



Tseil-Waututh Nation səlilwətał



July 6th, 2022

TWN File#: 22-033

Dan Barghshoon
Regulatory Policy, Canada Energy Regulator
opr-rpt@cer-rec.gc.ca

Dear Mr. Barghshoon

RE: TWN Comments on the Onshore Pipeline Regulations Review

Introduction

Tseil-Waututh Nation (TWN) has reviewed the Onshore Pipeline Regulations Review Discussion Paper circulated for comment in January 13th, 2022. The TWN review of the discussion paper has been supported with capacity funding provided by the Canadian Energy Regulator Onshore Pipelines Regulation (OPR) Review under the Impact Assessment Agency's (the Agency) Policy Dialogue Program – Stream 4. The discussion paper has been reviewed in accordance with the Tseil-Waututh Nation's Stewardship Policy. We provide below our comments in response to the Onshore Pipeline Regulations Review Discussion Paper questions and comments specific to the Canadian Energy Regulator Onshore Pipeline Regulations.

Tseil-Waututh Nation ("TWN") is a First Nation with inherent and Constitutionally-protected Indigenous rights, title and interests throughout its territory. Tseil-Waututh means "People of the Inlet" and the lands and waters around Burrard Inlet and the Salish Sea in what is now Metro Vancouver, have been our home since time out of mind. TWN maintains our governance and stewardship rights throughout our territory. We look forward to seeing how our comments are integrated into the regulations.

Responses to selected Discussion Paper questions

Question 2: How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?

TWN understands that a key purpose for this review is to "deliver a regulation that supports the highest level of safety, security and environmental protection, [and] advances Reconciliation with Indigenous peoples". The vast majority of pipelines operate within First Nations' territories. While the oil and gas industry can bring jobs and economic benefits to some communities, in the long term this industry also brings significant direct, long-term and cumulative impacts ranging from habitat fragmentation, loss of cultural heritage, loss of access to cultural resources, exposure to racism and violence, increased exposure to harmful pollutants, impacts from spills and exacerbation of climate change from the consumption of the oil and gas products carried in the pipelines.

The cumulative effects of oil and gas industry infrastructure already infringe Tsleil-Waututh's Indigenous rights, including the ability to practice our cultural, ceremonial, spiritual, subsistence, and economic activities, and exceed what is allowable under Tsleil-Waututh law. In a 10 km stretch of Eastern Burrard Inlet, the core territory of the Tsleil-Waututh Nation, there is an aggregation of six industrial-scale above ground oil storage facilities and their associated pipeline infrastructure and marine and rail shipping activities. TWN's concerns regarding cumulative effects and the failure of the Crown to address them have been affirmed in Canadian law including *Yahey v. British Columbia* which acknowledged that as more impacts accrue in a First Nations' territory, development becomes ever-harder to justify, as the Crown must still fulfill its constitutional obligations to uphold Indigenous ways of life (*Yahey v. British Columbia*, 2021¹). Research finds that environmental hazards disproportionately impact Black and Indigenous communities in Canada (see, for example, work by Ingrid Waldron, a sociologist at Dalhousie University)². Dr. Waldron defines environmental racism as "racial discrimination through the disproportionate location of environmentally hazardous projects in Indigenous, Black, and other racialized communities."³ Indigenous communities have a double impact of being subject to environmental racism while also being at greater risk of impacts from environmental hazards through traditional diet, medicine, cultural practices and generally living more intimately with the environment. The current government recognizes environmental racism as a concern in Canada and "Bill C-226, An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice"⁴ just passed the second reading in the House of Commons on June 22nd, 2022⁵. In addition to the impacts of cumulative effects and environmental racism, this industry directly contributes to climate change that threatens the rights of Indigenous peoples and adds new risks to the safe operation of pipelines. The lack of collective climate action and leadership on behalf of all levels of government, and consequent failure to curb emissions and prevent runaway catastrophic climate change constitutes an infringement of Indigenous rights, as well as an endangerment to lives, ecosystems, and infrastructure.

Historically, in project development and operation, the risks and impacts of environmental racism, climate change, and cumulative effects on Indigenous peoples have not been recognized or accounted for. Acknowledgement, avoidance, mitigation, and compensation of these impacts must be included in the OPR regulation framework. Can the CER clarify for TWN how the CER plans to ensure the OPR accords with Bill C-226, in the event it is passed into legislation?

Consent is fundamental to Indigenous rights and reconciliation and is indeed required, as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples and case law. Pipeline operation

¹ *Yahey v. British Columbia*, 2021 BCSC 1287, <https://www.bccourts.ca/jdb-txt/sc/21/12/2021BCSC1287.htm>

² Waldron, Ingrid. 2018. There's something in the water: environmental racism in indigenous and black communities.

³ Waldron, Ingrid. February 1st, 2021. Addressing Environmental Racism in Black Communities in Canada. News and Blogs. The Broadbent Institute.

https://www.broadbentinstitute.ca/addressing_environmental_racism_in_black_communities_in_canada

⁴ House of Commons Canada. 2022. BILL C-226 An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice.

<https://www.parl.ca/DocumentViewer/en/44-1/bill/C-226/first-reading>

⁵ Thurnton, David. June 22, 2022. Commons could soon pass legislation to study environmental racism.

<https://www.cbc.ca/news/politics/racism-environment-bipoc-1.6496767>

regulations will do little for reconciliation if the pipeline projects, routing, and operations are completed without meaningful consultation and without the free, prior, and informed consent of affected Indigenous peoples, as identified in Canada's United Nations Declaration on the Rights of Indigenous Peoples Act. Communication, consultation, and co-planning with Indigenous people must take place at all stages: throughout the planning, construction, operation, and pipeline abandonment or removal phases. In order to meet the goals of the regulations, Indigenous consent, meaningful consultation, joint planning, enforcement and compliance, and participation must be substantively integrated into these regulations.

TWN expects these regulations to be modernized to recognize Indigenous rights, title and interests, including Indigenous laws, governance systems and community practices. The regulations have potential to become a tool for reconciliation provided they are revised with meaningful engagement and participation with Indigenous peoples, including mechanisms for Indigenous decision-making. Consultation cannot be merely information gathering, but must result in feedback being incorporated into the regulations in a substantive way. Indigenous-Crown relations are increasingly shifting away from consultation -- a largely unilateral, passive process where a regulatory authority is merely obligated to consider a First Nation's input in what ultimately remains a Crown decision -- towards joint decision-making, in which a First Nation is brought into the process from the very beginning as a partner and a government with its own decision-making authority. This is occurring through legislation, case law, and direct relationships and partnerships between First Nations and Crown agencies. It is critical that the CER's updated processes reflect this.

Question 3: How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?

The discussion document mentions that "Companies must follow applicable federal, provincial or territorial requirements when their activities can impact heritage resources." We recommend that the CER include "and where applicable, Indigenous requirements" in this list.

Canada is the only country in the "Western World" lacking heritage legislation at the federal level. For projects under federal jurisdiction, there are no specific laws that govern protection of archaeological and cultural heritage resources and sites. Areas of exclusive federal jurisdiction nonetheless encompasses cultural heritage sites, both on land and below the water, and has high potential to encompass presently unknown sites (known as 'archaeological potential').

In the absence of federal legislation, cultural heritage and archaeology is governed under provincial legislation. However, TWN has found that British Columbia's requirements for protection of heritage resources under the B.C. Heritage Conservation Act are grossly insufficient. The Trans Mountain pipeline construction in our territory has been following the B.C. Heritage Conservation Act but we continuously experienced unreasonably short consultation periods, a lack of inclusion of TWN feedback including best practices and processes, refusal to provide TWN with information on archaeological findings, and impassible barriers to accessing archaeology sites along the construction route resulting in destruction and loss of cultural heritage resources. This is a significant loss to all.

Tsleil-Waututh always takes a precautionary approach when dealing with impacts to Coast Salish cultural heritage. A lack of known or documented archaeological sites within the project area does not preclude the possibility of archaeological deposits within the existing project footprint. TWN has our own Cultural Heritage and Archaeology program including professional archaeologists, and we must have the opportunity to inform and guide cultural heritage management on projects within our territory.

The current OPR and heritage resource protection framework is entirely inadequate at respecting TWN rights and interests. As a result, we make the following recommendations:

TWN recommends that federally regulated projects must be required to follow a high standard of heritage protection and that this standard be developed with direction, guidance and consent of Indigenous peoples and be responsive to their cultural priorities.

The discussion document writes that “Companies must follow applicable federal, provincial or territorial requirements when their activities can impact heritage resources”. We recommend that the CER include “and where applicable, Indigenous requirements” in this list.

Chance Find Procedures must be required for construction and maintenance activities in addition to robust archaeological and cultural heritage protections. Chance Find Procedures alone are not sufficient but must be included. Chance find procedures must be developed in consultation with each affected First Nation, as cultural heritage considerations will be unique to each First Nation, and each nation will have its own archaeological guidance and protocols for identifying and protecting cultural heritage.

Question 4: How can the OPR contribute to the protection of traditional land and resource use, and sites of significance for Indigenous peoples on a pipeline right-of-way, during construction, and operations and maintenance activities?

Much of the feedback in this letter is applicable to this question. Protection of traditional land and resource use, and sites of significance for Indigenous peoples can be achieved through sufficient recognition of Indigenous governance rights and the meaningful involvement of affected Indigenous groups at all stages of the process, from project conceptualization and planning, to project review, to monitoring and compliance. As discussed above, the free, prior, and informed consent of affected Indigenous peoples is paramount, as identified in Canada’s United Nations Declaration on the Rights of Indigenous Peoples Act. Communication, consultation, and co-planning with Indigenous people must take place at all stages: throughout the planning, construction, operation, and pipeline abandonment or removal phases. In order to meet the goals of the regulations, Indigenous consent, meaningful consultation, joint planning, enforcement and compliance, and participation must be substantively integrated into these regulations.

Indigenous peoples can and must be included in the design and planning of operations and maintenance activities, and in emergency and response planning and exercises. Ongoing oversight can be enabled through environmental and cultural heritage monitoring programs and by offering training for Indigenous Environmental and Archeology Monitors. Barriers to site access such as requirements of layers of certifications for Indigenous monitors (IMs) must be minimized to ensure Indigenous groups

with limited resources can still have oversight on active work. While the safety of IMs is of utmost importance, in TWN's experience, requirements for drug and alcohol testing for site visits can be a barrier as a trigger of racial stereotypes. Consultation and accommodation of this concern should be integrated into safety plans.

Proactive communication with the proponent and engagement with local First Nations can continue throughout planning and implementation activities related to pipeline construction, operations and maintenance, and emergency management processes.

Question 5: How can the use of Indigenous knowledge be addressed in the OPR?

The use of Indigenous knowledge in the OPR must be led by affected Indigenous people. Confidentiality of this information must be guaranteed, and capacity limits must be respected when it comes to consultation on these matters.

Recognition of First Nations and other affected Indigenous groups as governments and therefore decision-makers in their own territories is key. For TWN, our Indigenous knowledge and science are critical components of our internal review processes. The resulting analyses and decision that we make (such as whether to support a project or not, and the proposed conditions, changes, and/or mitigations) are informed by our Indigenous knowledge which may or may not be made fully available to the regulatory agency. It is important for the CER to respect the confidentiality of much Indigenous knowledge, and in the event that a First Nation or Indigenous group makes a decision or recommendation, the Indigenous knowledge informing that decision or recommendation may or may not be made available to the CER.

Question 6: How can the OPR address the participation of Indigenous peoples in pipeline oversight?

TWN recommends companies work to develop relationships and lines of communications with local First Nations. Ongoing oversight can be enabled through environmental and cultural heritage monitoring programs and by offering training for Indigenous Environmental and Archeology Monitors. Barriers to site access such as requirements of layers of certifications for Indigenous Monitors (IMs) must be minimized to ensure nations with limited resources can still have oversight on active work.

TWN seeks clarification as to whether the CER is considering the Indigenous Advisory Monitoring Committee (IAMC) as a potential vehicle for continued oversight of the OPR. If so, it is critical to emphasize that the IAMC is not a rights-holding body, and is therefore not a consultation body. TWN as a First Nation holds Constitutionally-protected and inherent Indigenous rights to its territory, and the federal government has a legal duty to consult us as rights-holders. The IAMC, by contrast, is not a rights-holder, nor an elected body with the authority to speak on behalf of First Nations. As IAMC states on their website:

“Participation in the Committee does not ... replace or diminish the federal government’s duty to consult or accommodate individual Indigenous communities, or diminish its obligations to comply with all applicable legal and regulatory requirements.”

There is no provision for regular communication or notification between the IAMC and individual First Nations about concerns or incidents related to OPR. It is not within the IAMC mandate to report out to local First Nations, and existing confidentiality requirements restrict IAMC's communication to First Nations. In TWN's experience, government agencies and proponents mistake IAMC as a consultation body which results in gaps and barriers to meaningful consultation with TWN as a directly-affected First Nation. There could be a role for the IAMC in pipeline oversight, but at present, the role of the IAMC does not yet serve this purpose to individual First Nations. Ultimately, the IAMC cannot replace direct dialogue, consultation, and engagement with individual First Nations.

Throughout the course of our engagement with IAMC, TWN is of the view that compliance verification inspections have too narrow a scope of inquiry to meaningfully address substantive concerns or questions our monitors have about safety, archaeology or other issues, and concerns our monitors raised were dismissed by regulators on the scene.

Question 10: Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to: a. those people implementing the OPR; or b. those people who are impacted by the operational activities addressed in the OPR?

Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls describe in the final report⁶ a clear link between resource industry projects and racism and violence against Indigenous women and girls, as well as increased sex industry activities in areas close to projects. It is incumbent upon the CER to ensure the revised OPR add provisions to protect Indigenous people from racism and violence related to project construction including, but certainly not limited to, requirements for training programs on cultural safety that address Canada's history of colonialism and impacts on Indigenous peoples, that address racism and gender-based violence, and educate staff on the rights of Indigenous peoples. Further, policies should be required to be in place to respond when incidents of racism or violence occur.

Security staff, contracted security forces and RCMP dispatched to pipeline construction sites have subjected Indigenous people in Canada to grievous human rights transgressions to the point where Canada has been reprimanded multiple times⁷ by the United Nations Committee for the Elimination of Racial Discrimination (UN CERD). The revised OPR must include provisions that protect Indigenous people from human rights abuse from security operations. Meaningful engagement with First Nations and Indigenous groups in the ways described above, including the requirement of free, prior and informed consent before projects proceed, would likely contribute to minimizing this type of conflict.

Question 22: How can the OPR drive further improvement to the environmental performance of regulated companies?

⁶ Reclaiming Power and Place: the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Canada, 2019. Web Archive. <https://www.loc.gov/item/lcwaN0028038/>

⁷ <https://twnsacredtrust.ca/a-third-letter-from-the-un-to-the-government-of-canada/>

Meaningful engagement, and requiring consent with First Nations would help ensure that ecological and cultural values, cumulative impacts, environmental racism and other concerns specific to local Nations are addressed. For example, crossing reports must include consideration not just of roads or utility right-of-ways, but also of crossing routes of local First Nations such as trap lines and traditional travel routes. Indigenous engagement, as described above, must take place early in project planning and design, and Indigenous engagement should be meaningful, pursued at a government-to-government level, and be consensus-based. Some First Nations may elect to conduct their own impact assessments, the results of which must be meaningfully considered and respected. This approach will ensure meaningful environmental protections over the long-term and further reduce risk to assets and infrastructure, as well as legal risk.

The construction and operations of pipelines have impacts on climate change and we have seen in recent years that the catastrophic impacts of climate change are impacting pipeline construction and operation, bringing new risks to the environment and Indigenous peoples.

TWN suggests the OPR must require new pipeline construction and operations be in alignment with Canada's climate targets for greenhouse gas reductions in all aspects of implementation of the regulations including the design, construction, operation or abandonment of a pipeline and related facilities such as pump stations and storage facilities.

In the summer of 2021 the Trans Mountain pipeline construction in BC was interrupted by forest fires. In the fall of 2021, the existing Trans Mountain pipeline and the pipeline under construction were exposed by mudslides and flooding. The impacts from a pipeline failure and oil spill on the Fraser River at that time would have been devastating. Highways across BC were closed for weeks if not outright destroyed, which would have impeded spill response. The Fraser Valley was flooded which would have resulted in extensive contamination of BC's most productive farmland, and the Fraser River estuary would have been devastated. This very near miss in fall 2021 was all from one storm event. The Trans Mountain project is not prepared for the impacts of climate change.

New projects must be built to standards that address the new risks from climate change. The planning of new pipelines must include risk assessments based on increased risk of accident and spills from the impacts of climate change. The risk assessments must examine all aspects of the lifetime of a pipeline including the design, construction, operation or abandonment of a pipeline, and related facilities such as pump stations and storage facilities. The design of new projects must be built to withstand the new climate regime and accident and safety planning must be designed with a climate impact lens. Given these emerging threats, the OPR should also require existing pipeline projects to review their risk from a perspective of climate resilience and be required to adapt operations in response.

Question 25: Are there any matters related to the Emergency Management Program in the OPR that require clarification? If so, what are they? Are there any matters for which further guidance is required?

Spill response planning is generally absent from the regulations. Spill response planning should be explicitly required in the regulations and include engaging local First Nations and Indigenous groups in developing communication plans and emergency response plans to identify hazards and map risks to

cultural features including tangible and intangible cultural sites. Local First Nations should be involved in emergency response training exercises.

Often First Nations are the first to detect and respond to spills within their territories, and it is First Nations who are left with the contaminated landscape, as typically, only a fraction of a spill is ever recovered. In TWN's view, extensive spill preparedness that includes pre-impact studies developed in collaboration with First Nations would reduce the impacts of spills, would protect freshwater resources, and would reduce impacts on Indigenous cultural resources. TWN suggests that funds from industry levies should be used to support spill preparedness programs and resources in local Indigenous communities. The Heiltsuk Nation in northern Coastal British Columbia is establishing a similar program for marine based spills.

Comments specific to the existing regulations

TWN recommends that the regulations must include an introductory paragraph as well as references throughout the regulations that identify a requirement for meaningful Indigenous consultation and engagement and for the free, prior and informed consent of affected Indigenous peoples in alignment with the United Nations Declaration on the Rights of Indigenous Peoples Act, and to ensure proactive protection and respect for Indigenous rights, title and interests, as enshrined in Section 35 of the Constitution Act, 1982 in all aspects of the implementation of the regulations including the design, construction, operation or abandonment of a pipeline. TWN further recommends that provisions for adequate time and resources must be provided to Indigenous peoples to support effective consultation and engagement.

We have provided suggestions below for specific sections of the regulations that would help to ensure the goals of this review are met with respect to advancing reconciliation with Indigenous people.

1. TWN recommends that paragraph 6 of the General regulations include an additional bullet following the introductory clause. TWN's suggested wording is in italics.

"6 The purpose of these Regulations is to require and enable a company to design, construct, operate or abandon a pipeline in a manner that ensures

- a. the safety and security of persons;*
- b. the safety and security of pipelines and abandoned pipelines; and*
- c. the protection of property and the environment; and*
- d. early, effective and meaningful participation and consultation of Indigenous peoples in decisions that affect them, their communities, and territories, through ensuring the free, prior, and informed consent (FPIC) of Indigenous peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples Act*
- e. respect for Indigenous rights, title and interests, as recognized and affirmed in Section 35 of the Constitution Act, 1982.*

2. TWN recommends that paragraph 6.1 describing the requirements for a Management system include an additional bullet following the introductory clause. TWN's suggested wording is in italics.

*“6.1 (1) A company shall establish, implement and maintain a management system that...
(b) is developed through early and meaningful participation and consultation of Indigenous peoples in decisions that affect them, their communities, and territories.*

3. TWN recommends that Section 6.3 (1) describing the development of tracking and reporting policies and goals related to paragraph 6 include reference to the proposed additional bullet 6 (d) to ensure that Indigenous people are included in development and scoping of the reporting policies and the goals for the prevention of releases and accidents, and to ensure they are included in the dissemination of the reports.
4. TWN recommends that paragraph 6.5 describing the requirements for a Management System Process include an additional bullet following the introductory clause. TWN’s suggested wording is in italics.
*“6.5 (1) A company shall, as part of its management system and the programs referred to in section 55,
(y) ensure these systems, policies, processes, and programs are developed with early and meaningful participation and consultation of Indigenous peoples to ensure FPIC has been reached in accordance with the United Nations Declaration on the Rights of Indigenous Peoples Act and that the title, rights and interests of Indigenous peoples are protected.*
5. TWN suggests that paragraphs 9-13 related to the design of the pipeline implicitly impact Indigenous rights as facilities will be situated within traditional territories of Indigenous peoples and thus require consultation. TWN suggests including a paragraph that outlines a requirement for effective and meaningful participation and consultation of Indigenous peoples to ensure FPIC has been reached in accordance with United Nations Declaration on the Rights of Indigenous Peoples Act and that the title, rights and interests of Indigenous peoples are protected related to the design of a pipeline including routing, right-of-way crossing or proximity, stations location and operations, and storage facilities location and operations.
6. TWN recommends that paragraphs 18.1 to 20.2 referring to construction safety should include a requirement to develop education, training and safety policies that address racism and gender-based violence and that the policy be developed in consultation with Indigenous peoples.
7. Paragraph 24 referring to Permits for Use and Disposal of Water must include reference to consultation with local Indigenous peoples to ensure water resources and cultural values are protected. TWN suggested wording is in italics.
24 (1) In the event of the use and disposal of water, engage in early, effective and meaningful participation and consultation of Indigenous peoples to ensure FPIC has been reached in accordance with United Nations Declaration on the Rights of Indigenous Peoples Act and that the title, rights and interests of Indigenous peoples are protected.
8. TWN recommends that paragraph 27-30 (2) referring to Operation and Maintenance Manuals and Maintenance Safety include a requirement for meaningful engagement and consultation with Indigenous peoples on the development of these manuals and policies. The requirement to

inform contacts of special conditions associated with the maintenance should include reference to respecting concerns and values identified in consultation and engagement with Indigenous people.

9. TWN recommends that paragraphs 32 (1)-35 related to the Emergency Management Program refer to a requirement for meaningful engagement and consultation with Indigenous peoples on the development of this program and related manuals and practices including Incident reports referred to in section 52. TWN suggested wording is in italics.

32 (1) *In consultation with Indigenous people*, a company shall develop, implement and maintain an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency that could adversely affect property, the environment or the safety of workers or the public.

(1.1) *In consultation with Indigenous people*, the company shall develop an emergency procedures manual, review it regularly and update it as required.

(2) A company shall submit the emergency procedures manual and any updates that are made to it to the Regulator.

33 A company shall establish and maintain liaison with the agencies *and Indigenous communities* that may be involved in an emergency response on the pipeline and shall consult with them in developing and updating the emergency procedures manual.

34 A company shall take all reasonable steps to inform all persons who may be associated with an emergency response activity on the pipeline of the practices and procedures to be followed and make available to them the relevant information that is consistent with that which is specified in the emergency procedures manual.

35 A company shall develop a continuing education program for the police, fire departments, medical facilities, *Indigenous communities and* other appropriate organizations and agencies and the public residing adjacent to the pipeline to inform them of the location of the pipeline, potential emergency situations involving the pipeline and the safety procedures to be followed in the case of an emergency.

10. TWN recommends that paragraph 39 referring to developing a surveillance and monitoring program and paragraph 47.1, referring to a security management program include added text to require that human rights are respected such that Indigenous peoples do not experience racism, harassment, intimidation, or violence by employees, security staff and private contractors.
11. TWN recommends that paragraphs 44(1) to 54 (2) related to deactivation, reactivation and decommissioning of pipelines include the requirement to meaningfully engage with Indigenous people prior to or, at minimum, at the same time that applications are made to the Commission.
12. TWN recommends that paragraphs 46 (1) to 46 (3) referring to training programs include a requirement for training programs to include components on cultural safety that address Canada's history of colonialism and impacts on Indigenous peoples, including racism and gender-based violence. It is also critical that training programs educate about Indigenous rights

and title, and their legal standing in Canada, given that this serves as the basis for Crown-Indigenous engagement in the first place.

13. TWN recommends that paragraph 48 referring to developing an environmental protection program include a requirement to develop this program with early, effective and meaningful participation and consultation of Indigenous peoples to ensure FPIC has been reached in accordance with United Nations Declaration on the Rights of Indigenous Peoples Act and that the title, rights and interests of Indigenous peoples are protected.
14. TWN recommends that paragraph 48 referring to developing an environmental protection program include specific reference to developing a robust spill response plan in consultation with Indigenous people.
15. TWN recommends that new regulations be added to require construction and operation be in accordance with Canada's climate targets for greenhouse gas reductions in all aspects of the implementation of the regulations including the design, construction, operation or abandonment of a pipeline and related facilities such as pump stations and storage facilities.
16. TWN recommends a new regulation be added requiring new pipeline proposals include risk assessments and safety plans based on increased risk of accidents and spills from the impacts of climate change, such as flooding, landslides, and fires. The risk assessments must examine all aspects throughout the lifetime of a pipeline including the design, construction, operation and abandonment of a pipeline, and related facilities such as pump stations and storage facilities.
17. TWN recommends a new regulation be added requiring existing pipeline projects review their accident risk from a perspective of climate resilience and be required to adapt operations to address the risk assessment findings.
18. TWN recommends a new regulation be added to ensure that archaeological and cultural heritage resources are identified and protected through early, effective and meaningful engagement and consultation with Indigenous peoples, and that procedures, including but not limited to chance find procedures, are developed and approved by local Indigenous peoples.

Next steps

The cumulative effects of oil and gas industry infrastructure projects already infringe Tsleil-Waututh rights, title, and interests, including cultural, ceremonial, spiritual, subsistence, and economic activities, and exceed what is allowable under Tsleil-Waututh law. Pipeline construction has impacts on our Indigenous rights, title and interests. Human rights violations continue to occur at construction sites as documented by the UN CERD, referenced above.

This OPR review is an opportunity to meaningfully address these risks and impacts. TWN appreciates the capacity funding CER provided to engage in this regulatory review and for respectfully adjusting the timeline in order to receive this feedback. We trust our input will be genuinely considered and incorporated in the drafting and planning process.

We look forward to hearing back from you on how CER intends to address the points raised in this letter. Please do not hesitate to contact us should you have any questions on the above, or wish to discuss further. We would be happy to schedule a meeting with your team to discuss these questions and ongoing consultation on the regulations.

Please have your staff contact [REDACTED] Policy Analyst at [REDACTED] to schedule a meeting and to address any questions.

Sincerely,

[REDACTED]

[REDACTED]

Policy Advisor, Treaty Lands and Resources Department
Tsleil-Waututh Nation

Cc: [REDACTED] Director, Treaty Lands and Resources Department
[REDACTED] Policy Analyst, Treaty Lands and Resources Department