

Record of Decisions
Indigenous Advisory and Monitoring Committee – TMX
February 14-15, 2018
River Cree 1 & 2, Enoch River Cree Resort
Enoch, Alberta

RECORD OF DECISIONS

1. WELCOME AND OVERVIEW

1.1 Agenda: IAMC-TMX Meeting, February 14-15, 2018

- The proposed draft agenda was adopted by the Committee with no amendments.

1.2 Record of Decisions: January 15-16, 2018

- The Record of Decision from January 15-16, 2018 was approved with no amendments.

1.3 Record of Decisions: February 2, 2018

- The Record of Decision from the February 2, 2018 Kwikwetlem First Nation project proposal was approved no amendments.

2. PROJECT DECISIONS AND PROPOSALS

2.1 Provide support to the IAMC-TMX in implementing Committee priorities from Salish Sea Industries

- The Committee approved the proposal with no amendments.
- The Committee Co-Chairs will schedule a meeting with Chief Gordon Planes to further discuss this project.

2.2 Cultural and Ecological Information Management System (CEIMS) Proposal from Louis Bull Tribe

- The Committee approved the proposal with no amendments.
- Norine Saddleback (Alberta First Nations) recused herself from all deliberations and decisions regarding the Louis Bull Tribe proposal.

2.3 Deliver environmental monitoring training for eight participants from Mountain Métis Nation Association

- The Committee approved the proposal subject to:
 - Addition of a clear training goal;
 - Development of an itemized budget;
 - Seeking to understand the capacity of the organisation to implement the project and any additional support that may be required that is not already captured in the proposal (to be added to itemized budget); and
 - Examining particular barriers for Mountain Métis participation in the proposed training program, and if necessary, addressing these barriers in the proposal.
- Tracy Friedel (Alberta Métis) recused herself from all deliberations and decisions regarding the Mountain Métis Nation Association proposal.

2.4 Enhance protective services and emergency planning within the Nation from Esquimalt First Nation

- The Committee approved the proposal, with the following considerations:
 - The Marine Shipping Subcommittee will receive project updates as outlined in the Contribution Agreement;
 - The Secretariat will explore the possibility of the applicant developing this proposal into a multi-year proposal; and
 - Identification of any additional support that may be required, and if necessary, addressing this need in the proposal.

- The Secretariat will report the budgetary implications of these considerations at the March IAMC-TMX meeting.

2.5 Deliver oil spill response training from Ditidaht First Nation

- The Committee approved the proposal with no amendments.

2.6 Retain a Human Resources Manager and Economic Development Manager from Cheam Indian Band

- The Committee approved the proposal subject to:
 - The Secretariat and Raymond Cardinal (Alberta First Nations) will work with the applicant to further develop the proposal by addressing: (1) development of a comprehensive workforce development strategy that is scoped beyond one proponent/project; (2) description of activities in years 3 and 4, and; (3) examination of opportunities to share knowledge and resources with other communities.
- The Socioeconomic Impact Subcommittee will receive project updates as outlined in the Contribution Agreement.
- Chief Ernie Crey (Fraser Valley) recused himself from all deliberations and decisions regarding the Cheam Indian Band proposal.

2.7 Acquire equipment to support data collection, monitoring and habitat mapping from Tsleil-Waututh Nation

- The Committee approved the proposal, with the following considerations:
 - Consideration of the development of an inclusion strategy for youth, elders, and others; and
 - Expansion of the scope of the project to also collect cultural and traditional use data.
- Carleen Thomas (Burrard Inlet / Lower Fraser) recused herself from all deliberations and decisions regarding the Tsleil-Waututh Nation proposal.

2.8 Develop a Métis knowledge and use and occupancy study from BC Métis Federation

- The Secretariat will work with the applicant to further develop the proposal and to obtain a clearer understanding of the work being proposed after the first year.
- A revised proposal will be brought forward for decision at the March IAMC-TMX meeting.

2.9 Upgrade emergency communication network infrastructure from Enoch Cree Nation

- The Committee approved the proposal subject to:
 - Additional detail on specific costs outlined in the proposal; and
 - Consideration of the existing level of emergency management training of personnel, with additional training to be included in the proposal, if necessary.
- Michelle Wilsdon (Alberta Métis) recused herself from all deliberations and decisions regarding the Enoch Cree Nation proposal.

2.10 Develop environmental management and emergency response capacity from Musqueam Indian Band

- The Committee approved the proposal, with the following consideration:
 - Developing this proposal into a longer-term project with Musqueam.
- The Marine Shipping Subcommittee will receive project updates as outlined in the Contribution Agreement.

2.11 Trans Mountain Expansion Project Review & Monitoring Program from Cheam Indian Band

- The Committee approved the proposal with no amendments.
- Chief Ernie Crey (Fraser Valley) recused himself from all deliberations and decisions regarding the Cheam Indian Band proposal.

2.2 Other Discussions

- Many community project proposals have the potential to be developed into line-wide or regional projects. In this way, they would address broader committee priorities and be accessible to a greater number of First Nations and Indigenous communities.

3. ENGAGEMENT

- The Committee appointed Carleen Thomas (Burrard Inlet / Lower Fraser) the Chair of the Engagement Subcommittee.
- The Committee provided the subcommittee and Gail Murray (IAMC-TMX Engagement Advisor) feedback on the proposed engagement approach. The Committee discussed a strategic approach to engagement in order to reduce engagement fatigue, and a more informed engagement approach by using Indigenous community's election cycles to proactively inform newly elected leadership about the IAMC-TMX and opportunities for their communities.
- The Committee approved up to \$20,000 for operating expenses and honoraria for the Engagement Subcommittee to complete its Engagement Strategy and Implementation Plan by March 31, 2018. E-SC members have committed to an intensive work schedule over the next six weeks, and this authority will provide special permission to reflect time and effort between meetings for this short but intensive time.
- The Committee approved the budget request of up to \$4,288 in operating funds for a community visit to be hosted by Cheam and held on the evening of March 12, 2018.

4. COMMUNICATIONS

- Walter Quinlan (IAMC-TMX Indigenous Caucus Communications Manager) sought the Committee's input on the communications strategy. The Committee discussed the importance of including language on Aboriginal rights, Treaty rights, UNDRIP and the TRC in all communication material.
- The Committee also supported regular updates to the communities about the work of the Committee (e.g. announcing project decisions, reporting from the spawning deterrents workshop, etc.) to build trust, confidence and convey a sense of certainty with local communities.

5. UPDATE FROM REGULATORS

- **Environment and Climate Change Canada**
 - Garth Mullins delivered an update on an emergency order application filed under the Species at Risk Act related to caribou near Wells Grey Provincial Park. Garth informed the Committee that the Indigenous Monitoring Subcommittee will meet with the Canadian Wildlife Service to further discuss this issue.
 - At the March IAMC-TMX meeting, Garth will provide the Committee with a literature review of existing research on diluted bitumen, highlighting research findings and limitations; and at a subsequent meeting ECCC will deliver an update on the species at risk along the project's right-of-way.
- **Fisheries and Oceans Canada**
 - Tracey Sandgathe (alternate for Cheryl Webb) delivered an update on regulatory reviews, including temporary in-water infrastructure at the VersaCold site in Burrard Inlet, and an upcoming determination on where authorizations or permits are required for 10 referred watercourse crossings. Tracy also provided an update on DFO compliance monitoring at the Westridge Marine Terminal.
- Committee members raised concerns about the lack of participation of the Kinder Morgan Aboriginal Monitors during inspections activities. DFO has committed to the

Committee to endeavor to work with the Aboriginal Monitors, and provide advanced notice of the inspection schedule to the Indigenous Monitoring Subcommittee. DFO restated its standing invitation for members of the IAMC-TMX to join DFO on their inspections.

- **National Energy Board**

- Brian Chambers from the National Energy Board (NEB) delivered an update on recent TMX construction activity; the construction schedule; the Burnaby Mountain tunnel portals; detailed route hearing process; the Kinder Morgan's Full Scale Emergency Management and Response Exercise in the Jasper area; and the upcoming IAMC-TMX Watercourse Crossings workshop.
- The NEB will not move forward with an administrative monetary penalty for Kinder Morgan's premature installation of the spawning deterrent mats.
- The Indigenous Caucus has requested a written statement describing the rationale for the Board's decision.

6. TIER 1 – INDIGENOUS CAUCUS & FEDERAL CAUCUS

- Chief Ernie Crey (Co-Chair) provided the Committee with an update on his recent engagement with the BC Interior Nations and BC Métis organizations. The purpose of the engagement was to ensure that the Indigenous representatives understood: that participation is 'without prejudice'; the IAMC-TMX was not created by Kinder Morgan, nor does the proponent fund the Committee; the existing opportunities to participate with the IAMC-TMX (e.g. capacity funding, subcommittees, etc.); and that the IAMC-TMX will not 'interfere' in how either the BC Métis or Secwepemc would select an Interim Member to the Committee.
 - The BC Interior Nations and BC Métis communities that Chief Crey met with have either submitted or will be submitting proposals for the IAMC-TMX capacity funding.
 - The Subcommittee Policy was distributed to the BC Interior Nations and BC Métis communities that Chief Crey met with, and there was keen interest in participating on the IAMC-TMX subcommittees.

7. FEDERAL REGULATORY REVIEW UPDATE

- The Committee received a presentation from representatives from Natural Resources Canada, Canadian Environmental Assessment Agency, Environment and Climate Change Canada, Fisheries and Oceans Canada, and Transport Canada concerning the recent federal environmental regulatory reviews, the overarching federal objectives, and parliamentary procedures.
- The Committee, along with the federal guests, discussed a variety of topics, which included delegation of authority; consultation; governance; language and framing of the proposed changes; the proposed *Impact Assessment Act*; impacts on the marine environment; and opportunities to influence policy directions through implementation.
- The Committee discussed a number of possible action items which include:
 - Submitting an input paper on the proposed legislative changes;
 - Appearing before the Parliamentary Committee;
 - Developing communications material to describe how and when communities can provide input;
 - Organizing a series of in-community workshops discussing the proposed legislation; and,
 - Developing an in-depth analysis addressing how the proposed changes may relate to Aboriginal rights, Treaty rights, UNDRIP and the TRC.

8. JFK LAW SUMMARY OF FEDERAL GOVERNMENT'S PROPOSED REGULATORY CHANGES

- Tim Dickson, Legal Counsel to the IAMC-TMX Indigenous Caucus, provided the Committee with an overview of the proposed changes to Canada's environmental legislation, as it relates to the Indigenous Caucus's August 2017 submission, and broader Indigenous interest.
- In his presentation, Tim highlighted positive aspects of the proposed changes, areas that need more clarity (e.g. 'Indigenous governing body'), and areas that the Indigenous Caucus may want to push further.

9. THE GOVERNMENT OF BRITISH COLUMBIA'S PROPOSED REGULATORY CHANGES ON HAZARDOUS MATERIAL

- Tim Dickson, Legal Counsel to the IAMC-TMX Indigenous Caucus, provided the Committee with an overview of the proposed regulatory changes on hazardous materials by the Government of British Columbia. Specifically, the presentation discussed: response times; geographic response plans; loss of public use; marine application; and diluted bitumen transportation restrictions. The Province is expected to have an intentions paper circulated by the end of February 2018, and begin engaging with Indigenous groups.
- The Committee discussed engaging with the Province on the proposed regulations in all aspects except the diluted bitumen transportation restrictions, to ensure the Committee is meaningfully included in any proposal that is enacted.

10. DISCUSSION PAPER ON ABORIGINAL RIGHTS, TREATY RIGHTS, UNDRIP AND THE TRC

- Pursuant to several discussions at the Committee, Tim Dickson, Legal Counsel to the IAMC-TMX Indigenous Caucus, summarized his paper on Aboriginal rights, Treaty rights, the principles of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Truth and Reconciliation Commission of Canada's Calls to Action. Tim emphasized the importance of co-management and collaborative consent (e.g. consensus decision-making).
- The Committee discussed organizing a workshop with Indigenous and government experts to further discuss the principles of UNDRIP. One purpose of the workshop could be to produce a vision statement/paper through joint fact-finding and learning. The vision statement/paper could be used to inform the work of the Committee (e.g. through subsequent work plans).
- Committee members discussed framing IAMC-TMX decisions to demonstrate how the Committee's work supports the principles of UNDRIP.

11. PROJECT AND PROCUREMENT UPDATES

- Naina Sloan, IAMC-TMX Co-Chair, provided the Committee with an update on the Executive Director and Senior Science Advisor positions, and the permanent website. An email with a link to the job posting for both the Executive Director and Senior Science Advisor will be distributed to Committee members before the March IAMC-TMX meeting, with the intent to select a respective candidate in April 2018.
- A successful company has been selected to develop the permanent website. The contract was awarded on February 9, 2018, to Naut'sa Mawt Resource Group, owned by 10 Coast Salish First Nations of the Naut'sa Mawt Tribal Council and based in Delta, BC. The project will start this month and the website is expected to be launched in May 2018.

- Germaine Conacher, MNP LLP, provided the Committee with an update on the work done in developing a framework for oversight for the Committee. The research focused on 40 of the 117 NEB project conditions and their relevant sub-conditions. These conditions were chosen as they relate to Indigenous interests, for example: they have consultation requirements, or specifically address an Indigenous community or communities. The analysis will provide a description of the information that is required to satisfy the condition, and highlights potential gaps and/or risks associated with the filings (e.g. no new studies were filed, Indigenous communities did not provide input, etc.).
 - The Committee discussed possible uses for this analysis, including: informing local communities; providing communities with tools to track properly the filings and related submissions; and advising regulators on future projects. The Committee also discussed expanding the scope of the analysis to include authorizations and permits.
 - MNP LLP will present its findings at the March IAMC-TMX meeting.
- Raymond Cardinal, Alberta First Nations, provided an update on the IAMC-TMX Monitoring Pilot program. The program is in the process of recruiting potential Indigenous monitors from other Alberta impacted communities. Raymond also provided a brief overview Kinder Morgan's Full Scale Emergency Management and Response Exercise which he and the monitors attended in Jasper, AB, at the end of January 2018.

12. OTHER

- Before the March IAMC-TMX meeting, the Secretariat will survey Committee members to ensure the proposed IAMC-TMX meeting dates outlined in the draft calendar are satisfactory.

PARTICIPANTS

IAMC-TMX Members:

- Chief Ernie Crey (Fraser Valley)
- Chief Marcel Shackelly (Mid-Fraser/Thompson)
- Chief Russell Chipps (Vancouver Island – Southeastern)
- Michelle Wilsdon (Alberta First Nations)
- Carleen Thomas (Burrard Inlet/Lower Fraser)
- Raymond Cardinal (Alberta First Nations)
- Norine Saddleback (Alberta First Nations)
- Tracy Friedel (Alberta Métis)
- Peter Hilton (Okanagan, alternate for Chief Harvey McLeod)
- Caitlin Kenny (Vancouver Island – South)

- Naina Sloan (Natural Resources Canada)
- Brian Chambers (National Energy Board)
- Evan Jones (Transport Canada, alternate for Ian Chatwell)
- David Heap, Canadian Coast Guard
- Garth Mullins (Environment and Climate Change Canada, alternate for Barry Jeffrey)
- Tracy Sandgathe (Fisheries and Oceans Canada, alternate for Cheryl Webb)

Indigenous Caucus Staff:

- Kyle Robertson (Technical Advisor)
- Walter Quinlan (Communications Manager)

IAMC-TMX Staff:

- Gail Murray (Engagement Advisor)

Other Participants:

- Tim Dickson (JFK Law)

Support:

- Cathy Chalupa (Natural Resources Canada's Indigenous Partnerships Office – West (IPO-W))
- Margaret McQuiston (National Energy Board)
- Vananh Nguyen (IPO-W)
- Sarah Meurrens (IPO-W)
- Jacquie Béasse (IPO-W)
- Karolina Pol (IPO-W)
- Chris Sheppard (IPO-W)

Invited Guests in Person:

- Germaine Conacher (MNP LLP)
- Jason Hwang (Fisheries and Oceans Canada)
- Ryan Greville (Transport Canada)
- Jim Fox (National Energy Board)

Invited Guests by Phone:

- Genevieve Carr (Natural Resources Canada)
- Chris Piercey (Natural Resources Canada)
- Susan Winger (Canadian Environmental Assessment Agency)
- Annie Déziel (Canadian Environmental Assessment Agency)
- Jim Taylor (Canadian Environmental Assessment Agency)
- Bryan Poirier (Environment and Climate Change Canada)
- Nancy Harris (Transport Canada)

Regrets:

- Chief Harvey McLeod (Okanagan)
- Kristine Pearson (Vancouver Island – Western Approach)
- Barry Jeffrey (Environment and Climate Change Canada)
- Cheryl Webb (Fisheries and Oceans Canada)
- Ian Chatwell (Transport Canada)