FILE HILLS QU'APPELLE TRIBAL COUNCIL

Canada Energy Regulator
Onshore Pipeline Regulations & Filing Manual Review
Phase 2 Engagement

What We Heard and Recommendations

July 21, 2024

EXECUTIVE SUMMARY

In September 2024, the File Hills Qu'Appelle and the Canada Energy Regulator (CER) signed a contribution agreement to facilitate engagement and feeback on the upcoming amendments to the Onshore Pipeline Regulations (OPR) and the Filing Manual (FM) in a manner that incorporate First Nation Knowledge, as well as First Nations laws, policies, practice and protocols.

The File Hills Qu'Appelle Tribal Council, Lands, Resources, Environment & Stewardship Department (FHQTC-LRES), in collaboration with technicians from the CER held a in person engagement on the OPR and FM on December 9 & 10, 2024, followed by virtual engagement on January 23, and March 20 2025. In addition, FHQTC-LRES technicians and Youth Advisory Council Members to attended the February 13, 2025 OPR-CER Heritage Resources Workshop, both in person and virtually.

Throught this time period, the FHQTC-LRES technicians developed briefings for Member Nations Leadership and held internal meetings and discussions with the FHQTC-LRES Youth Advisory Council, Language Keepers, Technicians and Land Users.

Given the potential impacts of changes to OPR and FM on Member Nations' Rights across Treaty 4 and beyond, FHQTC ensured that all 13 chapters of the OPR and FM were part of our engagements. This report focuses on the intersection of First Nation rights and the OPR/FM ancestral territory Resources.

Who We Are

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

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

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

First Nations Sovereignty

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

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

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

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

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

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

First Nations Aboriginal Rights and Title

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

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

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

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

a) Use of land to a depth of the plough for farming by the Queen's subjects
b) Harvesting of trees by settlers for the construction of their homes
c) Use of grasslands for the animals brought by immigrants.

The Treaty 4 First Nations agreed to the Commissioner's request and, in exchange, were to receive 'benefits' for 'as long as the sun shines and the water flows.' They did not share any land below six inches,

water, or anything else on or above the ground. That is why Treaty 4 Nations still today have Aboriginal rights and title to the land, resources and resource activities within Treaty 4 Territory.

First Nations Treaty Rights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are many misunderstandings in Canada about the sacred Treaties, treaty-making, and Treaty rights, including among her governments, past and present. Much of this understanding has to do with the fact that the spirit and intent of Treaty has not been taught in Canada's mainstream education systems, only the written text. The written version of Treaty 4 leads to further ignorance. It falsely implies that Treaty 4 people gave up their sovereignty and self-determination to the British Crown and that they also ceded and

surrendered the land and its resources. There is much work needed to correct this misunderstanding. On the Crown's part, it must begin with the Government of Canada's demonstration of the political will to do so and with Canadian courts changing the approach that they so far have taken regarding treaty interpretation.

Crown/Federal Government Sovereignty/Treaty Relations

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

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

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

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

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

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

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Rights to Lands, territories and Resources

The provisions of UNDRIP relating to lands, territories, and resources emphasize Indigenous peoples' inherent rights to own, use, develop, and control the lands, territories, and resources they have traditionally owned, occupied, or otherwise used. UNDRIP affirms Indigenous peoples' spiritual connection to their traditional lands, territories, and resources and their responsibility to maintain and protect them (Article 25). It recognizes Indigenous peoples' right to own, use, and control these lands and resources, and requires states to legally acknowledge and protect these rights (Article 26). States must implement fair and transparent processes to address disputes over land and resources (Article 27). Where lands or resources have been taken without free, prior, and informed consent, Indigenous peoples are entitled to restitution or just compensation (Article 28). Indigenous peoples also have the right to conserve and protect their environment and resources, and states have an obligation to support Indigenous eRorts to achieve sustainable development (Article 29).

These provisions affirm Indigenous peoples' rights to their lands, territories, and resources. They highlight the connection between these rights and Indigenous cultural, spiritual, social, and economic well-being. Participatory rights enable Indigenous peoples to govern their lands according to their own laws, values, and priorities and are closely tied to the right of self-determination.

Right to Honorable Treaty Implementation

States have a duty to implement historic treaties with Indigenous peoples in good faith. Article 37 of UNDRIP affirms Indigenous peoples' right to the recognition, observance, and enforcement of their treaties. Respecting treaties fosters mutual respect and cooperation, reinforcing the reciprocal rights and obligations necessary to implement UNDRIP. Treaties create binding commitments that must be upheld according to their original spirit and intent.

> *Article 37*
> *1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.*
> *2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.*

Article 37 also underscores Indigenous peoples' authority to negotiate nation-to-nation agreements that reflect their sovereignty, governance, and legal traditions. In doing so, it affirms their right to self-determination, recognizing their political agency in shaping and maintaining treaty relationships. The article further obliges states to give effect to agreements that allow Indigenous nations to determine their political status and govern their affairs, reinforcing their autonomy within the framework of international law.

TRUTH AND RECONCILIATION COMMISSION CALLS TO ACTION

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

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

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

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

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

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

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

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

Heritage Resources Management in practice on CER-regulated projects

The protection of heritage resources, archaeological sites, cultural artifacts, and sacred sites is essential to FHQTC Member Nations because these places and objects embody our histories, identities, distinct ways of life and ongoing cultural and spiritual practices. Protecting them is essential to maintain and strengthen our traditions, knowledge systems, and connections our their ancestral lands. Diligent implementation of treaty promises and UNDRIP requires governments to prevent the destruction, appropriation, and exploitation of these sacred places and artifacts while supporting First Nation-led stewardship and decision-making over their own heritage. This is reflected in Article 11 and 12 of UNDRIP

> *Article 11*
> *1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*
> *2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.*
>
> *Article 12*
> *1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.*
> *2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.*

Article 11 recognizes the right to practice, revitalize, and protect Indigenous cultural traditions, including historical sites, artifacts, and ceremonies. It also requires states to provide redress for cultural property taken without free, prior, and informed consent. Article 12 aRirms Indigenous peoples' right to maintain, protect, and access their religious and sacred sites, ceremonial objects, and human remains, while also ensuring states support their repatriation when taken unlawfully. These rights are fundamental to self-determination, as they empower Indigenous nations to govern their cultural heritage, exercise control over sacred and historical sites, and preserve their identities without external interference. The rights of redress and repatriation are central to the protection of culture and heritage. This is reflected in the Federal Action Plan commitment to: 98. Co-develop with First Nations distinction-based comprehensive approach, which will include legislative, programming and/or service measures, to enable the repatriation/rematriation of Indigenous cultural belongings and ancestralr emains. (Canadian Heritage).

While this does not apply to the provinces, Saskatchewan should take guidance from this. Saskatchewan must protect sacred site by recognizing site-specific rights to land that can prevent development from occurring in spiritually relevant places. Improvements to the TLE process may help, as would amendments to the Environmental Assessment process to ensure that First Nations knowledge is given a role in decision-making. Article 25 of UNDRIP, for example, states: "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual

relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard." Environmental and land use regimes must permit these relationships to survive.

Saskatchewan's Heritage Property Act, which deals with the preservation of cultural heritage properties, archaeological sites and palaeontological sites in the province, must be amended to ensure consistency with best practices in the field and with the UN Declaration. In particular, Indigenous ownership, stewardship, and decision-making over cultural heritage, artifacts, and sacred sites must be recognizes and clear processes for the return of Indigenous cultural objects, human remains, and sacred items must be developed n consultation and collaboration with First Nations peoples.

Heritage Resources and the CER
The CER does not have a standard of Heritage Resources. The CER has a responsibility to work with Right Holders to establish a definition of Heritage Resources that is in accordance with UNDRIPA and First Nations Laws and protocols, in addition to recognize First Nations jurisdiction over heritage resources. Provincial acts over heritage resources must be revisited and provide full control of First Nation sacred sites, burial sites, artifacts, and any other heritage resources, as defined by the impacted nations to First Nations. The CER must create the conditions to ensure that these steps are taken, when regulated project is permitted. FNs data sovereignty must be recoginzed and the removing provincial safeguarding of heritage information has to be set as a priority. The Impact Assessment Act includes heritage sites reporting, but the CER leaves it almost entirely to provincial jurisdiction; this constitute an infrindgment on First Nations Inherent, Constitutional & Treaty Rights.

Historic impacts on sacred and culturally important sites must be also be rectified. As a first step, the CER must engage all impacted First Nations in heritage resources definition and identification, provide capacity support and time allocation and ensure a full and complete transparency between the CER, the proponent, contractors and impacted Nations.

As of now the CER assumption is that the proponent will do proper work with heritate resources consultants and report to the province, if they need to. This is not sufficient and lead to document underdocumentation of potential heritage sites, and destruction of artifacts. As part of its review of OPR and FM, the CER must ensure that all regulations are compliant with UNDRIPA, which include a recognition of FN jurisdictions. This is even more critical as the Indigenous Ministerial Arrangement Regulations (IMARS) are in discussion. In this context, the way CER must also change the way conditions are framed. It must remove the "it must consider" to" it must apply" when it relates to FN knowledge.

When requested by Nations, the CER should create a system that supports and recognizes First Nations' permits and jurisdiction and ensures that companies respect them and don't cherry-pick and ignore others.

CER interpretation of Delgamuk's decision must be brought to life, and oral tradition must be recognized and given the same value as written analyses. This should also inform a cultural

process assessment and construction progress report that include FNs issues/cultural issues/heritage issues and cultural impact reporting mechanism similar to a health and safety reporting /environmental mechanism.

The CER must increase its transparency; when reporting goes to the CER, is the process to get the info back to impacted Nations must be clearly established and vetted. Recognition of First Nation Knowledge within reporting mechanisms

Other considerations regarding the OPR/FM

CER must require early engagement from companies so that First Nations understand what is being proposed within their territories. CER must ensure that engagement is meaningful and adequately funded when developments may impact First Nations' Inherent and Treaty rights. Further, CER must mandate regulated companies to advance reconciliation by not only entering into Impact Benefit Agreements with First Nations, but to also negotiate resource revenue sharing agreements. Regulated companies and First Nations need to foster respectful, open and transparent working relationships in order to build trust and mutually benefit from one another and the developments. Lastly, a comprehensive review must be undertaken in order to ensure that the OPR is aligned with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as the Truth and Reconciliation Commission (TRC) of Canada's Calls to Action, particularly Calls to Action 43, 44 and 92.

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

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

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

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

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

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

a) Accommodate the FHQ definition

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

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

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

There was a time (1959 to 2008) when NEB ignored First Nations' cultural heritage and resources. And then came the time (2008-2019) when NEB limited its 'protection' of First Nations' cultural heritage and resources to pipeline right-of-ways during construction, operations and maintenance activities and to only those heritage resources either previously identified by provincial archaeologists acting on their own or which project proponents happened to 'run into.' NEB, in cooperation with Industry, also limited their consideration of First Nations' interests to a buffer zone that extended 50 kilometres out from a pipeline. Other federal and provincial agencies, especially departments administering Indian affairs, tried to limit First Nations' traditional lands to those identified in comprehensive community planning and land use planning projects to lands used for hunting, fishing and gathering contemporarily. On top of all this, the provincial government administered longstanding laws that classified off-Reserve cultural artifacts and even human remains as provincial property. These, of course, are violations of First Nations' inherent and Treaty rights as well as Indigenous rights under international law.

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

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

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

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

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

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

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

Then there is Treaty Territory, which covers all of the territory mapped out in Treaty Number 4, also known as the Qu'Appelle Treaty. FHQ people maintain their kinship ties and spiritual, cultural and linguistic connections and pursue hunting, fishing, and gathering (including medicines) throughout this territory.

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

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

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

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

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

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

Indigenous Knowledge systems and western science can work in tandem and complement one another, from data collection and analysis, policy development, to decision and post decision-making. The process, however defined and developed, needs to be a shared one where both systems can occupy space. The inclusion and use of Indigenous Knowledge must also be consistent with the articles of UNDRIP and the TRC Calls to Action.

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

A. **Respect for Indigenous peoples and their knowledge**: respect the diverse interests, priorities and circumstances of the Nation; interactions with Indigenous Nations are respectful of their guidance, protocols and processes; and Indigenous peoples will guide the understanding of the context and meaning of any Indigenous knowledge that they provide, the purpose for which it is being provided and how the knowledge, even when provided in confidence, may be shared. **However, saying that Indigenous Knowledge needs to be respected is devoid of real meaning without guidance as to how it should be done.**

B. **Establish and maintain collaborative relationships with Indigenous peoples**: communicate with Indigenous peoples about the opportunities to participate in project reviews and regulatory

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

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

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

E. **Support capacity building to facilitate the consideration of Indigenous knowledge**: where funding is available to support Indigenous participation, it is provided as early as possible; capacity support for Indigenous peoples should address the Nations' needs to the extent possible; Indigenous Nations need to record and preserve their Indigenous knowledge while federal departments and agencies support the data access and gathering; and support building cultural competency of officials involved in reviews and regulatory decision making.

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

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

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

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

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

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

The CER must provide adequate financial resources to First Nations, Tribal Councils, Treaty and/or Regional organizations, so that information can reach the First Nations. Again, the CER must ensure that they mandate companies to engage early in the conceptual stages, so that there are no surprises for the First Nations and consequently industry. Improving transparency will support a predictable and timely regulatory system.

CER can develop tools on consultation and engagement for First Nations with First Nations that aligns with UNDRIP. If First Nations are involved and informed at the earliest possible time, then work can proceed not only in a predictable and timely manner but in a way that supports reconciliation.

It appears that the CER remains without regulatory context to protect Traditional Sites. The CER must request that any proponent Environmental Protection Plan and that Company Environmental Protection Program recognize Nations can only undertake the monitoring of Traditional Sites.

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

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

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

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

The plans must be filed with and reviewed by the CER. In this way, the CER can verify that plans include appropriate involvement by impacted Indigenous Nations and the necessary support by proponents to ensure Nations can participate. The plans must provide clarity about the role and authority of Indigenous Nations in emergency response. An example of involvement could include specifying how Indigenous monitors will be involved and trained in emergency response procedures or indicating how volunteer firefighters from Indigenous Nations will be incorporated into emergency response training and plans. In addition to involving technical people, Elders, youth, and Leadership of Indigenous Nations must be involved.

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

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

OTHER CONSIDERATIONS

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

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

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

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

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

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

WORKING DIFFERENTLY

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

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

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

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

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

reinstatement of lost title lands and a re-allocation of resources, but also to the legal obligation to compensate First Nations for lost opportunities associated with the inability to exercise aboriginal rights."

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

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

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

a) 1493 Papal Bull

b) Doctrine of Discovery

c) 1830 Detribalization Policies

d) 1947 Plan to Liquidate Canada's Indian Problem within 25 years

e) 1969 White Paper Policy

f) 1974/76 Native Policies.

g) 1980 Buffalo Jump Policies

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

All of which is respectfully submitted.