Indigenous Community Experiences in the Energy Sector

SPEAKERS: STEPHEN BUFFALO
PRESIDENT/CEO, INDIAN RESOURCE COUNCIL

CLAYTON NORRIS, CMA, CPA, CAFM, MBA
VICE PRESIDENT, ABORIGINAL SERVICES, MNP LLP
About Stephen Buffalo (IRC)

Mr. Buffalo is a proud member of the Samson Cree Nation, located approximately 100 kilometres south of Edmonton, Alberta. Mr. Buffalo completed a Business Administration program at Medicine Hat College, continuing on to the University of Lethbridge, where he completed a Management Degree in 1998.

He began working at Peace Hills Trust two days after his convocation. Mr. Buffalo worked for Peace Hills Trust for 15 years. Peace Hills Trust’s loss has been IRC’s gain.

Mr. Buffalo is great asset exemplified in his eagerness to begin work in his new position. Stephen’s vision is to continue to work with the members of the IRC, to maintain a strong relationship with Indian Oil and Gas Canada (IOGC) and to work together on our mandates to ensure that First Nations are protected and maximize their benefit on their natural resources. Looking ahead the sky is the limit.”
About Clayton Norris (MNP)

Clayton Norris, CMA, CAFM, MBA is the Vice President of MNP's Aboriginal Services. He leads the MNP Aboriginal Services team across Canada, which currently provides services in consulting, accounting, and business advisory services in over 175 Indigenous communities.

As a member of the AFOA Alberta Board in 2005, Clayton was awarded the Deputy Minister’s Pride and Recognition award for Excellence in Leadership. He was a member of the 2008 Governor General Leadership Conference, an active participant in Roundtable of Economic Development with Members of Parliament, Aboriginal and Industry leaders, and took part in the Canada Public Policy Forum for Aboriginal Participation in Major Resource Projects.
Agenda

IRC/IOGC
- About IRC
- About IOGC
- Relationship with Canada
- Other Energy Regulator Roles

Indigenous Engagement
- Linear Projects
- Indigenous Title and Right
- Pipeline and Natural Resource Project Gridlock

Valuation Framework
- Framework to Address Gridlock
- Proposed Valuation Framework of ITR
- Stakeholder Support
Indian Resource Council (IRC)

IRC was founded in 1987 by Chiefs representing the oil and gas producing First Nations as a task force established to study the role of the Crown in the management of First Nations oil and natural gas resources.

The IRC advocates on behalf of its membership for change to federal policy that will improve and increase economic development opportunities for First Nations and their members.
About MNP LLP

In business since the 1940’s, MNP LLP (MNP) has grown to become one of Canada’s leading business advisory and accounting firms. A dominant national professional services firm, MNP is also an independent member of Praxity, AISBL, which is the 8th largest global alliance of independent accounting firms around the world.

For over 25 years MNP has been providing services to Aboriginal communities, organizations and businesses. During this time MNP has partnered with more than 250 Aboriginal communities across Canada. Throughout these partnerships, we have gained the experience and knowledge to better assist Aboriginal communities in a variety of key areas.

Of all the diverse markets we serve, one of the most significant and meaningful is the Aboriginal community. It is with this recognition that MNP has made this a priority and created a Firm-wide Aboriginal Services niche. Having a full service Aboriginal Niche allows our team members to better recognize and realize that traditional values and unique needs that exist within Aboriginal communities and to have the knowledge, experience and motivation to meet these needs.
Indian Resource Council (IRC)

The Indian Resource Council members consist of:

- First Nations across Canada with oil and gas production on their land including those that have the potential for production.
- First Nations from coast to coast with the majority located within the Western Canada sedimentary Basin.
Indian Resource Council (IRC)

IRC Mandates:

• To support First Nations in their efforts to attain greater management and control of their oil and natural gas resources;

• To complement initiatives by individual First Nations to gain economic self reliance and to ensure the preservation of the Crown Trust obligations under Treaties with First Nations;

• To coordinate the promotion of initiatives with Federal and provincial governments, with industry and with other groups associated with oil, natural gas and related activities to enhance economic benefits realized by the First Nations from resource development;

• To encourage a greater development and utilization of First Nations human resources in oil, natural gas and related activities;

• To transform IOGC into a First Nations institution, working in partnership with the IOGC co-management Board. To this end work towards the establishment of an oil and gas business centre, and a First Nations oil and gas institution in the long term.
Indian Oil and Gas Canada (IOGC)

Indian Oil and Gas Canada (IOGC) is an agency within Aboriginal Affairs and Northern Development Canada (AANDC) that aids First Nations in the development of its oil and gas resources.

IOGC represents more than 100 First Nations with oil and gas agreements in the provinces of British Columbia, Alberta, Saskatchewan and Manitoba.

**Mandate:** “To fulfill the Crown’s fiduciary and statutory obligations related to the management of oil and gas resources on First Nations lands. To further First Nation initiatives to manage and control their oil and gas resources.”
IOGC Co-Management Board

The Co-Management Board was established in 1996 by the signing of a MOU between the Minister of Aboriginal Affairs and Northern Development and the IRC.

The MOU established a Co-Management Board of Directors to initially co-manage IOGC operations, focusing on areas of collective interests, such as IOGC issues, policies, plans, priorities and resources.
IOGC-IRC Current State

Roles and Responsibilities
- Fulfill Canada’s fiduciary obligations related to oil and gas on reserves.
- Administers agreements (leasing and royalties) on FN reserves.
- Develops, maintains and enforces the on-reserve oil and gas regulatory framework

Duties include:
- Setting strategic direction including IOGC mandate;
- IOGC annual work plans
- Performance measurement
- Organization structure
- Allocation of resources
- Internal and external relations
- Approval of significant expenditures
- Policy issues
- Selection of IOGC Executive Director

Co-Management Board (est. 1996)

Roles and Responsibilities
- Supports FN efforts to gain more control over their oil and gas resources.
- Complements individual FN initiatives related to economic growth in resources
- Promote initiatives with Canada and Provinces to enhance economic benefits for FNs.
- Transform IOGC into a FN institution
Canada and the IRC have created a Steering Committee on policy development which in turn has created two Joint Technical Committees (JTC) to work on specific projects:

1. **Joint Technical Committee One (JTC1) – Modernization to the Indian Oil and Gas Regulations**
   • To assist IOGC and AANDC in modernizing First Nation Reserve lands oil and gas regime by reviewing draft regulatory content, providing guidance and ensuring First Nation perspectives are fully considered during the development of new Indian Oil and Gas Regulations.

2. **Joint Technical Committee Two (JTC2) – Co-Management and the Continuous Change Process**
   • Responsible for examination and development of issues that are not included in the current phase of revisions to the IOGA.
   • The IRC and Canada have agreed that these issues are at the root of a process of continuous change with respect to the management of oil and gas resources on First Nations lands.
   • This process is designed to evolve towards First Nations having greater control over the management of these resources through an enhanced role in the co-management of IOGC as envisioned in the 1996 Memorandum of Understanding.
“No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.”

–Right Honourable Justin Trudeau, Prime Minister of Canada, in every Minister’s Mandate letter.

- The Prime Minister further asks in his mandate letter to the Minister of Natural Resources that he work with other Ministers, including the Minister of Indigenous and Northern Affairs to enhance the engagement of Indigenous groups in reviewing and monitoring major resource development projects.

- The goals of the government are to ensure Indigenous peoples are more fully engaged in reviewing and monitoring major resource development projects, and that impacts on indigenous communities’ rights and interests are be accommodated where appropriate. IRC feels that it can offer assistance to the government to help achieve these objectives.
Energy Regulator Role

**NEB Role**

- Federal regulator of:
  - Pipelines and powerlines that cross provincial and international borders;
  - Imports of natural gas and exports of crude oil, natural gas liquids, natural gas, refined petroleum products, and electricity; and
  - Oil and gas exploration and production activities in specified areas that are not regulated under joint federal/provincial accords.

**Provincial Energy Regulator Role**

- Provincial regulator of:
  - Intra-provincial pipelines and powerlines; and
  - Oil and gas exploration and production activities in most areas except those specified areas that are regulated under joint federal/provincial accords.
Linear Projects

Linear Projects - Construction projects that contain many identical units are characterized as repetitive projects. Linear projects are repetitive projects that have horizontal repetition repeated due to their geometrical layout such as highway, pipelines, and electrical lines. Linear projects may traverse fee simple properties through defined boundaries or through easement rights.
Linear Projects and Indigenous Peoples

- Nearly all major linear projects cross multiple traditional Treaty, Reserve, or traditional territories where Indigenous title requires a consultation and value consideration.

- Land development steps (bolded steps require community involvement):
  - Project Initiation/Concept
  - Land Tenure Certainty
  - Land Leasing
  - Financing
  - Infrastructure Development and Services
  - Construction

- Significant challenges with engagement and participation of First Nations has resulted in all Canadians being impacted.
  - Several oil and gas pipelines
  - Transmission lines
Standing Rock Protest Video

Indigenous Title and Right (ITR)

Aboriginal title can be distinguished from fee simple ownership in several fundamental respects:

- Aboriginal title is inalienable except to the Crown
- Aboriginal title is a collective right, shared by all members of an Aboriginal community, based on historical occupancy prior to the assertion of European sovereignty
- Aboriginal title as a species of Aboriginal right is now constitutionally protected and entrenched in Section 35(1) of the Constitution Act, 1982

Supreme Court of Canada rulings:

- Delgamuukw (1997)
- Daniels (2013)
- Tsilhqot’ in (2014)

Indigenous title (ownership) has been confirmed however there are no current valuation models of ITR.
## Examples of Ownership Rights and Interests

<table>
<thead>
<tr>
<th>Title</th>
<th>Possession</th>
<th>Sell or Dispose</th>
<th>Control</th>
<th>Use for Personal Enjoyment</th>
<th>Exclude or Prevent Trespass</th>
<th>Economic Benefit/Risk</th>
<th>Legal Interest</th>
<th>Physical Interest</th>
<th>Valuation Approaches</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fee Simple</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Leasehold</td>
<td>X</td>
<td>X-</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Occupied/Unseeded Crown Land</td>
<td>X</td>
<td>O</td>
<td>O/X</td>
<td>O/X</td>
<td>X/O</td>
<td>O</td>
<td>O/X</td>
<td>X</td>
<td>O</td>
</tr>
<tr>
<td>Crown Land</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O</td>
<td>O/X</td>
<td>O</td>
<td>O</td>
</tr>
<tr>
<td>Certificates of Possession/Occupation</td>
<td>X</td>
<td>X (transfer may be limited)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Indigenous</td>
<td>X/O</td>
<td>O</td>
<td>X-</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>O</td>
<td>X</td>
</tr>
</tbody>
</table>
Pipeline and Natural Resource Project Gridlock

Throughout North America, pipeline and other natural resource projects are facing steep opposition from Indigenous communities seeking a seat at the decision making table for projects impacting their communities.

- Northern Gateway Pipeline
- Keystone XL Pipeline
- Enbridge Pipeline
- Mackenzie Gas Project
- Manitoba Hydro

To date, negotiations regarding appropriate compensation for Indigenous communities have been challenging given the lack of framework to begin and guide discussions.
Framework to Address Gridlock

In October 2016, the Indian Resource Council (IRC) hosted a conference in Calgary to seek a long-term solution:
- Over 350 delegates from First Nations, Industry, Federal and Provincial Governments across Canada
- Significant support from industry leaders to find long term solutions
- IRC Board subsequently passed a resolution to move forward with a proposal

As representatives of the oil and gas producing First Nations in Canada, the Indian Resource Council is well placed to ensure that major development projects in Canada are able to proceed in partnership with Indigenous communities, promoting a new relationship built on fairness and mutual respect.
Develop a comprehensive framework for the valuation of linear resource projects impacting First Nations communities in Canada.

This valuation framework will provide much greater cost certainty to companies and First Nations considering linear projects and will reduce the amount of negotiation and unknowns for all parties.

Legal partner, Gowlings WLG, and accounting and valuation experts, MNP LLP, will provide an independent baseline valuation of the impact on Indigenous communities by proposed linear project.
## Intended Outcomes of Valuation Framework

<table>
<thead>
<tr>
<th>First Nations</th>
<th>Industry</th>
<th>Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Gain increased economic participation and benefits from linear projects.</td>
<td>• Experience enhanced regulatory certainty and benefit from improved project economics.</td>
<td>• Provide commitment to Indigenous people and receive royalty/revenues from projects.</td>
</tr>
</tbody>
</table>
Framework Requirements

Given the complex nature of the proposed project, it must meet the following requirements to gain approval from all stakeholders:

- All major project benefits, risks and economics will be factors of framework;
- Valuation framework must meet the needs and requirements of all stakeholders;
- Legal and regulatory compliance is required; and
- IRC Board/First Nation leadership has all the information to be on the same playing field through the entire life cycle of a project.
Regulatory Considerations

• The development a valuation framework does not take away the ability of a First Nation to decide to support or oppose any project.

• It cannot be emphasized enough that the proposed development of a broad valuation methodology cannot, must not and would not attempt to take the place of the decision-making processes as to whether to proceed with or approve any such project.

• The sole objective is to develop a means to assist in the costing of land access if and when there is agreement to proceed with a particular project. Those decisions will be predicated on a wide range of factors at the discretion of every individual First Nation.
Key Success Factors

Key success factors for the proposed project include:

• Support from industry and government
• Minimal impacts to existing projects
• Protective of all indigenous rights
• Majority consensus
• Scalable
• Economically beneficial
• Sound valuations and legal basis
• Must be initiated and led by First Nations
Recommended Next Steps?
Discussion