FILE HILLS QU'APPELLE TRIBAL COUNCIL

Comments on the Onshore Pipeline Regulations Review Discussion Paper

June 30, 2022

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Mr. Barghshoon:

We thank you for the opportunity to identify and state our position on issues concerning the Canada Energy Regulator's Onshore Pipeline Regulations (OPR). We understand that you are in the initial stage of the OPR review and that our submission, along with all others, will be considered thoroughly before any amendments are made to the regulations. Our submission may also inform CER's regulatory framework, operating policies, plans and directives, particularly those relating to Reconciliation.

We are providing responses to several of the specific questions posed in the Discussion Paper provided. In addition, we set out an existing legal and political framework that identifies the lawful and political mandate to implement everything in the processes of decolonization and reconciliation at CER and other federal departments responsible to some degree for 'Indians and Lands reserved for Indians.'

We were pleased to see in the Discussion Paper that one of CER's objectives for this review is "to deliver a regulation that supports the highest level of environmental protection" and that another is to deliver a regulation that "advances Reconciliation with Indigenous peoples." We are looking forward to working with CER toward the achievement of these objectives and the transformation of these agreeable words into concrete actions.

Respectfully,

[redacted] FHQTC Director
Lands, Resources, Environment & Stewardship

EXECUTIVE SUMMARY

In the 2015 Speech from the Throne, the federal government committed to introduce new environmental assessment processes to restore public trust and that, *"…Indigenous Peoples will be more fully engaged in reviewing and monitoring major resources projects….the Government will undertake to renew, nation-to-nation, the relationship between Canada and Indigenous peoples, one based on recognition of rights, respect, co-operation and partnership"*.

In February 2018, the Government of Canada (GOC) introduced Bill C-68, *An Act to amend the Fisheries Act and other Acts in consequence* and Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*. Both Bills received royal assent on June 21, 2019.

In addition to a number of reviews and discussion papers from the GOC to accompany the new Bills, such as the development of a draft Indigenous Knowledge Framework for Project Reviews and Regulatory Decisions, the Canadian Energy Regulator (CER) announced in January 2022 that it was conducting a comprehensive review of the Onshore Pipeline Regulations (OPR) under the CER Act to update the regulations. The objective for the review is to deliver a regulation that supports the highest level of safety, security and environmental protection; advances reconciliation with Indigenous peoples; addresses transparency and inclusive participation; and, provides for predictable and timely oversight and encourages innovation.

WHO WE ARE

The File Hills Qu'Appelle Tribal Council (FHQTC) is a First Nations organization located in Treaty 4 Territory situated in what is now known as the province of Saskatchewan. It offers a wide range of programs and services through its governance office to its eleven (11) Member First Nations. FHQTC First Nations are comprised of distinct and diverse multilingual cultural identities of the Lakota, Dakota, Nakoda, Cree (Nehiyaw), and Saulteaux (Anishinaabe) Nations.

Our FHQTC First Nations are signatories to Treaty #4 and occupy Treaty 4 Traditional and Ancestral Territories that span across the provinces of Saskatchewan, South Central Manitoba and Southern Alberta.

As our First Nations govern in duality as individual sovereign Nations and as collectives of sovereign Nations, the FHQTC receives and advances the collective interests of the 11 Member First Nations and their Citizens who are the true rights holders. It is with their consultation that we submit this commentary on the OPR Review Discussion Paper.

First Nations Sovereignty

When a person is born into a First Nation (e.g., *Nêhiyawak, Anihšināpēk, Dakota, Lakota,* or *Nakoda*), they enter the natural world with Creator-given rights and obligations, one of which is First Nations sovereignty at an individual or self-level. That self-sovereign identity is then transferred to the individual's family or clan and then to the First Nation, with a legal and political structure designed to safeguard and exercise that sovereignty on behalf of the individual and citizens. That is First Nation customary law and always has been.

First Nations sovereignty consists of spiritual ways, culture, language, social and legal systems, political structures, and inherent relationships with lands, waters and all upon, below or above them. First Nations sovereignty exists regardless of what Great Britain or Canada did or did not do and will no matter what Canada does or does not do. First Nations sovereignty will continue as long as First Nations people exist.

First Nations sovereignty is not something that was, or is, conferred by external human power, but rather is inherent to a First Nation. On the other hand, British or Canadian sovereignty (legal or constitutional sovereignty) is a political concept that replaced the supreme power that once resided by statutory law in the sovereign or monarch. Today it is primarily used to govern relationships between and among states in the international political arena.

Given that today there are two groups of sovereign nations (Canada and First Nations) on *Iyiniwi-ministik* (Our People's Island), and given that First Nations sovereignty is Creator-given while Canadian sovereignty is a legal construct, it falls on Canada to accommodate First Nations sovereignty. In so doing, it is expected that Canada would safeguard First Nations' inherent and ancient rights, among others, to:

a) Ownership over traditional land and resources
b) Preserve identity and culture;
c) Participate in decision-making processes, especially in matters related to culture and life
d) Self-government through customary laws.

First Nations sovereignty is a Creator-given collective right that each First Nation citizen must protect and maintain for their community's future generations. Simply because First Nations have not been able to exercise this right does not mean it has been lost. That is the law.

First Nations Aboriginal Rights and Title

Aboriginal rights are inherent collective rights which flow from First Nation peoples' use and occupation of certain areas of *Iyiniwi-ministik*. They include rights to the land, rights to resources and resource activities, the right to self-determination and self-government, and the right to practice one's own culture and customs, including language and religion.

External sources have not granted Aboriginal rights. They result from First Nation peoples' occupation of their territories and their ongoing social structures and political and legal systems. Aboriginal rights are separate from rights afforded to non-Aboriginal Canadian citizens under Canadian common law.

Aboriginal title is an inherent right recognized in common law that originates in First Nation peoples' occupation, use and control of ancestral lands before colonization. Aboriginal title is not a right granted by the government; rather, it is a property right that the Crown first recognized in the Royal Proclamation of 1763. Furthermore, subsection 35(1) of the Constitution Act, 1982 recognizes and affirms "existing Aboriginal and treaty rights."

When First Nations negotiated Treaty Number 4, the Treaty Commissioner requested only three things:

a) Use of land to a depth of the plough for farming by the Queen's subjects

b) Harvesting of trees by settlers for the construction of their homes

c) Use of grasslands for the animals brought by immigrants.

The Treaty 4 First Nations agreed to the Commissioner's request and, in exchange, were to receive 'benefits' for 'as long as the sun shines and the water flows.' They did not share any land below six inches, water, or anything else on or above the ground. That is why Treaty 4 Nations still today have Aboriginal rights and title to the land, resources and resource activities within Treaty 4 Territory.

First Nations Treaty Rights

Sovereignty and aboriginal rights are inherent rights that stem from the First Nations people's history, traditions, and prior occupation of *Iyiniwi-ministik*, or what eastern First Nations call Turtle Island. These rights, along with rights set out in the Royal Proclamation, treaty-making under international law, and fundamental human rights that have been affirmed internationally beginning in the 1940s, are commonly referred to today as 'Indigenous Rights.' These Indigenous rights include the right to education, health, justice, shelter, language, culture, land, territory, the ability to make treaties and other agreements, and the right to make and enforce law. Aside and distinct from these Indigenous rights are Treaty Rights.

Treaty rights flow from the agreements made between — in this case — the Treaty 4 First Nations and the British Crown. Before identifying and defining these rights, it is essential to note the following:

a) A treaty is a binding, legal agreement between two or more sovereign nations

b) Treaties have been utilized as long as nations have existed

c) First Nations made treaties with other First Nations long before non-First Nations came to *Iyiniwi-ministik*

d) Treaties are made because of the need for mutual understanding and agreement, usually regarding peace and friendship, a military alliance, geographic boundaries, or trade.

e) Treaty 4 Chiefs especially, but also other First Nations people, were very knowledgeable about many of the treaties made between 1817 and 1874 with First Nations or Native Americans in the northern US states with the US government and in Manitoba with either Lord Selkirk or the British Crown. This is because many of the Treaty 4 Chiefs' parents, grandparents, and other close relatives were involved in making those treaties and had passed on the information regarding those treaties through oral history.

f) Treaty 4 was initiated at the 1873 request of the Council of the Southern Plains Cree. The request was made to Ottawa through past Treaty Commissioners in Manitoba because of First Nations' concerns regarding the trespass of the newcomers, especially the Hudson's Bay Company and land surveyors. To the First Nations people, such trespassing represented a potential breach of their Natural or First Law, in that unless checked by a mutual understanding or Treaty, the action could upset the balance and harmony of the sacred relationship between the Earth and all her inhabitants.

g) Treaty 4 was negotiated from within two worldviews and two knowledge systems, one which was oral and one written. Therefore, it is vital to understand the spirit and intent of the Treaty, not just the letter of the agreement. The 'spirit' refers to the sacredness of Treaty 4, an agreement entered into before the Creator and that therefore will live on, in both written and oral form, in continual fulfillment without obstructions. This is why Treaty 4 is referred to as a 'living document.' It is not an old, obsolete, or pointless document. It upholds important principles of reciprocity, respect, and renewal rooted in thousands of years of experience and presence on *Iyiniwi-ministik* and one that holds the keys to a new path forward regarding the relationship between First Nations and Canada.

   The ‘intent’ of Treaty 4 refers to the intentions of both the Crown and First Nations peoples to benefit from the Treaty and to be respectful of each other’s way of life.

   The original spirit and intent of Treaty involve understanding and upholding the agreements that the Crown and First Nations negotiated, rather than focusing on how Treaties have been re-interpreted by Canadian governments long after the fact.

h) All inherent rights are reserved, recognized and confirmed by the Treaty-making process. Those First Nations' inherent rights that are included in Treaty 4 are those that have been further defined, refined or enriched.

i) Since its inception, the Government of Canada has created its own policies designed to terminate the inherent Indigenous and Treaty rights of First Nation peoples. This policy approach was and is the Doctrine of Discovery which originated with the Papal Bulls of the Roman Catholic Church. The proposition that emerged from these instruments and that was passed along through the generations was that colonial powers knew what was best for First Nations people.

j) Canada – First Nations relations are governed and based on the legal and political framework that includes a full box of First Nations Inherent rights, Aboriginal rights and title, Treaties and Treaty Rights and such proclamations, statutes and declarations as the Royal Proclamation of 1783, the Constitution Act 1982, the British North America Act 1867, and the United Nations Declaration of the Rights of Indigenous Peoples along with other United Nations treaties, instruments and mechanisms, and of course, international law.

That said, some but not all of the Treaty rights of the First Nation people of Treaty 4, no matter where they may live, include the Treaty right of First Nations to:

- Nationhood
- Government
- Institutions
- Administration

- Chief and Headmen Salaries
- Lands, Water and Resources
- Education
- Health
- Social Assistance
- Police Protection and Extradition
- Economic Development
- Unrestricted crossing of international boundaries
- Meet in Council
- Shelter
- Annual Reviews of Treaty
- Annual Annuity and Gratuity Payments
- Ammunition (annually)
- Fishing twine and nets (annually)
- Hunting and fishing access, equipment, and supplies
- Agriculture implements, livestock and seed grain
- Medals, presents and clothing.

There are many misunderstandings in Canada about the sacred Treaties, treaty-making, and Treaty rights, including among her governments, past and present. Much of this understanding has to do with the fact that the spirit and intent of Treaty has not been taught in Canada's mainstream education systems, only the written text. The written version of Treaty 4 leads to further ignorance. It falsely implies that Treaty 4 people gave up their sovereignty and self-determination to the British Crown and that they also ceded and surrendered the land and its resources. There is much work needed to correct this misunderstanding. On the Crown's part, it must begin with the Government of Canada's demonstration of the political will to do so and with Canadian courts changing the approach that they so far have taken regarding treaty interpretation.

Crown/Federal Government Sovereignty/Treaty Relations

The legal/political framework governing First Nations and Canada relations includes:

- Inherent Rights and Title
- Royal Proclamation 1763
- Indian Treaties 1 to 11
- Constitutional Act 1982
- International Law
- United Nations Declaration on the Rights of Indigenous Peoples

Entering into Treaty 4 did not cede First Nations' inherent sovereignty or their nationhood and its authorities nor give any authority to the Crown in Right of Canada to determine their form of government, determine their membership or citizenship or determine what happens to the status of Indian lands reserved by the Treaty, including traditional lands and resources and any other jurisdictional matter or field. That is for the Treaty 4 people to do with as they see fit according to the Royal Proclamation of 1763 and the making of the Treaties and First Nations' inherent sovereignty.

Again, Treaty 4 does not give the Crown any authority or mandate to determine the form of Treaty 4 Nations' title to lands and resources.

Treaty 4 Nations will use traditions, customary laws and practices to exercise their inherent rights. In the case of the inherent right of title to lands, territories, and resources, their traditions, customary laws and practices focus on:

a) Land and resource sovereignty
b) Conservation
c) Environmental integrity
d) Sustainability
e) Exploration, extraction, and transportation standards and practices.

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has several articles, which speak directly to the protection of lands, territories and resources, particularly Article 26 which reads:

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 the 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.

Other UNDRIP Articles speak to the rights of Indigenous peoples as it relates to lands, territories and resources, most notably Articles 8(b), 10, 19, 25, 27, 28, 29, 30, and 32. Article 32 in particular calls for the free, prior and informed consent of Indigenous peoples prior to any project affecting their lands, territories, or other resources.

TRUTH AND RECONCILIATION COMMISSION CALLS TO ACTION

The Truth and Reconciliation Commission (TRC) Calls to Action speak directly to Reconciliation and business:

Reconciliation
Canadian Governments and the United Nations Declaration on the Rights of Indigenous Peoples

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

Business and Reconciliation
92. We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.

ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.

iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism.

DISCUSSION PAPER COMMENTS

How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?

CER must require early engagement from companies so that First Nations understand what is being proposed within their territories. CER must ensure that engagement is meaningful and adequately funded when developments may adversely impact First Nations' Inherent and Treaty rights, culture and way of life. Further, CER must mandate regulated companies to advance reconciliation by not only entering into Impact Benefit Agreements with First Nations, but to also negotiate resource revenue sharing agreements to accommodate for such adverse impacts. Regulated companies and First Nations need to foster respectful, open and transparent working relationships in order to build trust and mutually benefit from one another and the developments. Lastly, a comprehensive review must be undertaken in order to ensure that the OPR is aligned with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as the Truth and Reconciliation Commission (TRC) of Canada's Calls to Action, particularly Calls to Action 43, 44 and 92. It is also critical that First Nations are involved at the earliest stages in the design and carrying out of any required environmental and rights-based assessments and / or consultation processes. This must include the scoping of projects and ensuring that any such assessment and / or consultation process looks at the direct, induced and cumulative impacts on our Inherent and Treaty rights, culture and way of life. The ***Yahey*** decision of the British Columbia Supreme Court makes it clear that a "business as usual" approach to consultation and assessment can no longer be used. Nor can an implicit assumption that pipelines cause little or no adverse impacts to rights, culture and way of life be the guiding approach to assessment and consultation. Partial guidance for doing proper assessments can be found in the various Guidelines attached to the ***Impact Assessment Act.***

It is also critical that CER works with First Nations and Tribal Councils such as FHQTC to develop thresholds / criteria to assess adverse impacts to our Inherent and Treaty rights, culture and way of life – otherwise, how will the CER be able to determine such impacts and whether they require mitigation and accommodation?

How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?

In practice, companies are subject to applicable federal, provincial or territorial requirements when their activities may impact heritage resources. However, some policies are weak on the preservation and protection of artifacts and/or sacred sites, which effectively excludes First Nations when discoveries are made. In Saskatchewan, for example, there have been issues with the provincial Heritage Conservation Branch that is responsible for conserving and protecting archaeological, paleontological and built-heritage resources in the province. First Nations have called for the protection of culturally sensitive areas, and their concerns are oftentimes ignored by the province.

It is critical that CER develop tools to address the discovery of an artifact or sacred site, etc. A modernized approach needs to be developed that deals with First Nations respectfully, and which will allow them to carry out proper protocols when dealing with any discovery. These sites are not regarded as provincially-owned from a First Nations perspective, given that these sites are within our ancestral and Treaty territories. As guided by our Elders, these sites remain our responsibility and thus a respectful process must be developed, in consultation with First Nation Elders, as an initial gesture towards reconciliation that is grounded in the fiduciary duty owed to First Nations by the Crown. Any tools that are developed must also align with UNDRIP and the TRC as it relates to heritage resources, the discovery of artifacts, and the protection of sacred sites.

The definition of what constitutes a heritage resource must also be re-evaluated. The Council of Europe Framework Convention on the Value of Cultural Heritage for Society defines cultural heritage as "a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time."

The 2003 United Nations Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage as "the practices, representations, expressions, knowledge, skills — as well as the instruments, objects, artifacts and cultural spaces associated therewith — that communities, groups and, in some cases, individuals recognize as part of their cultural heritage."

As noted by the United Nations Special Rapporteur in the field of cultural rights, although no uniform definition exists, several international instruments and references relating to traditional knowledge and traditional cultural expressions provide useful guidance for defining what is usually understood as cultural heritage. Noting that no list is exhaustive, the Special Rapporteur referred to cultural heritage as "tangible heritage (e.g. sites, structures and remains of archaeological, historical, religious, cultural or aesthetic value), intangible heritage (e.g. traditions, customs and practices, aesthetic and spiritual beliefs; vernacular or other languages; artistic expressions, folklore) and natural heritage (e.g. protected natural reserves; other protected biologically diverse areas; historic parks and gardens and cultural landscapes)" She added that cultural heritage should be understood as resources enabling the cultural identification and development processes of individuals and communities which they, implicitly or explicitly, wish to transmit to future generations. Cultural heritage also includes traditional knowledge and cultural expressions.

First Nation governments in Treaty 4 Territory fully intend to use this FHQ definition of cultural heritage and resources when they exercise their Inherent right to sacred and traditional land and resources and their Treaty right to treaty grounds as well as cultural and spiritual lands. They will exercise these rights by reclaiming jurisdiction using a proposed First Nation Cultural Heritage and Resources Law. In the interim, FHQ expects CER to:

a) Accommodate the FHQ definition

b) Respond proactively to the call of the Committee on Economic, Social and Cultural Rights to all States, including Canada, to "respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life."

c) Implement article 11 of UNDRIP, which affirms that all "states shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs."

Article 11 is one area where there can be no misinterpretation of consent — "no" means no.

There was a time (1959 to 2008) when NEB ignored First Nations' cultural heritage and resources. And then came the time (2008-2019) when NEB limited its 'protection' of First Nations' cultural heritage and resources to pipeline right-of-ways during construction, operations and maintenance activities and to only those heritage resources either previously identified by provincial archaeologists acting on their own or which project proponents happened to 'run into.' NEB, in cooperation with Industry, also limited their consideration of First Nations' interests to a buffer zone that extended 50 kilometres out from a pipeline. Other federal and provincial agencies, especially departments administering Indian affairs, tried to limit First Nations' traditional lands to those identified in comprehensive community planning and land use

planning projects to lands used for hunting, fishing and gathering contemporarily. On top of all this, the provincial government administered longstanding laws that classified off-Reserve cultural artifacts and even human remains as provincial property. These, of course, are violations of First Nations' inherent and Treaty rights as well as Indigenous rights under international law.

Access to and use of lands, territories and the environment are essential elements of cultural heritage for many First Nations peoples, including those of FHQ. The connection between land rights and cultural heritage is firmly embedded in international legal instruments and international jurisprudence. Many human rights institutions have highlighted that ownership, control and management of their ancestral territories constitutes an essential element of the cultural heritage of indigenous peoples.

In keeping with UNDRIP, CER and the federal government must acknowledge that First Nation people are rightful stewards of their cultural heritage. They must agree to explore alternative theories and methods for interpreting the past, basing these theories and methods on First Nations' ways of knowing and being. And when the time comes for First Nations to begin adopting their First Nation Cultural Heritage and Resources Law, CER must call upon the federal government to implement a law vacating their jurisdiction over First Nations' cultural heritage and resources and recognizing that First Nations recognizing First Nations jurisdiction in that field.

But what FHQ Member First Nations needs right now is a financial arrangement to identify their cultural heritage resources and a policy for designating the resources. They also need CER and the federal government to accept the First Nations' definition of First Nations territory, whatever the consensus might be.

First Nations territory describes First Nation peoples' ancestral and contemporary connections to a geographical area. Territories may be defined by kinship ties, occupation, seasonal travel routes, trade networks, management of resources, and cultural and linguistic connections to place. This means it is up to Indigenous peoples to define their territories; it is not up to the government and not Industry.

There are many differences between First Nations' views on territory and the Canadian legal and political definitions. If CER is to meet its mandate of implementing UNDRIP, it must resolve these differences. And, of course, the views and advice of the IAC will be crucial to that exercise. Therefore, it may be helpful for FHQ to offer opinions on territory by using examples specific to the Treaty 4 Nations. But again, these are suggestions or ideas. In the end, definitions will have to come from the Nations.

First, there are FHQ Ancestral Territories or Ancestral Homelands, where the earthly remains of FHQ pre-contact ancestors lie. To most of the Treaty 4 Nations or what has been known for over four hundred years as the Iron Alliance, this territory covers the Great Lakes and Midwest regions of the USA, the Central and Southwest regions of Ontario, and the entire Province of Manitoba.

Then there are the FHQ Traditional Territories or Traditional Lands and Resources, where FHQ near-ancestral burial sites, sacred sites, and cultural sites lie. Most of the Treaty 4 Nations include an area covering southeast Manitoba north to Swan River, parts of Minnesota, North Dakota and Montana, and southern Saskatchewan north to the South Saskatchewan River and from the Cypress Hills to the South Saskatchewan River west of Calgary. FHQ sacred and cultural sites in this area include, among many others: Turtle Mountain (MB), Great Sand Hills, Cypress Hills, Little Rocky Mountain (MT), Little Manitou Lake, Elbow, Red Ochre Hills, Saint Peters, Clearest Bluff, Where the Pinto Lies, Buffalo Pound Lake, and Last Mountain Lake.

Then there is Treaty Territory, which covers all of the territory mapped out in Treaty Number 4, also known as the Qu'Appelle Treaty. FHQ people maintain their kinship ties and spiritual, cultural and

linguistic connections and pursue hunting, fishing, and gathering (including medicines) throughout this territory.

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?

The OPR can contribute to the protection of traditional land and resources use, and sites of significance during all stages of pipeline activities by ensuring that regulated companies operate in an open and transparent manner with the First Nations, as well as in a manner consistent with the articles of UNDRIP and the TRC Calls to Action. The CER must mandate that First Nations are included when companies develop plans, to present those plans to First Nations, and to address any concerns that the First Nations may have. This way, there will be no surprises when regulated companies begin works within a pipeline right-of-way.

As we, and our environment, experience the total effects of activities on the land and not just effects one by one, the OPR can create tools for guidance on assessing ongoing cumulative effects during all stages of pipeline activities. Assessing cumulative effects will allow us to understand the big picture of cumulative change so that we can understand the regional and local impacts. The goal is to estimate the total impact of all activities, the state of the receiving environment, and whether it can or should withstand further change. And, although such an assessment should be conducted prior to any approvals, it can be equally important and informing during the lifetime of a pipeline activity.

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

There is no universally accepted definition of Indigenous knowledge. The term describes complex knowledge systems embedded in the unique cultures, languages, values, legal systems and worldviews of Indigenous peoples. It tends to be Nation/community-specific and place-based, arising from Indigenous peoples' intimate relationship with their natural world. It is generally understood to be collective knowledge that encompasses community values, teachings, relationships, ceremony and governance (Draft Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions, May 2021).

In the context of Indigenous Knowledge, it is important to note that not all Indigenous People are considered Indigenous Knowledge holders.

> *"A long time ago there wasn't such a name as Elder. Each community or village determined their own specialist based on a variety of things. The chosen ones were given the right because of the lifestyle they lived, while others were given the gifts to help through dreams and visions. These gifted ones specialized in one or more areas and were herbalists, pipe carriers, medicine man/woman, story tellers and practitioners of traditional and sacred ceremonies. Each of these people were given and earned that right to be that messenger and helper of the peoples".*
>
> - Federation of Saskatchewan Indian Nations (FSIN) *Cultural Responsiveness Framework (undated)*

Indigenous Knowledge systems and western science can work in tandem and complement one another, from data collection and analysis, policy development, to decision and post decision-making. The process, however defined and developed, needs to be a shared one where both systems can occupy space.

The inclusion and use of Indigenous Knowledge must also be consistent with the articles of UNDRIP and the TRC Calls to Action.

We offer the following principles to guide officials, and the companies, when applying and/or incorporating Indigenous knowledge:

A. **Respect for Indigenous peoples and their knowledge**: respect the diverse interests, priorities and circumstances of the Nation; interactions with Indigenous Nations are respectful of their guidance, protocols and processes; and Indigenous peoples will guide the understanding of the context and meaning of any Indigenous knowledge that they provide, the purpose for which it is being provided and how the knowledge, even when provided in confidence, may be shared. **However, saying that Indigenous Knowledge needs to be respected is devoid of real meaning without guidance as to how it should be done. In the past and, unfortunately, in the present, some companies do not respect the protocols of First Nations in collecting and using this Knowledge or they seek to "interpret" this Knowledge without the consent of the holders of this information. Either in regulations or elsewhere, there needs to be an agreed-upon approach to the collection, interpretation and use of Indigenous Knowledge.**

B. **Establish and maintain collaborative relationships with Indigenous peoples**: communicate with Indigenous peoples about the opportunities to participate in project reviews and regulatory decisions; what Indigenous knowledge may be considered and any condition for its consideration in project review and regulatory decisions is critical for Indigenous peoples to decide whether and how they share their knowledge; early engagement; respect ownership, control, access and possession principles (OCAP); only Indigenous knowledge holders are positioned to share their knowledge; processes to be inclusive of Indigenous women, youth, Elders, gender diverse and two-spirited peoples; and respecting any Treaties and formal consultation agreements with Indigenous Nations that apply to the collection and consideration of Indigenous knowledge.

C. **Consideration of Indigenous knowledge**: communication with Indigenous Nations about how the Indigenous knowledge is understood, by how it is described and how it was considered as well as a process for dispute resolution to deal with conflicts in the interpretation and use of Indigenous Knowledge; inform Indigenous peoples of the processes associated with reviews and decisions; flexibility in processes and policies to support the consideration of Indigenous knowledge; Indigenous knowledge to be understood in the context in which it is provided; Indigenous knowledge and western scientific knowledge systems are equally valued; and Indigenous Nations will decide who provides indigenous knowledge and how permissions are obtained.

D. **Respect the confidentiality of Indigenous knowledge**: prior to receiving Indigenous knowledge officials will clearly communicate that there are exceptions under which Indigenous knowledge provided in confidence may be disclosed; Indigenous Nations determine whether to share their knowledge and what aspects of that knowledge are shared in confidence; if Indigenous knowledge is to be disclosed, federal officials must consult the person/Nation who provided the knowledge, to whom it is proposed to be disclosed to, about the scope of the proposed disclosure and the potential conditions under which it will be disclosed; and federal officials will communicate to the Indigenous Nation how they will handle, store and treat Indigenous knowledge provided in confidence.

E. **Support capacity building to facilitate the consideration of Indigenous knowledge**: where funding is available to support Indigenous participation, it is provided as early as possible; capacity support for Indigenous peoples should address the Nations' needs to the extent possible; Indigenous Nations need to record and preserve their Indigenous knowledge while federal

departments and agencies support the data access and gathering; and support building cultural competency of officials involved in reviews and regulatory decision making.

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

The CER must engage directly with First Nations in pipeline oversight by providing regular updates for the lifecycle of the project, to the First Nations, particularly those whose ancestral and Treaty territories are impacted. In addition, a committee should be established that includes Citizens from the First Nations who are impacted by the resource development. Regular updates should be provided to this committee to oversee the maintenance and operation of a pipeline, as well as being included in decision-making when the First Nations' Inherent and Treaty rights are impacted. Further, CER could engage with Tribal Councils, Treaty and/or Regional organizations in order to ensure that no First Nations are excluded from participating. The provision of adequate financial resources will be necessary in order for First Nations to participate in pipeline oversight. Any tools developed in this regard needs to be aligned with the articles of UNDRIP and consistent with the TRC Calls to Action.

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

The CER needs to mandate that early engagement be undertaken by regulated companies that intend to undertake work on pipelines, particularly those First Nations whose ancestral and Treaty territories will be impacted by the development. For example, in Saskatchewan, it is not mandatory for companies to engage in early engagement – but if CER required this of the companies in order to be issued a permit, perhaps this would curtail some of the issues that arise when projects are announced.

OPR requires that a management system be clear, and good documentation be understood by all employees, at all levels, apply to all areas of work and include every regulated activity conducted by the company and be proactive, to anticipate issues and adjust course.

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

The management system should be communicated and further developed, if there is an opportunity to enhance and improve the system, with the First Nations who occupy, use or have interests and rights in the area. Using as an example, a situation where an emergency arises, First Nation citizens must be involved in the emergency command centers where decisions are made and information on the emergency is provided. This needs to be done to not only promote transparency to the First Nations whose rights are impacted but the local First Nations will know the lay of the land given that the development is within their ancestral and Treaty territories. The First Nation citizen(s) in the command centres can then report back to their respective Nations on the state of the emergency and any work being undertaken to address the emergency and any impacts to the environment. First Nations must be included in decision-making at all stages, but particularly when emergencies arise in order to effectively mitigate any incidents. This requirement would be aligned with UNDRIP.

How could the CER improve transparency through the OPR?

The CER must provide adequate financial resources to First Nations, Tribal Councils, Treaty and/or Regional organizations, so that information can reach the First Nations. Again, the CER must ensure that they mandate companies to engage early in the conceptual stages, so that there are no surprises for the

First Nations and consequently industry. Improving transparency will support a predictable and timely regulatory system.

How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?

CER can develop tools on consultation and engagement for First Nations with First Nations that aligns with UNDRIP. If First Nations are involved and informed at the earliest possible time, then work can proceed not only in a predictable and timely manner but in a way that supports reconciliation. As noted earlier, this must include early inclusion of First Nations in the design of impact assessment and consultation processes, starting with the scoping of any project.

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?

It appears that the CER remains without regulatory context to protect Traditional Sites. The CER must request that any proponent Environmental Protection Plan and that Company Environmental Protection Program recognize Nations can only undertake the monitoring of Traditional Sites. Furthermore, any such "Protection Plan" cannot be limited to biophysical or environmental impacts alone; it must align with a program to protect rights, culture and way of life and what is needed to exercise them.

How can contaminated sites management requirements be further clarified, in the OPR or in guidance?

The CER must ensure that historical spills and contaminated sites are managed and remediated under the rules and standards applied to modern spills.

Testing and monitoring after a spill must include Traditional Land Users and others within the local and impacted Indigenous Nations. Indigenous Nations must be involved in developing remediation and monitoring plans and assessing return to the baseline condition. Plans must be designed with Indigenous Nations to facilitate work with Traditional Land Users in the event of a spill. The plan must include how Indigenous experts should be contacted, what support would be required, how they would provide information, and how the use of that information would be protected. Keeping the information up to date will require strong relationships with the Nations.

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?

The CER must specifically require that an Operational Indigenous Engagement Plan include communication and presentations on emergency response plans through project conditions or other methods.

Proponents must undertake activities to support improved understanding among Nations of emergency management and emergency response plans. The CER must require that any proponent emergency response plans indicate how the proponent intends to involve potentially impacted Indigenous Nations in the emergency response programs, beyond providing information on these programs.

The plans must be filed with and reviewed by the CER. In this way, the CER can verify that plans include appropriate involvement by impacted Indigenous Nations and the necessary support by proponents to ensure Nations can participate. The plans must provide clarity about the role and authority of Indigenous

Nations in emergency response. An example of involvement could include specifying how Indigenous monitors will be involved and trained in emergency response procedures or indicating how volunteer firefighters from Indigenous Nations will be incorporated into emergency response training and plans. In addition to involving technical people, Elders, youth, and leadership of Indigenous Nations must be involved.

The CER must ensure greater protection for Indigenous sites of significance by ensuring that Traditional Land Use studies, shared at the discretion of Nations, are incorporated into emergency response plans (e.g. in control point mapping) so the sites can be given proper protection during an emergency while ensuring appropriate confidentiality.

In the event of a spill, proponents must know the location of cultural sites that could be impacted (shared at the discretion of the Nations and appropriately protected for confidentiality). Plans must include measures to protect areas or conduct salvage, with oversight by Indigenous Nations and carried out by qualified experts.

OTHER CONSIDERATIONS

We want to applaud the CER in its decision to work differently towards enhancing the involvement of Indigenous Peoples - development of an Indigenous Advisory and Monitoring Committee, Indigenous Monitoring Program and the Reconciliation Strategic Priority Statement with the values of truth, humility, clarity, courage, honour, respect and compassion and following guiding principles that will frame its implementation:

- **Recognition of the UN Declaration on the Rights of Indigenous Peoples as a framework for advancing Reconciliation within our mandate:** We understand that implementing the UN Declaration and delivering on our obligations are key to advancing Reconciliation at the CER.
- **Recognition that Indigenous peoples have the right to self-determination, realized through their own governance, laws and practices:** The CER will seek to understand the Indigenous laws, practices and ceremonies specific to Indigenous peoples and their territories and how these apply to decision making and operations.
- **Reconciliation requires transformative change; it is about doing things differently, and about doing different things:** We will work to move beyond transactional exchanges with Indigenous peoples to forming mutually respectful and collaborative relationships established in the spirit of partnership. We will listen deeply and commit to be creative, innovative, and inclusive of worldviews.
- **Reconciliation requires acknowledging past harms that continue today are barriers to positive and respectful relationships:** We will work to identify barriers such as systemic discrimination within the CER and the limitations of colonial structures, and work to address these barriers head on, in a manner that respects the human dignity and rights of Indigenous peoples.
- **Renewing relationships is at the core of Reconciliation**: We will invest in long-term relationships with First Nations, Métis Nation, and Inuit partners, in an effort to build knowledge, better understand each other, and find common solutions. The work and advice of the Indigenous Advisory Committee, and the strong relationships built, will help to advance Reconciliation.
- **Responsibility for advancing Reconciliation within the CER belongs not only to the CER as an organization, but also to its people:** We are committed to implementing systemic changes within the organization, as well as supporting the individual Reconciliation journey of each person at the CER.
- **Reconciliation is an ongoing process and journey and requires flexibility:** We recognize that as relationships evolve and grow, so will our understanding of Reconciliation and we will remain open to this evolution and growth.
- **Advancing Reconciliation is an objective that must be incorporated into every aspect of the CER's work:** We will work to implement a cultural shift in the organization and ensure that Reconciliation is considered at all levels of decision-making and operations.
- **Ensure an outcome-based approach to Reconciliation**: We will seek out practical and tangible tools and measures to advance Reconciliation in our work and will report on progress. We recognize that accountability and demonstrable progress are key to building trust.

However, the CER falls short in consulting with the rights holders – the First Nations are the rights holders and must be consulted and not bodies such as the Indigenous Advisory and Monitoring Committee.

The purpose of consultation is to reconcile the relationship between the Crown and First Nations by taking into account the First Nations' views and concerns, and by demonstrating how those views were considered in arriving at a decision. Both the federal and provincial Crowns must demonstrate that it provided an opportunity for consultation when it believes that any conduct or decision may impact

Aboriginal or Treaty rights (*R. v. Sparrow*). One example would be whether to allow resource development on Crown lands, which may ultimately impact First Nations' rights, given that Crown lands are within First Nations' ancestral or traditional territories. If that conduct or decision impacts the First Nations' ability to hunt, fish, trap or gather, then there will be a need for consultation.

The courts have found that the Crown has the duty to consult - not third parties. This includes both the federal and provincial governments. In the Carrier Sekani decision, the court held that the Crown can rely in part – or entirely on – a regulatory process like the CER (formerly known as the National Energy Board). As such, the CER can develop tools in collaboration with First Nations that would assist the Crown in its duty to consult.

WORKING DIFFERENTLY

From 2007 until August 2019, when CER replaced NEB, the relationship between NEB and First Nations, and Industry and First Nations, for that matter, was never respectful or satisfying from the First Nations' perspective. FHQ saw and experienced far too much interaction and interchange between NEB and Industry to the exclusion of First Nations. In terms of process, both Industry and NEB saw First Nations merely as 'stakeholders' rather than unique, rights-bearing first peoples. Industry, with the compliance of NEB, too often attempted to define and limit the extent of constitutionally-entrenched Aboriginal and Treaty rights. What FHQ wishes to discuss here and now CER's commitment "to change [CER's] requirements and expectations to advance reconciliation."

It is the view of FHQ that whatever changes CER wishes to make to their requirements and expectations to advance reconciliation must be informed by two realities or truths:

1) As the *de facto* Crown, CER owes a fiduciary obligation to First Nations, that is, an obligation to protect their interests. Jurisprudence, or the general legal, moral, political or economic policies and principles embodied in Canadian legal decisions, underpins this reality.
2) According to the Chairman of the TRC, "Reconciliation is not an act of forgiving past wrongs. It is a process of dismantling the ongoing colonial relationship that treats Indigenous people as less than human. It is not a matter of benevolence or charity. It is a matter of respect and rights." The process of decolonization and reconciliation must be guided by: (a) the existing legal framework, (b) the eschewing of decrees and laws of colonization, and (c) United Nations framework companion documents.

Before discussing jurisprudence, we must remind ourselves of two principles that came out of two Supreme Court of Canada decisions released on July 26, 2017. First, the Supreme Court confirmed that even though the NEB (now CER) is not strictly speaking "the Crown," it acts for the Crown in the regulatory process and, therefore, assumes "the Crown." Second, the cases also confirmed that "deep consultation" is required whenever a First Nation has a solid claim to an Aboriginal or Treaty right and where the potential impacts of a proposed project on that right are significant. That happens to be the case with all proposed projects in the Treaty Territory of all FHQ.

As to the jurisprudence that applies to CER to date, perhaps the law firm of Blake, Cassels & Graydon of Vancouver summarized it best when (now BC Supreme Court Justice) Maria Morellato said in her paper *The Crown's Fiduciary Obligation Toward Aboriginal Peoples*: "Jurisprudence relating to the Crown's responsibility to aboriginal people has categorically affirmed that the Crown will be held to a high standard of honourable dealing when it exercises legislative or discretionary powers in a manner which affects aboriginal lands and resources. The tenor of the most recent cases suggests that the Crown accommodate aboriginal rights and that such accommodation, in turn, requires that the Crown identify what treaty or aboriginal rights may be affected by their actions so that aboriginal peoples can be consulted in a manner which takes their right seriously. Furthermore, we know that such consultation will, in certain circumstances, require that First Nations be involved in the Crown's decision-making processes relating to land and resource use and that such consultation may require that the Crown not proceed with a decision or action without the consent of the First Nation affected. Significant difficulties admittedly arise, given that the evolution of the law in this area remains in its formative stages, in predicting precisely when consent will be required and when it will not. Nonetheless, in the final analysis, the Crown will be held to a strict standard of conduct in dealing with aboriginal lands and resources and, further, the Crown must in some manner facilitate and accommodate the expression of these rights in the commercial marketplace. This was made clear by the Court in its decisions in Gladstone and Marshall where commercial rights to fish were affirmed and in Delgamuukw where the Court recognized that aboriginal title had an inescapable economic component. Aboriginal entitlement to the expression of these rights is at the heart of the Crown's fiduciary obligation and, where these obligations are not met, the infringement of an aboriginal right could lead not only to a reinstatement of lost title lands and a re-

allocation of resources, but also to the legal obligation to compensate First Nations for lost opportunities associated with the inability to exercise aboriginal rights."

Moving on to decolonization and reconciliation, as stated earlier in this paper, the process must be guided by the existing legal and political framework. To refresh, the existing framework includes:

- Sovereign Relations
- Inherent Rights and Title
- International Treaties 1 to 11
- Royal Proclamation of 1763
- Constitution Act 1982
- International Laws
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- American Declaration on the Rights of Indigenous Peoples.

Decolonization and reconciliation process must also be guided by an eschewing of the tools of colonization and removing their values and objectives from current and future laws and policies. These tools include:

a) 1493 Papal Bull
b) Doctrine of Discovery
c) 1830 Detribalization Policies
d) 1947 Plan to Liquidate Canada's Indian Problem within 25 years
e) 1969 White Paper Policy
f) 1974/76 Native Policies.
g) 1980 Buffalo Jump Policies

And finally, as the United Nations High Commissioner on Human Rights has said, UNDRIP must be read together with other human rights instruments and the growing human rights jurisprudence concerning Indigenous peoples to advance Indigenous peoples' rights. Just as the recommendations of the Royal Commission on Aboriginal Peoples (RCAP) and the Truth and Reconciliation Commission (TRC) of Canada inform the implementation of UNDRIP, so too do the Indigenous Rights framework companion documents, they being the conventions, declarations and directives from such sources as the:

- International Convention on Civil and Political Rights
- Indigenous and Tribal Rights Convention 1989 (ILO)
- American Declaration on the Rights and Duties of Man (OAS)
- American Declaration on the Rights of Indigenous Peoples (OAS)
- United Nations Human Rights Committee
- Inter-American Commission on Human Rights
- Inter-American Court on Human Rights
- United Nations Permanent Forum on Indigenous Issues

- Expert Mechanism on the Rights of Indigenous Peoples, and
- UN Special Rapporteur on the Rights of Indigenous Peoples.

It is overwhelmingly clear that federal and provincial policy related to energy in First Nation contexts is in dire need of a significant overhaul. Some government agencies are speaking all the right words in that regard. But just talking about it or even building in some mention of UNDRIP, TRC or Aboriginal and Treaty rights into policy or plans is one thing; it is quite another to develop and implement policy in ways that substantively respect and enable the exercise of First Nations rights. That development and implementation begins with a mandate. In this instance, CER already has that mandate. It has a mandate letter from the Prime Minister to CER's minister and by the CER Act. The next step is commitment. Again, CER already has that, plus the ability and willingness to change as well as a clear understanding of priorities which, in this case, and as stated in Canada's Historical Geography, is the recognition that "the Indigenous/non-Indigenous divide represents the most complex and troubling one facing the nation and an important element in redefining the relationship between Indigenous peoples and the nation-state of Canada."

So, it is up to CER to grab the reins of change in its sphere of operations and drive it forward. FHQ believes that CER can and must do this proactively, not rely on the courts to "reconcile First Nations sovereignty with Canada's assumed sovereignty" and without depending upon its alternative dispute resolution mechanism to appeal or impose policy change. CER can originate that policy change on its own, within its present mandate and within the three frameworks identified above. It is time to put some substance on those frameworks in the areas of decolonization, reconciliation, and energy policy in the context of First Nations rights.

FHQ propose that CER begin that work by calling on any and all pipeline companies CER has engaged with or expects to engage with to clearly reference in their management system documents TRC's Call to Action #92 and provide evidence on an ongoing basis that they have implemented the Call to Action, which is:

> "We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:
>
> 1. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
> 2. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
> 3. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism."

Doing that would demonstrate to FHQ that CER is serious about creating a path forward that fully respects the rights, culture and way of life of First Nations people while introducing better transparency and accountability in the oil and gas industry. That would be an excellent starting point for further work together on a nation-to-nation and government-to-government basis.

As to the rest of the changes CER wishes to make to their requirements and expectations to advance reconciliation FHQ reiterates their expectation that any changes proposed or made reflect the two realities presented in the second paragraph of this section.

REGULATORY FRAMEWORK

The review and implementation of any CER OPR framework inclusive of its regulations, guidance documents, review documents, and related policy must provide for the following adaptive, explicit, comprehensive and interdisciplinary shared decision making model methodologies (pre-construction, during construction, post-construction):

- All project approval conditions, orders and compliance variance measures be confirmed as true by our First Nations on frequent intervals for the lifecycle of the project and its ancillary projects:
    - Ie: when variance applications are filed by the proponent to any part of an original application or under any compliance of condition or order, those variance applications must initiate consultation to the First Nations prior to the consideration & approval by CER (references to Section 4/53/55/21/24/27/39/46/54 of the OPR)
    - This is not limited to current biophysical and socio-economic elements: water quality/quantity, fish and fish habitat, wetlands, wildlife and wildlife habitat, species at risk or species of special status, air quality, acoustic environment, heritage resources, sites of significance, navigation & navigation safety, unceded lands and territories
- CER OPR Commission Authority should ensure shared decision making methodologies inclusive of First Nations toward ensuring all pipeline assessments are planned, operated & maintained in an environmentally responsible standard
- CER OPR must set forth inclusion of transparent measures to ensure understanding of OPR in relation to other Acts of legislation such as Fisheries Act, Navigable Waters & Nuclear Safety. To confirm the triggers of any other Acts within an application to refrain from silo approaches to regulatory mechanisms
- CER OPR Management System and Protection Program Audit Protocols must ensure that all pipeline inspections and audits involve professionally certified First Nation personnel, inclusive of all respective First Nations, with the regulatory ability to report and validate final findings of such inspections and audits directly with any impacted First Nations
- CER OPR Filings Manual must undergo an extensive review in compliance with UNDRIP Act of Canada and all current case law. Other regulation guidelines such as ie Pipeline Damage Prevention, Event Reporting and Remediation Process Guide must also be reviewed as companion policy.
    - Ie: Guide P Tolls and Tariffs must be reviewed to ensure resource revenue sharing models
- CER OPR Environmental Assessments scopes, limits, boundaries and proposed mitigations must be inclusive of First Nation rights, interests, case law and legislation that include the interactions of effects from a cumulative analysis and residual effects
- CER OPR regulations, policy and guidance documents' definitions of interpretation/terminology must be inclusive of First Nation interpretation and definition
- CER OPR must ensure that the inherent jurisdictions and treaty provisions are induced and integrated
- Comprehensive review of CER OPR Emergency Management Program, Integrity Management Program, Training Program, Safety Management Program, Security Management Program, Pipeline Control System, Reporting requirements, Environmental Protection Program etc

CONCLUSION

The eleven (11) FHQTC member Nations belong to five (5) distinct linguistic groups: Nehiyawak; Anishinabek/Saulteaux; Dakota; Lakota; and Nakoda, all of which are situated within the vast territory of Treaty #4. As distinct Nations, they all possess a right and corresponding responsibility to ensure proper governance over their lands and traditional territories. The integrity of their land is deeply entrenched in their way of life and their intimate connection with their lands and everything that is entwined with it: the water; the environment; and its resources all tied to their Natural Laws. It is a process guided by sacred protocols that is deeply entrenched in their Indigenous ways of knowing that ensures the continuation of their way of life.

As members of five (5) distinct linguistic groups, each possess distinct processes by which they hold and pass on their knowledge from one generation to the next guided by sacred protocols – a state of collective consciousness. It is with this in mind, that we summarize our comments on the Onshore Pipeline Regulations (OPR) Discussion Paper and how the Canadian Energy Regulator (CER) can improve its operations through the OPR:

- CER must require early engagement from companies;
- CER needs to develop a modernized approach to address the discovery of an artifact or sacred site that will deal with First Nations respectfully, and that will allow them to carry out proper protocols when dealing with any discovery;
- CER must mandate regulated companies to operate in an open and transparent manner with the First Nations;
- CER can create tools for guidance on assessing ongoing cumulative effects during all stages of pipeline activities;
- CER needs to develop and define a process where Indigenous Knowledge systems and western science can work in tandem and complement one another;
- CER must engage directly with First Nations in pipeline oversight by providing regular updates to the First Nations, particularly those whose ancestral and Treaty territories are impacted;
- The CER must provide adequate financial resources to First Nations, Tribal Councils, Treaty and/or Regional organizations, so that information can reach the First Nations; and
- CER can develop tools on consultation and engagement for First Nations <u>with</u> First Nations that aligns with UNDRIP.

All of which is respectfully submitted.