

## OPR and Filing Manuals Review

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

The creation of the Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion Project (IAMC-TMX) was the culmination of years of advocacy and negotiations from LNIB and other First Nations along the TMX route. The IAMC-TMX provided for greater oversight and active participation in TMX construction monitoring, ensuring First Nations rights were respected throughout the construction process. LNIB supports adopting the IAMC-TMX model as the basis for an expanded institutional Indigenous monitoring and advisory mandate for all new and existing pipelines in Canada. Formalizing such committees to provide ongoing oversight on pipeline projects could form the basis for a new collaborative relationship between First Nations, the Crown and private industry, advancing reconciliation and recognition of First Nations' inherent Title and Rights.

The UN Declaration on the Rights of Indigenous Peoples Act (UNDA)'s Action Plan Measure 34 (APM 34), drafted in consultation with the IAMC-TMX, compels the CER to enhance participation of Indigenous peoples and set measures to enable Indigenous peoples to exercise federal regulatory authority in matters currently regulated by the CER. Subtopics 1 and 3 relate to APM 34.

#### **Subtopic 1: Preventing and Addressing Impacts to the Rights and Interest of Indigenous Peoples**

##### Discussion Questions

I1. The Objectives for Improvement largely align with LNIB's vision for responsible pipeline development, but the Proposed Options should incorporate First Nations into the design and implementation of companies' programs and processes.

I2. The addition of a new protection program should explicitly incorporate First Nations in the design the program, and First Nations should be involved in the oversight of the program's implementation.

OPR S 6.5b) requires a company to "develop performance measures for evaluating the company's success in achieving its goals, objectives and targets." Performance metrics related to implementing a process to engage with Indigenous Peoples and demonstrating how Indigenous Knowledge is incorporated into protection programs must consider the opinions and be subject to the review of relevant First Nations. A more elaborate system that functions to check boxes of indigenous "engagement" still has the potential to fail to meaningfully consult with First Nations.

Cultural competency training must speak to the community or nation in which the company is operating and avoid relying on pan-indigenous tropes and themes. Where available, nation specific cultural protocols should be incorporated into the training.

Additional requirements may be collaboratively determined by potentially affected First Nations and should include mutually agreed upon value identification and performance metrics.

I3. The IMAC-TMX could serve as a model for ongoing monitoring and oversight of these and other compliance measures.

I4. Capacity gaps, lack of institutional knowledge, and perverse incentives by proponents to avoid knowledge that could potentially delay or derail projects. Any management system must account for these challenges.

I5. No comment

I6. Challenges associated with incorporating localized knowledge, Indigenous laws, policies, practices, protocols, and knowledge into the OPR include the diversity in practices, worldview, and institutional arrangements of First Nations across Canada, and concerns around data privacy. Some knowledge is not to be shared. The burden of proof is perpetually placed on First Nations to prove continuous use and occupancy, the relative significance of a place, practice, or resource, and to share customs, protocols, and knowledge that may have been lost through cultural genocide.

## **Subtopic 2: Managing Socio-Economic Effects**

I7. Agree with objectives for improvement across all project activities, including design, construction through to abandonment. Specific objectives should include

- discrimination based on gender, gender identity, sexual orientation, and race
- incidence of sexual violence both within project accommodations and within communities in which the project operates

I8. No comment.

I9. The IMAC-TMX could serve as a model for ongoing monitoring and oversight of these and other compliance measures.

I10. Incidents of discrimination based on racial, gender-identity, or sexual orientation and incidents of sexual violence are often under reported. A culture of safety within the company is required to ensure that community members and workers alike have the security to report incidents both internally and with relevant authorities without fear of reprisal, and with confidence that their reports will be taken seriously and resolved.

I11. No comment.

Subtopic 3: Engaging with Potentially Affected People and Communities

I12. No concerns with the Objectives for Improvement

I13. No comment.

I14. No comment.

I15. Challenges with engagement include capacity, lack of specialized knowledge, and a lack of institutional knowledge.

I16. No comment.