

How Collaborating with Tribal Communities Benefits Pipeline Development

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A little more than a year ago, an oil pipeline became the center of a national protest. The Dakota Access Pipeline attracted an army of third-party activists who professed to be acting in the name the Standing Rock Sioux in North Dakota. The controversy surrounding Energy Transfer's project may have been avoided, however, if the pipeline company had formed a partnership with the tribe early on in the development process, according to tribal land management experts.

Oil and gas pipeline projects have increasingly become the focus of third-party opposition. Oftentimes those opposition groups use indigenous communities as a tool to attract larger protests. By partnering with indigenous groups during the early stages of pipeline development — that is, before the opposition knows about the project — pipeline companies can preempt those groups from latching onto U.S. tribes and the First Nations in Canada for publicity, according to tribal relations expert Art Cunningham, founder of Roundtable Consulting and a retired indigenous relations liaison at TransCanada.

Cunningham has been working in North America's oil and gas pipeline sector as an indigenous relations practitioner for more than 30 years. He started in the industry as a corrosion technician with NOVA Corp., which merged with TransCanada in the 1990s. His career switch happened by chance. As an indigenous person himself, Cunningham was thrust into tribal negotiations in 1988 when a "group of young native people were blockading one of our projects."

Cunningham got a call to see if he could help.

"When I asked why they called me, they said, 'You're the only Indian we've got working for us,'" he recalls. "The rocket science I used then was one of guys blockading was a second cousin of mine. I brought the group into Friendship Center, and we had a meal and I asked them questions while we ate."

Cunningham credits the late president and CEO of NOVA, Bob Blair, with being a visionary in the pipeline industry when it came to involving the First Nations, from hiring them to work for his company to engaging with them on new projects.

"Bob Blair didn't get much support from the industry or the Canadian government," he says. "They said he was opening a can of worms."

NOVA was in the middle of an aggressive build in northern Alberta at the time. The men blocking the project wanted something simple, but vital: jobs. Cunningham figured out what skills they had and put them to work.

"Nobody knew what a tribal liaison was for the pipeline industry, including myself," he says. "The point was to generate more employment opportunities. Indians were invisible in Canada. They were taken care of by the government, but broader society didn't pay any attention to them. Most people had negative perceptions. From an industry standpoint, tribes were invisible because the companies didn't have to engage with them. The companies dealt with the government bureaucracy on projects. Treaty lands were ignored. There was not much demand for visibility in these communities. They didn't view industry as venue to help their cause."

However, that started to change in the 1990s. A series of court cases from Canada's First Nations led to the government mandating that pipeline companies include indigenous groups in the infrastructure development process.

In the United States, it's the federal government's duty to engage with tribal communities on pipelines. However, the system is murky. Natural gas pipelines are the jurisdiction of the Federal Energy Regulatory Commission (FERC), whereas crude oil pipelines are mostly the jurisdiction of the individual states where the pipeline resides. However, if it crosses federal lands or an international border, then it's the jurisdiction of the Army Corps of Engineers or the U.S. State Department, respectively. This disjointed system is why tribal negotiation experts advocate for pipeline companies to work directly with the tribes, instead of leaving it to the uncertainty of bureaucracy.

In 2008, Cunningham was involved with a pilot program by TransCanada that sought to engage tribal groups in the United States during the development of the Keystone XL pipeline. Based on his time as a liaison between the pipeline industry and indigenous groups, Cunningham believes there are three ways to view engaging indigenous people: the legal approach, the regulatory approach and the relationship approach.

With the legal approach, Cunningham says pipeline companies can follow the letter of the law to get the project built and let the courts decide on any complaint from indigenous groups.

Similarly, the regulatory approach puts the decisions in the hands of the various governing bodies to ensure the project is approved.

The relationship approach, however, is the method Cunningham believes is most beneficial to pipeline companies and indigenous communities.

The legal and regulatory approaches could create a negative legacy with the impacted tribe, whereas the relationship approach allows that community to become a partner on the project similar to how pipeline companies work with municipalities to build public trust. Pipeline companies can provide employment opportunities, tax revenues and other benefits, while indigenous governments can offer financial incentives and a measure of certainty.

"If you take the relationship approach, you can get out way ahead, like we did with Keystone XL," Cunningham says. "We visited with each tribe on the route, not just their physical present-day location, but we considered their ancestral lands too. We wanted a clean right of way."

Building a relationship with tribes also serves to dispel misconceptions, says Lou Thompson, chief operations officer of Tribal Energy Resource LLC.

"The concept that pipeline companies purposefully avoid reservations when siting projects is common, and there are many reasons why," Thompson says. "One reason is a lack of understanding how tribal governments work and what the risks are having pipes on tribal lands. I know many pipelines that are on tribal lands, and those concerns are unfounded."

Thompson is engaged in negotiations for a current pipeline project where 18 tribal members have been trained to serve as monitors. He previously worked at TransCanada on the Keystone XL and Gulf Coast pipeline projects.

"With Keystone XL, when they went to build the pipeline, they wanted the shortest route possible, but they were going to avoid reservations," Thompson explains. "What would have been the shortest route possible was not really the shortest. There was a lack of understanding of what it takes to go through these reservation lands."

Another misconception centers on tribal opposition.

“The pipeline companies say they’re not going to build a pipeline through a reservation because the tribe is going to oppose it,” Thompson says. “That might be the case in North Dakota or South Dakota, but not in other parts of the country. Many tribes welcome having pipelines. It’s obvious why, because they enjoy the taxation and tariffs and benefits that come with that.”

Bending over backwards to avoid tribal lands can also backfire, Thompson adds. In some areas, Keystone XL wasn’t on tribal lands, but it was so close to the reservation that it still had a big impact on the tribe.

“They see that the county gets all this tax money and the tribe gets zero. The tribe still feels the impact, and it bothers them,” Thompson argues. “One of the tribes in Montana was asking, ‘Why did you avoid us? Let us enjoy those benefits.’”

Thompson recommends to pipeline companies, if their project is not on a reservation, it should be at least five miles away. Otherwise, the tribe will feel the impact but not receive the benefits. “Pipeline companies should understand that they don’t have to continue avoiding tribal lands,” he adds.

Developing relationships with indigenous groups during project development provides pipeline companies more control over the process, Cunningham says. It also provides a better defense if the project is challenged in court.

“If you have to go in front of a judge or panel and you can demonstrate your efforts to go out and engage with the tribes,” he says, “then that stands you better chance of being recognized at responsible proponent.”

Actors of Protection

In recent years, indigenous groups have become a major component to third-party opposition campaigns. However, Cunningham says the protest groups don’t have the best interest of the First Nations or tribes in mind, but are rather using these communities to grab bigger headlines.

Cunningham calls the protestors “actors of protection,” a term he heard from the elders in his own indigenous community. Pipeline companies have the opportunity to build relationships with tribal groups much earlier than the opposition, and the industry should recognize its advantage.

“The benefit of negotiating with a tribe before the pipeline company announces the project is the company can get in there before they’re [the protestors]in there,” Cunningham says. “They’re not going to protest if they’re not aware of it.”

Cunningham recommends companies take the time to get to know the indigenous communities better when considering a pipeline through or adjacent to tribal lands.

“If you start the dialog and involve the tribal community, third-party groups will not be in there at any time until the project becomes public. And they want it public,” he says. “It’s not front-page news when you’re just thinking about building a pipeline.”

Building relationships with tribal governments helps eliminate the tribal component of a pipeline protest, Thompson adds.

“You can get rid of the opposition by getting the tribal government on board with the project,” he says.

Cunningham agrees that tribal engagement minimizes the support opposition groups can build with First Nations or tribes. In the process, pipeline companies can create goodwill between indigenous groups and the industry as a whole.

“It’s great to be able stand up and talk about your record,” he says. “If you’re on tribal land and working with the community, it makes an impact and builds a trust.”

Furthermore, Cunningham suggests investing in indigenous communities is another avenue to improve a company’s corporate responsibility profile. Establishing that reputation will set the pipeline company apart from the opposition.

“I haven’t seen any of these third-party groups contribute to communities with infrastructure and investment,” Cunningham says. “What is your contribution long-term to improve poverty? In North America, opposition groups are interfering with our opportunity to build better capacity for our community.”

Thompson says one of the driving forces behind Tribal Energy Resource is the “disdain we have for how nonprofit groups use tribal groups for their own gain” during protests.

“Where’s the Sierra Club now in Standing Rock? Are they contributing to the community? No,” Thompson says. “The environmental impact of the protest itself was despicable. They have their own agenda, and it isn’t about helping the tribe.”

Thompson doesn’t want to let opposition groups take advantage of the tribal groups when pipeline companies could provide real benefits for the communities. Instead, establishing a relationship with the indigenous groups “strips the credibility from opposition groups posing as supporting the tribes,” he says. The best way to counter the opposition groups is to get indigenous communities to work with the pipeline companies.

“If a pipeline is deemed in the national interest, then that pipeline is going to be built,” Thompson says. “You can either benefit from that or not.”

For the Benefit of All

Partnering with tribal groups presents a strong business case for pipeline companies. However, there are some challenges in working with these communities.

Working with tribes can be viewed as “strange way to do business,” Cunningham says. It requires innovative approach when dealing with their culture. However, building these relationships can have lasting benefits for both pipeliners and tribal communities.

During one project where Cunningham helped engage a tribal community in Alberta, the project was credited with reducing law enforcement and welfare calls in the community.

“The simple thing was men got work, and they were able to provide for their family,” he says. “That’s what impacted me the most. If you can positively contribute to the world around you, it can have a big impact.”

One caveat Cunningham has is that indigenous groups cannot be viewed a monolithic group. What has caused problems when engaging with First Nations and tribes is the lack of recognition that these communities are diverse cultures.

“To some, an Indian is an Indian is an Indian,” he says. “These communities can be as different as the English and French in terms of culture and family dynamic.”

Cunningham adds that this lack of recognition is one reason why the Canadian and U.S. governments don’t do well when engaging with indigenous communities, because they don’t have measures for addressing each group individually.

Pipeline companies, however, do have that opportunity. These actions not only reduced the likelihood that the community might join up with opposition groups, but Cunningham says a pipeline company can fulfill corporate responsibility goals by establishing a positive legacy with indigenous groups.

“There is the opportunity for simple things like providing jobs with long-term unemployment benefits, but there are also philanthropic opportunities,” Cunningham says. “Pipeline companies can contribute to certain community activities or build infrastructure because the pipeline goes through tribal land. What the industry can’t do is change the rights of native people in North America, but what it can do is make more investments fiscally. That’s an investment in the relationship.”

Pipeline companies can also partner with tribal groups on the jobsite, Cunningham says. He gives an example in northern Alberta where a tribal group has become a player in the pipeline industry.

“They’ve become contractors,” he says. “You can mentor them and then they’ll flourish. We can actually give our own business back to them.”

One benefit especially attractive to indigenous groups are the tax incentives inherent in a pipeline passing through their lands. However, Thompson adds there are also potential financial benefits for the pipeline company when building on tribal lands.

“I encourage companies to look to reservations, not avoid them,” he says. “In the United States, tribes have the sovereign authority to establish free trade zones, or foreign trade zone (FTZ) in their boundaries. That can eliminate some of the taxes and tariffs of the product passing through their territory.”

Cunningham adds that pipeline contractors also play a role in building relationships between tribal groups and the industry as a whole.

“Each contractor can their build own legacy in tribal relations,” he says. “It might not mean much with one company, but perhaps it will with the next company. That’s where the idea of a positive legacy comes in.”

The bottom line is the business case is strong for pipeline companies to engage with tribal communities during project development, Cunningham says.

“Access to land is key to both pipeline companies and contractors and uncertainty is their biggest risk,” Cunningham says. “Building that relationship can do a lot to support access to land. They have to build their own corporate capacity to deal with that risk. It’s not a cookie-cutter approach. It’s a commitment.”

It’s a commitment that can have lasting benefits for both parties, while leaving the third-party out of the equation.

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