Free, Prior and Informed Consent (FPIC)** – DRFN has the right to give or withhold its consent to proposed projects that may affect its lands and waters. To support consent-based decision-making, DRFN will participate in the evaluation, selection, design, implementation and monitoring of biodiversity and cultural offsetting projects. An offset plan consistent with this policy is a pre-requisite to achieving the confidence and degree of certainty necessary for FPIC, a key principle under UNDRIP. Consequently, an offset plan must first be submitted for review during early engagement and subsequent revisions made as necessary during the detailed assessment phase as detailed biophysical and cultural information become available. An offset plan condition that is approved by DRFN is required for DRFN to provide consent to provincial and/or federal agencies to provide a recommendation for project approval.
- 3. Limits to offsetting** – Offsetting is not a panacea, but rather a tool to manage risk and uncertainty at project and regional scales. Relative to historic baselines, some areas may be of high cultural significance, vulnerable, and irreplaceable. Ongoing approvals of industrial development and rural land conversion have resulted in cumulative effects that have, and continue to, infringe on treaty rights. Offsetting is a last resort and should not be considered an opportunity to circumvent a regulatory decision that would otherwise be a denial of a certificate. In some cases, the impacts may be considered too severe to offset (for example, a determination of unacceptable risk) and these developments should not proceed. For regulatory and proponent certainty, this determination will be made during early engagement. In some cases, a determination of unacceptable risk may be made during the detailed assessment phase with the accumulation of new information.
- 4. Mitigation hierarchy** – Withholding project approval is the only mechanism available to avoid further infringements on treaty rights. Otherwise, there are limited mechanisms to avoid, reduce, or mitigate impacts of proposed industrial developments on DRFN's treaty rights. Given uncertainties associated with mitigations and quantifying residual effects (as highlighted in *Yahey*), DRFN can utilize offsetting as a means to address a project's contribution to significant adverse cumulative effects in its traditional territory.

Resolution of the mitigation hierarchy and determinations about significance of effects have previously relied on the magnitude, direction, and duration of residual effects relative to arbitrary or qualitative thresholds. This approach has failed to accommodate impacts to treaty rights. The basis for offsetting will be the project footprint after all reasonable efforts have been made to reduce the footprint. On-site restoration and other site-specific mitigation measures will still be required. For the purposes of offsetting, on-site measures are considered complementary measures to the goal of reducing project level impacts and contributing to the management of cumulative effects.

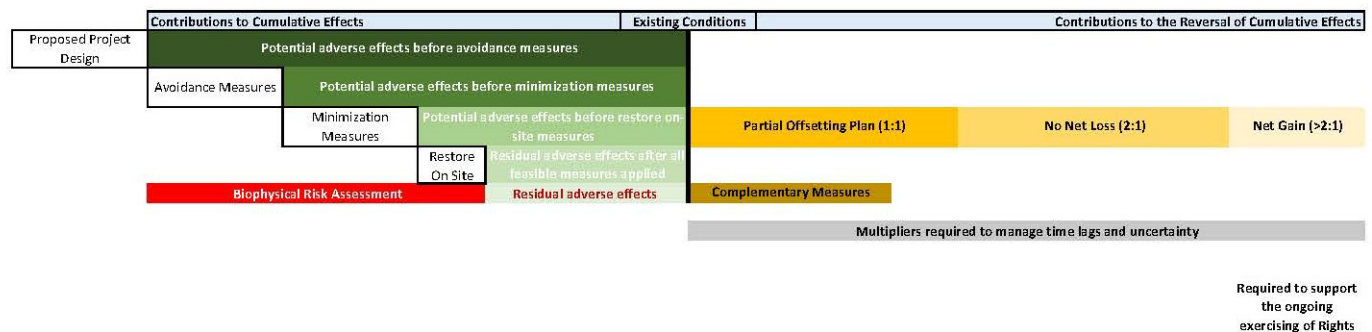
- 5. Net gain** – Given the state of cumulative effects in DRFN's planning area and the urgency required to begin reversal of these cumulative effects and revitalize DRFN's relationships with its lands and waters, an offset plan will be designed to result in a net gain to conservation and/or cultural outcomes. In some rare cases, no net loss may be agreed upon. Ways to achieve net-gain include but are not limited to:

- a) increases in the spatial extent of the natural heritage system; b) increases in biological and habitat diversity; c) enhancement or restoration of ecological functions and hydrological functions; d) enhancement or restoration of wildlife habitat; e) enhancement of natural succession; f) creation of

wetlands, water systems or woodlands; g) enhancement or restoration of riparian corridors; h) enhancement or restoration of groundwater features; and i) establishment, enhancement or restoration of linkages between natural features and areas.

In addition, funding for cultural offsetting may be required to support initiatives designed to revitalize cultural values as the basis for community health and well-being. The combination of environmental and cultural components in the offset plan, as well as incorporating long-term monitoring, will ensure a net-gain is achieved.

The net gain objective relative to the mitigation hierarchy is illustrated for reference below.



6. **Equivalency** – In establishing equivalency between the impacts and the offset, the offset must take into account not only quantity (spatial extent) but also quality with respect to the condition and ecosystem values of both the impact site and the offset site. The criteria for equivalency considered herein are relative to the historic baseline in the region surrounding a proposed development, and the values and interests that DRFN members raise during pre-screening and early engagement. DRFN’s land use planning process will identify candidate restoration sites and priority environmental and cultural areas that can be used to inform the equivalency evaluation. Ongoing engagement will identify funding priorities for initiatives that will contribute to cultural sustainability, reflecting the values and interests that have been impacted in the proposed development area.
7. **Additionality** – An offset must provide a new contribution to conservation that is additional to that which would have occurred without the offset taking place. A joint environmental and cultural offset would provide DRFN the opportunity to address key priorities to restore important ecosystem and cultural services that might otherwise be difficult to implement.
8. **Duration of the Offset** – An offset must be in place for at least as long as the project, and potentially to perpetuity depending on impacts and community requirements. Capacity funding to support monitoring for the full lifecycle of a proposed development will enable effectiveness evaluation and adaptive management of restoration initiatives to ensure success. Funding for cultural initiatives, including support for the protection of values represented by the establishment of KTP, for example, will provide net intergenerational benefits to DRFN.
9. **Location of the Offset** – To better manage and reverse cumulative effects and ultimately restore the DRFN’s connections with its lands and waters, offset locations will be decoupled from project sites and instead focus on areas of importance to the cultural and community wellbeing of DRFN. The offset location will be based on community engagement and will rely on desired conservation outcomes and cultural values, including the potential for long-term success and viability. DRFN has identified numerous candidate restoration sites during its land use planning process and are working to expand this list. Further community engagement will prioritize restoration sites and cultural programs that will provide the highest returns per restoration investment dollars.
10. **Uncertainty** - Offsets must account for risk and uncertainty by clearly documenting data sources, assumptions,

and knowledge gaps (and how they might be overcome through additional monitoring). There is always some uncertainty about the size and nature of the loss at the impact site, and the size and nature of the gain at the offset site. Uncertainty will be minimized by demonstrating offset gains before the impact occurs. The offset plan will account for uncertainty through 1) an appropriate offset ratio to maximize opportunities for successful implementation, 2) an appropriate evaluation of equivalency relevant to historical baselines, and 3) extensive community engagement on community interests, values, and priorities to inform offset planning.

Another major source of uncertainty concerns the likelihood of successful long-term implementation, monitoring and enforcement of offsets. Impacts (and offset gains) must be monitored and addressed over time to ensure offset goals are being met. The offset plan will include funding and capacity support for long-term monitoring, effectiveness evaluation, and adaptive management.

- 11. Equity and Co-operation** – Development of an offset plan must be equitable and cooperative. Proponents must consider and plan for adequate time and space to explore the offsetting principles in detail, and engage with DRFN to invite and incorporate DRFN perspectives in offsetting that will meaningfully address impacts to treaty rights. Given what has been to date a failure in standard EA practice, proponents must recognize the central importance and significance of offsetting as a potentially significant tool (in combination with other regional restoration initiatives) that is realistically available to meaningfully address cumulative effects and improve the ability of DRFN members to exercise their treaty rights.
- 12. Transparency and Communication** – DRFN requires early and frequent information regarding project designs, and the collaborative design and implementation of the offset plan. In all cases, DRFN will be clear in its expectations for an offsetting plan, and provide information on how the offset plan will be used to provide a net gain for ecosystem health and cultural values in DRFN’s planning area.
- 13. Full-cost accounting of offsets** – The proponent will cover the total cost of the offset, based on a full-cost accounting approach. This includes the cost of raising awareness and engaging the community, legal and research fees, of creating and maintaining the offset (including community, cultural, and scientific capacity building), and of monitoring and reporting. The *Yahey* decision effectively resulted in placing the onus on the statutory decision maker (in this case, British Columbia) to provide funding to address cumulative effects. In some cases, particularly if projects are approved without the consent of DRFN, British Columbia, Alberta, and/or Canada should bear some of the costs associated with environmental and cultural offsetting, consistent with the goal of reconciliation under UNDRIP.
- 14. Multipliers** – Offset ratios can vary widely and are often the main mechanism to manage risk and uncertainty. Doig River continues to evaluate its criteria for offsetting ratios, which depend on several factors, including but not limited to, the prevalence of existing disturbance, the prevalence of private and Crown land, traditional uses and values of the impact site that may be lost, opportunities to offset those losses elsewhere, socio-economic impacts or opportunities, and the good faith efforts of proponents to build meaningful relationships.

Offset Implementation

Decision Tree

This offset policy (the Policy) applies Doig River’s Land Use Planning (LUP) area.

The Policy is an interim policy that will be in effect until the LUP has been finalized and associated management plans for the Environmental Protection Areas (EPA) have been completed.

The Policy applies to all industry proponents, including mining, forestry, oil and gas, and other energy infrastructure projects (e.g, electric, wind). DRFN reserves the right to make exceptions in some rare cases.

The Policy applies to new development proposals in the LUP area, with specific rules and conditions within the three sub-zones and EPAs. DRFN reserves the right to revisit offsetting requirements for development proposals that are currently in a review process awaiting a decision statement, or for projects requiring permit renewals, or for projects that are in non-compliance with certificate conditions and/or operating with ineffective mitigation measures.

Upon completion of the LUP and associated EPA management plans, the Policy may be revised from time to time, as required, as new data become available regarding the effectiveness of operational level mitigations and regional restoration initiatives. This may include revisions to industry-specific standards.

Implementation of the mitigation hierarchy in standard EA practice has not only failed to prevent, but contributed to, the significant cumulative effects that are impacting DRFN treaty rights. As a result, DRFN has reconsidered how the mitigation hierarchy may more appropriately apply to future regulatory decisions. As one tool available to DRFN, offsetting measures are to be applied to the entire project footprint, with the expectation that projects are sited to utilize pre-existing disturbance. This will incentivize appropriate avoidance and reduction measures for all future footprints. Site-specific mitigations are still expected to manage operational risks to the assessment values of interest (e.g., direct wildlife mortality, noise, dust, etc.).

The Policy incentivizes the use of pre-existing disturbance by requiring lower offset ratios for the already disturbed areas of the proposed footprint. Higher ratios apply for additional disturbance (ie, novel disturbance to crown land).

The ratios presented in the offsetting decision tree are minimum expected ratios. These ratios may be adjusted upwards on a case-by-case basis, depending on a project's location and the anticipated risks to biophysical and socio-cultural values identified by DRFN. These risks will be identified early in the engagement process.

Offsetting ratios reflect DRFN's consideration of the inherent values that each management zone and EPA holds for its members, and the requirement to balance those values with ongoing sustainable resource development.

Offsetting is primarily a tool to manage risk and uncertainty, not a panacea. Offset ratios reflect the uncertainty in implementation, success, and time lags. DRFN believes that when the principles of additionality and equivalency are meaningfully considered and evaluated relative to historical conditions (rather than current conditions), then the application of these offset ratios (in combination with regional restoration initiatives) will result in a landscape condition that more closely reflects what was lost.