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June 30, 2022

Mr. Dan Barghshoon
Regulatory Policy
Canada Energy Regulator
517 Tenth Avenue SW
Calgary, AB T2R0A8

Re: Onshore Pipeline Regulations Review Discussion Paper.

Dear Mr. Barghshoon,

Doig River First Nation (DRFN) submits the following comments regarding the Onshore Pipeline Regulations Review Discussion Paper. DRFN looks forward to ongoing engagement during the OPR Review.

Background on Doig River First Nation

Doig River is a Treaty 8 First Nation, and its members are Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*. Treaty 8 was first signed on June 21, 1899 at Lesser Slave Lake in present-day Alberta between Canada and the Indigenous peoples of the surrounding area. It was ratified by Order-in-Council 363 on February 2, 1990.

Doig River's predecessor First Nation, the Fort St. John Beaver Band (the "Band"), adhered to Treaty 8 near Fort St. John on May 30, 1900. The Band divided into Doig River and Blueberry River First Nations ("Blueberry") in 1977. Doig River is part of the Dane-zaa cultural group. The Dane-zaa people are also referred to as Beaver and their historic territory is the Upper Peace River region of British Columbia and Alberta.

General Comments

DRFN appreciates the opportunity to participate in the OPR review process. DRFN also appreciates the well-intentioned attempt to consider Reconciliation in the OPR consistent with the principles of UNDRIP; however, DRFN recommends that the OPR review proceeds

concurrently with a comprehensive review of the CER Filing Manual and the Commission's review process for federally regulated pipelines. All three mechanisms, 1) the Filing Manual, 2) the formal decision-making process, and 3) the OPR, must be consistent with how Aboriginal interests are considered throughout the life cycle of the project, from initial concept and feasibility, through the assessment process, and ultimately through development and decommissioning. The most comprehensive and well-designed set of OPRs will ultimately fail to support Reconciliation unless both Industry and the CER fully understand what section 35 Aboriginal and Treaty Rights (herein Rights) mean and the implications of ongoing infringements to those Rights for our way of life. If pipeline proponents and the CER continue to either ignore or inadequately consider the protection (and enhancement) of Rights during the assessment and decision-making processes, there is little confidence that the OPR will be a useful mechanism to capture those requirements as part of the Management System, the project specific Environmental Protection Plan or corporate Environmental Protection Program or to convey those requirements to personnel and contractors.

To illustrate, the Discussion Paper seeks input on the protection of heritage resources, traditional land and resource use (TLRU), the incorporation of Indigenous Knowledge (IK), and engagement; however, the Discussion Paper does not provide any meaningful mechanism to address infringements on Rights, which would help guide discussion on these topics. Heritage resources, engagement, IK, and TLRU are all elements that support an understanding of Rights, but the concept of Rights is much broader and requires deeper engagement with individual communities. Understanding the full breadth of Rights, understanding how the exercising of our Rights has diminished and eroded since signing of the Treaty, is fundamental to Reconciliation.

Our comments are also informed by our current participation as Intervenor in the CER review of the NorthRiver Midstream NEBC Connector Project. DRFN recently participated in a cumulative effects workshop (June 20-24, 2022) hosted by the CER and attended by the Commission, to determine how best to consider and evaluate cumulative impacts on Rights, the contribution of the NEBC Project to those Rights, and offsetting those impacts. The impetus for the workshop was the recent provincial court decision for the Blueberry River First Nation (BRFN) that concluded the province of BC had failed in its duty to manage cumulative effects and in failing to do so, resulted in the inability of BRFN to meaningfully exercise its Treaty Rights. The Commission is right to consider provincial litigation in its determinations, but the mechanisms to do so are less clear. There is potential for the OPR Review to be informed by the outcomes of the NEBC review process. The OPR Review must be considered in the context of the evolving political landscape and must be responsive to a CER review process that is designed to meaningfully and adequately evaluate impacts to Rights, and meaningfully contribute to the reversal of those impacts. If revised accordingly, the OPR could support implementation, monitoring, and compliance outcomes relative to Rights and Reconciliation.

To support the dialogue around Rights and Reconciliation, DRFN is developing a conceptual alternative to the assessment of biophysical, cultural and socio-economic elements relating to the evaluation of impacts from proposed developments to Doig River values, interests, traditional practices, and the exercising of our Rights. Doig River recommends this alternative assessment

methodology as a more appropriate mechanism than those prescribed in the CER Filing Manual. The intent is to change the assessment framework from treating Doig River as an objective of the assessment to a participant in the assessment.

This alternative is necessary for several reasons:

1. Current assessment practice tends to focus on biophysical valued components and indicators that often exclude those that are significant to Doig River.
2. Current biophysical assessment methodology tends to be of limited scope, negating potential inference to Doig River values and interest; therefore.
3. The standard practice of using the assessment of biophysical impacts as a proxy for impacts to traditional use and on the exercising of Aboriginal and Treaty rights is not appropriate as it is often misleading and inaccurate.

Further, Table A-1 of the CER Filing Manual summarizes the *Circumstances and Interactions Requiring Detailed Information* and includes guidance on the assessment of impacts to:

1. Traditional land and resource use (TLRU)
2. Rights of Indigenous Peoples

Doig River maintains that it is inappropriate for regulators and proponents to make these determinations without the direct participation of communities in the assessment. One of the objectives of Doig River’s engagement protocol is to enable Doig River to meaningfully participate in the assessment, and where necessary (determined by project) for Doig River to lead the design and implementation of the assessment of impacts to TLRU and the exercising of our Rights. It is only through our direct participation in the assessment that we can adhere to the principle of free prior and informed consent and Reconciliation as stated in UNDRIP. Restructuring the assessment and decision-making framework is a pre-requisite to incorporating Indigenous interests and values in the OPR.

Section 1 – Lessons Learned

Question 1. What’s working well in relation to the OPR, and its implementation, and what could be improved.

DRFN Response: See responses below.

Section 2 – Reconciliation with Indigenous Peoples

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

DRFN Response: See General Comments plus responses below.

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?

Relevant Sub-text – “The company is expected to identify mitigation approaches and must develop heritage resource discovery contingency plans...Companies must follow applicable federal, provincial, or territorial requirements when their activities can impact heritage resources.”

DRFN Response: The company is expected to survey the proposed route with DRFN members to identify the presence of, and potential impacts to, heritage resources. In some cases, capacity for DRFN to conduct these surveys independently may be culturally appropriate. The company is expected to identify mitigation approaches and must develop heritage resource discovery contingency plans in collaboration with DRFN, and/or adhere to any applicable mitigations that DRFN may have already developed. Companies must follow applicable DRFN requirements (in addition to regulatory requirements) when their activities can impact heritage resources. To ensure enforcement, requirements for the above-mentioned surveys and plans must be captured in both the project-level Environmental Protection Plan and the corporate Environmental Protection Program, and include requisite training for personnel and contractors to recognize chance finds and associated stop-work and reporting procedures.

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?

Relevant Sub-text: ...the CER Act requires the Commission to consider the rights, interests and concerns of Indigenous peoples...The CER Filing Manual sets out information requirements and guidance for applicants regarding how lands and resources in relation to a project area are used by Indigenous peoples...as well as the CER’s expectations for engagement with Indigenous peoples regarding potential impacts on rights and interests.”

DRFN Response: The generational knowledge and oral histories of our members’ relationship with the lands and waters in our territory make DRFN the only authority in a position to evaluate impacts to our Rights. The notion that the CER can dictate engagement expectations or direct proponents how to evaluate impacts to Rights is misguided. An assessment of impacts to TLRU is only one component to understanding impacts to Rights, which requires the time, space, and capacity to evaluate adequately and can only be done by our knowledge holders. DRFN is in the process of developing 1) an engagement protocol to guide both proponents and the CER around expectations for consultation and engagement, 2) an internal assessment protocol on Rights that would operate in

parallel to, and ultimately inform, the CERs review process, and 3) an offsetting policy to contribute to the reversal of ongoing significant adverse cumulative effects on our ability to exercise our Rights.

The construction of a pipeline right of way effectively alienates members from TLRU in the area, and avoidance may extend out several kilometres. The condition of the lands and waters to which members are being displaced may also be diminished in terms of being able to practice TLRU. Offsetting is a last resort and given that avoidance never applies, offsetting is becoming our only mechanism to reverse impacts to TLRU and Rights. In the absence of provincial and federal leadership and policy on offsetting, DRFN is in the process of developing an offsetting protocol as the part of its framework for engaging with companies and the CER. The OPR seems to be one mechanism to enforce offsetting principles and prescriptions developed by DRFN. DRFN provides here a list of offsetting principles for further discussion:

1. Free, Prior and Informed Consent - Doig River has the right to give or withhold its consent to proposed projects that may affect its lands and waters. To ensure effective participation of Doig River in decision-making, Doig River will participate in the evaluation, selection, design, implementation and monitoring of biodiversity and cultural offsetting projects.

2. Limits to offsetting - Impacts to some sites, features and habitats will not be able to be offset, based on their vulnerability, irreplaceability and/or their cultural significance to Doig River (for example, sacred sites, core traditional use areas, core hunting areas, camp sites, etc.). In determining which sites should be off-limits to development, Doig River will consider its IK and sound science, according to protocols established by the community.

2.1 Cultural Significance (Values) - In determining limits to offsetting, cultural significance to Doig River must be respected. Cultural significance may include access by elders, hunting, fishing, and gathering relationships, sacred sites, economic importance and ceremonial values.

2.2 Vulnerability - In determining limits to offsetting, the vulnerability of the natural features or systems affected must be taken into account. Vulnerability may also have to do with the vulnerability of community relationships with the features or systems involved, including the relationships of the knowledge holders. Age, health, economics, and the number of knowledge holders all factor into these relationships.

2.3 Irreplaceability - Some types of natural features or systems cannot in anyway be compensated for through offsetting. In such cases, the development proposal should not proceed. Significant accommodation measures will be sought by Doig River for development under these circumstances.

3. Mitigation hierarchy - Offsetting will be set within a clear mitigation sequence. The first step is to define areas that are off-limits to development and to be protected from negative impacts. The next step is to ensure that even where offsetting is allowed to occur, negative impacts are avoided wherever possible. Following this, any unavoidable negative impacts must be reduced. Given uncertainties associated with mitigations and quantifying residual effects (as highlighted in *Yahey*), Doig River will utilize offsetting to address and reverse significant pre-existing adverse cumulative effects in its traditional territory. As a result, the base metrics for determining offsets is the project scale after avoidance and reduction have been demonstrated, not residual effects. In implementing the mitigation hierarchy, Doig River First Nation protocols will be respected and utilized.

4. Net gain - Offsetting requires of an overall net gain or benefit for biodiversity based on measurable conservation outcomes. If the proposed development negatively impacts cultural values, these impacts must also be offset on a net gain basis, according to Doig River protocols and in a culturally appropriate manner that satisfies community interests and needs.

5. Equivalency - The destruction of a natural system or any of its components is never "equivalent" to their restoration elsewhere. Nevertheless, offsetting proceeds on the assumption that such tradeoffs can be justified in some circumstances when they result in a net benefit for nature and communities. In establishing equivalence between the impacts and the offset, the offset must consider not only quantity (**spatial extent**) but also quality with respect to the condition and biodiversity values of both the impact site and the offset site. The full range of Doig River cultural values and interests must be integrated into the determination of equivalence.

6. **Duration of offset** - The beneficial outcomes secured through an offset will extend beyond the project's impacts and should last in perpetuity. Impacts to be considered include harm to biodiversity as well as harm to Doig River First Nation cultural values and interests.
7. **Location of offset** - The offset location will be based on desired conservation outcomes and cultural values, including the potential for long-term success and viability. The offset agreement will include ecological and cultural capacity benefits to Doig River that are negatively impacted by the development, even if the offset location is not close to the disturbed site.
8. **Equity and co-operation** - Offsets will be designed and implemented in an equitable and cooperative manner, according to Doig River protocols and with the effective participation of the community and other interested parties in all aspects of decision-making (e.g., planning, implementation, monitoring and evaluation).
9. **Transparency and communication** - Both the development proponent and the offset provider (i.e., the parties involved in negotiating, designing, implementing, and overseeing offsets) will share information in a transparent manner and according to an established timeline. They will openly communicate project plans and results with Doig River. Communication about Doig River values be generated through established Doig River protocols.
10. **Full-cost accounting of offsets** - The development proponent will cover the cost of the offset, based on a full-cost accounting approach. For Doig River, this will include the full cost of raising awareness and engaging the community (e.g., communication, education, relationship- building), of entering into an agreement (e.g., research, legal fees), of creating and maintaining the offset (including in most cases community, cultural and scientific capacity building), and of monitoring and reporting.
11. **A note on multipliers** - The most used means of managing uncertainty is the application of a multiplier, whereby the size of the offset is increased by some multiplier to compensate for the risk of failure or inadequacy. There are advantages and disadvantages to this approach. Doig River will develop a set of criteria to determine under which scenarios multipliers will be required and at what magnitude. It is anticipated that at minimum a multiplier of 2 (offset):1(total project disturbance) will set the stage for initial negotiations.

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

DRFN Response: Oftentimes, the term Indigenous Knowledge (“IK”) is used superficially in environmental assessment processes, to refer to ancillary or peripheral knowledge that supplements harvesting or land use information. However, this term has a more critical meaning. IK is foundational to Doig River. It provides a comprehensive understanding of the environment including biophysical, social, ceremonial, economic, and cultural aspects, as well as insight into the interconnectedness of those aspects. IK is important; it can support decision-making and enhance sustainability principles of the Nation for present and future generations.

IK can be defined as a cumulative body of qualitative knowledge that has been handed down through generations describing the relationship of living beings (including humans) with one another and their environment. It helps contextualize the environment and is key to understanding the nature of Indigenous rights and their exercise (both harvesting rights and others).

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

DRFN Response: DRFN looks forward to further discussion on this topic. See also response to questions 4 and 28.

Section 3 – Engagement and Inclusive Participation

Question 7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?

DRFN Response: DRFN looks forward to additional discussion on this topic as it relates to our responses to Questions 4, 5, and 6.

Question 8. How could communication and engagement requirements in the OPR be improved?

DRFN Response: DRFN looks forward to additional discussion on this topic as it relates to our responses to Questions 4, 5, and 6.

Question 9. How could the CER improve transparency through the OPR?

DRFN Response: See various responses throughout this document.

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?***

DRFN Response: DRFN is in the process of understanding and developing protocols to evaluate GBA+ analyses during project reviews.

Section 4 – Global Competitiveness

Question 11. How can the OPR support a predictable and timely regulatory system that contributes to Canada’s global competitiveness?

DRFN Response: From an Indigenous perspective, the focus solely on economics and developing regulatory systems that benefit companies is part of the root problem with respect to the perpetuation of cumulative effects and the ongoing infringements on Rights. DRFN requires the time, space, and capacity to meaningfully participate in the regulatory system. The CER Filing Manual has a requirement for Early Engagement; however, this is typically interpreted to mean engagement during the project notification period. If the CER insists on these rapid processes, then the concept of Early Engagement needs to be reframed to being at the Project Concept and pre-feasibility stages, ie, the very beginning of when a company is considering a new pipeline or facility. This may provide DRFN sufficient lead time to then participate in the formal review according to those established timelines. Early Engagement also provides insight

to potential impacts to Rights and the project requirements to address those Rights. In some cases, this may require projects to be abandoned rather than pursue an uncertain and costly review process. The CER also needs to develop the collective courage to deny pipeline proposals. DRFN cannot recall whether the CER has ever declined a project, contributing to the significant adverse cumulative effects experienced across our traditional territory today.

Question 12. How can the OPR support innovation, and the development of new technologies or best practices?

DRFN Response: Companies for decades have been relying on “standard industry best practices” or “standard industry mitigations” to derive conclusions of non-significance of project impacts. These “standards” clearly do not work and contribute to cumulative effects because there is a lack of monitoring, mitigations tend not to be evaluated for their effectiveness, and there is little to no adaptive management. DRFN recommends to collectively revisit the metrics around impact determination, the development and evaluation of new mitigation techniques and technologies, monitoring protocols, and adaptive management. This exercise will also improve the progression of offsetting principles as a mitigation tool (see response to question 4)

Question 13. What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER regulated facilities?

DRFN Response: DRFN looks forward to further discussion on this topic. See also response to Question 12 and 28.

Question 14. Are there opportunities within the OPR for data and digital innovation that could be used by the CER and by companies regulated by the CER?

DRFN Response: This relates to the performance metrics discussed in question 12 and to the linkages between the Environmental Protection Plan and the broader Environmental Protection Program. For years DRFN has been requesting a more complete overview and understanding of a company’s existing network and its development plan in the future, including anticipated upstream infrastructure to feed the network. DRFN recommends the development of a central spatial database that DRFN can access that provides an overview of a company’s facilities across our territory, and projections for future development. This type of database at a landscape scale is a more appropriate mechanism to communicate corporate environmental impact and will inform environmental protection and offsetting requirements at the project scale. This approach is consistent with the more holistic worldview of our members and can be more readily translated into an assessment of impacts to Rights. This approach would

also support strategic land-use planning processes that DRFN is involved in. Contribution and management of the database, and its access could be managed and regulated by the CER via the OPR.

Question 15. How can the OPR be improved to address changing pipeline use and pipeline status?

DRFN Response: No additional comments at this time.

Section 5 – Safety and Environmental Protection

Question 16. What further clarification, in either the OPR (e.g., structure or content), or in guidance, would support company interpretation and implementation of management requirements?

DRFN Response: No additional comments at this time.

Question 17. How should information about human and organizational factors, including how they can be integrated into a company's management system, for both employees and contractors, be provided in the OPR, and/or described in related guidance?

DRFN Response: No additional comments at this time.

Question 18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?

DRFN Response: No additional comments at this time.

Question 19. How can respect and personal workplace safety be assured at CER regulated sites?

DRFN Response: This is a concern for our members. There are a couple potential mechanisms to consider. These are not exhaustive suggestions. Cultural Competency training should be offered during onboarding and conducted annually. The training may include information on what Aboriginal Rights are and identify the implications for operations. This might be rolled into broader training that includes the protection of heritage resources. The Canadian Race Relations Foundation offers anti-racism workshops. In British Columbia, San'Yas offers Core Training courses where participants are introduced to key aspects of cultural safety and addressing anti-Indigenous racism. The courses are self-paced and facilitated, but the OPR may set a requirement to attend such programs.

Course topics include:

- Colonization in Canada
- Racism, discrimination, stereotyping, and their impacts on Indigenous people
- Taking action to strengthen Indigenous Cultural Safety in relationships, practices, and services

Further information can be found here: <https://sanyas.ca/core-training/british-columbia>

Question 20. How should the CER be more explicit about requirements for contractor management?

DRFN Response: No additional comments at this time.

Question 21. How should the OPR include more explicit requirements for process safety?

DRFN Response: No additional comments at this time.

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

DRFN Response: DRFN looks forward to additional discussion on this topic as it relates to our responses to Questions 3, 4, 5, 6, 13 and 14.

Question 23. How can the connection between the Environmental Protection Plan, specific to an individual pipeline, and the company's Environmental Protection Program, designed for a company's pipeline system, be improved?

DRFN Response: DRFN looks forward to additional discussion on this topic as it relates to our responses to Questions 13 and 14.

Question 24. How can contaminated site management requirements be further clarified, in the OPR or in guidance?

DRFN Response: Typically, companies are not required to evaluate potential soil contamination outside of agricultural designated lands. In the context of TLRU and potential infringement of Rights, companies and the CER should be aware of any legacy contamination through the entire proposed right of way and adhere to any contaminated site management protocols.

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?

DRFN Response: No additional comments at this time.

Question 26. How could the requirement for a Quality Assurance Program be improved or clarified in the OPR?

DRFN Response: No additional comments at this time.

Question 27. How can the OPR incorporate the key issues identified in the Safety Advisory regarding the strength of steel and the relative strength of the weld area?

DRFN Response: No additional comments at this time.

Section 6 – Implementation Objectives

Question 28. What are your recommendations for compliance promotion at the CER?

DRFN Response: DRFN is in the process of developing a guardianship program intended to act as independent monitors to evaluate the state of our lands and waters across our traditional territory. An additional role for DRFN Guardianship could be an expansion to liaise with CER compliance specialists to review the OPR as applied to individual projects and to collaboratively conduct inspections.

Question 29. How do you want to be engaged by the CER in the development of technical guidance?

DRFN Response: Thank you for the opportunity to review and comment. DRFN looks forward to ongoing discussions with the CER to meet DRFNs expectations for sustainably constructed and maintained pipelines.

Best Regards,

[REDACTED]

Oil and Gas Advisor
Doig River First Nations

[REDACTED]

Signature: [REDACTED]

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Discussion Paper - DRFN Review

Final Audit Report

2022-06-30

Created:	2022-06-30
By:	[REDACTED]
Status:	Signed
Transaction ID:	[REDACTED]


"Discussion Paper - DRFN Review" History

 Document created by [REDACTED]
2022-06-30 - 6:59:56 PM GMT - IP address: [REDACTED]

 Document emailed to [REDACTED] for signature
2022-06-30 - 7:00:48 PM GMT

 Email viewed by [REDACTED]
2022-06-30 - 7:01:10 PM GMT - IP address: [REDACTED]

 Document e-signed by [REDACTED]
Signature Date: 2022-06-30 - 7:03:23 PM GMT - Time Source: server- IP address [REDACTED]

 Agreement completed.
2022-06-30 - 7:03:23 PM GMT