

October 14, 2022

Strategic Advisor, Energy Adjudication
Canada Energy Regulator
210-517 10 Ave SW
Calgary, Alberta
T2R 0A8

By email:

cc: filingmanual@cer-rec.gc.ca

Re: Review of the Onshore Pipeline Regulations (OPR) – IAMC-TMX feedback on Discussion Paper

The Indigenous Caucus (the “Caucus”) of the Indigenous Advisory & Monitoring Committee for the Trans Mountain Pipeline (IAMC) has reviewed the Canada Energy Regulator’s (CER) proposed updates to Greenhouse gas (GHG) emissions and Climate Change and draft supplemental guidance. This brief provides a preliminary response to the proposed updates.

As you are aware, the IAMC is an innovative body that aims at providing for the meaningful inclusion of Indigenous perspectives into the post-approval regulation of the Trans Mountain Corporation’s (TMC) pipelines, including the Trans Mountain Expansion Project (the “Project”), and associated marine shipping. The IAMC’s overall objective is to improve the safety of pipelines and marine shipping and to protect the environment and Indigenous interests in the lands and waters.

Participation in the work of the Caucus and the Committee by Indigenous members and nations is expressly “without prejudice” to the nations’ positions on the Project. The Committee does not represent Indigenous nations with respect to their section 35 rights and it is not a consultative body. Sections 64 and 65 of the Committee’s Terms of Reference are explicit in this regard. That said, the IAMC has proven to be an effective means of soliciting views from rights holders to advise government on the means of enhancing Indigenous inclusion in the oversight of the Trans Mountain Project.

Since its inception, the Caucus has highlighted the need to transform the Committee’s role from advising government to truly co-managing with government, in a manner consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). The work to implement this reality continues today. The IAMC is in the process of envisioning its ‘post-construction’ role and identifying means of further strengthening the voice of Indigenous communities in the oversight of CER’s regulated companies. As this vision takes shape, it will be important that updates to regulations (OPR, Filings

Manual, etc.) do not unduly restrict any future role Indigenous Nations, the IAMC (and/or an Indigenous Governing body) or an ‘Indigenous Energy Regulator’ may have in sharing decision-making with the CER.

The Filings Manual update must be situated in context. The Supreme Court of Canada has confirmed that Indigenous laws are part of the constitutional fabric of Canada, and that the purpose underlying section 35 of the *Constitution Act, 1982* is the reconciliation of the prior existence of Indigenous societies with assumed Crown sovereignty. While the *Constitution Act, 1867* allocates certain jurisdictions to the federal Crown and provinces, it also leaves space for the operation of Indigenous self-determination. Very few Canadians and proponents know and appreciate this reality. We are convinced that the CER, through this Filings Manual update, can make this reality known and – through section 35 obligations as well as obligations associated with the *United Nations Declaration on the Rights of Indigenous Peoples Act* – is legally obliged to do so.

Engagement & the “Whole of Government” Approach

The Caucus responses to the CER’s proposed filings manual updates reflect some preliminary perspectives heard from its engagements with Indigenous communities affected by the Trans Mountain pipelines and marine shipping. The responses *do not* reflect the breadth of these discussions and it is fundamental that engagement at the IAMC table continue throughout the Filings Manual updates process over the years to come (as outlined in the CER’s Regulatory Framework Plan: 2022 to 2025¹).

This policy development work can be more efficient and effective than it currently is. As contemplated in its Terms of Reference, the IAMC creates a unique forum for co-development of input and advice between six federal departments and Indigenous partners. The Federal government’s commitment to a “Whole of Government” approach to engaging with the Caucus on matters that enhance the IAMC’s role in the oversight of Trans Mountain Corporation’s activities is useful, but more work is required to align various department’s policy development initiatives.

There are currently substantial regulatory and policy changes being contemplated to respond to Canada’s commitments to implementing UNDRIP² and Canada’s Climate Plan, including reducing greenhouse gas (GHG) emissions³ and adaptation⁴. Engagements on these policy development initiatives are being carried out by various Federal departments in “silos” and these parallel engagement processes create an unnecessary burden on Indigenous communities.

¹ CER’s Regulatory Framework Plan (2022-2025): <https://www.cer-rec.gc.ca/en/about/how-we-regulate/regulatory-framework-plan/regulatory-framework-plan-2022-2025/index.html>

² Canada, Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act – Next Steps, <https://www.justice.gc.ca/eng/declaration/engagement/index.html>

³ Canada, Canada’s Climate Plan: Oil and Gas Emissions Plan, <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/oil-gas-emissions-cap.html>

⁴ Canada’s First National Adaptation Strategy, <https://letstalkadaptation.ca/>

The Caucus has heard numerous times from its constituents that the challenge for communities is that there are too many abstract policy processes, and it is not clear how each relate to one another or specifically, to the community's particular interests. This confusion is compounded by situations of overwhelming and underfunded referral requests on Indigenous organizations with limited capacity to respond under short timeframes.

The IAMC can play a critical role in facilitating these discussions amongst the affected communities along the Trans Mountain Pipeline corridor and marine shipping route. As part of the Caucus' interest in developing UNDRIP-consistent legislation and regulations, the Caucus proposes a workshop be set up with the Federal partners to map out all relevant forthcoming policy development plans. 'Mapping out' those policy initiatives relating to GHG emissions, climate change adaptation, marine shipping and implementation of UNDRIP would be good starting points.

This forward-looking plan will enable the Caucus to effectively support the Federal government in soliciting feedback from affected Indigenous communities and allow the Caucus to better plan for and prepare advice and guidance of greater value to government. Working with the Federal Partners, the Caucus could prepare recommendations to presenting the information succinctly in a format relevant to the affected Indigenous communities and hold regional workshops to solicit advice. The Caucus aims to improve the Federal engagement process itself, not to be another recipient of the public notifications and be reactive to the requests for comment. For example, the Caucus was not informed of Environment Canada and Climate Change's recent public engagement on the National Adaptation Strategy nor on discussion papers on Options to cap and cut oil and gas sector GHG emissions. These complimentary policy intentions provide greater context for Indigenous communities to advise on the CER's filing manual update on GHG emissions and the Caucus' recommendations would be better informed.

Using this Filings Manual update initiative as an example, the Caucus would like to better understand the CER's approach to engaging with Indigenous communities to-date and the associated response rate. Publicly available responses on the website implies there were just six responses, none of whom represented Indigenous interests⁵. Understanding the CER's challenges and constraints to engagement will help the Caucus in recommending improvements for future engagements.

The Caucus would also be looking to evaluate the effectiveness of the CER's engagement on the 2021 updates to the Filing Manual's GHG and Climate Change sections and the other federal department's climate policy engagement with the Indigenous communities, including feedback on ECCC's discussion paper on Canada's National Adaptation Strategy (May 2022), Options to Cap and Cut Oil and Gas Sector Greenhouse Gas Emissions to Achieve 2030 Goals and Net-Zero by 2050 (July 2022), and plans for NRCAN's intention to set up Regional Energy and Resource Tables in early 2023.

Through our community connections and experience in coordinating Nations to collectively identify and propose solutions to areas of concern, the IAMC is an ideal forum to present a coordinated, 'all of

⁵ Canada Energy Regulator, Public Feedback Opportunities on Proposed Filing Manual Updates (online): <https://www.cer-rec.gc.ca/en/applications-hearings/submit-applications-documents/filing-manuals/filing-manual/filing-manual-updates/index.html>

government' approach to updating climate change policy in conjunction with implementation of the principles of UNDRIP.

General

Since 1990, Canada's oil and gas sector GHG emissions have increased by 74% and in 2020, the sector was the largest source of emissions (accounting for 27% of total national emissions)⁶. CER's regulated companies have a significant role to play in meeting Canada's climate commitments.

To date, GHG emissions rates in Canada have continued to climb with declines only attributed to major economic downturn events (ie. 2009, 2020). Trans Mountain operations follow this trend, though direct emissions continued to rise and may further increase with the additional shipping planned to Westridge terminal, even with new expansion project mitigation measures in place.

Achieving net zero emissions is crucial but won't be sufficient to reverse warming and the associated impacts on Section 35 Rights. CER needs to prepare policies and guidance that 'drawdown' global greenhouse gas concentrations rather than focusing solely on minimizing emissions from future Projects. To achieve these goals, the Caucus has heard in its engagement that the CER should:

- (a) Implement UNDRIP to fully recognize Indigenous governing bodies to protect their Rights from climate-related impacts,
- (b) ensuring all GHG emissions and sources are considered in a Project's review (i.e. holistic view of assessment that includes indirect downstream emissions),
- (c) conduct comprehensive monitoring, verification, and enforcement of regulations with Indigenous partners,
- (d) push the oil and gas sector to focus on avoidance rather than offsetting, and
- (e) address GHG emissions and climate vulnerability of existing infrastructure and the associated cumulative impacts on Indigenous Rights and interests.

These matters are briefly discussed in the following sections and the Caucus looks forward to discussing in depth with CER's policy makers working on the Filing Manual update and Onshore Pipeline Regulation Review along with the other Federal partners involved in climate policies for the oil and gas sector and marine shipping.

(a) Applicability of relevant laws, regulations and policies

In addition to setting an expectation that proponents describe how further changes to federal and international climate-related laws potentially impact a project, the CER must require a description of how affected Indigenous government's laws are considered.

⁶ Government of Canada, Greenhouse Gas Emissions (online): <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html#oil-gas>

Just as federal and international climate-related laws will evolve over the years to come, so too will Indigenous laws, guidance and policies be developed and codified in response to the implementation of *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) across Canada.

Indigenous Nations opposed to the Trans Mountain Project continue to express to the Caucus deep concerns that the Project proceeded by dismissing their concerns (i.e. downstream emissions), providing inadequate responses to their expectations (i.e. cumulative effects), and did not recognize the Nations' stewardship policies, land tenure systems, or provincially recognized water quality objectives. The National Energy Board's (NEB) assessment approach for the Trans Mountain Project would not have been consistent with UNDRIP Articles 19, 26, and 27 amongst others⁷.

With the transition from the NEB to the CER, these issues that were once external to the CER's jurisdiction are now part of its mandate. Reconciliation is a directive for change. The Filings Manual needs to adapt to address Indigenous issues and concerns and needs to adapt as Indigenous laws are codified and/or shared in a manner consistent with how the affected Indigenous government chooses to do so. Reconciliation and the implementation of UNDRIP requires Canada to work alongside Indigenous Nations to ensure proponents comply with Indigenous laws and expectations and clearly understand and articulate the risks to their proposed Projects.

UNDRIP Article 19 is clear on the need to enable 'free, prior and informed consent' by Indigenous peoples before Canada adopts or implements legislative or administrative measures that affect them. Indigenous communities are disproportionately impacted by climate change⁸ and the metrics used in today's impact assessments often do not capture the community-based data needed to fully understand impacts to those most affected. Further, understanding how climate change is likely to impact the specific social / environmental aspects of these communities requires more time that is often afforded in the CER's assessment process.

Some Indigenous communities are already undertaking this work (at their own cost), and these studies must be given sufficient consideration in the Project assessment. For example, the Adams Lake Indian Band conducted a 2-year holistic cumulative effects (CE) assessment for the North Thompson Watershed with a focus on quantifying the potential hazards and risks associated with a range of

⁷ United Nations Declaration of the Rights of Indigenous Peoples (online): <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

Articles of note:

Article 19

States shall consult and cooperate in good faith with Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have a right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

"States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process."

⁸ United Nations, (online): <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>

landscape and climate conditions that could result in adverse effects for the Trans Mountain Pipeline System and/or the Trans Mountain Expansion Project from changes in streamflow⁹. Consequences of land use, climate change, and wildfire to landscape composition and wildlife were also assessed, but the Caucus has heard concerns this study was largely ignored and there had been no required (or volunteered) adjustment to construction or engineering to account for these anticipated changes.

The Filing Manual needs to clear on the importance of time and investment of resources so that the burden is on the proponent, not on the affected community. Proponents must be required to resource these studies and engage much sooner than currently required so impacts to Indigenous Rights interests could be fully captured in the CER's review. The Filing Manual and associated guidance documents needs to be explicit on the expectations of proponents to work effectively with communities and the communities must have an opportunity to clearly express their confidence that the information used within an assessment is adequate to protect their interests.

The creation of an 'Indigenous Energy Regulator' sharing decisions with the CER could work to ensure Indigenous rights-holder's concerns were appropriately considered in a Project's review. As the CER considers how to integrate the principles of UNDRIP and Indigenous rights into the Filings Manual and Onshore Pipeline Regulation (i.e. embedded throughout or as a discrete section), the Caucus welcomes deeper discussions on how these interests can be fully considered.

(b) Considering all emissions / sources

One of the most controversial aspects of the assessment of the Trans Mountain Project was the CER's avoidance of taking a comprehensive approach to assessing GHG emissions and potential implications to global climate change. Specifically, the exclusion of the consideration of the potential indirect effects of downstream emissions. With the proposed Filing Manual GHG updates and guidance, the CER will not resolve this controversy and will fail to live up to the principles of UNDRIP Article 19 for those Indigenous Nations seeking a better understanding of the global impacts of approving energy infrastructure.

The CER needs to adopt the approach taken by its predecessor (the National Energy Board, NEB) on the Energy East Project and require the proponent to provide information on the indirect greenhouse gas emissions that could result if the project is constructed, including from incremental upstream oil production and upgrading, incremental downstream refining and end-use, and incremental third-party electricity generation.

In the NEB's decision to include downstream emissions¹⁰, there was acknowledgment that although the associated activities related to downstream emissions were beyond the care and control of the

⁹ ALCES® Landscape & Land Use, "Assessment of the Cumulative Effects of Climate Change and Land Use to the Trans Mountain Pipeline and Wildlife Habitat in the North Thompson Watershed, February, 2019 – Online (https://www.barryjwilson.com/tmx_cfx)

¹⁰ NEB letter to Energy East Pipeline Ltd. and TransCanada Pipelines Limited, 23 August 2017, Energy East Pipeline Project - Lists of Issues and Factors EA (online): <https://nben.ca/en/cons-pub-transcanada-energy-east-pipeline.html?download=5041:list-of-issues-and-ea-factors-document-energy-east-and-eastern-mainline-letter-to-interested-parties-national-energy-board-august-23-2017>

applicant and could not be considered “incidental activities” under the CEAA 2012, there was still justification to gather this information to better understand the potential implications of the proposed project on climate change.

In much the same way that Trans Mountain Corporation had little care and control of marine shipping activities, the reconsideration hearings instigated by the August 2018 Federal Court of Appeal decision enabled a space for Indigenous Nations and others to evaluate and understand the potential impacts to their rights and interests from marine shipping.

Concerns relating to the cumulative effects of downstream GHG emissions are increasingly relevant and CER should expect Indigenous Nations will continue to seek a comprehensive and holistic review of how proposed Projects enable and/or contribute to global climate change prior to providing consent to proceed.

Given the magnitude of GHG emissions from Canada’s oil and gas sector and the need to decarbonize the economy, the CER should go beyond Environment Canada & Climate Change’s (ECCC) 2020 Strategic Assessment of Climate Change¹¹ and enable opportunities to discuss potential downstream emissions from proposed Projects. Even if there is uncertainty in these assessments, the discussion is necessary and by not requiring proponents to undertake this work (or considering third-party reports in a Project’s review) the CER will fail in restoring public trust and will miss an opportunity for consent-based decision-making.

(c) Monitoring, verification, and enforce regulations

For the oversight of any net-zero plans, it is important that Indigenous communities have sufficient time to review and comment on the proposed plans and that the monitoring, verification, and administrative penalties are robust enough to incentivize good behaviour. This oversight needs to be informed by the Indigenous communities and a proponent’s methodology and reporting needs to more open and transparent.

An IAMC Indigenous Monitor recently participated in a Port State Control Inspection (with Transport Canada) and observed several types of emissions from the existing operational facilities (P/V Valves, Vapor Line burn off, etc.). It wasn’t clear who was responsible for oversight of fugitive emissions (CER, ECCC, the Port of Vancouver, Province, etc.), who received GHG emission records from Trans Mountain, if the data was verified, or if the information was made publicly available on a real-time basis so emissions can be independently monitored by affected Indigenous communities.

While the expansion Project has two CER Conditions relating to GHG Emissions and Offsets (Condition 140 and 142, below), these are specifically for the construction phase, and do not require any Indigenous consultation to better inform their plans.

¹¹ ECCC, Strategic Assessment of Climate Change, Revised October 2020 (online) - <https://www.canada.ca/en/services/environment/conservation/assessments/strategic-assessments/climate-change.html>

CER Condition 140	CER Condition 142
<p><u>Post-construction greenhouse gas (GHG) assessment report</u> Trans Mountain must file with the NEB for approval, within 2 months after commencing operations, an updated GHG assessment report specific to the Project. The report must include:</p> <p>a) the methodology used for the assessment, including the sources of GHG emissions, assumptions, and methods of estimation.</p> <p>b) the total direct GHG emissions generated from Project construction, including land-clearing;</p> <p>c) a breakdown of direct GHG emissions generated by the construction of individual Project components (pipeline, pump stations, tank terminals and Westridge Marine Terminal) and by land-clearing activities; and</p> <p>d) a comparison and discussion of the direct GHG emissions calculated in b) with the predicted emissions in Trans Mountain's application and subsequent submissions.</p>	<p><u>GHG Emissions Offset Plan – Project construction</u> Trans Mountain must file with the NEB for approval, within 4 months after commencing operations, a plan for providing offsets for all direct GHG emissions generated from Project construction, as determined in Condition 140. The plan must include:</p> <p>a) a list and discussion of all possible offset options considered;</p> <p>b) the criteria against which each option was assessed for viability;</p> <p>c) a description of the offset option(s) selected for direct GHG emissions generated from Project construction, and the rationale for selecting the option(s);</p> <p>d) confirmation that the selected offset option is registered under the approved quantification protocols and has been verified by an accredited "verification body"⁸;</p> <p>e) a schedule indicating when the selected offset options(s) will be initiated; and</p> <p>f) an accounting of offsets confirming no net GHG emissions from Project construction.</p>

For operations, the Caucus isn't aware of any sections in the Onshore Pipeline Regulations that require the existing emissions to be tracked and reported to the CER over the lifecycle of the project, nor guidelines on consultation, the appropriate monitoring scope and methodology. While the Province of BC has a Greenhouse Gas Emission Reporting Regulation¹², it is unclear if the Province of Alberta's Specified Gas Reporting Regulation¹³ is consistent with BC's, or how these would relate to CER's expectations and Indigenous expectations (if consultation on these regulations didn't occur).

While the direct 'Scope 1' GHG emissions at Westridge were reported in Trans Mountain's Annual Environment, Social & Governance Report, it isn't clear who is reviewing this report and confirming accuracies when conflicts are identified from one year to the next:

TMC's 2020 ESG Report¹⁴				TMC's 2021 ESG Report¹⁵				
ENVIRONMENT cont	Units	2019	2020	GHG EMISSIONS (TONNES CO₂e)				
Climate Change and GHG emissions				2019	2020	2021		
Scope 1 GHG emissions (direct)	tonnes CO ₂	4,596	6,570	4,552	5,567	5,685		
Scope 2 GHG emissions (indirect)	tonnes CO ₂	121,197	106,234	121,197	106,234	116,015		
Total GHG Emissions	tonnes CO ₂	125,793	112,804	TOTAL GHG EMISSIONS		125,749	111,801	121,700

Further clarity on how the CER, ECCC and/or Provinces (or others) are receiving, reviewing, and verifying emissions reporting on existing facilities should be prepared to share with communities. In addition, the Caucus is interested in better understanding how the respective regulatory bodies are coordinating with one another and informing associated decisions based on Indigenous input.

¹² Province of BC: Reporting Industrial Greenhouse Gas Emissions: <https://www2.gov.bc.ca/gov/content/environment/climate-change/industry/reporting>

¹³ Province of Alberta: Specified Gas Reporting Regulation: https://open.alberta.ca/publications/2004_251

¹⁴ Trans Mountain, Trans Mountain's 2020 Environmental, Social & Governance Report (online): https://docs.transmountain.com/TM_ESG_Report_2020_Final.pdf

¹⁵ Trans Mountain, Trans Mountain's 2021 Environmental, Social & Governance Report (online): https://docs.transmountain.com/ESG-Reports/TransMountain_2021-ESG-Report_ENGLISH_28jun2022_highres.pdf

The Caucus proposes the IAMC undertake a review of the oversight of Trans Mountain's GHG emissions on the existing pipeline and terminals to assess the reporting requirements and associated monitoring and verification processes. This work will inform the Caucus review of TMC's Condition 140 and 142 filings and support recommendations to the CER on the GHG Filings Manual update and Trans Mountain as they develop targets to reduce and/or offset GHG emissions.

The Filing Manual should require proponents to share information that would enable the CER and Indigenous communities to evaluate and consider a company's performance in reducing emissions on existing infrastructure while considering any new Projects from the proponent.

(d) Focusing on avoidance rather than offsets

Canada has committed to be net-zero emissions by 2050. The United Nations has stated that "*new funding for fossil fuel exploration and production infrastructure is delusional*" and would worsen the global problems of pollution and climate change¹⁶. The Pembina Institute indicated Canada's Oil & Gas sector's actions is not living up to its pledges¹⁷. The CER must ensure there is a fulsome dialogue on the values of proceeding with projects when there is considerable uncertainty about the effectiveness of mitigation measures and the CER should be prepared to adopt a precautionary approach and deny approval if this reflects the collective views of affected Indigenous Nations.

Filing Manual guidance must significantly prioritize avoidance and mitigation of GHG emissions over offsetting and carbon credits. The CER must set clear guidelines that push industry to significantly reduce emissions and not let 'industry standards' alone determine the rate of change.

Carbon offsets don't deliver the emissions savings or carbon removal they're designed to. For example, Trans Mountain's proposed mitigation measure to reduce fugitive GHG emissions at Westridge Terminal (the largest source of direct emissions along the pipeline route¹⁸) is to install two new Vapour Recovery Units (VRUs) to capture vapours associated with ship loading activities, re-liquify them and then reinject these back into the ships. While this process may marginally increase the efficiency of getting the product to the market, the end result will result in the same amount of GHG's contributed to the atmosphere (i.e. 'direct' emissions from TMC's operations simply become 'indirect' downstream emissions from combustion). Similarly, planting trees that are ultimately burnt down due to climate-induced forest fires fails to reduce emissions or incentivize actions to decarbonize the economy if the proponent is released of their obligation to offset a short time after these trees are planted.

The impacts of offsetting projects to Indigenous interests must also be considered. Guidance should be prepared to ensure proponents fully outline the potential impacts to sites of Indigenous significance from any offset activities and these must be clearly articulated *before* decisions are made. For example, avoiding directional drilling (ie. tree clearing) in favour of open-cut crossing of a watercourse may

¹⁶ UN News (online), "Climate change: More fossil fuel investment, just 'delusional', warns Guterres" - <https://news.un.org/en/story/2022/06/1120372>

¹⁷ Pembina Institute, "*Waiting to Launch The gap between Canadian oilsands companies' climate pledges and actions*", Sept. 23, 2022. (<https://www.pembina.org/pub/oilsands-waiting-launch>)

¹⁸ Trans Mountain 2021 Environmental, Social & Governance Report (online): <https://www.transmountain.com/esg-report>

detrimentally impact culturally important fish species. Conversely, clearing for a directional drill operation could impact culturally modified trees or sites of deep spiritual connection. To date, proponents have typically done a poor job of identifying Indigenous sites of significance prior to undertaking activities and the CER must ensure this work is done. A consent-based decision-making process must be included in the Filing Manual to ensure affected Indigenous communities approve of proposed offsetting Projects.

If offsets must be applied, carbon credits must be derived from a fully regulated and audited carbon market, one that has the endorsement of the affected Indigenous Nations. An Indigenous governing body could potentially be an appropriate means of monitoring and reviewing offset initiatives and providing an endorsement for Indigenous Nation's consideration in their own decision-making processes.

To achieve these goals, the CER must co-develop a transparent decision-making process into their Project review phase that incorporates Indigenous values and clearly articulates uncertainties and risks in a manner that can be clearly communicated to affected Indigenous Nations. The Caucus welcomes further discussions with CER to develop structured decision-making processes to support the integration of indigenous knowledge and provides a consent-based assessment of GHG emissions and offsetting.

(e) Addressing GHG emissions and climate vulnerability of existing infrastructure

Given that our economic systems, investments, and regulatory decisions have brought about the climate crisis, the CER should set standards for their regulated industries to offset historic emissions. Rather than stealing from the future, proponents must contribute to healing it.

While it is important for proposed Projects to identify mitigation measures to reduce GHG emissions, the Caucus would like to understand what the CER is doing to assess GHG emissions from existing oil and gas infrastructure and the associated requirements for companies to develop mitigation measures for emissions and adapting to climate change.

While the proposed Filing Manual update assumes that all new project applications will have a lifetime beyond 2050 and proponents are to provide a credible net-zero plan for projects beyond this time, the has heard concerns that these net-zero plans would not consider emissions that have occurred to-date from existing infrastructure. It is these emissions that have contributed to the climate crisis that is already impacting Section 35 rights. A proponent's corporate net zero plan should include an estimate of the total GHG emissions from existing infrastructure to-date and these total emissions should be part of the corporate offsetting plan.

Upgrading existing infrastructure to minimize GHG emissions should be a priority but it's unclear to the Caucus what regulatory requirements the CER is applying to address this issue and if the instruments are sufficient to effect the necessary change. Further, engineering standards must be updated to ensure existing infrastructure is resilient to extreme climate events. The Adam's Lake Indian Band cumulative effects study mentioned earlier is a good example of where Indigenous interests to assure

engineering standards on existing infrastructure need to be addressed. The 2021 Flood events in BC also highlighted vulnerabilities to the existing pipeline system and its unclear to the Caucus how the CER is requiring Trans Mountain to re-engineer its system in the face of increased climate risks, vulnerabilities of species, and shifting landscapes.

The Caucus would like to better understand how existing pipeline systems are audited for preparedness to climate change events and reducing GHG emissions and how Indigenous communities would be part of this evaluation process.