Onshore Pipelines Regulation Review

Submitted by Wicehtowak Limnos Consulting Services LP

A George Gordon First Nation Company

July 7, 2022

Introduction

Wicehtowak Limnos Consulting Services LP (WLCS) is wholly owned by George Gordon First Nation and provides environmental and consulting services. WLCS was formed to ensure that the Nation's stewardship obligations are met and as such we are tasked with engaging with the Crown, regulators, proponents and other stakeholders.

The responses below are provided after internal consultation with George Gordon First Nation leadership, technicians and membership through group and one-on-one conversations. Our goal is to address all questions in the Onshore Pipeline Regulations Review Discussion Paper with the understanding that some are less relevant than others. We note that this document is supported by financial support for the CER, but that due to limitations in this funding we are not able to fully complete our analysis, In this regard, and with a goal of advancing reconciliation, we view this as a first step, and invite the CER to further dialogue on this issue.

For the purposes of this analysis, we are recognizing the roles of various stakeholders in the development and operation of pipelines. To ensure clarity, we define other parties as follows:

- Regulator: The entity that, through legislation at the Federal or provincial levels of government, has a mandate to oversee the approval, operations and decommissioning of pipelines. The CER is the primary regulator of concern for this discussion, but we note that the CER delegates large tranches of regulatory oversight to other bodes.
- Crown: The Crown is the government's responsible agent regarding oversight of pipelines. Federally regulated pipelines are overseen by the CER and this body is responsible for Crown consultation.
- Proponent: This is the entity that is proposing, operating, or decommissioning a pipeline. The proponent is responsible for all regulatory requirements regarding pipelines.
- Contractor: This is an entity that performs specified scopes of work for the proponent. They are obligated to follow regulatory requirements, but the proponent cannot assign their responsibility to any other party.
- Agent: This is an entity that performs tasks on behalf of the Crown. Agents cannot be assigned Crown obligations that stem from legislation or regulation.

Indigenous Rights and Legislation

There are government commitments in place enshrined in legislation and/or public declaration. The most critical of these commitments stem from the following:

- Canadian Energy Regulator Act: This defines the CER as the sole regulator and Crown entity for pipelines that cross provincial boundaries, and/or international borders.
- Impact Assessment Act: This act defines the Impact Assessment Agency as the federal regulator of designated projects. The Impact Assessment Agency sets the process for CER led impact assessments.
- United Nations Declaration on the Rights of Indigenous Peoples Act: This act enshrines the articles of the United Nations Declaration on the Rights of Indigenous Peoples as Canadian law, and as such must be applied to all Crown regulated activities.
- Truth and Reconciliation Commission Calls to Action: The federal government has committed to implement the Calls to Action. The website tracking progress (https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801) was last updated on June 23, 2022.

Questions

We have chosen to respond directly to questions posed by the CER in its OPR discussion paper. We note that our concerns are not fully addressed through our responses, but due to limited financial support and to ensure the Crown addresses our concerns with stemming from their queries, we have chosen this approach while maintaining that further consultation is required.

1. **What's working well in relation to the OPR, and its implementation, and what could be improved?**
   The OPR in its current form does not provide Indigenous Nations the ability to meaningfully assess projects regulated by the CER, nor does it provide capacity to complete monitoring as prioritized by the Nation. Our comments below aim to set out a path to ensuring Indigenous Nations can fulfill their stewardship obligations within the processes set out by the CER.

2. **How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?**
   The revised OPR regulations should have the TRC Calls to Action and UNDRIP provide core guidance for practice. Our suggested action items reflect the content and intent of the above documents. We have also reviewed the Canadian Energy Regulator Act (CERA), and although a legal review is beyond the scope of this response, we see no barriers to suggested practice based on the act.

WLCS has extensive experience with the IAMC created to facilitate engagement regarding the Enbridge Line 3 Replacement Project. Our involvement spanned from the creation of the Terms of Reference to present. We note that the IAMC is a secretariat of the Major Projects Management Office (Natural Resources Canada). WLCS successfully bid on scopes of work including capacity training in partnership with the CER in 2019 and conducting weekly filings reviews during construction.

The CER under CERA has responsibilities to Section 35 Rights Holders as an agent of the Crown. The structure of the IAMC creates a situation where the responsible regulator seconds engagement to a different Crown agent that does not oversee regulation of projects. The IAMC is limited in their ability to ensure that Nations can effectively exercise their stewardship obligations as they have no regulatory jurisdiction. The CER cannot assign responsibility for ensuring Section 35 Rights are upheld to Natural Resources Canada. In this light, the role of the IAMC is limited to engagement, and precludes consultation. As a Nation we have chosen to no longer participate in the IAMC process as there is no meaningful outcomes that can be obtained. We have rather had to engage with the proponent directly, which can create a perception that economic opportunities are interchangeable with stewardship.

In the past the CER has informed us that they cannot undertake activities that are deemed to be capacity building. This does not seem to be supported by any text in CERA, nor any other source. Rather as the responsible Crown agent, we view the role of the CER as critical to building capacity. This has a pragmatic advantage of creating a meaningful Nation to Crown relationship without the involvement of other Crown agents and a legal advantage of ensuring that Nations who cannot undertake meaningful stewardship activities have the ability to increase capacity following CER practice which reduces the reliance on outside technical and/or legal representation.

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?**
   In Saskatchewan Heritage Resources (HR) are defined by the provincial government and cannot be accessed by third parties unless they are HR professionals such as archaeologists. We have many examples of sites of Indigenous importance that were not identified by non-Indigenous HR professionals both due to features not being recognized and because many sites of Indigenous importance do not warrant HR protection under provincial law. There are no specific federal HR laws that can be used to protect Indigenous HR, and thus as the responsible Crown agent, the CER must ensure that this function is completed as per Nation protocols and methods.

The two most significant barriers are capacity to assess HR in areas to be disturbed and access to HR data from provincial regulators.

The revised OPR regulations should ensure that Nations can independently assess HR at any point during the project life cycle. We are often told that HR has been assessed in areas that have previously been disturbed, yet we can point to recent examples where mature rights of ways have yielded chance finds. Due to colonial attitudes regarding HR in the past Nations have been reluctant to identify sites of importance as they are most often not provided any legal or regulatory protection once identified, and as part of an Impact Assessment, Environmental Protection Plan, or other document, the information becomes public. We suggest the following:

- The CER should compel provincial HR regulators to disclose to the CER all HR data within the footprint of a project, including a buffer area. The CER should then make this information available to Nations as requested. We are cognizant that there is a public interest to keep HR information private, but this is outweighed by the rights of Nations to acquire and assess this data. There are legal mechanisms in place to ensure that HR information is kept confidential, and there are no barriers to including persons working for Nations to be included in the current information sharing processes.
- The CER should place equal weight on Nation-led HR assessment as it does with western approaches. Nations should be afforded the opportunity to assess HR at any time during the project cycle with a specific focus on predisturbance phases of projects, including in cases where the disturbance takes place on previously developed sites. The CER should provide the necessary resourcing to Nations to undertake this task.

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?**

WLCS has completed numerous Traditional Knowledge and Protocol (TKP) studies, including for the Enbridge Line 3 Replacement Project. Most often TKP is considered prior to project construction and the onus is placed on the proponent to provide capacity for Nations to undertake this work. As part of the project application the proponent indicates they have TKP information from a list of Nations, and CER procedures allow Nations to present this information in written and/or verbal form during application proceedings.

TKP is unique to each Nation and must be considered to be an evolving body knowledge that is added to in an iterative manner. Proponents and regulators often view TKP from a colonial perspective of the data representing a snapshot in time, often focused on pre-contact settlement and land use. This approach is not

consistent with UNDRIP or the TRC Calls to Action. Recent decisions such as Powley have reaffirmed this right as including current land use and practices.

Support for TKP studies offered by proponents is often financially limited and requires prescribed scopes of work. For example, Enbridge wanted a map of Traditional Use from George Gordon First Nation. We declined to provide this information, but rather defined the footprint of the project that lies within Nation Traditional Territory. Maps are powerful tools that have been used by the Crown and proponents in the past to exclude Nations that have previously defined Traditional Territories that do not capture sites of concern. Also, maps created for one particular project may not be relevant to other projects or Crown concerns, as Traditional Use impacts vary due to specific project parameters. We suggest the following:

- The CER should ensure that the Crown provides mechanisms that ensures Nations define and execute TKP studies that are consistent with their needs and the aims for TRC Calls to Action and UNDRIP. The Crown needs to be aware that any deficiencies regarding TKP may be viewed by Nations as infringing on Section 35 rights. Nations should be afforded the opportunity to conduct TKP studies as they wish and define their own scope of work.

5. **How can the use of Indigenous knowledge be addressed in the OPR?**
We note that the CER in the discussion paper identifies traditional gathering (i.e. medicinal plants) as an issue that can be addressed only through the utilization of Traditional Knowledge. This acknowledgement warrants the prioritization of the generation and inclusion of Traditional Knowledge into the updated OPR.

   The most significant barrier to meaningfully undertaking this activity is access to the entirety of the project footprint by Nation identified experts as a core task to be performed when deemed appropriate by the Nation. We anticipate that most Nations will choose to perform this work during the Impact Assessment phase of the project, to ensure Traditional Knowledge is included in any regulatory review and likely create project compliance conditions. The CER should support this work as it ensures that regulatory review braids western science with Traditional Knowledge and meets the outcomes defined in UNDRIP. This task should be supported financially as warranted and not through defined financial support amounts as now occurs with participant funding programs (PFP). In its current form the PFP perpetuates asymmetrical capacity with regards to the proponent, regulator and Crown; each of which have few if any limitations to professional and financial capacity; and Indigenous Nations, which are tasked with performing scopes of work in Traditional Knowledge of equal relevance to the project, but being subjected to colonial limitations on capacity support which in the case of proponents is often linked to accommodation and business development, and

through the PFP which is inadequate to perform work. To the standards that are warranted in Impact Assessment.

Another consideration is the limits to access to private lands. The Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA) is actively engaged in ensuring that Indigenous Nations are unable to access private lands. We note that several pipeline proponents have cited concerns regarding CAEPLA opposing access to the right of way and have deferred to requesting landowner permission to access lands for any Indigenous person working on stewardship obligations. Not surprisingly this is nearly always denied, and there are no simple options that can be undertaken by the proponent. Assessment of areas that had, may have had, or do have traditional use is a Section 35 right, and the Crown needs to ensure access. We are aware that the CER has the power to identify any individual as an agent allowing legal access, but to our knowledge this has been avoided in recent IAMC scheduled inspections.

We note that CAEPLA has a simple and transparent mandate to diminish Indigenous Section 35 Rights. A review of their website (https://www.caepla.org/) makes this obvious with articles such as:

- Ottawa's Hidden Plan to Open Your Property Up to First Nations Occupation (https://www.caepla.org/the_canadian_government_s_hidden_plan_to_open_your_property_up_to_indigenous_occupation)
- Illegal CER Inspections – We want to hear your stories (https://www.caepla.org/illegal_cer_inspections_we_want_to_hear_your_stories)
- Oh and another thing – Regulatory control over your land by "Indigenous Governing Bodies" (https://www.caepla.org/oh_and_another_thing_regulatory_control_over_your_land_by_indigenous_governing_bodies)

It is beyond the scope of this document to provide further context, but it is evident that many publicly stated positions of CAEPLA are hostile to Indigenous Rights and thus far they have been effective in precluding meaningful stewardship activities. We see no legal reason for the CER not to ensure Section 35 Rights are upheld, and failure to do so is a breach of the responsibility of the Crown.

6. **How can the OPR address the participation of Indigenous peoples in pipeline oversight?**
Our experience with the IAMC has provided ample evidence that this approach and oversight does not create meaningful involvement regarding stewardship promotion, largely for previously stated reasons. Our Nation has opted out of participation in IAMC activities as they, at best, create additional engagement but do not create any responsibility or positive actions regarding Section 35 Rights for the Crown or proponents. We also note that active participation in IAMC activities may actually erode perceived rights as the Crown and proponents can

claim ongoing IAMC engagement as a stewardship activity in which a Nation is participating voluntarily. We again stress that the CER cannot allocate activities that support Section 35 Rights to other federal agencies with no legal mandate to uphold these rights.

7. **How can the OPR support collaborative interaction between companies and those who live and work near pipelines?**
Many Section 35 Rights Holding Nations have inadequate capacity to address pipeline related stewardship priorities due to the asymmetric access to capacity and resources. We have previously defined this issue and note this as an action item. One area that we feel the CER can improve upon is access to expert staff. Nations have multiple contacts in a range of provincial and Federal programming that are Crown agents, often with multiple contacts at a single agency. This model is consistent with the CER, who allocates responsibility based on projects. We suggest that the revised OPR defines a Nation-to-Nation relationship which would ensure that the CER has a single point of contact for each Nation. This person would ensure that all issues identified by each Nation are addressed by the CER and any other responsible third party. We have in the past requested information from the CER and have not received responses most likely due to having queries addressed to the incorrect person. As an example see the email sent April 19, 2022 below:

"Hi (name redacted):

We corresponded last fall regarding MN-S and CER engagement; however I am writing in my role as President of Wicehtowak Limnos Consulting Services LP (WLCS) which is wholly by George Gordon First Nation. We regularly review filings and note that for the above project the CER sent correspondence to the proponent regarding a pipeline reactivation (L400-2021—01 01).

In this notification the following text appears:

The CER did not directly notify Indigenous communities who may have known and/or asserted traditional territory in the Project area when the application was received as the information in the application indicated that the potential for adverse effects on the exercise of rights in the Project area would be none or negligible. In coming to its decision, the Commission determined that the Project has no or negligible potential impacts on the exercise of Treaty or Indigenous rights in the Project area. The Commission also determined that the Project has no or negligible environmental or socio-economic effects.

As the entity charged with ensuring that the Nation's stewardship obligations are met and that Section 35 Rights are upheld it is important for us to unpack this assessment and understand how this determination is made. I understand that you may not be the most appropriate CER team member to undertake this discussion, but we would appreciate some informal follow up. If it is preferable within the CER for us to formally file a request we can do so.

Thanks for your attention to this matter, and I hope we can connect soon.

Scott Barnes, Ph.D., P.Ag."

This email has not yet received a response. We are hopeful that the revised OPR will address these significant gaps.

8. **How could communication and engagement requirements in the OPR be improved?**
   The previous response has outlined deficiencies in CER to Nation communication. Regarding proponent communication we note that in general it has been sufficient to address our concerns, but we also note that this is likely due to our proactive approach which may not be feasible for all Nations. Formal communication that stems from condition compliance has issues, as the format required especially regarding ongoing engagement creates tables and logs without any specificity or more importantly action items. We are not providing a full analysis here, as it is beyond the scope of this document. We will assert that the CER cannot second consultation to proponents, and we are aware of issues experienced by other Nations that have demonstrated that this communication standard is insufficient. We have also noted that Nation-proponent engagement addresses many issues that are not relevant to the Crown, and that proponents may choose to link economic opportunities with the execution of stewardship obligations which are Section 35 Rights. This is problematic as Nations may have to choose to curtail stewardship at the expense of meaningful accommodation and/or economic opportunities.

   We suggest that the revised OPR specifically delinks activities related to Section 35 Rights with economic opportunities. Both are critical aspects of UNDRIP, but the CER can only address activities which they regulate. We suggest that the CER advocates a modification of the present alternative dispute resolution as a model for proactive Nation-proponent communication. Nations should be able to request that the CER ensures that all stewardship activities proposed by the Nation to the proponent are reviewed and addressed with the CER acting as a mediator at any point in the process. This approach will allow for Nations with limited capacity to have their concerns addressed without prejudice from any proponent.

9. **How could the CER improve transparency through the OPR?**
   The CER has systems in place that do not provide adequate transparency. In our previous role with the IAMC we delivered capacity training in a partnership with the CER. This involved training on accessing REGDOCS which even for an experienced user is not a simple process. The CER should revamp the website to improve usability, but a meaningful additional step that could be completed immediately is to post all filings in RSS format. This would allow for any user to search the RSS database using one of numerous free RSS search engines.

An additional issue for transparency regards technical data. In 2018, as part of our scope of work with the IAMC we were tasked with reviewing data regarding historic releases on the Line 3 right of way. We asked the proponent and regulator for all relevant technical files. We received limited information from both parties, and what was received did not allow us to make a determination regarding the status and closure plans for these sites. The CER is responsible for ensuring sites with historic contamination are managed to achieve regulatory compliance, but there is an additional fiduciary duty to disclose to Nations the technical information that the CER considers to manage these sites. The revised OPR should create a database of all technical information gathered by proponents regarding management of all sites that have known or perceived environmental liability.

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?**

    We have no specific comments with regards to this question, except to point out that colonial systems to present have disadvantaged many with identified gender diversity. As a result, the Federal Government has made this approach a priority which is mirrored in our Nation. We have seen recent examples where addressing GBA+ issues has allowed for proponents to discount the importance of Section 35 Rights. This should not be considered from a zero-sum perspective but rather to view each priority as intertwined and foundational to any relationship.

11. **How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?**
    Much of the uncertainly and delays regarding CER regulated projects stem from issues arising from Section 35 Rights Holding Nations. We have previously in this document outlined issues of asymmetric access to capacity, and lack of access for Nation led assessments. The revised OPR may allow for an improvement of issues regarding competitiveness, but our perspective is that the Federal Crown as part of their commitment to net-zero carbon emissions by 2050 has targeted oil and gas transport as a source of concerns. This is borne out by well-known legislation that may impact Section 35 Rights and/or articles of UNDRIP.

    The revised OPR should take a global view of emissions and while holding to account Canadian companies, force an assessment of the carbon emissions per unit of imported oil and natural gas. This analysis should also take into account GBA+ and human rights concerns, with performance below Canadian standards in either requiring importers to mitigate impacts directly to Nations or other

parties with negative outcomes. It may be beyond the scope of the OPR to address these concerns, but it is clear that the current system of carbon pricing inordinately impacts Indigenous peoples that require hydrocarbon resources to follow traditional lifeways.

Project review times are in our opinion reasonable, with the caveat that all previously described Indigenous led stewardship activities must be fully supported as part of the project application and not viewed by the Crown as accommodation.

12. **How can the OPR support innovation, and the development and use of new technologies or best practices?**
    We feel that the CER has the tools at hand to provide a much better regulatory regime, if priorities are placed on transparency, capacity, inclusion of Traditional Knowledge and Crown to Nation consultation as previously described in this document.

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

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?**
    We have defined our suggested action to address questions 13 and 14, including release of all filings via RSS, a redevelopment of the CER website, and the appointment of a Nation specific single point of contact for the CER.

15. **How can the OPR be improved to address changing pipeline use and pipeline status?**
    Leave to abandon applications are problematic as they end the active role of the CER in infrastructure oversight, and essentially release the proponent from further environmental monitoring activities. We are aware that the legislation allows for the CER to compel a proponent to address environmental liability discovered after granting leave to abandon, but without any evidence being obtained through monitoring that is not a regulatory requirement there is no mechanism to address issues. We have two suggestions that address some of the present deficiencies:
    - We recommend that all leave to abandon applications are subject to a public hearing and approval process up to and including hearings. This should not be part of the application approval as most infrastructure has planned use over decades. The proponents should provide a remediation plan including all technical data to impacted Nations (as well as any other impacted stakeholders) for a limited period of review. If issues remain unresolved over the period of review, the CER should hold hearings limited to those parties with continuing concerns. This ensures proponents

are held to their responsibilities and Nations are able to assess infrastructure using current standards and best practices.
    - Once leave to abandon is granted, we recommend that all sites with known or suspected environmental liability continue to be regulated by the CER under the revised OPR. This ensures that sites are not transferred to provincial regulation where approval was granted federally. The Crown cannot assign responsibility for projects under their jurisdiction to provinces.

16. **What further clarification, in either the OPR (e.g. structure or content), or in guidance, would support company interpretation and implementation of management system requirements?**
    We have no response to this issue other than all suggested practices and activities described in our response are included in management systems and auditing activities in the revised OPR.

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?**
    As an Indigenous Nation that owns an Indigenous company we are challenged with these issues on an ongoing basis. Disinformation and structural biases are built into every entity we work with including the CER. From our perspective we support the aims of the CER to improve human and organizational factors. We note that human and organizational factors of specific relevance to Indigenous Nations and peoples are not addressed. The revised OPR provides an opportunity for progress on these issues:
    - All entities (Crown, regulator, proponent, and any other stakeholder) should be compelled to take Indigenous orientation training provided by one or a partnership of the Rights Holding Nations impacted by a project. This model would emulate HSE training required to access project sites. This training must come from a Rights Holding Nation and not an Indigenous advocacy or other non-governmental organization. We anticipate that this training could take place online or in person. We also note that this does not release the Crown, regulator or proponent from Nation specific training or engagement needs.

18. **How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?**
    There are a wide range of commercial HSE programs that allow for real time input of HSE data remotely, as well as being able to access data specific to a project using a single portal. We recommend that the CER conducts an audit of available systems and makes available their analysis for discussion.

19. **How can respect and personal workplace safety be assured at CER regulated sites?**
    We are personally aware of incidents that targeted Indigenous individuals, companies and Nations in a negative way since 2017; involving the Crown, regulator, and proponents. We will not provide specific information regarding these incidents but are encouraged that the CER recognizes their role to eliminate their own biases, and to ensure that their required practices uphold this standard. Many if not all of our suggestions to inform the development of the revised OPR will support this goal.

20. **How should the CER be more explicit about requirements for contractor management?**
    Our experience has shown that proponents retain one or more prime contractors to complete work on pipeline projects. These contractors report to the proponent, and there can be issues in consistency between action taken to support stewardship as agreed to by the proponent and Nations. The ultimate responsibility for these issues lies with the proponent as deemed to be required by the regulator.

    We suggest that whenever a proponent chooses a contractor that conducts activities on their behalf that are subject to CER oversight that the persons responsible at the specific contractor are made public. This can be done simply by the contractor acting on behalf of the proponent filing within the current system. The outcome of this initiative is the creation of necessary transparency within the system so Nations can contact those who are completing real-time work on a project.

21. **How should the OPR include more explicit requirements for process safety?**
    Process safety is promoted through improved transparency and communication through all phases of a project. Our suggested revisions to the OPR support this and are likely sufficient to achieving this goal.

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

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?**
    From our perspective environmental protection programs (EPP) are generally of good quality and ensure regulatory compliance. This does not however ensure that issues identified by Nations are included. During our monitoring for Line 3, we were able to see sites that we identified as important to Indigenous Nations in the EPP and associated alignment sheets. This disclosed a location but did not allow for our monitors to know more such as the nature of the Indigenous valued

component, the specific mitigation nor the Nation(s) with concerns. We asked for this additional information but were told it was confidential, which is consistent with many Nation information sharing protocols. We were unable to assert that site specific mitigation was undertaken at any of these locations.

In cases such as this it makes the most sense for the Nation identifying sites of concern to be present during all phases of the project that may impact the site. The CER in the revised OPR should compel proponents to make site access and monitoring mandatory if requested by the Nation. This approach allows for Traditional Knowledge to be kept confidential but promote required stewardship mitigation.

24. **How can contaminated site management requirements be further clarified, in the OPR or in guidance?**
In our opinion addressing this item is beyond the scope of our response, as it largely refers to the remediation process guide (2020). We can engage with the CER specifically regarding the guide, but also note the following:
    - The guidance provided by the CER states that annual reporting must be complete by June 30 each calendar year. We were unable to find any public records of these reports for 2021 or previous years on the CER website. This is public information that should be shared with all impacted Nations.
    - The remediation process does not account for Indigenous Knowledge, nor does it uphold all articles of UNDRIP.
    - There is no publicly available list of sites that includes environmental data. We have looked at the CER Interactive Pipeline Map (https://www.cer-rec.gc.ca/en/safety-environment/industry-performance/interactive-pipeline/) for incidents in Saskatchewan and using the available filters cannot look at all data. Releasing this data by RSS would help, but the map system needs updating and environmental data embedded.

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?**
Emergency management is a key issue for Nations and we are aware of gaps. From a technical viewpoint we are satisfied with the standards required. Our experience with proponents is that they are quite willing to involve Nations in field and desktop exercises, but in our view these provide limited benefits. We suggest that the revised OPR creates standards of notification for Nations. As previously demonstrated current practices for defining impacted Nations exercised by the CER is inadequate. Rather we suggest that for emergency response (as well as all other CER regulated processes defined geographically) the CER engages with Nations to have them define their own geographic boundaries regarding immediate response notification, remedial activities, incident investigation and closure. Each Nation is likely to have their own

notification standards that vary between phases of response and project. This self determination is key to upholding the aims of UNDRIP and promotes reconciliation.

26. **How could the requirement for a Quality Assurance Program be improved or clarified in the OPR?**
    We have no comments on this 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?**
    We have no comments on this question.

28. **What are your recommendations for compliance promotion at the CER?**
    Compliance promotion is an issue that is evolving. We are encouraged that the CER is seriously considering updating practices in the revised OPR but assert that this issue is secondary without actions taken from an Indigenous viewpoint as previously described in this document.

29. **How do you want to be engaged by the CER in the development of technical guidance?**
    We view these comments as a first step in the revision of the OPR. We are ready and capable of providing more information and formally request follow up to this document through an in-person meeting prior to the end of July 2022.

Conclusion and Next Steps

We would like to thank the CER for providing support for this analysis. As noted we view this as a first step and request that the CER follows up based on a Crown to Nation relationship that promotes the goal of reconciliation. Feel free to contact the undersigned.

Respectfully;

[redacted] Ph.D., P.Ag.

President, Wicehtowak Limnos Consulting Services LP

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