



Nazko First Nation Onshore Pipeline Regulations Phase 2 Review

Submitted to:

Canada Energy Regulator

Created by:

Landmark Resource Management Ltd.
On behalf of Nazko First Nation

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1 Quality Assurance and Quality Control

Landmark Resource Management Ltd. (“Landmark”) has a developed Quality Assurance and Quality Policy (“the Policy”) to outline the quality assurance and quality control (“QA/QC”) commitments for the company. This Policy and associated Guide will be applied to all projects and work performed by Landmark.

As an organization, Landmark recognizes that effective quality systems are essential when providing professional services to our clients in today's competitive marketplace. All employees, associates, and contractors working for Landmark must be committed to providing great customer service and project deliverables.

Full authority for the implementation and administration of the Policy and Guide has been delegated to Landmark’s Principals, General Manager, Project Managers, and Senior Discipline Leads. These members of the Landmark team have the responsibility and organizational freedom to identify quality control problems, stop work, recommend solutions, and verify resolutions of such problems.

To implement this Policy and Guide, Project Managers and Senior Discipline Leads are responsible for their assigned project’s QA/QC activities. They may delegate the performance of their assigned duties to qualified individuals, but they shall retain full responsibility for completing their projects in strict accordance with established quality control expectations at Landmark and our client’s specifications.

The quality of all contractors shall be the joint responsibility of the General Manager, Project Managers, and Senior Discipline Leads. All projects will be executed in a manner that emphasizes safety, quality, schedule adherence, social responsibility, client capacity building, and maximum cost-effectiveness.

The QA/QC authorities for this report are as follows:

Name	Title / Role	Qualifications	Signature
[REDACTED]	[REDACTED]	BA, MBA, CAPM	[REDACTED]
[REDACTED]	[REDACTED]	BSc, PGCERT	[REDACTED]

2 Introduction

Landmark Resource Management Ltd., (“Landmark”) has prepared the following comments on behalf of Nazko First Nation in response to the Canada Energy Regulator’s (“CER”) Onshore Pipeline Regulations (“OPR”) Phase 2 topic papers. It is expected that the input provided within this submission will be used to inform the development of draft regulatory proposals to amend both the Onshore Pipeline Regulations under the *Canadian Energy Regulator Act* (“CERA”) and the CER Filing Manual. Nazko First Nation appreciates the funding provided to support the review of the OPR Phase 2 topic paper materials and the opportunity to provide comments to the CER.

Nazko First Nation recognizes the importance of participating in this engagement process and sharing perspectives that reflect its values, priorities, and interests. All comments are provided without prejudice to Nazko First Nation’s recognized and asserted Aboriginal rights, title, and interests, including those that may not yet be fully expressed or resolved.

These statements are submitted as part of an engagement process between Nazko First Nation and the CER and are not to be construed as consultation under *s.35 of the Constitution Act, 1982*. Nazko First Nation wishes to note that the funding provided was not adequate to support a review of all the discussion paper materials provided. As a result, Nazko focused its efforts on reviewing and responding to the topic areas of greatest interest and concern to the Nation. Specifically, the review focused on the following papers:

- Topic Paper B on Deactivation and End of Lifecycle
- Topic Paper C on Emergency Management
- Topic Paper D on Environmental Protection
- Topic Paper I on Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement
- Topic Paper J on Safety
- Topic Paper K on changes to the Filing Manuals regarding Environmental and Socio-economic Assessments (ESA)
- Topic Paper L on changes to the Filing Manuals on Lands Matters
- Topic Paper M on Filings Manuals – Rights and Interests of Indigenous Peoples

Additional cross-cutting and interdisciplinary issues and topics identified are discussed throughout this submission. For those topic papers not addressed in these comments, this should not be interpreted as a lack of interest in those areas of the current or future OPR.

Nazko First Nation looks forward to continuing engagement with the CER to explore how these comments can be meaningfully incorporated into the development of future regulatory approaches and proposals and to ensure that First Nation perspectives are reflected in the evolution of Canada’s pipeline regulations.

3 Community Description

Nazko First Nation is in the north-central interior of British Columbia (B.C.). The people of Nazko First Nation are traditionally Dakelh (Carrier) speakers; “Nazko” is a Carrier word meaning “river flowing from the south” (Furniss, 1993a). Nazko First Nation’s ancestral people were amongst the original inhabitants of north-central B.C. Carrier country stretches 500 kilometres from the Coast Mountains in the west to the Rocky Mountains in the east, and 300 km from Takla Lake in the

north to the Chilcotin Plateau in the south. The terrain varies from the low, rolling hills along the Blackwater River in the south, to the mountainous regions that border Carrier country to the west, north, and east (British Columbia Assembly of First Nations, n.d.). The region demonstrates the continued connection to the cultural landscape and important Dakelh hunting areas, fishing sites, overland trails, water use and transportation routes, and potential burials.

The Cariboo and Chilcotin regions of B.C. have been home to the Dakelh (Carrier) people for thousands of years; Nazko First Nation lays Aboriginal claim over their traditional territory and have a collective responsibility and obligation to protect and maintain their culture, people, and spirituality (Gardiner, 2017). Nazko First Nation is part of the Dakelh Nations (Southern Carrier Nations), along with the Lhoos'uz Dené (Kluskus), Red Bluff (Lhtako Dene), and Ulkatcho (Ul'katchot'en) peoples.

Nazko First Nation has 22 reserves: Baezaeko River 25; Baezaeko River 26; Baezaeko River 27; Blackwater No. 1; Coglistiko River 29; Deep Creek 5; Euchiniko Creek 17; Euchiniko Creek 18; Euchiniko Creek 19; Fishpot Lake 24; Lower Fishpot Lake 24A; Michelle Creek 22; Michelle Creek 23; Nahlquonate 2; Nazco 20; Nazco 21; Nazco Cemetery 20A; Redwater Creek 30; Trout Lake Alec 16; Trout Lake Jonny 15; Ulkah 3; and Umlisle 4 (Landmark Resource Management, 2024 Nazko First Nation Baseline Socio-Economic Study, p. 7).

The overall registered population of Nazko First Nation, as of April 2024, was 435, 114 of whom live on one of Nazko First Nation's two inhabited reserves (CIRNAC, 2024; Mullard & Townsend, 2015). Nazco 20 and Euchiniko Creek 17 are the only reserves inhabited by members (Nazko First Nation, personal communication, 2024). Nazko Village (Nazco IR 20) is at Stump Lake and called Chuntezni'ai, meaning "the trees were under water long before the people came to settle in Nazko" (Boyd, 1989, p. 3). Nazco IR 20, situated approximately 100km west of Quesnel, is where the majority of on-reserve Nazko First Nation members live (Boyd, 1989; Gardiner, 2017). Nazko First Nation's administration office is located in Quesnel (Gardiner, 2017).

Nazko First Nation's currently recognized territory is approximately 1,870,176 ha. The 22 reserves total approximately 1,973 ha (BCAFN, n.d.). Nazko First Nation is not, and has never been, a signatory to any Treaty.

3.1 History

The Nuxalk-Carrier Grease Trail was an essential corridor for communication, transport, and trade that had been used by Indigenous peoples for over 6,000 years (Kwusen & Affinity Bridge, n.d.). The name signifies the trade of oolichan grease from the Pacific Coast to inland communities (Furniss, 1993, p.14). The Nazko People are traditional nomadic people, with Nazko ancestors moving across the land throughout the year to different camps and villages. The introduction of the reserve system forced the Nazko People onto specific parcels of land.

Nazko First Nation's history has been profoundly impacted and shaped by the effects of colonialism and the arrival of European settlers, including land displacement, cultural disruptions, restrictive policies, and economic changes (Gardiner, 2017, p.9). Nazko First Nation history also demonstrates how instrumental the dispossession of their lands and extraction of resources were to the growth and wealth of the colony.

Historically, Nazko First Nation is an amalgamation of the Nazko, Euchinico, and Blackwater Bands. The amalgamation took place in 1957 (Canada, 1957). At that time, the Nazko population was 106 people with 89 people joining from Nazko, 15 from Euchinico, and two from Blackwater

(Canada, 1957). The amalgamation was prompted in part by the common heritage of members of these communities and, as Kew (1974a) notes, the ongoing processes of land cut-offs (p. 8).

3.2 Post-Contact Summary

As early as 1793 explorers such as Alexander Mackenzie, Simon Fraser, and Daniel Harmon travelled through Dakelh territory as they descended the Fraser River below the mouth of the Nechako River and encountered “Nanscud Denees” or “Nask-otin” (Nazko) people and evidence of fishing camps (Furniss, 1993b, p. 15). Mackenzie writes that he met “Nanscud Denees” people along the Blackwater (West Road River) trail, also known as the Nuxalk-Carrier Grease Trail (Lamb, 1970 as cited in Ministry of Justice, 2012).

Trading posts were established throughout Dakelh territory in the early 1800s (Alexander, 1997). Fort Alexandria journal entries from 1824 indicate the “Nask-otin” (Nazko) were coming to the fort to trade furs (Lamb, 1960 as cited in Ministry of Justice, 2012).

The anthropological field notes of Irving Goldman provide a substantial set of records related to the activities of the Nazko community and their neighbours in the Quesnel area dating to the 1930s. Goldman conducted PhD research with the Alkatcho people in 1935 and 1936 (later published as Goldman, 1940, 1953). Goldman’s Nazko files are detailed family histories and include discussion about regional potlatches and funeral rituals.

The anthropological field notes of Julian Steward are also relevant to Nazko and its history. While Steward worked primarily with Northern Dakelh peoples, particularly at Stuart Lake, his field notes make references to Nazko families. His files also include trapline maps as far south as Trout Lake Jonny. There is a note that suggests the village was once populous, but people moved to Stoney Creek.

Several sets of Hudson’s Bay Company post records are relevant to Nazko’s territory and people. These include records from Fort St. James, Fraser Lake/Fort Fraser, and Fort Alexandria.

More recent evidence from Nazko First Nation community researchers also supports Nazko First Nation assertions and claims north of the Blackwater River. Nazko community members have requested this information be included in this document. This evidence is in the form of place names collections (e.g., Kew, 1974b) that imply deep connections to the area, descriptions of longstanding uses of the territory for harvesting and other culturally specific practices (e.g., Nazko-Kluskus Study Team, 1974; Kew, 1974a), and traditional use and occupancy studies (Nazko Band Government and Drake GIS, 2001; Nazko First Nation, 2005, 2019; Wolfhard, 2014). Such evidence also appears indirectly in anthropological records associated with Julian Steward (1940) and Irving Goldman (1936); these records include names of people conducting activities in Nazko First Nation territory and place names.

Post-colonial events such as epidemics, gold rushes, the *Indian Act (1876)* and its further amendments, restrictive policies, residential school, land dispossession, etc., all influenced the current socio-economic condition of Nazko First Nation and provide valuable context for the ongoing efforts toward reconciliation and self-determination for the Nation (Nazko First Nation Baseline Socio-Economic Study, 2024 p.14).

3.3 Governance

Dakelh governance practices have shifted over generations. Nazko First Nation Knowledge Keeper Laura Boyd (1989) says that “long ago” leadership was informal, based on the abilities of individuals with skills to address specific problems. The governance system was based on clans, matrilineal descent, and potlatching (Tobey, 1981, p. 418; Goldman, 1941). There were no chiefs, says Boyd (p. 33), each extended family having its own de facto leader who achieved support due to his demonstrated ability. When families joined together from time to time, the older, more capable and persuasive leaders prevailed (Kew 1974a p. 37). Boyd notes that the earliest Dakelh ‘chiefs’ were appointed by fur traders and reinforced by Catholic priests (p. 33). Furniss (1993a) notes that the early Dakelh governance patterns were based on family, household, and band, where a band is different than that defined by the Indian Act. She uses the anthropological definition of band:

A band consisted of groups of closely related families that shared the same general territory ... each band had a central gathering place and their name came from that site ... Those families that stayed in the Nazko River and lower Blackwater River areas were known as the Nazkot'en (p. 51).

Boyd (1989, p.32) notes, however, the following:

There are no clans at Nazko anymore. The clan laws were broken when the Department of Indian Affairs gave each family surnames (last names) and today we are identified by our last names and not by which clan we belong to.

Nazko people voted in 1969 to adopt an *Indian Act* election system and Catherine Patrick was the first elected Chief (Boyd, 1989, p. 34). Furniss (1993a) agrees with Boyd:

Clans, potlatches, personal emblems and ideas of a nobility were not a part of the earlier culture of the other southern Carrier bands. In fact, potlatches and the idea of the nobility are in direct conflict with the fundamental Carrier value of egalitarianism. (p. 64)

Nazko First Nation today is governed by an elected Chief and Council who are responsible for governing the community and making decisions on behalf of its members. Chief and Council are elected by Nazko First Nation members every two years, administered under the *Indian Act*, and operate out of their main office in Quesnel. Currently, the government consists of one Chief and two Councillors. Some of their responsibilities include overseeing various aspects of community life, including health, education, housing, and social development (Crown-Indigenous Relations and Northern Affairs Canada, 2024). Within Nazko First Nation’s administration, there are numerous departments. Each department is tasked and responsible for specific areas of community services and infrastructure. These departments work together to implement policies, manage resources, and provide services to support the well-being and growth of Nazko First Nation. This governance and administrative structure ensures that governance is participatory and responsive to the needs and aspirations of the community (Crown-Indigenous and Northern Affairs Canada, 2024).

Nazko First Nation integrates traditional knowledge and self-determination approaches into its governance functions whenever feasible and appropriate (Gardiner, 2017). This is achieved through family meetings and consultation with the community outside of the Indian Act governance system. Participatory decision

making is conducted through workshops with the youth and lunches with Elders (Gardiner, 2017).

Nazko First Nation assert their traditional rights and title to their ancestral lands independently (Gardiner, 2017). A lack of treaty does influence Nazko First Nation's negotiations and interactions with the government. The Nation continues to advocate for the recognition of their sovereignty, land rights, and self-determination. The absence of a treaty underscores ongoing efforts to address historical injustices and secure fair and equitable agreements that respect their autonomy and cultural heritage (Gardiner, 2017).

Nazko First Nation is not currently active in the B.C. treaty process and has withdrawn from a comprehensive treaty settlement plan independently on a provincial and federal level.

4 OPR Deactivation and End of Life Cycle Topic Paper

Future amendments to the OPR regarding deactivation and end-of-lifecycle activities have significant implications for Nazko First Nation, whose lands, waters, and rights are directly impacted by pipeline infrastructure, including CER-regulated facilities. All aspects of decommissioning, abandonment, and reclamation must be undertaken in full partnership with First Nations and reflect their consent, knowledge systems, and desired outcomes. Nazko First Nation emphasizes the need for end-of-lifecycle activities to support the long-term health of the land and ensure the continued ability of current and future generations to exercise Aboriginal rights. The following comments outline key comments and recommendations from the perspective of Nazko First Nation.

4.1 Deactivation and End-of-Lifecycle Activities

Nazko First Nation emphasizes that all stages of pipeline deactivation, decommissioning, abandonment, and reclamation must be undertaken in full partnership with and with the free, prior, and informed consent of First Nations whose territories are impacted. These activities carry long-term ecological, cultural, and socio-economic implications, and therefore must reflect Indigenous governance, jurisdiction, and knowledge systems. This may include, but is not limited to, the inclusion of First Nations cultural and environmental monitors and inspectors throughout all lifecycle regulation activities, including end-of-lifecycle activities. It also involves working collaboratively with First Nations to identify both environmentally and culturally relevant restoration and reclamation practices. Cultural knowledge, traditional land use, and occupancy information should guide the planning of deactivation and decommissioning activities. Furthermore, remediation and reclamation standards being considered and applied should support the ongoing exercise of Aboriginal rights. These standards should promote cultural and community well-being, as well as economic subsistence and sustainable livelihoods.

4.2 Integration of Cultural and Ecological Knowledge

End-of-lifecycle planning must incorporate First Nations' cultural and ecological knowledge according to cultural context and protocols to ensure that decommissioned and reclaimed lands are capable of supporting the meaningful exercise of Aboriginal and treaty rights, including hunting, fishing, trapping, and cultural practices. Restoration and reclamation efforts must go beyond technical remediation and address Indigenous values, land use patterns, and ecological baselines defined by First Nations. First Nations must be involved in determining the methods and approaches used regarding application and interpretation of cultural and ecological

knowledge and its verification, and data protections and confidentiality must be upheld through the First Nations principles of ownership, control, access, and possession (OCAP) principles.

4.3 Support for Expanded Monitoring and Surveillance (Section 39)

Nazko First Nation supports the proposed expansion of Section 39 to include explicit requirements for monitoring and surveillance of decommissioned and abandoned pipelines. These should include ambient monitoring and cultural measures and parameters. These cultural measures and parameters should be developed by impacted First Nations, and Indigenous monitors and inspectors should be involved in any monitoring, inspection, or enforcement actions regarding such parameters. Ongoing monitoring is essential to ensure that deactivated infrastructure does not pose risks to the environment or to Aboriginal rights.

Monitoring programs should

- be co-designed with affected First Nations;
- be contracted directly to First Nation governments or development corporations, wherever possible, to ensure local capacity building and First Nation oversight;
- specifically include Indigenous-defined measures (values/receptors, indicators, IK-informed historical baseline reference condition and current condition trends comparison, and Indigenous thresholds for confident use) for ecological health and land readiness; and
- ensure First Nation inspectors and monitors either work alongside the CER on enforcement actions when required, or that First Nation monitors and inspectors have enforcement authority delegated to them when conducting compliance verification activities.

4.4 Long-Term Records Retention (Section 56) and Transparency

Nazko First Nation supports stronger record-keeping provisions for decommissioned and abandoned pipelines, including long-term retention of records that can support historical land use documentation, environmental assessment, and rights-based claims. These records must be accessible to First Nations, shared in culturally appropriate formats, and in the case of First Nations-owned or provided data, must abide by OCAP principles.

4.5 Clear Definitions and Distinctions Needed

Nazko First Nation supports efforts to clarify definitions related to lifecycle activities (e.g., deactivation vs. decommissioning), but emphasizes that definitions must reflect First Nation perspectives on land use and lifecycle impacts. Definitions of “restoration” and “reclamation” must be clarified and broadened to include traditional ecological conditions necessary to exercise Aboriginal rights and support cultural knowledge transmission now and for future generations.

5 OPR Emergency Management Topic Paper

Emergency management is a critical priority for Nazko First Nation, as it is for all Canadians, given the serious safety risks associated with pipeline operations. However, due to limited resources and a lack of detailed understanding of the current OPR, Nazko First Nation’s comments at this time are high-level and preliminary in nature.

Nazko First Nation acknowledges the potential value of incorporating CSA Z246.2 by reference into the OPR to support consistent and standardized emergency preparedness and response across jurisdictions. However, Nazko First Nation is not currently informed enough on the content

and implications of CSA Z246.2 to take a formal position. Further education and engagement from the CER is required to support Nazko First Nation in understanding the technical standards and how they affect their lands, rights, and safety.

It is recommended that this is a step that the CER endeavours to take with any Indigenous nations with interest or concerns regarding emergency management of any CER-regulated pipelines and facilities in their territory, including Nazko First Nation. This could include but is not limited to operators, CER, and First Nations hosting joint emergency preparedness and response tabletop simulation and planning exercises, ensuring First Nations emergency response services and lands departments are included in the notification and communication protocols around emergency response, and ongoing communication and relationship building between First Nations, the CER, and operators occurs to promote a culture of safety and trust amongst parties that is critical for effective emergency management.

Next, Nazko First Nation supports the proposed amendment to subsection 32(1) to include adverse effects on sites of historic and cultural significance. Emergency response activities must not compromise or damage Indigenous cultural heritage, and Nazko First Nation strongly encourages the CER to require pipeline companies to take proactive measures to identify, protect, and avoid such sites in emergency scenarios.

Finally, Nazko First Nation also welcomes the CER's intent to clarify requirements regarding the involvement of Indigenous peoples in Emergency Management (EM) programs. Pipeline operators must embrace a more inclusive approach to education, preparedness, and planning that involves First Nations not just as stakeholders, but as partners in emergency response. This involvement must be resourced adequately by both the CER and pipeline companies, including funding for community capacity, training, equipment, and emergency planning. Emergency preparedness funding provided for by the Indigenous Advisory and Monitoring Committee (IAMC) for the both the TEMP and Enbridge Line 3 projects are good models of capacity building for First Nations emergency management related to pipelines. Nazko First Nation looks forward to working with the CER in future phases of engagement to ensure its emergency management concerns are more fully addressed in OPR reforms.

6 OPR Environmental Protection Topic Paper

Environmental protection is of fundamental importance to all Canadians and is especially critical for Nazko First Nation. A healthy environment, from an Indigenous worldview and benchmark, is essential for the Nation to be able to meaningfully exercise its Aboriginal rights throughout its territory, including hunting, fishing, trapping, and gathering, related protocols and other practices. The cumulative and ongoing impacts of industrial development have made it increasingly difficult for Nazko First Nation to maintain its way of life, and strong environmental protections that reflect Nazko values are necessary to begin to address this reality.

6.1 Duty to Report and Manage Contamination

Nazko First Nation supports the proposed amendments to strengthen requirements related to the reporting, management, and compliance enforcement (including remediation) of contamination. These proposals appear reasonable and provide greater clarity on the responsibilities of pipeline owners throughout the lifecycle of a pipeline. However, Nazko First Nation requests clarification from the CER on how contamination reporting and management will align with emergency management frameworks and integrity management system requirements and how these

updated regulations will be enforced and implemented in practice by companies. Greater transparency and accountability in this area are essential.

To support this enhanced transparency and accountability, additional mechanisms beyond self-reporting of spills and incidents by operators is required. These mechanisms should include fulsome and appropriate inspection by CER Inspection Officers, with the option for First Nation monitors' participation in these compliance activities either in-field or through review of the CER's findings prior to any certificates declaring complete restoration or reclamation has been achieved. Additionally, prior to any signoff or confirmation of reclamation or restoration efforts being deemed complete or adequate, appropriate testing and site assessments of the area must be completed. This could include completion of a Phase 1 Contaminated Environmental Site Assessment (Phase 1 ESA), a preliminary site investigation, and third-party investigation of potential soil and water contamination, including any areas of potential environmental concern (APECs) or potentially contaminating activities (PCAs) identified from the Phase 1 ESA.

6.2 Reclamation, Vegetation Management, and Restoration

Nazko First Nation is currently unable to take a detailed position on the proposed requirements due to a lack of funding and capacity to fully engage with the topic. Nonetheless, Nazko First Nation emphasizes that all reclamation, vegetation management, and restoration activities must integrate local First Nation cultural and ecological knowledge and end land use capabilities to ensure disturbed land is returned to a healthy condition required for the meaningful exercise of Aboriginal rights. As a result, the reclamation standards that are selected and implemented must include documentation of the baseline and existing conditions of ecosystems prior to disturbance from the project and that restoration plans outline a pathway to achieving those pre-disturbance conditions. Without this information adequately tracked and documented, and subsequent restoration plans followed and complied with, the ecosystem may be irreparably harmed or altered such that species can no longer thrive and local First Nations can no longer exercise rights in the area.

Nazko First Nation strongly recommends that First Nation third-party reviews of reclamation, vegetation management, and restoration plans be made mandatory. These reviews are vital to ensuring that cultural values, ecological relationships, and traditional use objectives are fully integrated into reclamation outcomes. Alongside these third-party reviews, the CER must include and support the participation of local impacted First Nations in the ground truthing, monitoring, and inspection of restoration programs to ensure ecological function that supports the exercise of Aboriginal rights is achieved. Additionally, the CER should ensure that strong reclamation standards are being applied to projects to ensure restoration to pre-disturbance conditions is being achieved to the greatest extent practicable, including restoration to conditions that support the exercising of Aboriginal rights in the area. The CER should also provide specific funding to support First Nation engagement and review of these plans and field programs as OPR are updated.

6.3 Environmental Protection Plans

Nazko First Nation is unable to provide a detailed position on this proposed requirement due to limited resources and funding for meaningful engagement. However, as with reclamation and restoration plans, Nazko First Nation recommends that First Nation third-party reviews and recommendations for inclusion in Environmental Protection Plans (EP Plans) be required as a regulatory standard. These plans must not only address environmental hazards but also integrate

Indigenous knowledge according to community requirements, and community-led ambient and cultural monitoring strategies from the outset and throughout the entire project lifecycle per the OPR. Any monitoring that is implemented must both achieve compliance and ensure efficacy of the environmental protection, mitigation, and/ or restoration strategies being implemented. As a result, having cultural and environmental monitors from impacted First Nations is absolutely critical for ensuring both regulator and nation-specific monitoring and lifecycle oversight needs are being met.

6.4 Climate Resiliency

Nazko First Nation supports the proposed requirement for companies to incorporate climate resiliency into risk assessments and mitigation measures. As a rural and northern First Nation community, Nazko First Nation is particularly vulnerable to the impacts of climate change including wildfires, floods, droughts, and temperature extremes that directly affect land access, safety, and traditional practices. Climate-related risks for major infrastructure projects must be identified, continually assessed, and planned for in a way that recognizes and responds to the unique challenges facing First Nations like Nazko.

7 OPR Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement

Nazko First Nation fully supports the CER's efforts to amend the OPR to improve oversight of impacts to the rights and interests of Indigenous peoples, socio-economic effects, and engagement requirements. These areas are deeply interconnected and are essential to ensuring that Nazko First Nation can protect its lands, uphold its responsibilities to future generations, and fulfill/achieve the meaningful exercise of our rights across our territory.

However, due to limited resources and capacity, Nazko First Nation is not in a position at this time to provide a detailed review or formal position on the specific proposals outlined in the topic paper. The proposed amendments raise complex issues that require thoughtful review and input, which Nazko First Nation is currently unable to undertake without adequate support. Reconciliation includes activities and capacity support that enable the equal ability as well as opportunity for participation in responding to proposing amendments as well as providing recommendations.

Given the importance of future amendments, and the obligations of OPR and Free, Prior, and Informed Consent under *DRIPA*, Nazko First Nation recommends that this topic be the focus of a dedicated future phase of OPR engagement. This engagement must be properly resourced to enable Nazko First Nation and other First Nations to fully participate. This includes funding to support internal staff time, engagement coordination, and access to technical and legal expertise required to evaluate the proposed changes and their implications on the Aboriginal rights, title, and interests of First Nations. Nazko First Nation also emphasizes that any future amendments related to rights, socio-economic interests, and engagement must be developed in partnership with First Nations. Proper engagement and consent-based processes are essential to ensure that future amendments are fair, respectful, and reflective of the feedback provided by First Nations.

8 OPR Safety Topic Paper

Due to limited resources, Nazko First Nation was not able to engage a subject matter expert on pipeline safety and is therefore unable to provide detailed technical comments on the proposals outlined in the Safety Topic Paper.

Despite this, pipeline safety remains a priority for Nazko First Nation, as the safety of people and the protection of the environment are fundamental concerns for all communities, particularly those directly affected by pipeline infrastructure. Nazko First Nation is supportive of future updates to the OPR that seek to increase the safety of people and the environment throughout all phases of pipeline activity, from construction and operation to maintenance and abandonment.

At a high level, the proposals outlined in the topic paper seem reasonable. Nazko First Nation would welcome the opportunity to learn more from a CER subject matter expert about how the proposed options and approaches for process safety management and safety planning will enhance safety outcomes in Nazko First Nation's territory. Meaningful education and dialogue are necessary to ensure that the Nation can engage more fully in this important area of regulatory oversight in future phases of the OPR review. Additionally, the recommendations that Nazko has put forward in section 5 above on emergency management should be incorporated when considering methods for enhancing First Nations participation and engagement in pipeline safety programs and measures.

9 Filing Manuals ESA Topic Paper

The CER Filing Manual and subsequent Environmental and Socio-economic Assessments ("ESA") and applications submitted have needed improvement for many years, with a frequent critique being how complicated and disorganized filings can be, making information difficult to find and interpret. Developing amendments to the Filing Manual and ESA requirements may mitigate these challenges. However, such changes must be done with intention and care as to prevent valued components and metrics of key value and importance to Indigenous peoples being evaluated in a siloed, decontextualized, and disaggregated manner that ignores the fundamental and inextricable interconnectedness of these values.

While splitting the ESA into two subsections, as is being recommended in subtopic 1 of Topic Paper K, may be viewed as creating greater clarity, it also creates the risk of Indigenous knowledge, rights, interests, and values being segregated and evaluated within a silo and not integrated into key intersecting values, and the assessment of effects on these values, such as impacts to wildlife and wildlife habitat, vegetation, fish and fish habitat, water resources, and their socio-economic effects. If the CER were to proceed with splitting ESAs into two chapters, there will need to be requirements for applicants to demonstrate how Indigenous knowledge, values, metrics, and data, which include temporally appropriate Indigenous-knowledge-informed historical baseline conditions, have been culturally developed and compared with existing baseline conditions, the assessment of effects on other valued components, including the proposed enhancement measurements to improve positive effects, alongside avoidance, mitigation, compensation, and offsetting measures for the reduction of potential adverse effects from the project.

Of particular importance and concern for Nazko First Nation is how these proposed changes to the Filing Manual and ESA structure could impact the way Indigenous knowledge, metrics, values, and data would be integrated and applied to the following aspects of the ESA development:

- scoping and selection of the valued components that are assessed within the Application and ESA;
- the assessment of potential biophysical and socio-economic effects of the project;

- evaluation criteria and the significance determination (i.e., assessment of likelihood of significant adverse effects);
- the identification and development of measures that enhance positive effects and limit or reduce negative effects such as avoidance, management, mitigation, and offsetting; and
- the assessment of cumulative effects completed for the Project.

The CER must ensure that any amendments made to the Filing Manual enhance the culturally appropriate and verified integration of Indigenous knowledge, values, metrics, and data, including how that is evaluated for significance determination, rather than further limiting its use and consideration in Project assessments. This includes ensuring there are appropriate mechanisms for project applicants, the Commission, and the Crown Consultation Coordinator work in close collaboration with impacted First Nations in both integrating Indigenous metrics and data, and validating that the conclusions and determinations being reached with that information are accurate and reflective of the extent of potential effects on Indigenous rights, title, and interests in the project area.

10 Filing Manuals Lands Topic Paper

Nazko First Nation's territory has experienced the cumulative impacts of industrial development. These impacts have reduced the Nation's ability to freely and meaningfully exercise Aboriginal rights across its territory. In particular, Crown lands remain some of the only accessible areas where Nazko First Nation members can exercise their Aboriginal rights. As such, Nazko First Nation has concerns about new or expanded pipeline infrastructure that would further disturb or restrict access to Crown land.

If Crown lands are used or disturbed for pipeline development, Nazko First Nation believes appropriate compensation mechanisms must be established to ensure there is no net loss of access to Crown lands by current and future generations of land users within the Nation's territory. These mechanisms should consider not only land area lost to current and future land users, but also ecological function, cultural value, and land use suitability for the Nazko First Nation.

To conclude, Nazko First Nation was not able to secure a subject matter expert to properly review this topic paper. As such, the Nation is uncertain whether the comments above are fully within scope for the envisioned updates to the Filing Manuals. To that end, Nazko First Nation requests a meeting with the CER to clarify the intent of this section and to confirm how its interests and concerns can be appropriately addressed.

11 Filing Manuals Rights and Interests of Indigenous Peoples Topic Paper

Clearly understanding and effectively responding to the nature and scope of pre-existing Aboriginal rights and treaty rights, enshrined in s.35 of Canada's *Constitution Act, 1982*, particularly within constrained external regulatory assessment processes and approaches, has always been a challenge for proponents and governments. The inadequacy of assumptive and reductive externally applied Western assessment methodology for evaluating how development impacts and effects Indigenous peoples and the exercise and practice of our rights has been a co-optive and marginalizing process. Holistic worldviews, Indigenous knowledge systems, and ways of life required for cultural sustainability and the meaningful exercise of rights have been compartmentalized, decontextualized, and even excluded to fit into non-Indigenous regulatory

assessment frameworks. Expecting a Western assessment framework to appropriately, effectively, and accurately assess impacts and effects to Indigenous territories, land uses, traditional resources and the exercise of rights from an external lens is not realistic nor does it fulfill the intent of *UNDRIP* and *DRIPA*.

Updating these approaches is well overdue including a “Rights and Interests of Indigenous Peoples” section, and acknowledgement that specific guidance with respect to inclusive methodologies is needed and from the lens of those who are best placed to effectively do that. This means Indigenous methodologies, as well as supporting social science disciplinary expertise, is necessary to create balance and ethical space to the assessment framework.¹ This approach can also help integration of collaborative and Indigenous-led assessments and studies. The CER may find that ‘clarity’ is not so much the problem as ensuring inclusivity of Indigenous perspectives, worldviews, and knowledge, and through culturally appropriate mechanisms for more accurate and meaningful assessment. Establishing appropriate methodology is the foundational place to start regarding re-organization of approaches in the Filing Manual.

Further, establishing appropriate methodology for the organization of the Filing Manual sections is important for the following:

- enabling consistent, culturally inclusive, holistic, and transparent linkage between assessment criteria, evaluation, and mitigation and enhancement measures;
- enabling assessment functionality and transparency for knowledge integration opportunities of Indigenous views, metrics, and data, whether from collaborative or Indigenous-led assessment and studies; and
- motivating better early engagement requirements of proponent applicants, including funding for collaborative, or Indigenous-led assessment or studies.

Indigenous Knowledge and worldviews fundamentally and inherently inform the practice and exercise of rights. As such, preserving the relationships between assessment measures and the land is critical as these tangible and intangible values are foundational to the context and practice of rights.

Siloing assessment sections, such as ESA and rights and interests of Indigenous peoples, without maintaining clear cultural linkage and perspective creates a fundamental challenge for effective inclusion of Indigenous knowledge systems and worldviews and undermines holistic relational contexts that underlie and inform the nature and scope of the rights and interests of Indigenous peoples. For example, the CER’s intent to prevent and address impacts to Indigenous rights and interests by “incorporating *specific* localized knowledge held by Indigenous Peoples” is extractive without maintaining the cultural context (underlying rights) that ‘specific’ knowledge is situated in, such as “Indigenous laws, policies, practices and protocols”. There is no division between environmental, socio-ecological, and socio-economic values, as well as the related knowledge and the rights and interests of Indigenous peoples. One informs the other; they are inextricably

¹Ermine, Willie. (2007). The Ethical Space of Engagement. *Indigenous Law Journal* 6:1. p193. “The ‘ethical space’ is formed when two societies, with disparate worldviews, are poised to engage each other. It is the thought about diverse societies and the space in between them that contributes to the development of a framework for dialogue between human communities. The ethical space of engagement proposes a framework as a way of examining the diversity and positioning of Indigenous peoples and Western society in the pursuit of a relevant discussion on Indigenous legal issues and particularly to the fragile intersection of Indigenous law and Canadian legal systems.”

linked. Trying to “avoid duplication between the two” only serves to decontextualize, essentialize, and diminish rights, harming the very purpose of the CER’s intent, captured in reconciliation statements. It is far more productive and appropriate to understand and maintain the relational nature between them. Situating all topics of cultural relevance to Indigenous Nations, such as ESA, within the overarching topic of rights and interests of Indigenous peoples, and how other topics relate to that, may be a more practical approach.

An example of the overlapping related sections of assessment, such as in ESA and rights and interests of Indigenous peoples, would be ESA Valued Components (VCs), such as wildlife, aquatic species (i.e., fish), water, air, vegetation, etc. Potential impacts and effects to the biophysical attributes of these VCs privilege a Western science focus in the ESA; however, Indigenous knowledge, worldview, and further related values must also inform impacts and effects to their biocultural/socio-ecological functions including the cultural expectations necessary for their health, quality, and condition required for confident use.² This is part of the manner in which rights are exercised, informed by Indigenous knowledge, worldview/values, and practice/protocol requirements. This is how ESA VCs and rights and interests of Indigenous peoples VCs are linked.

It is important to remind the CER of the applicability of case law that included the necessity to prioritize Indigenous perspectives in consultation regarding how Indigenous peoples view potential impacts to our way of life and territories by activities that could adversely affect them.³

11.1 Appropriate & Accurate Metrics Criteria

Assessment metrics are the backbone of assessment. Critical criteria used in assessment have not been culturally inclusive or supportive of the nature and scope of Indigenous knowledge systems and worldviews for accurately assessing impacts and effects on Indigenous land use, traditional resources, and other rights and interests of Indigenous peoples. Culturally developed and relevant metrics criteria provide an appropriate relational foundation for inclusion of Indigenous knowledge systems and worldviews which inform land use, ways of life, and particularly the manner in which rights are exercised (how and why, not just what, where, and when) based on values, beliefs, customs, protocols, laws, governance, stewardship and relationship with natural surroundings. These should be community-developed, with independent, appropriate, and supportive disciplinary expertise, not just from engagement conversations synthesized by the applicant. This internal community work can be a requirement of early engagement milestones, possibly as a first phase of further Indigenous-led assessment or community studies (and included in funding capacity from the applicant). Most importantly, cultural metrics also ensure there is consistent linkage between culturally determined and relevant Valued Components, accurate evaluation, and effective mitigation, management, monitoring, and enhancement plans. Indigenous-defined cultural metrics criteria must support the nature and scope of Indigenous knowledge systems and worldviews, including the following:

² The ‘biocultural’ paradigm is an interdisciplinary approach, including socio-ecological systems theory and other discourses such as anthropology and ethnobiology, political ecology, and Indigenous knowledge systems. The biocultural approach bridges ecological and social-cultural factors and includes the intersection of culture with economic, biological or other culturally-related material measures, often within the context of biodiversity, conservation, and sustainability. It places emphasis on the emergence of culturally grounded, locally developed and relevant holistic metrics, preserving the place of reciprocal and integral nature-culture relationships. See related references.

³ *Tsilhqot’in Decision* (SCC 2014) judicial commentary.

- Culturally Relevant Temporal Baselines – the temporal nature and context of generational transmission of Indigenous knowledge systems through time must be maintained. This requires Indigenous knowledge-informed historic reference condition baselines that reflect pre-extractive industry conditions before change, with which to compare Indigenous knowledge-informed current condition baselines for the accurate extent of cumulative change on Indigenous territories, land use, resources, and exercise of rights. Using current/existing condition baseline only does not reflect or respect the nature of Indigenous knowledge systems, nor provide accurate contribution of a project to cumulative effects or the projection from reasonably foreseeable projects.⁴ As described in the Yahey Decision, existing conditions are an already significantly altered baseline condition. This needs to inform the criteria used to characterize residual and cumulative effects on the practices and exercise of rights of Indigenous peoples.
- Spatial Boundaries – the geospatial connectedness of the cultural landscape and extent of potential impacts and effects on the health, quality, and condition of that landscape mean that Indigenous knowledge and stewardship responsibilities need to be considered regarding determination of culturally appropriate local and regional assessment areas for VCs in assessment sections, and for integration of Indigenous-led assessment and studies. Indigenous local and regional study areas also consider specific land use sites and culturally significant areas in relationship to the cultural landscape, not as isolated areas.
- Indigenous Valued Components – are biophysical (water, fish, wildlife, plants, etc.), biocultural/socio-ecological, and cultural (the condition tied to cultural requirements and expectations for use and practice). A socio-ecological example would be the harvesting of medicinal or ceremonial plants, which likely require special protocols regarding the plant's condition that must be met before harvesting and use. Those protocols include spiritual values/observances which can also be cultural VCs. Protocols could also be indicators (providing a measurable benchmark). Other related cultural VCs may include, for example, governance/stewardship. Indigenous VCs, tangible and intangible, whether quantitative or qualitative, inform the manner required for the exercise of the right, and can be rights in themselves.
- Indicators – the quantitative and qualitative measurable parameters of health, quality, and condition, according to Indigenous views and needs, are socio-ecological cues regarding the health, quality, and condition of a VC required for confident use or practice.

Another important distinction to make between Indigenous perspectives and Western science perspectives in assessment is use of the term 'availability'. This implies presence/absence and quantity of a resource and 'opportunity' for use. This, however, does not include the explicit cultural requirement of 'usability' by cultural standards regarding the health, quality, and condition required of a traditional resource. This is what defines cultural opportunity and meaningful exercise of rights—the *ability*, not just opportunity. This indicator (measurable parameter) is a linkage to requirements for human health and cultural well-being of Indigenous peoples.

Cultural metrics should also inform culturally relevant management and monitoring plans in application assessment, as effective management and monitoring must address Indigenous requirements for meaningful exercise of rights. These additional cultural metrics include the following:

⁴ 'Current' condition baseline also invites Shifting Baseline Syndrome, discussed by several scientists, which undermines accurate assessment and effective management and monitoring plans.

- **Thresholds of Acceptability** – this is a threshold of confident use or practice in the exercise of rights, not government standards of acceptability. These cultural thresholds are directly tied to and informed by the more accurate extent of change resulting from Indigenous knowledge–informed historic and current baselines comparison, and changes in land use patterns. These metrics are directly tied to meaningful (and sustainable) exercise of rights. If confidence of use has significantly diminished or been surpassed, decreased use/practice, avoidance, abandonment, or displacement occurs.
- **Triggers** – an early warning for thresholds of confident use in monitoring for a necessary and timely response to diminishing conditions for use/practice.
- **Targets** – goals for increasing quality and condition on the road to restoration. These would support enhancement plans and the following objectives/endpoints.
- **Objectives/Endpoints** – the outcome and condition required in which to meaningfully practice and exercise rights with confidence.

Indigenous-developed cultural metrics maintain focus on the required condition and usability of valued resources, practices, and areas for the meaningful ability to exercise rights. Cultural metrics provide an accurate measure of how far away the value is from achieving the related objective (restoration, preservation of the right, conservation, etc.). These can inform regulatory mitigations and project approval conditions that include enhancement measures and provide better and more appropriately structured and culturally inclusive monitoring programs.

The CER noted that not all effects pathways can be quantified in assessment of potential effects on the rights and interests of Indigenous peoples. However, cultural VCs and their qualitative measures are of critical importance in identifying effects pathways and impacts to the rights and interests of Indigenous peoples in assessment. For example, spiritual/ceremonial practices and stewardship practices are essential qualitative VCs that have inherent protocols that define how and why those practices are to be exercised. If there is an effect pathway that prevents that, it must be identified and measured, whether through qualitative or quantitative cultural benchmarks.

Assessment of potential project impacts and effects on the rights of Indigenous peoples are not just about interaction with where, what, and when of Indigenous land and resource use; it is also the how and why. All of these elements together are informed by worldview (ontology) and knowledge system (epistemology). This is the underlying context of rights, informing land and resource use decision-making and practice (tangible and intangible). It is the context of rights that needs to be centralized in assessment when looking at what impacts or effects a project may have on their exercise. Further, it is this cultural-centric lens that must drive the methodological approach and determination of how they are used in evaluation.

11.2 Residual Effects Characterization

Characterizations of residual effects in assessment are determined by the quantitative measure or definition of qualitative categories relative to existing conditions. It is the significantly altered existing conditions that underlay the Yahey Decision and exceedance of cultural thresholds of use that has impaired and infringed upon the practice and exercise of rights. Therefore, characterization of residual effects on cultural VCs and the rights of Indigenous peoples should be established and quantified or qualified through an Indigenous lens, and requirements for cultural thresholds of use criteria considered regarding preservation of the meaningful ability and quality of the practice in exercise of rights. In this context, the characterizations descriptions require alteration in definition and constancy throughout the evaluation for their contribution to already-degraded existing conditions. For example:

- magnitude would be understood as *any* change in land use patterns affecting the frequency for, ability to, and quality of the exercise or practice of rights;
- geographic extent regarding applied spatial boundaries from an Indigenous lens regarding effects to lands, resources, and Indigenous peoples was discussed earlier;
- duration would be in relation to the full time of interrupted land use, practices, and place-based transmission of knowledge effectively lost by a generation or more (i.e., extension into the operation phase or beyond could be decades of vital learning years for land users and opportunity for knowledge transmission);
- frequency is in relation to the uncertain event and number of disturbing activities and interruption of practices; and
- reversibility should consider the other criteria, particularly the lasting effect of duration on lost ability over time for practice and exercise of rights from interrupted knowledge transmission and for a generation or more before operations and reclamation are complete. There is also unfamiliarity with reclaimed areas and uncertainty regarding successful use.

The characterization of residual effects is one example of external assumptions of acceptability evident and prioritized in current assessment methodology and evaluation.

11.3 Significance Determination

For the purposes of significance determination in assessment on residual and cumulative effects to culturally developed metrics including VCs and rights and interests of Indigenous peoples, and owing to judicial determination of significantly altered baseline conditions as found in the *Yahey Decision (SCC 2021)*, when establishing significance, Indigenous peoples might expect the most conservative considerations to be made until such time that the positive impacts of restoration and enhancement measures and initiatives are realized.

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