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Via email ([opr-rpt@cer-rec.gc.ca](mailto:opr-rpt@cer-rec.gc.ca))

Canada Energy Regulator  
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T2R 0A8

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**Re: Onshore Pipeline Regulation Review (Phase One)**

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We write to provide our views on the Canada Energy Regulator's ("CER") review of the Onshore Pipeline Regulations (the "OPR" or the "Regulations") and how these regulations can be amended to facilitate the inclusion of Indigenous communities in decision making and regulation of onshore pipelines.

**1. Mikisew Cree First Nation**

Mikisew Cree First Nation is the largest First Nation in the oil sands region and a signatory to Treaty 8. Mikisew members still seek to actively exercise their Treaty rights in their traditional territory and carry out their traditional activities as their ancestors have done for generations. However, the meaningful practice of Mikisew's rights and way of life depends on Mikisew having sufficient quality and quantity of resources to support the exercise of Mikisew rights and culture, and the maintenance of our livelihood.

Over the past century, our traditional territory has been heavily impacted by hydro dams and the rapid expansion of oil sands activities. As a result, the waters in our territory no longer support indigenous navigation as needed, our traditional resources are diminishing, we are seeing increased evidence of contamination, and our Treaty rights and culture are at great risk. Moreover, Wood Buffalo National Park, an important part of our traditional territory, has the worst conservation outlook of a natural World Heritage Site in Canada.





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## **2. The Regulations Should Facilitate the Inclusion of Indigenous Communities in Regulatory Decision Making and Planning and Should Encourage Companies to Adopt Best Practice for Working with Indigenous Communities**

Given the important role the OPR plays in setting out the rules for pipeline regulation and management, changes to the OPR should be made to facilitate the inclusion of Indigenous communities in the decision making and regulation of pipelines throughout their life cycle. The OPR is one piece of the regulatory scheme governing federally regulated pipelines. It sets out the rules that companies must follow after they have been authorized to build and operate a pipeline. While some progress has been made in ensuring that Indigenous knowledge and Indigenous peoples views are considered with respect to federal impact assessments (although much work has yet to be done), there has been little progress with respect to the inclusion of Indigenous communities in ongoing pipeline regulation and management.

As set out in more detail below, the broad approach that we are recommending is that plans and programs that have the potential to impact the interests and rights of Indigenous communities should be either 1) developed in collaboration with those Indigenous communities or 2) approved by the affected Indigenous communities prior to filing with the CER.

We also recommend that the CER work with individual Indigenous communities to develop best practice guidelines for proponents to follow when working with those indigenous communities, and that those proponents be required to demonstrate how they have followed the best practice guidelines where they are developed. Given Mikisew's proximity to the oil sands sector, Mikisew has significant experience working with different operators in the region. While some operators work cooperatively with Indigenous communities to ensure that communication and engagement are thorough and meaningful and that Indigenous concerns are addressed, others do not. Given the discrepancy in approaches, the regulations should require companies to undertake best practices with respect to working with Indigenous communities; it cannot be left to the individual discretion of companies and proponents



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### 3. Regulations Should Facilitate the Inclusion of Indigenous Communities in Pipeline Planning and Decision Making

Indigenous communities, such as Mikisew, have been stewarding their lands and resources for generations. They are intimately familiar with the ecology of the area and interaction of the different resources upon which they rely for the practice of their rights. Despite this deep connection to their lands and resources, and contrary to Article 32 of the United Nations Declaration on the Rights of Indigenous People, we are regularly excluded from decision making and regulation of the resources within their territory. Given the important role the OPR plays in regulating pipeline operations and management, Mikisew submits that the Regulations should be revised to facilitate Indigenous inclusion in decision making and regulation of pipelines.

a. Programs should be developed in collaboration with affected Indigenous communities

One way Indigenous communities can be integrated into decision making and regulation of pipelines is through the programs and plans that are already required under the Regulations such as Emergency Management Programs, Safety Management Programs, and Environmental Protection Programs (the “Programs”). These Programs have the potential to significantly impact Indigenous communities, yet there is no requirement that they be included in their development. We recommend that the Regulations require these Programs either be developed in collaboration with affected Indigenous Communities or approved by affected Indigenous communities before they are accepted for filing.

b. Indigenous Knowledge Should be integrated into all aspects of Pipeline Operations

Given the experience Indigenous communities have as stewards of their land, Indigenous Knowledge is a valuable source of information that should be integrated into all aspects the regulatory process.

Unfortunately, the experience of many Indigenous communities is that Indigenous knowledge is considered secondarily to Western science, and in practice is seen as less reliable or valuable. Systemic racism and a lack of cultural awareness affects how Indigenous Knowledge is perceived and used.





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To encourage the respectful and appropriate collection and use of indigenous knowledge in regulatory planning and decision making, Mikisew recommends that the Regulations require the integration of Indigenous knowledge in the Programs, as well as at other decision points. In particular, Indigenous Knowledge should be used to identify culturally sensitive and/or traditional use sites. The regulations should further mandate that these areas are to be avoided when determining detailed pipeline routing, as well as in pipeline construction.

Moreover, the way in which many companies seek to obtain and use Indigenous Knowledge is often subject to critique. Indigenous knowledge must be collected and used according to the protocols and processes of individual communities, follow the principles of OCAP (Indigenous Ownership, Control, Access, and Possession), and be paired with mechanisms for the inclusion of Indigenous people in decision making.

Mikisew further recommends that the CER, with the support of Indigenous Communities, develop best practice guidelines for the collection and use of Indigenous Knowledge, and require proponents to either demonstrate how they have abided by those guidelines, or alternatively, require proponents to develop Indigenous knowledge collection and sharing agreements with affected Indigenous communities.

In general, the Regulations and supporting guidelines should facilitate the collection, use and integration of Indigenous knowledge into all aspects of the regulatory process. Indigenous people must also be involved in regulatory decision-making and oversight to support Indigenous Knowledge being used and applied.

*c. Indigenous Communities Should be involved in Compliance Monitoring and Enforcement*

The CER continues to consider the issue of potential impacts to rights has having been “dealt with” once project approvals are issued. However, leaving Indigenous communities out of monitoring and enforcing approval conditions, some of which are specific to their own rights, diminishes their role as stewards of the land and negates the efficacy of any management decision meant to mitigate impacts to their rights. Therefore, the role of Indigenous communities must be expanded to include participation in compliance and enforcement. Not only will this help integrate Indigenous communities into pipeline regulation, but it will ensure that compliance is better understood by affected Indigenous communities and that instances of non-compliance are dealt with in a manner that respects Indigenous perspectives.





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While there are some examples of the CER requiring the establishment of Indigenous monitoring programs for individual projects, requiring these programs is not standard practice. Further, even where Indigenous monitoring programs do exist, the programs face significant barriers: monitors face discrimination and pejorative behaviour from company employees or subcontractors; monitors do not feel like they are taken seriously, and feel that their work is viewed as tokenistic; monitors do not have the authority to act on issues of non-compliance (for instance, they do not have the authority to issue stop work orders); management decisions do not address issues identified by Indigenous monitors; and monitors are not provided with adequate training to ensure they are equipped for their role.

Mikisew thus recommends that the Regulations be amended to facilitate the establishment or appointment of Indigenous monitors for all projects and that steps are taken to ensure that they have the resources, regulatory tools, and training necessary to effectively administer compliance monitoring.

*d. Indigenous Communities should be involved in Environmental Monitoring and Data Collection*

Similarly, Indigenous communities should play a role in the development of environmental monitoring programs, the collection and assessment of environmental monitoring data, and recommending management changes to address identified issues.

Environmental monitoring can inform, adaptive management, relevant programs and plans (emergency management, environmental protection and safety management), and abandonment and reclamation plans. Environmental monitoring is also critical for verifying predicted project impacts, and the effectiveness of mitigation measures implemented to protect against potential impacts to s. 35 rights. Unfortunately, as with compliance monitoring, there is no requirement that Indigenous communities be involved in the development or implementation of environmental monitoring programs, or that the information gathered through these programs is shared with affected Indigenous communities. Inclusion of Indigenous communities in the development and implementation of environmental monitoring programs will help ensure that 1) Indigenous concerns are meaningfully addressed and assessed in monitoring, 2) information that is important to the affected communities is collected; 3) Indigenous communities trust that the information being collected is accurate; and 4) this information is communicated back to the Indigenous communities in a way that is accessible to the communities.





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Mikisew thus recommends that the regulations facilitate the inclusion of Indigenous communities in the development of environmental monitoring programs, the collection of environmental data, the analysis and reporting of results, and management decisions arising. This could be done by requiring that companies either co-develop environmental management and monitoring programs with affected Indigenous communities or requiring environmental management and monitoring programs receive approval from affected Indigenous communities before they will be accepted by the CER for filing.

#### **4. Regulations Should Facilitate Greater understanding and communication with Indigenous Communities**

##### **a. Companies must work with Indigenous Communities to develop communication plans**

Another component of helping to integrate Indigenous communities and perspectives into the regulatory and decision-making process is ensuring adequate communication between operators and affected Indigenous communities. To that end, the Regulations should facilitate more regular and meaningful communication with affected Indigenous communities regarding the activities that are taking place within their territory. The Regulations should require the company to work with affected Indigenous communities to co-develop a communication plan, or a requirement that the affected Indigenous community approve the communications plans prior to filing with the CER. While communication plans should be tailored to the individual nations, components may include:

- Identification of information needs of the individual Nation,
- Development of communication template that reports on individual monitoring or management activities in a way meaningful to the community,
- Regular community meetings to update community on the status of projects within their territory;
- Plain language summaries of ongoing activities;
- Plain language summaries of monitoring information, developed with assistance of Indigenous monitoring programs (see more below); and
- Yearly reporting on communication and engagement programs,
- Periodic review of the effectiveness of the communication plan.





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To ensure accountability Mikisew recommends that the Regulations also require operators to submit for filing with the CER on a yearly basis a summary of communication and engagement activities that have taken place, as well as periodic reviews of communication plan effectiveness. This summary should be co-developed with affected Indigenous Communities or should receive the consent of the affected Indigenous communities prior to filing with the CER.

*b. Training Programs should Include Cultural Awareness Training for all Employees*

The OPR currently require companies to develop and implement training programs for all of their employees. However, there is very little guidance on what is to be included in those training programs. Mikisew recommends that as part of training programs employees be required to undergo cultural awareness training. Such training will not only assist individual employees in their interactions with Indigenous people and communities with whom they work, but ideally will contribute to the development of a culture of understanding and sensitivity within the company, and the energy industry, more generally. This recommendation is consistent with the Truth and Reconciliation Commission Calls to Action # 92, in regard to the business sector:

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.

**5. Regulations should require involvement of Indigenous communities in development heritage resource policies**

The development of heritage resource policies and plans is an important aspect of pipeline regulation. Unfortunately, it is often the case that heritage resource policies are vague, not tailored to the specific communities that they apply to and fail to incorporate Indigenous knowledge and Indigenous protocols for dealing with heritage resources. This leads to Indigenous communities being excluded from decision around their heritage resources, and has led to the heartbreaking situation where many of Indigenous heritage resources are warehoused in central locations far from their home communities, and without the Nation’s awareness.







Given the importance of dealing with heritage resources in a sensitive and culturally appropriate manner, heritage resources policies should be developed and tailored to the individual communities a company will be working with. This will allow for Indigenous views to be considered and relevant protocols to be respected. The regulations should require that heritage resource policies be tailored to each project depending on whose territory the Project comes within. The Heritage management plans should also be either co-developed with affected Indigenous communities or approved by affected Indigenous communities prior to filing with the CER. Further, Indigenous communities should be given the right of first refusal for any archaeological work, as well as opportunities for repatriation of any objects collected during the assessment.

Finally, the CER should work with Indigenous communities to develop best practice guidance on heritage resource policies, and how to work with communities to collect, and incorporate Indigenous knowledge into their heritage management activities.

#### **6. Regulations should facilitate the reclamation of lands that will support Indigenous land use**

Most energy projects, including pipelines, are approved subsequent to a consultation process that outlines the potential impacts to rights, leading to the establishment of approval conditions intended to mitigate those impacts. This usually includes a commitment to return the land to a state that supports the exercise of s. 35 rights. Unfortunately, the landscape conditions required to support rights has never been defined. In our experience, and per the regulations, reclamation is considered complete when the landscape reaches an “equivalent land capability.” This is a concept that is meaningful to agricultural lands but has never been defined for rights-based practice. .

Mikisew thus recommends that the OPR adopt reclamation standards that ensure lands are restored to a state that supports the practice of Aboriginal and Treaty rights. Mikisew further recommends that the OPR require companies to submit reclamation plans that have either been co-developed with Indigenous communities or approved by affected Indigenous communities prior to filing, that reclamation practices include Indigenous communities, and that environmental monitoring programs monitor the progression of reclamation.







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## 7. The Regulations Should Facilitate Gender Equality and Respect

It is now understood that energy and resource extraction projects have disproportionate impacts on Indigenous women in a number of ways, and related to a number of factors including:<sup>1</sup>

- The presence of a large, young, male and mostly transient workforce;
- Patterns of drug and alcohol abuse associated with resource industry workers;
- Misogyny and racist attitudes towards Indigenous people;
- Lack of access to support services in smaller, rural communities;
- Increasing cost of living, and economic insecurity amongst those without access to resource sector wages;
- Inequality in wealth distribution;
- Reduction of harvesting/traditional activities; and
- The loss of sense of place, cultural identity, and disconnection from land

Indeed, the recently released Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (“MMIWG”) states that:

The National Inquiry heard testimony and examined evidence that suggested that resource extraction projects can exacerbate the problem of violence against Indigenous women and girls. Expert Witnesses, institutional witnesses, and Knowledge Keepers told the National Inquiry that resource extraction projects can drive violence against Indigenous women in several ways, including issues related to transient workers, harassment and assault in the workplace, rotational shift work, substance abuse and addictions, and economic insecurity. They argued that resource extraction projects can lead to increased violence against Indigenous women at the hands of non-Indigenous men, as well as increased violence within Indigenous communities. Reports submitted by witnesses substantiate their claims, as does a considerable body of literature identified by the National Inquiry. They all point to the same conclusion: federal, provincial, territorial, and Indigenous governments, as well as mining and oil and gas companies, should do a more thorough job of considering the safety of

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<sup>1</sup> Amnesty International, Out of Sight, out of Mind: Gender, Indigenous Rights, and Energy Development in Northeast British Columbia, Canada, Amnesty International 2016





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Indigenous women and children when making decisions about resource extraction on or near Indigenous territories.<sup>2</sup>

Moreover, call for action 13.1 of the Inquiry into MMIWG calls upon all resource-extraction and development industries to consider the safety and security of Indigenous women, girls, and 2SLGBTQQIA people, as well as their equitable benefit from development, at all stages of project planning, assessment, implementation, management, and monitoring. Likewise, call for action 13.2 calls upon all governments and bodies mandated to evaluate, approve, and/or monitor development projects to complete gender-based socio-economic impact assessments on all proposed projects as part of their decision making and ongoing monitoring of projects. Finally, action 13.4 calls upon the federal, provincial, and territorial governments to fund further inquiries and studies in order to better understand the relationship between resource extraction and other development projects and violence against Indigenous women, girls, and 2SLGTQQIA people.

Given the disproportionate impacts on Indigenous women and girls, Mikisew recommends that the Regulation require companies to develop plans and policies to address these impacts and the underlying causes of these impacts. These plans and policies could be as a component of the Safety Management Programs, an aspect of the employee training programs, or through the development of a new program altogether. Further, elements of these programs that relate to safety for Indigenous women, girls and the 2SLGBTQQIA community, should be approved or co-drafted with affected Indigenous communities.

To ensure accountability companies should be required to provide annual reporting on steps it is taking to address impacts from resource extraction on Indigenous women and girls.

## **8. Indigenous Communities should be supported financially to participate in pipeline oversight and regulation**

Finally, it is critical that Indigenous communities be supported in their involvement in this work, including through the provision of adequate funding. As set out in the Discussion Paper, the CER is committed to reconciliation with Indigenous people. Greater

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<sup>2</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, [Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#), Vol. Ia (2019) at 584.





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involvement in decision making, regulatory oversight, and monitoring are a few of the ways that the CER can facilitate this. However, this work cannot be funded by affected Indigenous communities. This funding must be the responsibility of those who reap the benefits of these projects: the companies, and the Crown.



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