



Makwa Sahgaiehcan First Nation

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Onshore Pipeline Regulations Review Team

Canadian Energy Regulator

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Calgary AB. T2R 0A8

Dear Review Team,

Re: Makwa Sahgaiehcan First Nation Review of the Canadian Energy Regulator's Onshore Pipeline Regulations Phase 1 Discussion Paper.

This submission is made on behalf of Makwa Sahgaiehcan First Nation ("MSFN"). MSFN holds Aboriginal and Treaty rights as recognized and agreed to by the spirit and intent of Treaty 6 and affirmed under Section 35 of the *Constitution Act, 1982*. MSFN also holds collective *Natural Resource Transfer Agreement, 1930* rights on all unoccupied Crown lands and other lands where there is a right of access.

This submission is part of MSFN's participation in the Canadian Energy Regulator's ("CER") *Onshore Pipeline Regulations* ("OPR") review process.

It was important for MSFN to participate in this review process given the negative effects that pipeline activities have on lands and resources critical to MSFN's way-of-life and the level of pipeline development present on lands to which MSFN holds Aboriginal and Treaty rights.

Pipelines and related facilities should be constructed, operated, decommissioned, and reclaimed in such a way that minimizes disturbance to lands and resources, cumulative effects, and impacts to Aboriginal and Treaty rights. Unfortunately, current regulations and regulatory requirements are not sufficient for this to occur meaningfully or reliably.

The table attached below includes MSFN's reply comments to questions posed within the *OPR* Discussion Paper. Issues, questions, and gaps identified within MSFN's reply comments must be considered and addressed by the CER within any updates to the *OPR* and prior to finalization.

In addition to the reply comments provided in the table below, MSFN has identified the following overarching issues and concerns that relate to the *OPR*:

Consideration of Aboriginal and Treaty Rights

Currently, there is no recognition or specific considerations to Aboriginal and Treaty rights or impacts to these rights within the *OPR*. This is a significant gap. Indigenous nations in Canada have constitutionally protected rights, which require consultation and accommodation whenever there is a potential impact from development projects. The *OPR* does not indicate any requirements around the consultation, notification, or involvement of Indigenous nations that may be affected by an activity. The *OPR*'s lack of transparency and inclusion of considerations relating to or seeking to protect Aboriginal

and Treaty rights directly impacts MSFN. Any impacts to MSFN's Aboriginal and Treaty rights need to be specifically acknowledged and there needs to be requirements put in place to ensure they are directly and proportionately accommodated either through elimination measures or reduction and control measures.

Cumulative Effects

At present there is no consideration to cumulative effects in the *OPR*. Cumulative effects are the combined effects of development and human activities within a delineated geographic extent that occur over time (past, present, and future). Assessing cumulative effects involves analyzing how specific impacts caused by each development activity or disturbance interacts with each other and how they collectively create changes (positive or negative).^{1, 2}

As recently noted in the recent *Yahey (Blueberry River First Nations) v. British Columbia 2021 BCSC 1287* decision, a provincial government's power to take up lands "is not infinite. The province cannot take up so much land such that Blueberry can no longer meaningfully exercise its rights to hunt, trap, and fish in a manner consistent with its way of life. The province's power to take up lands must be exercised in a way that upholds the promises and protections in the Treaty."² The lack of consideration to Treaty promises, cumulative effects, and lands taken up thresholds places the provincial and federal governments at risk for infringing upon Aboriginal and Treaty rights.

Specifically, there is a failure within the western regulatory system to identify impacts to Aboriginal and treaty rights on a project-by-project basis. Project-specific impacts are usually classified as 'negligible' or 'insignificant'. As a result, significant diminishment of the ability to exercise rights occurs over time. When impacts, such as disturbance or 'lands taken up' are viewed collectively through a cumulative effects lens, infringement to Aboriginal and Treaty rights is the result. Regulatory approval processes are restricted to considering adverse effects resulting from a project within a defined spatial scope specific to that project. Therefore, the consequences of taking up of land from the approval of a project is not considered in a comprehensive way to ascertain whether a meaningful right to hunt, fish or trap remains post-approval. These are critical information gaps that needs to be resolved.

Capacity

The duty to consult and accommodate carries with it the obligation to ensure adequate and sustained funding for Indigenous nations to carry out the ongoing work of identifying and articulating their interests and to participate in decision-making processes. Currently, the *OPR* does not include requirements that companies must provide adequate capacity funding to allow Indigenous Nation to participate in consultation activities or other related opportunities. This lack of capacity funding may result in meaningless consultation in which the Nation affected is required to accept the burden of the costs to participate, or risk not being able to voice the impacts a project has on Aboriginal and Treaty rights.

¹ Government of Canada. *Cumulative effects in Canada's boreal forests* (2021) <https://www.nrcan.gc.ca/our-natural-resources/forests/sustainable-forest-management/cumulative-effects-canadas-boreal-forests/23568>

² Indigenous Centre for Cumulative Effects. *Cumulative Effects* (n.d.) <https://www.icce-caec.ca/cumulative-effects/>

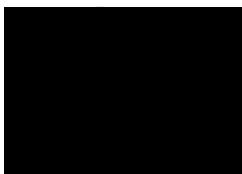
Specific Definitions and Higher Standards

Typical statements in regulations includes terms such as ‘adequate’ and ‘meaningful.’ These terms are used on multiple occasions to discuss regulations and standards and are not often clearly defined. These terms are subjective in nature, and it is likely that using them will lead to differing understandings of expectations between all parties. Definitions of these terms would help to ensure that expectations are clear for all parties involved, minimizing discrepancies.

The standards outlined in the *OPR* are low or easily achieved. There is a risk that companies will follow the bare minimum standards outlined in the *OPR* and not strive to exceed expectations, become competitive with other companies, and look to improve the consultation process between regulated companies and Indigenous nations. Standards laid out in the *OPR* ought to be higher to encourage innovation as well as ensure proper considerations to Aboriginal, Inherent and Treaty rights and greater involvement of Indigenous nations in *OPR*-related activities. Creating higher standards will also allow regulators to take a proactive approach in the much-needed oversight of projects.

MSFN provides these comments for the phase 1 review of the *OPR*, with the expectation that the comments provided will be considered and result in meaningful additions or amendments to the *OPR* with details on how the *OPR* includes these revisions. If comments are excluded from consideration, MSFN requests that explicit reasoning be given as to why that decision was made. We also expect that the CER will respond to any questions posed within our review table. If questions cannot be answered, we will look for rationale to be provided as to why not. MSFN will require the requested responses and details to guide the next phase of our engagement and our future comments.

Sincerely,



Chief [Redacted]
Makwa Sahgaiehcan First Nation

#	Discussion Paper Question	Reply Comments
1.	<p>What’s working well in relation to the OPR, and its implementation, and what could be improved?</p>	<p>The CER’s website indicates that the <i>OPR</i> is one of the CER documents that outlines expectations for companies’ engagement with Indigenous nations.³ Yet, there is no reference to Indigenous nations, or Aboriginal and Treaty rights in any part of the current <i>OPR</i>. Given this, it is unclear how the <i>OPR</i> considers, relates to, or protects Aboriginal and Treaty rights or what requirements are set out for companies to follow within these regulations. Further, the <i>OPR</i> does not include any explicit requirements pertaining to consultation, notification, or involvement of Indigenous nations that may be affected by any activity regulated under the <i>OPR</i>. This is inappropriate; there are many activities regulated by the <i>OPR</i> that directly affect Indigenous nations and their rights and interests. For example, monitoring and emergency response. The <i>OPR</i>’s failure to outline requirements for ongoing consideration and protection of Aboriginal and Treaty rights or consultation or inclusion of Indigenous nations in regulated activities leaves Nations, like MSFN, vulnerable. Nations are vulnerable to not having meaningful opportunities to participate and provide input, and to having our rights further impacted by pipeline activities.</p> <p>Requirements related to Indigenous nations and their rights cannot be left to guiding documents like the CER’s Early Engagement Guide or Filing Manual. Guidance documents are useful tools, but they are not binding, and they do not have same the force and effect of regulations. Regulations directly and formally speak to the implementation of legislation (in this case the <i>CER Act, 2018</i>). The <i>OPR</i> needs to contain specific requirements to ensure Indigenous nations are meaningfully consulted or included, and impacts to rights are considered, throughout the lifecycle of a project. There must also be requirements set to ensure that any impacts to rights resulting from a project directly or cumulatively are adequately accommodated either through elimination measures, or a combination of reduction and control measures.</p> <p>Further, the <i>OPR</i> should be the location in which cumulative effects to Aboriginal and Treaty rights are contemplated and addressed. Project-specific regulatory processes do not adequately consider how a project’s impacts will contribute to already present cumulative effects on lands and resources essential to the exercise of Aboriginal and Treaty rights. Projects are approved and managed in relative silos and cumulative effects continue to grow to such a degree that there has been a significant diminishment in Nation members’ ability to exercise their rights, without proper accommodation being identified.</p> <p>The <i>OPR</i> should also include explicit requirements for the provision of capacity funding to facilitate participation of impacted Nations in any consultation-related activities.</p>
2.	<p>How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?</p>	<p>Without acknowledging and actively working to set appropriate requirements and standards in place pertaining to Indigenous nations and their Aboriginal and Treaty rights, the <i>OPR</i> cannot contribute to reconciliation.</p> <p>As per the Call to Actions identified by the Truth and Reconciliation Commission⁴, two of the common actions to support reconciliation identified throughout are: 1) the requirement to renew or establish Treaty relationships and, 2) the implementation of the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> (“<i>UNDRIP</i>”). Neither of these reconciliation-related actions can occur without first explicitly including requirements for meaningful</p>

³ At Company engagement with Indigenous peoples sub-heading, the CER states “These expectations are outlined in the Early Engagement Guide, the CER’s Filing Manual and the Onshore Pipeline Regulations” <https://www.cer-rec.gc.ca/en/consultation-engagement/crown-consultation/index.html>

⁴ https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf

#	Discussion Paper Question	Reply Comments
		<p>consultation with Nations with the objective of seeking free, prior, and informed consent, along with regulated steps to ensure that impacts to rights are directly and proportionately accommodated and infringement does not occur.</p> <p>Further, as previously stated, the <i>OPR</i> should be where cumulative effects to Aboriginal and Treaty rights are contemplated and addressed. Project-specific regulatory processes do not adequately consider how a project's impacts will contribute to already present cumulative effects on lands and resources essential to the exercise of Aboriginal and Treaty rights. Projects are approved and managed in relative silos and cumulative effects continue to grow to such a degree resulting in the significant diminishment on Nation members' ability to exercise their rights, without proper accommodation being identified. There is limited understanding by federal and provincial governments on the current conditions of lands where MSFN holds Aboriginal and Treaty rights, or whether there has been too much land taken up resulting in the significant diminishment of our rights. As the <i>OPR</i> regulates activities that damage lands and resources, directly impacting Aboriginal and Treaty rights, it is important that the <i>OPR</i> includes actions meant to address direct and cumulative impacts from pipeline activities. At present there is no understanding of the amount of lands already taken up by development or through disturbance.</p> <p>MSFN also wants to clarify that while monitoring opportunities, such as the described Indigenous Advisory and Monitoring Committees or the Indigenous Monitoring Program that is being developed, can be positive in that they provide opportunities for Nations to remain apprised of project activities and oversight actions, are not accommodation for impacts to rights, nor are they substitutes for requirements that impacts to rights be assessed and addressed within the regulatory process prior to any decision-making steps by the CER. Moreover, there needs to be clarity as to the purpose of Indigenous monitoring programs and their influence within oversight directives and other requirements placed on companies as a project progresses through its lifecycle. Monitoring should not be performative in nature. Rather, it should have the ability to ensure accountability, foster transparency, and allow for ongoing involvement of Nations and considerations to Nations' rights and interests related to a single project and all pipeline activities regulated by the CER and its <i>OPR</i>.</p>
3.	<p><i>How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?</i></p>	<p>Heritage resource lists identified by the Crown do not consider the full scope of culturally critical sites or landscapes that are important to Nations for continuation of culture and way-of-life. The heritage resource list is also site-specific and does not acknowledge that historical and cultural significance applies more broadly to all lands and resources to which a Nation holds connection. In order for the <i>OPR</i> to contribute to the protection of heritage resources, the understanding of MSFN's connection to all lands and resources in Treaty 6 and Saskatchewan needs to be acknowledged.</p> <p>Additionally, there is limited transparency on how heritage resources are identified and how a connection with a specific Nation is determined. This includes how companies identify mitigation approaches and how heritage resource discovery contingency plans are developed. It is important to MSFN that clarification be provided on how these connections, approaches, and plans are developed, how they take Indigenous concerns and impacts into consideration, and the reasoning of how Indigenous concerns and impacts are addressed.</p>
4.	<p><i>How can the OPR contribute to the protection of traditional land and resource use, and sites of significance for Indigenous peoples</i></p>	<p>'Traditional land and resource use' ("TLRU") is an extremely narrow, site-specific approach, to assess impacts to Aboriginal and Treaty rights; TLRU does not capture the full scope of rights or how they are impacted by development activities.</p>

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	<p>on a pipeline right-of-way, during construction, and operations and maintenance activities?</p>	<p>Moreover, the term TLRU is a shallow term used to minimize the existence of Aboriginal and Treaty rights – rights which are constitutionally protected. MSFN has Aboriginal and Treaty rights on all unoccupied Crown lands throughout Treaty 6 and the province of Saskatchewan. TLRU requires Nations to ‘prove’ use of rights in specific spots which in turn is weaponized against them and used to justify impacts without appropriate accommodation. MSFN does not agree with this approach as it fails to recognize the Treaty relationship and the requirement of the Crown to protect Aboriginal and Treaty rights or accommodate for impacts where rights are not able to be protected. This approach also does not take into account cumulative effects of other projects, activities, and disturbances that are already present on the lands.</p> <p>Focusing on TLRU does not ensure adequate consideration to Aboriginal and Treaty rights and proper protection or accommodation of those rights. As such, the CER, both in the OPR and in all other regulatory documents and processes, needs to move away from this focus and terminology.</p>
<p>5.</p>	<p>How can the use of Indigenous knowledge be addressed in the OPR?</p>	<p>In MSFN’s previous experience, Indigenous knowledge that is provided can often be misinterpreted or downgraded when referenced in decision-making documents. With the time and effort, it takes to collect Indigenous knowledge and provide information on impacts to Aboriginal and Treaty rights, it is frustrating and disheartening to the Nation when the process of how the information is incorporated, or not, is unclear.</p> <p>The <i>OPR</i> needs to be transparent in the process of how information shared by Nations is considered and what the related requirements are for companies and the CER/Crown. This includes requirements that consultation occurs through the lifecycle of a project and other opportunities for involvement that are both meaningful and accessible to continue information sharing. It also means requirements as to how Indigenous knowledge and information pertaining to a Nation’s rights and interests are considered, utilized, and included in any documents or activities pertaining to a pipeline. There must also be requirements that any exclusion of information shared by Indigenous nations must be identified and rationale for exclusion must be provided.</p> <p>Any request for Nation participation in consultation-related activities, including the sharing of information and Indigenous knowledge, must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
<p>6.</p>	<p>How can the OPR address the participation of Indigenous peoples in pipeline oversight?</p>	<p>The <i>OPR</i> needs to explicitly outline requirements as they relate to the participation of Indigenous peoples in pipeline oversight. It is important that oversight over pipeline activities is not limited to a project-by-project focus, but also includes broad oversight over cumulative pipeline activities and their effects on the lands.</p> <p>Moreover, there needs to be opportunities for all Nations to have equal say in oversight activities rather than looking to assign one Indigenous person or group to speak on behalf of all Nations. We frequently see government bodies trying to narrow their engagement with, or involvement of, Indigenous nations down to just one person or group. While this may simplify things from the perspective of the Crown, it is not appropriate or reflective of the collective rights, and the diverse and distinct culture, information, and interests that each Nation holds.</p> <p>Any request for Nation participation in consultation-related activities, including involvement in oversight-related works, must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>

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7.	<i>How can the OPR support collaborative interaction between companies and those who live and work near pipelines?</i>	<p>Considerations for collaborative interactions within the <i>OPR</i> should not be limited to those who work and live near pipelines. This is a very western-centric perspective that does not take into consideration Nation members exercising Aboriginal and Treaty rights and discrimination against Nation members while exercising their rights. MSFN members often exercise their Aboriginal and Treaty rights in areas where pipelines are located but may not live or work nearby. MSFN members frequently travel further from their place of residence, due in large part to the amount of cumulative effects on the land and the lack of available lands compatible with the exercise of rights. MSFN members have also experienced harassment and racism when exercising their rights in the vicinity to development sites.</p> <p>As land continues to be damaged and taken up, it is likely MSFN members will be forced to travel further and exercise their rights in closer proximity with pipelines. This makes them vulnerable to unwarranted, uncomfortable interactions with companies and their employees or contractors. It also creates barriers to the exercise of their rights. This needs to be distinctly addressed within the <i>OPR</i>.</p>
8.	<i>How could communication and engagement requirements in the OPR be improved?</i>	<p>It is not enough to have secondary guiding documents, implied recommendations, or to encourage companies to communicate and engage. The only way to ensure that communication and engagement with Indigenous nations is improved through the <i>OPR</i> is to ensure that there are actual requirements pertaining to communication and engagement identified and formally laid out for everyone to follow.</p> <p>As previously stated, the <i>OPR</i> currently does not include any explicit requirements for communication or engagement with Indigenous nations. Communication and engagement requirements for companies need to be identified in consultation with Indigenous nations. These requirements must then be directly laid out within the <i>OPR</i>.</p> <p>There also needs to be greater oversight from the CER to ensure that all companies are sufficiently fulfilling communication and engagement requirements once they are detailed in the <i>OPR</i>. Current oversight approaches lean towards involvement after the fact, rather than proactive involvement by the regulator. This places the burden on MSFN and other Nations to raise concerns. This can lead Nations to potentially find themselves in conflicts with companies because of this approach to oversight. It would be better if the CER took steps to actively guide and intervene before complaints arose.</p> <p>Further, there needs to be set parameters around how communication or engagement activities are assessed for adequacy or meaningfulness. Without knowing what the CER's definition of 'meaningful' or 'adequate' communication and engagement or how they assess for this, it is challenge for both Nations and companies to navigate related requirements.</p> <p>Any request for Nation participation in consultation-related activities, including communication and engagement activities with companies, must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
9.	<i>How could the CER improve transparency through the OPR?</i>	<p>Currently, MSFN does not consistently receive ongoing, fulsome communication from companies or the CER once a project is approved. This makes it difficult to understand the progress of the project and how the project is</p>

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		<p>impacting Aboriginal and Treaty rights as it progresses, both from a project specific and cumulative effects perspective.</p> <p>There is too much delegating of information sharing onto companies with little oversight or follow-up from the CER. This makes it difficult for Nations to understand what activities are going on, and what involvement the CER has. Further, delegating this information sharing means that Nations only receive information from one project or project activity at a time. This creates a gap where Nations are left uninformed about the bigger picture of all projects and all activities ongoing from all projects. If the CER wants to continue to delegate information sharing activities to companies, they need to ensure that companies are accurately representing project activities, including any engagement with Indigenous nations and what measures are being put in place to accommodate for impacts with Aboriginal and Treaty rights</p> <p>Additionally, if the CER wants to increase consultation or Nation engagement in activities under the <i>OPR</i>, they need to ensure that information shared by Nations is being actively considered and incorporated into related documents, decisions, and actions. They should also require that in any instances where information shared by Nations is not considered or included that rationale be expressly noted and reported to the Nation.</p>
10.	<p>Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:</p> <ol style="list-style-type: none"> a. those people implementing the <i>OPR</i>; or b. those people who are impacted by the operational activities addressed in the <i>OPR</i>? 	<p>Accountability loops, increased training, and greater opportunities for Indigenous peoples to be employed by or involved otherwise in overseeing or carrying out policies and initiatives could be steps that the CER could take to address inequalities, discrimination, and colonial thoughts and systems within their policies and initiatives.</p> <p>Further, increased awareness, consideration, and steps to address racism and violence toward Indigenous peoples, especially Indigenous women, in areas where operational activities are taking place must occur. This must be explicitly considered in the <i>OPR</i> and reflected in any related policies, documents, initiative etc.</p>
11.	<p>How can the <i>OPR</i> support a predictable and timely regulatory system that contributes to Canada’s global competitiveness?</p>	<p>A ‘predictable and timely regulatory system’ should not come at the expense of meaningful consultation with Indigenous nations. MSFN requires the CER and, by extension, the <i>OPR</i> to carefully consider, protect, and accommodate where necessary, for impacts to MSFN’s Aboriginal and Treaty rights. The <i>OPR</i> should be used to support this requirement, rather than be a vessel to facilitate continued prioritization of economic benefit or “global competitiveness” at the expense of rights and the environment.</p>
12.	<p>How can the <i>OPR</i> support innovation, and the development and use of new technologies or best practices?</p>	<p>Although it is a positive step forward for the <i>OPR</i> to support innovation and the use of new technology and best practices, this does not negate the fact that irreparable damage has already occurred to lands and resources. The <i>OPR</i> should consider addressing current conditions as well as impacts from future activities in the push for new best practices, innovation, and new technology.</p> <p>The <i>OPR</i> could be a means of pushing companies to break out of their comfort zones and pursue innovative solutions to address impacts to rights and the environment. For this to occur, the <i>OPR</i> must include clear regulations and higher standards to hold companies accountable to the damages that have been done in the past</p>

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		and to minimize future damages by following a high standard of practice. These regulations and high standards need to be established for both specific projects as well as cumulative effects.
13.	<i>What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?</i>	<p>The CER must consider metrics specific to Aboriginal and Treaty rights. Without these specific metrics, the CER cannot support enhanced oversight and transparency for CER-regulated facilities. These metrics need to be developed in consultation with the Nations for both specific projects and cumulative effects.</p> <p>Any request for Nation participation in consultation-related activities, including involvement in oversight-related works, must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
14.	<i>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?</i>	<p>Data and digital innovation ought to support Nations as well as companies and the CER. It can be a great deal of effort and cost to track down information necessary to MSFN, in order to engage in consultation-related activities and remain apprised of activities occurring on lands to which the Nation holds Aboriginal and Treaty rights. Often the Nation must make multiple requests to companies to get information required, as well as pay fees to access geospatial data. Specifically in Saskatchewan, data is not easily attainable because it needs to be requested for each individual project. MSFN has also had instances where data sets have been incomplete, making it difficult to analyze and provide written comments to a proponent. Having to chase companies and carry costs of information gathering is a strain on MSFN's staff and resources. These barriers do not allow for meaningful consultation to happen.</p> <p>MSFN also has concerns around data storage and confidentiality. All data provided within the <i>OPR</i> should only be used for the project it is intended unless specific consent is obtained from MSFN.</p>
15.	<i>How can the OPR be improved to address changing pipeline use and pipeline status?</i>	<p>It would be beneficial for the <i>OPR</i> to provide regulations around protocol when impacts change, or a new impact arises, in relation to pipeline use and pipeline status. This protocol needs to take into account impacts to Aboriginal and Treaty rights at all stages of a project, including reclamation, and how the impacts can be eliminated, reduced, or accommodated appropriately. The <i>OPR</i> needs to explicitly consider how changes in status present potential impacts, which happen both specifically in a project, and cumulatively to the land. This protocol should also include the communication and engagement requirements with Indigenous nations that companies need to follow.</p> <p>Any request for Nation participation in consultation-related activities must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
16.	<i>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?</i>	<p>As previously stated, the <i>OPR</i> does not consider or explicitly speak to Aboriginal and Treaty rights. The <i>OPR</i> also does not include any requirements to consult with, notify, or otherwise involve Indigenous nations related to management systems. Conditions and commitments stemming from a project approval may include more specific details related to consultation/involvement of Indigenous nations and considerations to Indigenous nations' rights and interests. However, there is a great deal of variability in what conditions or commitments are applied per project. Having requirements explicitly identified in the <i>OPR</i> would address variability gaps and increase expectations on companies to consider and mitigate impacts to rights for project specific impacts as well as cumulative effects.</p>

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		<p>Further, as previously stated, directives within guiding documents or supporting documents are useful tools but they do not hold the same weight or force as regulations do. The <i>OPR</i> ought to include explicit details to ensure that requirements pertaining to Indigenous nations and their rights and interests are followed and enforceable.</p>
17.	<p><i>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?</i></p>	<p>Information about human and organization factors should be explicitly defined in the <i>OPR</i>, especially as they relate to risk management and emergency response.</p> <p>Factors specific to Indigenous nations should be developed in consultation with Nations, so that Nations who engage with multiple projects and project activities are better prepared to address and navigate these factors.</p> <p>Any request for Nation participation in consultation-related activities must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
18.	<p><i>How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?</i></p>	<p>Currently, company safety manuals as well as the Safety Management Program do not adequately consider safety risks to Indigenous nation members while exercising their Aboriginal and Treaty rights. Considerations to safety often focus on workers on site and nearby residents, without considering potential impacts to Indigenous peoples. There may be Indigenous peoples in the vicinity of the project exercising rights, who will be uniquely vulnerable should an accident or incident occur and there is no process to consider them or notify their Nations. The <i>OPR</i> must recognize this discrepancy and improve the connection between overall safety and Aboriginal and Treaty rights.</p> <p>Additionally, Indigenous nations must be made aware of accidents, malfunctions, or other safety-related incidents in a timely manner, with provision of fulsome information and identified opportunities for inclusion of the Nation in any follow-up actions.</p>
19.	<p><i>How can respect and personal workplace safety be assured at CER regulated sites?</i></p>	<p>CER regulated work sites need to explicitly state their requirements and protocols around ensuring respect and workplace safety for Indigenous peoples, including those employed at the worksite and those living and exercising their rights in the vicinity of a CER regulated site. MSFN members have experiences with being harassed by government representatives and companies' employees while exercising their rights. Members have also faced racism and discrimination while seeking, or within, employment. Interactions such as these demonstrate the vulnerability of, and lack of safety afforded to, Nation members within colonial, western society, and systems. In MSFN's experience on CER regulated work sites, there have been unsafe and discriminatory instances. This needs to be addressed urgently and actively.</p> <p>Improving Indigenous peoples access to jobs, training, and other employment and contracting opportunities would be beneficial. As would creating more meaningful space for Indigenous nations and peoples to be in oversight positions.</p>
20.	<p><i>How should the CER be more explicit about requirements for contractor management?</i></p>	<p>The <i>OPR</i> needs to include explicit requirements for Nations to be notified of what contractors are operating under each regulated company. Nations ought to receive information on each contractors' functions, timing, and process. There must also be information provided that speaks to how the contractor's policies or processes align or diverge with the proponent's project plan documents, like emergency response plans or environmental protection plans. There are usually numerous contractors on any given site, and it is not clear what procedures are being followed by each individual contractor.</p>

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		<p>Further, it is also difficult to ascertain what a contractor’s understanding, or required understanding, of 1) Aboriginal and Treaty rights, 2) the conditions applied for on a project, and 3) their requirements to communicate/involve/engage with Indigenous nations. This can lead to unsafe and uninformed interactions and instances of racism or harassment to Indigenous nations and their members by contractor employees. It can also lead to unforeseen or further amplified impacts to Aboriginal and Treaty rights.</p>
21.	<p><i>How should the OPR include more explicit requirements for process safety?</i></p>	<p>The OPR needs to provide explicit instructions as to what the standards are for process safety and how they should be properly implemented. These explicit instructions will require the OPR to define subjective terms such as ‘adequate’ and identify parameters for how actions are assessed for whether they meet the standards defined by these types of terms. Without this clarification, any statements, or requirements within the OPR are open for interpretation and create unnecessary confusion for all involved parties, including Indigenous nations.</p> <p>Further safety requirements must be increased to ensure that minimum standards push companies to seek innovation and improve best practices related to safety. Regulations define minimum requirements and then encourage companies to exceed those minimum requirements. Without formal incentives, companies have no reason to go above or beyond the minimum.</p>
22.	<p><i>How can the OPR drive further improvement to the environmental performance of regulated companies?</i></p>	<p>The OPR can drive improvement of environment performance of regulated companies by setting higher standards for environmental performance from companies, including explicitly stated parameters around how to meet set standards, for both specific projects and cumulative effects. This includes stricter limits related to water, soil, and air contamination as well as wildlife and vegetation protection. These parameters should be co-developed with Indigenous nations.</p> <p>Regulations are often meant to represent the minimum requirements, but companies are encouraged to take additional steps. The issue is that often the minimum requirements are all a company will want to fulfill, and they have no incentive or need to extend themselves beyond the minimum. This practice and the lack of strict, high, standards, negatively affects the environment and impacts Aboriginal and Treaty rights.</p> <p>Any request for Nation participation in consultation-related activities, including involvement in identifying environmental performance standards, measures, and requirements, must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the OPR.</p>
23.	<p><i>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?</i></p>	<p>The Environmental Protection Plans and Environmental Protection Programs need to specifically include mitigation and accommodation measures to address impacts to Aboriginal and Treaty rights both directly from a project and cumulatively with other projects. It is not sufficient to use biophysical mitigation measures as proxies or state insignificant concessions⁵, measures must be direct and proportionate and need to either eliminate, reduce and/or control each impact.</p> <p>Appropriate measures to address impacts to Aboriginal and Treaty rights must be developed in consultation with all impacted Nations. Measures should be reviewed periodically to ensure they are suitable and updated, when</p>

⁵ For example, companies will often make the commitment to provide Nations with a construction schedule as a measure to eliminate access impacts to Aboriginal and Treaty rights. However, a construction schedule does not eliminate, reduce, or control for the legal change in land that is attached with the granting of a disposition and the transfer of unoccupied Crown lands to occupied Crown lands which gives a proponent priority rights to the site and the authority to keep nation members off the site as they choose.

#	Discussion Paper Question	Reply Comments
		<p>necessary, with consultation of Indigenous nations who are affected. The <i>OPR</i> should explicitly state that it is the responsibility of the company to consult with Nations that are affected, and to work with the Nation on identifying how any potential impacts can be eliminated, reduced, or accommodated.</p> <p>Any request for Nation participation in consultation-related activities must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
24.	<p>How can contaminated site management requirements be further clarified, in the <i>OPR</i> or in guidance?</p>	<p>Requirements for companies to notify Indigenous nations in the event of an accident or contamination incident are unclear and inadequate for a Nation to properly understand the scope of the incident and determine how the incident may impact Aboriginal and Treaty rights. The requirements around involving Nations during clean up steps, feedback on the actions taken, and overall status of contaminated site management is currently insufficient. The <i>OPR</i> needs to explicitly state what the requirements for companies are in all the situations listed above, and in any other situation in which a Nation is not clear on the requirements that a company needs to follow. Ideally this communication will minimize any miscommunication and different interpretations of requirements being followed.</p> <p>Additionally, regulators often do not get involved unless a clear complaint is registered, or a company seeks their involvement. Regulators should take a proactive approach to overseeing the implementation and fulfillment of requirements to ensure sites are being managed appropriately.</p> <p>Any request for Nation participation in consultation-related activities must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
25.	<p>Are there any matters related to the Emergency Management Program in the <i>OPR</i> that require clarification? If so, what are they? Are there any matters for which further guidance is required?</p>	<p>As previously stated, the current <i>OPR</i> does not include any requirements or instructions related to consultation or otherwise involvement of Indigenous nations, or considerations of Aboriginal and Treaty rights. This is applicable for the Emergency Management Program as well. Considerations to safety often focus on workers on site and nearby residents. Nation members may travel quite far from their homes to exercise their rights. If this is not recognized or considered with emergency management processes under the <i>OPR</i>, Nation members may find themselves in proximity to an emergency incident and facing unique and unmanaged risks.</p> <p>Clarifying this management plan should be done alongside MSFN and should be periodically reviewed for effectiveness.</p> <p>Any request for Indigenous knowledge or participation must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the <i>OPR</i>.</p>
26.	<p>How could the requirement for a Quality Assurance Program be improved or clarified in the <i>OPR</i>?</p>	<p>Although having the requirement for a Quality Assurance Program is positive in the <i>OPR</i>, the definitions used within the program are vague. Clear and concise definitions need to be given to words that may be left up to interpretation, such as the term ‘adequate.’ Without this clarity, the Quality Assurance Program is insufficient.</p> <p>The Program must also consider Aboriginal and Treaty rights, outline how they will be considered, and explicitly state reasoning when they are not incorporated. Any request for Indigenous knowledge or participation must be accompanied by adequate capacity funding for the Nation.</p>

#	Discussion Paper Question	Reply Comments
27.	<i>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?</i>	<p>The OPR's reporting on the Safety Advisory's recommendations and issues should be transparent, clearly identified, and explicitly communicated. Reporting updates need to be sent out to impacted Indigenous nations on a consistent basis and in an accessible format.</p> <p>The OPR should also increase Indigenous nation involvement in setting out safety standards, and participation in feedback around the Safety Advisory's recommendations and issues.</p> <p>Any request for Nation participation in consultation-related activities must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the OPR.</p>
28.	<i>What are your recommendations for compliance promotion at the CER?</i>	<p>There needs to be higher standards placed on companies in the OPR. These high standards need to be accompanied by greater penalties for non-compliance when an issue or complaint is received. Higher standards will allow regulators to take a more proactive, rather than a reactive, approach when issues arise. This would result in a quicker response to these issues before they potentially lead to larger impacts, specifically any impacts to MSFN's Aboriginal and Treaty rights from an individual project and/or cumulatively. It would be beneficial to have Indigenous nations involvement with setting these standards. This may support greater consideration to Aboriginal and Treaty rights along with other issues and concerns that Nations may have related to a specific pipeline or cumulative effects resulting from collective activities on the land.</p> <p>Any request for Nation participation in consultation-related activities must be accompanied by adequate capacity funding for the Nation. This needs to be an expectation laid out within the OPR.</p>
29.	<i>How do you want to be engaged by the CER in the development of technical guidance?</i>	<p>Each request for consultation may require different scopes. Activities related to consultation should be determined in collaboration with the Nation.</p> <p>Generally, MSFN would like to be updated through email to Chief and Council and any necessary outside consultants, as indicated by Chief and Council. All engagement must come with adequate capacity funding that allows MSFN to participate in the process. There must also be suitable timelines and information given by the CER to ensure MSFN is able to meaningfully engage with the larger community, review necessary materials, correspond with the regulator, and provide written comments.</p>