



STONEY TRIBAL ADMINISTRATION

March 31, 2025

Delivered via email

Canada Energy Regulator

Email: [REDACTED]

RE: Bears paw First Nation Review of the Canada Energy Regulator Onshore Pipeline Regulations and Filing Manuals Update

This letter is submitted to the Commission of the Canada Energy Regulator (CER) by the Stoney Consultation Office. The Stoney Consultation Office works with Stoney Tribal Administration on behalf of the Stoney Nakoda Nations (“Stoney”), comprising Bears paw First Nation (“Bears paw”), Goodstoney First Nation (“Goodstoney”), and Chiniki First Nation (“Chiniki”). This letter is submitted on behalf of Bears paw.

The Stoney Nakoda Nations are self-governing bodies under the authority of Treaty No. 7 and provide leadership and direction through the duly elected Chiefs and Councils of the member Nations, collectively known as the Stoney Tribal Council. The Stoney Nakoda have constitutionally recognized Treaty and Aboriginal rights and interests (“Section 35 rights” and/or “Inherent rights”) within Îyāñé Nakoda Makoche (Stoney Traditional Territory). Stoney Nakoda reside mainly on Indian Reserve Lands at Mîñî Thnî (Morley) Alberta (I.R. #142, #143, #144), Eden Valley (I.R. #216), Rabbit Lake (I.R. #142B), and Bighorn (I.R. #144A).

Background

Bears paw understands the CER is seeking feedback on proposed updates to its Onshore Pipeline Regulations (OPR), as well as the Environmental and Socio-Economic Assessment and Lands portion of the Filing Manuals. The OPR constitute the main regulations the CER uses to oversee pipelines, as well as the rules that companies must follow in the design, construction, operation, and abandonment of their pipelines. The Filing Manuals outline application requirements for proposed projects.

The OPR have undergone minor updates since their establishment in 1999; however, no comprehensive review has been completed.¹ The CER began Phase 1 engagement with stakeholders and Indigenous Peoples on potential updates to the OPR and Filing Manuals in January 2022, which involved a discussion on potential issue areas for the OPR. Phase 2 engagement began in June 2024, when the CER released multiple topic papers related to the OPR and Filing Manuals. The submission that follows reflects the lived experience of Bears paw Elders and community members in relation to the topics covered in the OPR and Filing Manuals topic papers.

General

Bears paw’s primary concern lies with the CER’s proposed options for improving the identification, anticipation, and management of impacts to Bears paw’s rights. Bears paw maintains that the CER cannot administer effective oversight – either through the Filing Manuals or through the OPR – without first creating more transparency around Commission decision-making processes and frameworks, and clarifying how

¹ OPR – What We Heard Report <https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/onshore-pipeline/onshore-pipeline-regulations-review/what-we-heard-report/index.html>

Indigenous knowledge informs its decision making. Additional requirements for protection plans, monitoring, and cultural training for staff do not address impacts to Indigenous rights where these processes are proponent led and where it appears the Commission will accept proponent perspectives and understandings over Bears paw's evidence and knowledge.

United Nations Declaration on the Rights of Indigenous Peoples

In 2021, Canada enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act* ("UNDRIP Act"). This legislation mandates the federal government to align all federal laws with the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). An accompanying Action Plan supports the *UNDRIP Act*, including a specific measure (Action Plan Measure 34) that addresses the involvement of Indigenous Peoples in projects and issues overseen by the CER.²

Topic Paper M. Filing Manuals – Rights and Interests of Indigenous Peoples reiterates the CER's commitment to implementing the *UNDRIP Act* and the supporting Action Plan (specifically Action Plan Measure 34), which Bears paw views as positive. Measure 34 specifies that the Government of Canada must:

Work in consultation and cooperation with First Nation, Métis and Inuit communities, governments and organizations to (i) enhance the participation of Indigenous peoples in, and (ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the Canada Energy Regulator (CER).³

Bears paw views having increased autonomy and authority over projects within Íyāhē Nakoda Makoche as beneficial. Bears paw must be consulted on how we wish to participate in projects.

A major concern of Bears paw is that Indigenous communities are more likely than non-Indigenous communities to be impacted by project- and climate change-related emergencies and less likely to have resources and supports to respond to those emergencies. The health and welfare of Stoney members have been previously impacted by pipeline leaks which caused the release of H₂S and sweet natural gas.⁴ There remain outstanding issues from these incidents including insufficient coordination of provincial and federal agencies regarding leaks and/or gas release incidents, lack of timely response of personnel and emergency responders, lack of clarification on emergency contacts, communication barriers between emergency responders and Stoney residents, and lack of controlled access to on-reserve locations. A two-way education system must be required where pipeline companies can educate Indigenous communities about pipeline emergency management programs and climate change resiliency, and Indigenous communities are able to share information about emergency management and response needs/strategies that will ensure the health and safety of community members is protected during a pipeline-related emergency. Emergency management cannot be limited to site-specific impacts to Indigenous communities and must be applied to a broader Indigenous rights lens. Rather than limiting emergency management to adverse effects on sites of cultural significance, emergency management should focus on adverse effects to Indigenous rights (i.e., the ability to access, enjoy, experience sense of place, connect with cultural identity, etc. in relation to sites of significance). A comprehensive emergency management system that includes

² The Canada Energy Regulator, Commission of the Canada Energy Regulator Rules of Practice and Procedure Review – Discussion Paper, https://ehq-production-canada.s3.ca-central-1.amazonaws.com/03ab76bd5f795e0a7214634017506a96f1ab44b3/original/1725898273/fdb6ff78f80757149232103295b55bcc_Discussion_Paper.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQAKIOR7VAOP4%2F20241122%2Fca-central-1%2Fs3%2Faws4_request&X-Amz-Date=20241122T180414Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=00c7fa929184852172460a339fcaecd5b03142de663ace3aad4d9c91606006a3

³ The United Nations Declaration on the Rights of Indigenous Peoples Act, Action Plan, <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/pdf/unda-action-plan-digital-eng.pdf>

⁴ The incidents include the Quirk Creek Gas Plant H₂S incident in 2009, and the ATCO Pipelines Natural Gas incident in 2010.

Bears paw and addresses Bears paw concerns related to emergency management for pipelines and oil and gas sites – both upstream and downstream operations – should be a required outcome.

During the OPR and Filing Manuals community review process, Bears paw Nation members expressed a preference for pipelines be physically removed for decommissioning, particularly from aquatic areas, and the land restored. Having the pipeline remain in the ground is analogous to a cow with a nail in its hoof – the pipeline limits Bears paw’s ability to move freely within Íyāñé Nakoda Makoche. Restoration plans should include Bears paw to provide knowledge on biodiversity and to ensure ceremony is held to support healing of the land. In addition, project impacts to water and animals are of utmost concern to Bears paw and the exercise of their rights.

For changes to the OPR and Filing Manuals to achieve meaningful and transformative results for Bears paw, it is essential for Bears paw to have the financial capacity to guide the hearing process and make informed decisions and recommendations. Any Bears paw recommendations must be genuinely considered by both the Commission and Natural Resources Canada. Furthermore, while any jointly made decisions can be based on Canadian Acts, regulations, or policies, they should also equally consider Bears paw principles and cultural values.

In relation to involvement in compliance and oversight over lifecycles for CER-regulated infrastructure, it is Bears paw’s experience that timelines for Indigenous group participation in any follow-up and monitoring compliance activities required by the CER in its conditions for project approval are typically rushed. With limited internal capacity, it is difficult for the Stoney Consultation Office and Bears paw to participate. Further, the current process does not provide sufficient time for us to retain experts, train and identify staff to assist, and secure necessary funding. This must be discussed further between Bears paw, the Commission, and the Commission’s CER supports, to identify how the OPR and Filing Manuals can support improvement. Additionally, cumulative effects to Bears paw Section 35 rights and/or Inherent rights are not properly or consistently considered through CER processes and hearings and are, therefore, not effectively monitored in post-approval phases. Bears paw requires greater consideration of this in future processes moving forward. Stoney have in the past proposed the development of an Indigenous Advisory Committee for projects as a mitigation and/or accommodation measure, similar to the Indigenous Advisory and Monitoring Committee for the Trans Mountain Pipeline and Line 3. Bears paw would like to see Indigenous Advisory Committees be a condition of project approval to hold proponents accountable to meaningfully involve Bears paw in project monitoring and advising, as well as foster an understanding of impacts to Bears paw’s Section 35 rights to support offsetting or accommodation.

Conclusion

Bears paw expects the information and feedback in this letter will inform future amendments to the OPR and Filing Manuals as well as future discussion with the Commission and CER. In sum, our major areas of feedback include the following:

- Bears paw requires transparency around Commission decision-making processes and frameworks, and clarification on how Indigenous knowledge informs decision making. All Bears paw recommendations must be genuinely and equally considered.
- Bears paw must be consulted on how we wish to participate in projects.
- A comprehensive emergency management system that includes Bears paw is required for pipelines and oil and gas sites – both upstream and downstream operations.
- Bears paw’s preference is that pipelines be removed for decommissioning. Restoration plans for the land should include Bears paw.
- Adequate financial capacity for Bears paw is required to enable Bears paw to guide the hearing process, as well as to make informed decisions and recommendations, including those related to emergency management.
- Adequate time is required for Bears paw to retain experts, train and identify staff, and secure necessary funding to participate in follow-up and monitoring compliance activities.

- Cumulative effects to Bears paw rights need to be properly and consistently considered to support effective cumulative effects monitoring in post-approval phases.
- Bears paw would like to see Indigenous Advisory Committees be a condition approval for projects to improve proponent accountability to involve Bears paw in monitoring and advising, as well as proponent understanding of project impacts to rights.

We look forward to your consideration of our suggestions and future dialogue directly with the Commission, supported by CER staff, to promote a greater understanding of Bears paw’s governance, Section 35 rights and Inherent rights, and interests to ensure the OPR and Filing Manuals can be updated to the best advantage of all parties.

Sincerely,



Stoney Tribal Administration

Topic Paper A. Damage Prevention

Section/Question	Quote	Comment
Background: Damage Prevention	<i>CER regulations apply to any activity that disturbs the soil near federally regulated pipelines or federally regulated power lines.</i>	“Near” is an abstract term. A distance should be defined to limit variance in interpretation.
Objectives for Improvement	<p><i>The objectives of new requirements will be to help ensure that companies:</i></p> <ul style="list-style-type: none"> <i>• Are clear about what a surveillance and monitoring program should contain and aim to accomplish with respect to depth of cover...</i> 	When defining what surveillance and monitoring programs should contain, Indigenous communities should be engaged to build in opportunities for Indigenous monitoring.
Proposed Option	<p><i>Adding a requirement to section 39 of the OPR that the company’s surveillance/monitoring program must include depth of cover monitoring for:</i></p> <ul style="list-style-type: none"> <i>• the purposes of section 7 of the Canadian Energy Regulator Pipeline Damage Prevention Regulations – Obligations of Pipeline (DPR-O) companies (thus ensuring agricultural safety), and</i> <i>• monitoring the areas which may be impacted by hazards and potential hazards related to normal and abnormal weather conditions and land use.</i> 	<p>Section 7 of the DPR-O relates to operation of vehicles or equipment across a pipeline for the purpose of agricultural activity. Where such activity could impair the pipeline’s safety or security, the pipeline company is required to notify landowners of specific locations of concern.</p> <p>Consideration should be also given to ground disturbance with respect to the exercise of rights. For example, in previous regulatory hearings, Bearspaw has identified that our ability to dig shallow firepits for harvesting and ceremonial purposes has been impacted by pipeline projects. Like where <i>Topic Paper A</i> states “...agricultural activities do not require company consent”, the exercise of Bearspaw rights also does not require the consent of pipeline companies.</p>
Discussion Question A1	<i>Are there industry best practices, standards or provincial requirements that could inform new OPR requirements regarding depth of cover monitoring or maintenance/minimum earth cover?</i>	Not directed to Bearspaw.
Discussion Question A2	<i>What are the benefits and implications (e.g., costs) that regulated companies anticipate</i>	Not directed to Bearspaw.

Section/Question	Quote	Comment
	<i>from incorporating requirements for depth of cover monitoring into the OPR?</i>	
Discussion Question A3	<i>What are the benefits and implications (e.g., costs) that regulated companies anticipate from incorporating requirements for minimum depth of cover into the OPR?</i>	Not directed to Bears paw.
Discussion Question A4	<i>For regulated companies, would adding a depth of cover monitoring or maintenance/minimum earth cover requirement in the OPR align with current business practices, or substantially change corporate operations?</i>	Not directed to Bears paw.
Discussion Question A5	<i>How can the OPR improve the connection between the company surveillance and monitoring program and the DPR-O requirements and overarching Damage Prevention Program to ensure that depth of cover is adequately managed by pipeline companies?</i>	Section 16(a) of the DPR-O outlines the minimum content required in the public awareness portion of a pipeline company's Damage Prevention Program. Some of this includes information on how to work safely near pipelines, how to report on unexpected situations related to a pipeline, how to report damage, etc. Stoney have previously experienced pipeline leaks that resulted in hospitalization of community members because of exposure to H2S. More community-specific emergency response measures and protocols should be included in the minimum contents beyond information sharing and reporting.
Discussion Question A6	<i>How can the OPR improve the connection between the definition of ground disturbance (including cultivation) in the CER Act and the overarching Damage Prevention Program to ensure that depth of cover is adequately managed by pipeline companies?</i>	No comment at this time.
Discussion Question A7	<i>How should the CER be more explicit about requirements for depth of cover monitoring or maintenance? Explain why.</i>	No comment at this time.

Topic Paper B. Deactivation and End of Lifecycle

Section/Question	Quote	Comment
Discussion Question B1	<i>Are there any comments on, or further suggestions regarding the new or amended definitions above?</i>	No comment at this time.
Discussion Question B2	<i>Do you have any feedback on how section 45.1 could be improved to address the comments received; for example, what elements should be included in a decommissioning plan?</i>	<p>Currently the requirements in section 45.1 for a proponent application related to decommissioning are limited to “the reasons, and the procedures that are to be used, for the decommissioning.” (s. 45.1(2) of the DPR-O).</p> <p>Guide K of the CER Filing Manual provides more guidance on decommissioning application requirements. In proposed project applications, the assessment of impacts to Indigenous rights typically occurs within the Environmental and Socio-economic Assessment (ESA). For decommissioning applications under section 45.1, Guide K states: “While an Applicant’s full environmental and socio-economic assessment is not required to be filed, it must still be prepared and may be requested at any time” (p. 197 of the Filing Manual).</p> <p>Further, guidance for a decommissioning ESA states that “the environmental and socio-economic assessment should discuss the effects of the proposed method of decommissioning on the rights of Indigenous Peoples.” (p. 198 of the Filing Manual). In addition, the Filing Manual puts onus on the proponent to identify the extent of engagement for each decommissioning project: “The CER expects applicants to perform engagement activities for all projects depending upon the respective project scope. Companies must justify the extent of engagement carried out for each project” (p. 198-199 of the Filing Manual).</p> <p>Bears paw takes issue with this for two reasons:</p> <ul style="list-style-type: none"> • Activities are limited as “engagement”, rather than consultation with Indigenous communities, and • This enables proponents to assess impacts to Indigenous rights with limited/no engagement and consultation with Indigenous communities.

Section/Question	Quote	Comment
		<p>Bears paw suggests that the decommissioning phase of a project be approached with the same level of assessment and engagement/consultation as proposed project applications. This includes:</p> <ul style="list-style-type: none"> • sharing the decommissioning application with Bears paw, • providing the opportunity to complete a nation-led assessment, where Bears paw could provide information via Cultural Assessment to proponents about potential impacts of decommissioning activities on Bears paw's rights, • working with Bears paw to identify effective mitigations for potential impacts to Bears paw's rights, • the opportunity for Bears paw to provide information/evidence to the Commission related to impacts to Bears paw's rights and Bears paw's proposed mitigations for these impacts, • the ability for Bears paw to provide feedback on any conditions made by the Commission. <p>General filing requirements for a decommissioning plan in Guide K of the Filing Manual also require a monitoring plan for the segments of pipeline and facilities that will remain in place after decommissioning. Opportunities should be provided to Indigenous communities to participate in these monitoring activities to monitor for unpredicted impacts to Bears paw's rights. Further, it is Bears paw's preference that pipelines be physically removed for decommissioning, especially those in aquatic areas.</p>
Discussion Question B3	<i>What is your feedback on requiring companies to establish, implement and maintain a management system for decommissioned and abandoned pipelines?</i>	No specific comment at this time; however, Bears paw agrees that decommissioned and abandoned pipelines should be included in management systems per section 6.5 of the OPR.
Discussion Question B4	<i>What should the scope of the management system be for decommissioned and abandoned pipelines?</i>	<p>Section 6.5(1) of the OPR lists the requirements for company management systems and programs, including:</p> <p><i>(i) establish and implement a process for identifying and managing any change that could affect safety, security or the protection of the environment, including any new hazard or</i></p>

Section/Question	Quote	Comment
		<p><i>risk, any change in a design, specification, standard or procedure and any change in the company's organizational structure or the legal requirements applicable to the company;</i></p> <p>With respect to these subsections, Bearspaw suggests that companies be required to establish processes for identifying changes that could impact safety, security, or protection, not only of the environment, but for Indigenous communities and land users (see comments for Discussion Papers C and J).</p> <p>Companies should also consult with Indigenous communities on the identification and management of changes that may affect the safety and security of the environment, as these may impact the health, safety, and exercise of rights for Bearspaw.</p>
Discussion Question B5	<p><i>Are there risks associated with requiring companies to file a notification for deactivation activities instead of filing an application, and if so, how could they be mitigated?</i></p>	<p>It is Bearspaw's view that applications should still be required, and that notification only will be insufficient. Providing notification only to the CER removes any accountability and requirement for consultation and communication with Indigenous communities. To protect the exercise of Bearspaw's rights, Bearspaw must be informed about any project operating plans and activities and must be provided the opportunity to share information related to how these activities could impact their rights to foster further discussion on mitigation strategies and plans.</p>
Discussion Question B6	<p><i>Are there any concerns with the requirement to provide notifications on status to the CER every two (2) years during which the pipeline is deactivated to confirm that it is still being safely maintained in an operating state?</i></p>	<p>No comment at this time, though companies should be required to maintain communication and consultation with Indigenous communities throughout the entire deactivation period of a pipeline.</p>
Discussion Question B7	<p><i>Do you have feedback regarding the applicability of section 39 of the OPR (surveillance and monitoring) to include provisions around monitoring of abandoned pipelines?</i></p>	<p>No comment at this time.</p>
Discussion Question B8	<p><i>Do you have feedback on how Indigenous Peoples can be involved in the monitoring of decommissioned and abandoned pipelines?</i></p>	<p>Companies should hire Indigenous monitors and consult Indigenous communities on monitoring plans for decommissioned and abandoned pipelines. This should include space for Indigenous monitors to report findings back to their</p>

Section/Question	Quote	Comment
		communities and for communities to make recommendations for management – where required – to prevent or address any unforeseen impacts to rights.
Discussion Question B9	<i>Do you have feedback on including decommissioned and abandoned pipelines in section 56 of the OPR? For example, what is the appropriate record retention duration for these pipelines?</i>	No comment at this time.

Topic Paper C. Emergency Management

Section/Question	Quote	Comment
General Comment	N/A	<p>The CER cannot consider adequate changes to emergency management in relation to Indigenous communities without acknowledging the lack of capacity most indigenous communities, including Bears paw, face in this space. Indeed, Indigenous are more likely than non-indigenous communities to be impacted by project-related emergencies and less likely to have resources and supports to respond to those emergencies.</p> <p>The CER and companies can not rely on the internal capacity of communities to respond industrial/environmental emergencies – instead, the CER and companies must work with Bears paw to proactively build capacity.</p>
Background	<i>Educate: a continuing education program must be in place for police, fire departments, medical facilities, and other organizations and agencies and the public living nearby;</i>	Language regarding emergency management/safety needs to be expanded to specify Indigenous communities in addition to the public. Indigenous communities cannot be included under the same umbrella as the public, as the use of lands and emergency management related capacity between these two groups varies widely. A two-way education system must be required where pipeline companies can educate Indigenous communities about pipeline emergency management programs, and Indigenous communities are able to share information about emergency management and response needs/strategies that will ensure the health and safety of community members is protected during a pipeline-related emergency.
Subtopic 2: Priorities to be Considered within the EM Program	<i>The CER also intends to clarify that the EM Program must consider broader impacts to people (e.g., financial impacts) as well as safety.</i>	Bears paw has reservations about focusing on financial impacts related to emergency management. In Bears paw's experience, the CER's processes and approaches prioritize financial aspects of projects, and the economy, over other aspects of Indigenous and public interest (e.g., impacts to rights and the environment). In Bears paw's view, emergency management should remain focused on impacts to the biophysical environment, to Indigenous rights, and to safety of both the public and Indigenous communities.

Section/Question	Quote	Comment
Subtopic 3: Consolidation of current regulatory framework requirements within the OPR	<i>The CER has also published Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-reportable Incidents and intends to publish Best Practices for the Involvement of Indigenous Nations and Communities in Emergency Management.</i>	Note that Indigenous communities should be engaged on the development of the Best Practices for the Involvement of Indigenous Nations and Communities in Emergency Management.
Discussion Question C1	<i>What is your feedback on incorporating CSA Z246.2 by reference in the OPR?</i>	This referenced standard needs to either be internally updated or the OPR must require Indigenous consultation and involvement on the development of project-specific emergency management plans.
Discussion Question C2	<i>What is your feedback on replacing the term “safety of workers or the public” with “people” in subsection 32(1)?</i>	See Bearspaw’s comment regarding the Background and the Subtopic 2 sections of this Discussion Paper.
Discussion Question C3	<i>What is your feedback on including adverse effects on sites of historic and cultural significance in subsection 32(1)?</i>	Emergency management cannot be limited to site-specific impacts to Indigenous communities and must be applied to a broader Indigenous rights lens. Rather than limiting emergency management to adverse effects on sites of cultural significance, emergency management should focus on adverse effects to Indigenous rights (i.e., the ability to access, enjoy, experience sense of place, connect with cultural identity, etc. in relation to sites of significance) resulting from pipeline-related emergencies. Understanding these emergency-related impacts to rights and how to mitigate them will require consultation with Indigenous communities when developing a project emergency management plan.
Discussion Question C4	<i>What is your feedback on this proposal?</i>	No comment at this time.
Discussion Question C5	<i>Are there elements of the above-noted documents that should be included in OPR-related guidance rather than in the OPR itself?</i>	Bearspaw has no comments specific to this Discussion Question; however, for general accessibility and ease of review it is easier to reduce the number of documents with information that may be relevant for Bearspaw’s future participation in CER processes.

Section/Question	Quote	Comment
Discussion Question C6	<i>What is your feedback on elements of the Best Practices that could be incorporated into the OPR versus related Guidance?</i>	<p>Two Best Practice documents are discussed in this paper: Industry Best Practices for Notifications to Indigenous Nations and Communities, and Best Practices for the Involvement of Indigenous Nations and Communities in Emergency Management.</p> <p>Bearspaw notes that as these best practice documents relate specifically to Indigenous communities, they cannot be considered relevant or a “best practice” without consultation and involvement from Indigenous communities on the development of these documents.</p>
Discussion Question C7	<i>What is your feedback on clarifying the requirements in sections 33-35 of the OPR, regarding liaison activities and the continuing education program?</i>	<p>Section 35 of the OPR should be updated to list Indigenous communities, in addition to the public.</p> <p>Additionally, this paper proposes new Emergency Response Coordination and Emergency Management Information provisions within the OPR. Bearspaw will require more information surrounding these provisions before we can provide meaningful input.</p>
Discussion Question C8	<i>What is your feedback on clarifying the CER’s requirements within the OPR regarding the Involvement of Indigenous Peoples in a company’s EM Program?</i>	<p>Bearspaw finds this question to be very broad, where plenty of information already exists on the topic. Bearspaw participated in the Line 3 Indigenous Advisory and Monitoring Committee (IAMC) Trans Mountain Expansion Project IAMC, and contributed to the December 2019 Summary Report referenced in the Discussion Paper. The CER can refer to this feedback for details.</p> <p>The OPR should explicitly list requirements for Indigenous <u>consultation</u> regarding emergency management programs. In hearing processes, it is Bearspaw’s experience that the Commission will separate itself from the Duty to Consult, fulfilling this Duty via the Crown Consultation Coordinator instead. However, outside of these hearings for project applications, the CER as a Crown body must satisfy this duty. Pipeline emergencies and emergency management have the potential to impact Indigenous rights. Fulfilling the Duty to Consult can be accomplished by assigning procedural aspects to a third party (i.e., the pipeline companies); as such, the CER should include consultation requirements within the OPR.</p>

Section/Question	Quote	Comment
		<p>With this in mind, it should be noted that only a small subset of the projects approved and overseen by the CER trigger a hearing. The vast majority proceed without the Commission's direct oversight and Crown Consultation with Indigenous communities to this degree. These projects can still result in emergency management concerns and considerations.</p>

Topic Paper D. Environmental Protection

Section/Question	Quote	Comment
Discussion Question D1	<i>What is your feedback on the proposed requirements above?</i>	Contamination of the environment has the potential to impact Bears paw’s rights. Bears paw is supportive of additional reporting requirements as it pertains to contamination, including expanding reporting requirements beyond the definition of a “reportable incident”. However, Bears paw also suggests that reporting requirements should extend to Indigenous communities rather than the CER only, as Indigenous harvesters and land users should be made aware of potential contamination as soon as said contamination is identified by the company.
Discussion Question D2	<i>Do these requirements enhance environmental protection and clarify CER expectations in the areas of reclamation and vegetation management?</i>	This section of <i>Topic Paper D</i> does not clarify the CER’s expectations for reclamation; more specifically, Bears paw would like to see clear parameters and rules established by the CER – in consultation with Indigenous communities – around how to meet its expectations. Currently, the bullet points describing reclamation requirements are theoretical and similar to what a pipeline company may describe as their goals for reclamation, but in Bears paw’s experience these are never the real, tangible outcomes of reclamation activities. Bears paw members, Elders, and harvesters have recounted on multiple occasions how the landscape and environment changes after a pipeline is constructed, and how the land and spirits of the medicines are no longer the same. All of these create impacts to Bears paw’s rights that are not addressed by reclamation activities. The OPR should include the CER’s expectations for how companies will complete reclamation. For example, this can include establishing and enforcing a minimum net gain ratio for reclamation. This should also include consultation with Indigenous communities to develop project-specific reclamation methods or to conduct ceremonies that will support reclamation activities and the exercise of Indigenous rights.
Discussion Question D3	<i>The requirement proposed in the third bullet above states that the goals of restoration are to restore the land to a condition similar to</i>	In Bears paw’s view the overall objective of reclamation should a biodiversity net gain. Due to the impacts of colonization, in some cases history and knowledge of pre-

Section/Question	Quote	Comment
	<i>the surrounding environment and consistent with the pre-disturbance land use. Are these appropriate goals for restoration? If not, what should be the goals for restoration?</i>	disturbance land use is lost, which can make this a difficult threshold for Indigenous communities to define. While Indigenous knowledge, histories, and land use are important factors that should inform reclamation plans and activities, an overall biodiversity net gain will support healing lands within İyāñé Nakoda Makoche and the exercise of Bearspaw rights.
Discussion Question D4	<i>What is your feedback on establishing restoration goals in consultation with potentially impacted parties?</i>	See comments on Discussion Questions D2 and D3.
Discussion Question D5	<i>What does involvement by Indigenous Peoples in monitoring over the lifecycle of the pipeline look like to you? Please provide any applicable examples or best practices.</i>	In terms of monitoring activities for pipelines, Bearspaw faces three primary problems: <ol style="list-style-type: none"> 1) Funding: Participation in the development and carrying out of monitoring plans and activities is often underfunded. If the OPR adds requirements for Indigenous involvement in monitoring, these requirements will not be fulfilled meaningfully without appropriate funding from pipeline companies. 2) Employment Structure: Indigenous monitors are often considered employees of a pipeline company, reporting to the company who then report to Indigenous communities. Findings of Bearspaw monitors should not be filtered through a pipeline company. Instead, Bearspaw monitors should work for Bearspaw and report back to the community and Bearspaw leadership, who can have more meaningful dialogue with pipeline companies on monitoring reports. 3) Cultural Specificity and Applicability: Monitoring methods are established in a specific western-based approach. While important to meet safety standards, more conversations about incorporating Indigenous ways of being on the land into monitoring approaches is important for Bearspaw.
Discussion Question D6	<i>In the context of the CER's expectations of regulated companies, how could more independent monitoring and reporting by Indigenous Peoples be effectively and safely</i>	See comment on Discussion Question D5.

Section/Question	Quote	Comment
	<i>achieved? What challenges might be involved? Please provide any applicable examples or best practices.</i>	
Discussion Question D7	<i>Would the proposed processes in Subtopic 1 of the Rights and Interests, Socio-Economic Effects, and Engagement Topic Paper help ensure that Indigenous Peoples are included in the development and implementation of environmental monitoring activities, or are additional requirements or guidance required specific to monitoring?</i>	See comment on Discussion Question D5.
Discussion Question D8	<i>What are the costs or benefits of adding a requirement to develop an EP Plan that is scalable to the scope of the work for all construction, operations and maintenance activities?</i>	No comment at this time.
Discussion Question D9	<i>Are there alternative means to an EP Plan, that would help ensure that environmental protection is being considered and communicated during construction, operations and maintenance activities?</i>	No comment at this time.
Discussion Question D10	<i>Would the proposed requirements in Subtopics 1 and 3 of the Rights and Interests, Socio-Economic Effects and Engagement Topic Paper help ensure that EP Plans and the Environmental Protection Programs incorporate measures to prevent and address impacts to the Rights and Interests of Indigenous Peoples?</i>	Bears paw cannot speak to this with certainty, as it depends on multiple factors surrounding Indigenous engagement, including company and CER understanding of impacts to Bears paw's rights, a willingness to respond appropriately and effectively to these impacts, capacity funding, and proposed project details.
Discussion Question D11	<i>What mechanisms are companies currently using to ensure that all the information gathered, commitments made, and input received during the hearing is transferred to operational personnel for the lifecycle of the project?</i>	Not directed to Bears paw.

Section/Question	Quote	Comment
Discussion Question D12	<i>If a mechanism already exists, what are the benefits and costs of a requirement stating that a construction to operations transition plan is required?</i>	A construction to operations transition plan and more transferability between construction and operation personnel would create more consistency for Bears paw in terms of project commitments and understanding of Bears paw rights.
Discussion Question D13	<i>While events such as floods and forest fires could be considered hazards under OPR paragraph 6.5(1)(c), due to the increasing frequency of climate related events and the potential impact on all Canadians, the CER is considering a requirement that companies assess these climate related risks on a continual basis, and that infrastructure be resilient to these risks. What are the benefits and costs of a requirement related to continual assessment of climate risks and the implementation of a process to manage and mitigate these risks?</i>	As rights holders and land users, Bears paw are particularly vulnerable to the effects of climate change. Additional assessment parameters and requirements surrounding climate change resiliency are important for Bears paw.
Discussion Question D14	<i>Are there other options that may achieve the objective in a more effective manner? If so, please explain.</i>	See comment on Discussion Question D13.
Discussion Question D15	<i>Should the CER consider incorporating ISO 14001 and related ISO standards by reference into the OPR or any associated technical guidance? Please explain.</i>	Bears paw is required to pay \$159.00 to access this document and is unable to offer sufficient consideration on the topic. The CER should provide all necessary documents to ensure adequate review and input. Bears paw should not be required to pay.
Discussion Question D16	<i>Are there any potential regulatory gaps in relation to the management system requirements contained in sections 6.1 - 6.6 of the OPR and its applicability to the Environmental Protection Program required by section 48? If so, should ISO 14001 be incorporated by reference in whole or in part into the OPR or associated technical guidance to address those gaps? If in part, which standards or parts of those standards should be incorporated?</i>	See comment on Discussion Question D15.

Topic Paper G. Pipeline Integrity

Section/Question	Quote	Comment
Discussion Question G1	<i>Please provide feedback on the proposed change to the definition of onshore pipeline to include hydrogen and carbon dioxide in a gaseous state.</i>	Bearspaw requires separate regulations for hydrogen and carbon dioxide to consider the differing impacts from crude oil and natural gas.
Discussion Question G2	<i>What would an appropriate review period be for a notification?</i>	No comment at this time.
Discussion Question G3	<i>Do you have comments on the proposed approach or suggestions for alternatives?</i>	<p>It is not clear to Bearspaw what the potential benefits would be of providing notification for the use of new technologies rather than a complete application to the CER. Bearspaw is concerned that a notification process will limit the CER's ability to effectively fill its role in oversight of projects using these technologies.</p> <p>So far, the discussion paper states that notifications are recommended to “support innovation” and to ensure that companies using new technologies implement them in a safe manner. This will apply for technologies where <u>no standard is set</u> in the OPR. The discussion paper further indicates that onus will be placed on companies to “establish and implement a process for evaluating a technology for which no standard is set out in the OPR”. In effect, this means the CER will take a company's information as fact, and Bearspaw is concerned about potential gaps in CER staff and Commission knowledge, understanding, and training that will best position the regulator to make decisions about new technologies.</p> <p>Some questions that arise for Bearspaw include:</p> <ul style="list-style-type: none"> • Established standards will not only apply to pipeline companies but also provide guidance for CER staff and the Commission for reference. How will CER staff and Commission members be trained to understand these new technologies for their effective regulation? • Without established standards, will a pipeline company's word be accepted as fact regarding the implementation of new technologies?

Section/Question	Quote	Comment
		<ul style="list-style-type: none"> What other mechanisms and avenues will be in place for the CER to understand the potential impacts of new technologies and to ensure these are appropriately addressed?
Discussion Question G4	<i>Please provide feedback on the inclusion of these new requirements. Provide feedback on the threshold size of the installation mentioned in option 3.</i>	No comment at this time.
Discussion Question G5	<i>Please provide feedback on the impact of these new requirements on safety throughout the lifecycle of the pipeline.</i>	No comment at this time.
Discussion Question G6	<i>Please provide feedback about these proposed options.</i>	No comment at this time.
Discussion Question G7	<i>Please provide feedback on the proposed approach.</i>	No comment at this time.
Discussion Question G8	<i>What is your feedback on this proposed approach?</i>	No comment at this time.

Topic Paper H. Reporting Harm

Section/Question	Quote	Comment
Discussion Question H1	<i>Describe challenges or limitations that regulated companies have experienced when interpreting or applying the current OPR definition of “incident”.</i>	This question is not directed to Bears paw, but Bears paw would like to note that the current definition of an “incident” is limited to death or serious injury to people or “significant” adverse effects to the environment (plus other occurrences measured against specified industry standards). In Bears paw’s view, incidents should extend to Bears paw rights and interests, impacts to cultural, spiritual, or heritage sites (including ancestral remains), and death or serious injury of wildlife as well.
Discussion Question H2	<i>Based on industry experience and best practices, describe where improvements to the OPR definition of “incident” can complement areas of overlapping federal, territorial and/or provincial legislation and/or reduce reporting redundancies.</i>	Not directed to Bears paw.
Discussion Question H3	<i>What instructions or decision-making tools (e.g., risk matrix, checklist, decision tree) are most useful for regulated companies to make a timely assessment of whether an occurrence requires immediate notification to the CER?</i>	Not directed to Bears paw.
Discussion Question H4	<i>Describe industry best-practices that can improve how the CER approaches incident reporting in relation to adverse environmental effects or the potential for adverse environmental effects.</i>	Not directed to Bears paw, though Bears paw suggests that any reporting submitted to the CER be circulated with Indigenous communities, directly from the pipeline company.
Discussion Question H5	<i>Describe occurrences, other than chemical releases, that may have adverse environmental effects for which the CER needs to be immediately notified.</i>	Bears paw suggests the following: <ul style="list-style-type: none"> • Bears paw rights and interests, • Impacts to cultural, spiritual, or heritage sites (including ancestral remains), • Death or serious injury to wildlife, • Death or serious injury to species at risk,

Section/Question	Quote	Comment
		<ul style="list-style-type: none"> Death or serious injury to wildlife listed as key species that support the exercise of Indigenous rights (preferably naming communities who previously identified these species as key for the Commission to understand which communities may be impacted). <p>Also see comment on Discussion Question H4.</p>
Discussion Question H6	<i>There are occurrences that may result in an adverse environmental effect and may not be considered an incident as defined in the OPR. Depending on their severity, they could be submitted to the CER as a new notification type with an extended timeline and used to assess company performance or trend analysis. What occurrences do you think the CER needs to be notified of?</i>	Not directed to Bearspaw.
Discussion Question H7	<i>What do the terms “loss of operational view or operational control of a pipeline” mean to you?</i>	Not directed to Bearspaw.
Discussion Question H8	<i>How should notification and reporting be treated in relation to such events?</i>	Not directed to Bearspaw.
Discussion Question H9	<i>Do you have additional feedback for the CER to consider not covered in questions H7 or H8?</i>	Not directed to Bearspaw.
Discussion Question H10	<i>What criteria are of greatest importance when assessing the potential risk associated with a release of LVP or HVP hydrocarbons? (e.g., product, location including proximity to a site of historic or cultural significance, volume, rate of release).</i>	Stoney has previous experience with release of H ₂ S near Mîniî Thnî, which resulted in the hospitalization of community members. For Bearspaw, location of potential risks is critical. However, location must not be limited to site-specific information (i.e., reserves, or sites of cultural significance). For example, consideration must be given to harvesters who may be using the land in proximity to a pipeline during the time of an incident.
Discussion Question H11	<i>Provide examples of events relating to pipeline construction, operation, or abandonment that your company internally classifies as high-potential incident near misses.</i>	Not directed to Bearspaw.

Section/Question	Quote	Comment
Discussion Question H12	<i>Describe industry best practices that could inform the creation of an OPR definition and description of "high-potential incident near miss".</i>	Not directed to Bears paw.
Discussion Question H13	<i>What are the benefits and costs for regulated companies if high-potential incident near miss reporting were to become an OPR regulatory reporting requirement?</i>	Not directed to Bears paw.
Discussion Question H14	<i>Please describe what aggregated data sets and/or industry trend types would be most helpful in supporting these performance improvement objectives.</i>	Not directed to Bears paw.
Discussion Question H15	<i>How might the definition of "incident" in the OPR be refined to support these performance objectives (i.e., organizational and industry-wide learning and continual improvement)?</i>	Not directed to Bears paw.
Discussion Question H16	<i>Are you aware of existing best practices in historic or cultural site hazard identification that would clarify definitions and this proposed reporting requirement?</i>	The classification of a "hazard" may be site-dependent and vary across Indigenous communities (i.e., different factors may create the potential for different hazards). Effective hazard identification will require direct consultation with Indigenous communities. Companies should share what pipeline elements exist in the area, the potential risks associated with those elements, and how those can affect the surrounding environment. Communities will then be able to provide input on how these risks may result in hazards to important cultural sites.

Topic Paper I. Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement

Section/Question	Quote	Comment
Discussion Question I1	<i>What is your feedback on the CER’s objectives for improvement? Are these the right objectives, or are there others the CER should consider?</i>	<p>The CER is suggesting requirements to ensure companies “have systematic processes and procedures in place to identify, anticipate, manage and address potential impacts to the rights and interest of Indigenous Peoples across all of its activities...”</p> <p>For Bears paw the issue begins with the identification of impacts to rights and the treatment of these impacts throughout the CER’s hearing process. Proponent project applications will often underestimate the significance of an impact to Indigenous rights as “not significant” and therefore not require additional measures to manage and address these impacts. The hearing process is so combative and unbalanced, that despite Bears paw’s participation and provision of evidence to the CER Commission and pipeline companies, the companies’ assessments are taken as fact and impacts go unaddressed. This coupled with the lack of sufficient capacity, the lack of sufficient time, and inadequate Crown Consultation mean Bears paw is often disadvantaged in this process.</p> <p>For projects that do not trigger a hearing, there is almost no opportunity to identify impacts to rights and ensure they are properly mitigated, accommodated, and monitored. This is a fundamental flaw that continually goes unaddressed. It is unclear how the CER can proceed in good faith without adequately addressing these gaps.</p> <p>In Bears paw’s view, these proposed objectives will not address the root issue of company and Commission interpretation and consideration of Indigenous knowledge.</p>
Discussion Question I2	<i>What is your feedback on the following proposed options to meet the regulatory objectives?</i>	Bears paw should be provided the opportunity to better understand the CER’s anticipated implementation for these options. In Bears paw’s experience, the Commission’s interpretation and weighing of Indigenous knowledge

Section/Question	Quote	Comment
	<ul style="list-style-type: none"> • <i>a new protection program to prevent and address impacts to the rights and interests of Indigenous Peoples;</i> • <i>a new management system process for the incorporation of Indigenous knowledge;</i> • <i>a new management system process for the identification and incorporation of Indigenous laws, policies, practices and protocols;</i> • <i>cultural competency training requirements for all those working for regulated companies;</i> • <i>additional requirements where necessary.</i> 	<p>against pipeline company information has the most influence over whether impacts to Bearspaw’s rights are properly identified and addressed. Until such a time that Bearspaw can understand and have confidence in Commission decision-making processes, proponent requirements and protection programs for impacts to Indigenous rights are moot.</p>
Discussion Question I3	<p><i>Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?</i></p>	<p>See Bearspaw’s comment on Discussion Question I2. Until Commission decision-making processes are transparent and clear, and until Bearspaw can be confident that the Commission does not weigh proponent information above Indigenous knowledge, proponent-led protection programs will not address impacts to Bearspaw’s rights.</p> <p>Instead, Bearspaw suggests that capacity be provided for impacted Indigenous communities to develop project-specific Indigenous Rights protection programs, which proponents will be required to implement. This would support the CER’s commitment to advancing Reconciliation with Indigenous Peoples and Canada’s commitments to implementing the articles of UNDRIP by enabling Indigenous Peoples’ exercise of regulatory authority over projects in their traditional territories.</p>
Discussion Question I4	<p><i>Are there any potential challenges associated with these proposals? What are they? How can they be addressed?</i></p>	<p>See comments on Discussion Questions I2 and I3.</p>
Discussion Question I5	<p><i>What kind of guidance would be helpful to enhance your understanding of CER expectations related to new requirements to</i></p>	<p>See comments on Discussion Questions I2 and I3.</p>

Section/Question	Quote	Comment
	<i>prevent and address impacts to the rights and interests of Indigenous Peoples?</i>	
Discussion Question I6	<i>Do you have feedback on how specific localized knowledge, as well as Indigenous laws, policies, practices, protocols, and knowledge could be incorporated into the OPR? Are there other options or proposals that the CER should consider? Are there any particular challenges associated with implementing or verifying compliance to new requirements? How can these be addressed?</i>	See comments on Discussion Questions I2 and I3.
Discussion Question I7	<i>What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?</i>	See comments on Discussion Questions I1-I6.
Discussion Question I8	<i>What is your feedback on the following proposed options to meet the regulatory objectives?</i> <ul style="list-style-type: none"> • <i>a new protection program for the management of socio-economic effects;</i> • <i>expansion of the existing Environment Protection Program to include the management of socio-economic effects.</i> 	See comments on Discussion Questions I1-I6.
Discussion Question I9	<i>Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?</i>	See comments on Discussion Questions I1-I6.
Discussion Question I10	<i>Are there any potential challenges associated with these proposals? What are they? How can they be addressed?</i>	See comments on Discussion Questions I1-I6.
Discussion Question I11	<i>What kind of guidance would be helpful to enhance your understanding of CER</i>	See comments on Discussion Questions I1-I6.

Section/Question	Quote	Comment
	<i>expectations related to new requirements to manage socio-economic effects?</i>	
Discussion Question I12	<i>What is your feedback on the CER's objectives for improvement? Are these the right objectives, or are there others the CER should consider?</i>	See comments on Discussion Questions I13-I16.
Discussion Question I13	<p><i>What is your feedback on the following proposed option to meet the regulatory objectives?</i></p> <ul style="list-style-type: none"> <i>Explicit requirements for engagement related to the objectives, either through a stand-alone requirement or a management system process.</i> 	Engagement should be conducted as stand-alone and not through a management system process, and Bears paw requires sufficient funding for stand-alone engagement.
Discussion Question I14	<i>Do you have any feedback on how these can be implemented by companies and how compliance can be verified by the CER (e.g., potential oversight activities, assessment criteria, performance measures)?</i>	<p>One objective proposed by the CER is to “help ensure that companies are engaging potentially impacted Indigenous Peoples throughout the lifecycle to identify where rights and interests may be impacted, and how they can be addressed...”</p> <p>These activities cannot be only proponent-led; Indigenous communities need to have more oversight. To date, proponent-led engagement and processes to identify and address Indigenous rights have been sorely insufficient and lead to the continued contribution of projects to cumulative impacts on Indigenous rights.</p> <p>Another objective proposed by the CER is to “allow for flexibility so that companies can be responsive to, and respectful of, the unique needs, interests, and engagement preferences of Indigenous Peoples, potentially affected people and communities.”</p> <p>Bears paw requires a better understanding of what the CER means by “flexibility” in order to respond meaningfully.</p>
Discussion Question I15	<i>Are there any potential challenges associated with this proposal? What are they? How can they be addressed?</i>	See comments on Discussion Questions I13 and I14.

Section/Question	Quote	Comment
Discussion Question I16	<i>What kind of guidance would be helpful to enhance your understanding of CER expectations related to engagement?</i>	See comments on Discussion Questions I13 and I14.

Topic Paper J. Safety

Section/Question	Quote	Comment
Discussion Question J1	<i>What is your feedback on the proposed approach?</i>	No comment at this time.
Discussion Question J2	<i>What guidance is needed to support the incorporation of process safety management within the Safety Management Program? Please be as detailed as possible in terms of the nature and content of required guidance (i.e., specific topics, processes, procedures, or other practical tools that might be useful).</i>	No comment at this time.
Discussion Question J3	<i>What is your feedback on the proposed approach?</i>	Bears paw broadly agrees with the proposed approach. However, monitoring approaches should be described to include Indigenous monitors who can report to their communities to communicate any safety hazards and support any response activities. Moreover, companies should work to make any safety plans and documentation available in different Indigenous languages to support community member understanding and knowledge.
Discussion Question J4	<i>What guidance is needed to support safety plan provisions in the OPR? Please be as detailed as possible in terms of the nature and content of required guidance (i.e., specific topics, processes, procedures, or other practical tools that might be useful).</i>	No comment at this time.

Topic Paper K. Filing Manuals – Environmental and Socio-economic Assessment

Section/Question	Quote	Comment
Discussion Question K1	<i>Does the proposed split of the current ESA section improve clarity?</i>	<p>Splitting the ESA section into ESA, and Rights and Interests of Indigenous Peoples may provide more clarity; however, this cannot compromise the integration of Indigenous knowledge throughout the rest of the Project Application. The ESA section and Filing Manual must have requirements for the inclusion and integration of Indigenous knowledge regardless of a separate Indigenous Rights and Interests section.</p> <p>At the same time, the standard and level for integration of Indigenous knowledge into other sections of the ESA must be clear. The inclusion of Indigenous knowledge into biophysical or environmental contexts and understandings often removes this knowledge from its holistic context and applies it in an extractive manner. This may be exacerbated by splitting the ESA and Rights and Interests of Indigenous Peoples.</p>
Discussion Question K2	<i>What overarching topics are important to highlight as applying throughout the applicant's ESA and "Rights and Interests of Indigenous Peoples" sections?</i>	See comment on Discussion Question K1.
Discussion Question K3	<i>What other restructuring of the existing ESA section might improve clarity, readability, and better highlight important issues?</i>	See comment on Discussion Question K1.
Discussion Question K4	<i>To what extent should Indigenous knowledge and engagement be explicitly addressed in the selection of VCs? How should applicants demonstrate that Indigenous knowledge and engagement informed the selection of VCs?</i>	<p>Bears paw supports the addition of guidance and commitments to discussion around the scope and breadth of VCs in a project application.</p> <p>Applicants can demonstrate that Indigenous knowledge informed the selection of VCs by identifying pathways of effect between VCs and Indigenous Rights and Interests, and by describing the nature of these pathways. This would require the proponent to understand how Environmental and Socio-economic VCs can interact with Indigenous rights, and</p>

Section/Question	Quote	Comment
		to provide opportunity for Indigenous communities to verify these identified pathways of impact with the proponent and the Commission.
Discussion Question K5	<i>What factors should guide the choice of VCs in terms of their breadth?</i>	See comment on Discussion Question K6.
Discussion Question K6	<i>Can VCs be 'nested' to cover both specific and more general concerns (e.g., a general VC that sums the effects on a number of narrower VCs)? Are there any methodological considerations or approaches regarding the 'summing' of effects of individual VCs?</i>	Bears paw is aware of applications under the British Columbia Environmental Assessment Office (BC EAO), where the assessment of VCs includes “subcomponents” under certain VCs (e.g., the VC of Surface Water may be broken into “Surface Water Quality”, “Surface Water Quantity” and “Sediment Quality” subcomponents). This approach breaks large VCs into more digestible aspects that are easier for assessment and consideration with impacts to Indigenous rights. For Bears paw, the incorporation of Indigenous knowledge and an understanding of the exercise of Indigenous rights would be required to inform how VCs are nested, if at all.
Discussion Question K7	<i>What other improvements or clarifications can be made to the discussion and selection of VCs?</i>	No comment at this time.
Discussion Question K8	<i>Would having separate sections in the Filing Manual (e.g., one describing socio-economic VCs and another describing VCs focused on the rights and interests of Indigenous Peoples) improve clarity?</i>	See comment on Discussion Question K1 – Indigenous knowledge, histories, and rights must still be incorporated into the ESA section if Indigenous Rights and Interests were to be moved to a separate section.
Discussion Question K9	<i>How would such a split impact the assessment of biophysical VCs, socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?</i>	See comments on Discussion Questions K1 and K8 – the proposed approach risks separating Indigenous knowledge, rights, and experiences from the human and physical contexts. The CER states it wishes to “avoid duplication”; however, duplication will be unavoidable in the context of assessing impacts to Indigenous rights because these are so deeply intertwined with aspects of physical and socio-economic environments.

Section/Question	Quote	Comment
Discussion Question K10	<i>What VCs should stay in the ESA section versus which should move to the “Rights and Interests of Indigenous Peoples” section?</i>	No comment at this time.
Discussion Question K11	<i>What other improvements can be made to the guidance for socio-economic VCs?</i>	No comment at this time.
Discussion Question K12	<i>What considerations concerning enhancement measures should be included? Are there different considerations for enhancement measures for biophysical VCs versus socio-economic VCs?</i>	Enhancement measures should be examined with as much detail as mitigation measures. Often, enhancement measures are described/stated briefly but not assessed for level or depth of impact. For example, it is common for proponents to state that employment and training opportunities will provide benefits for Indigenous communities; however, there is no assessment of how many employment positions are available, or how many of these positions are anticipated to be made available to Indigenous peoples, nor is there any reflection on how many Indigenous peoples (from which communities) are employed or provided training. This means that only certain communities may be experiencing more benefits over others, and the real benefits of the enhancement measures are exaggerated.
Discussion Question K13	<i>What principles and other considerations concerning offsets should be included? Are there different considerations for offsets for biophysical VCs versus socio-economic VCs?</i>	Bears paw suggests that a net-gain principle be considered over a no net-loss principle when examining offsets. This approach is important for beginning to heal the land and address cumulative effects that are pervasive throughout Íyãhé Nakoda Makoche.
Discussion Question K14	<i>What is the best way to document, monitor, manage, and report on socio-economic protection and enhancement measures?</i>	Bears paw suggests that the issue is not with the implementation of mitigations, but with the accurate identification of impacts to Indigenous rights, and the subsequent development of mitigation measures. Without accurately identifying impacts to rights, the incorrect mitigations are developed, and the real impacts go unmitigated.
Discussion Question K15	<i>How can information relevant to environmental and socio-economic protection measures best be documented to ensure site-specific information and relevant</i>	See comment on Discussion Question K14.

Section/Question	Quote	Comment
	<i>commitments are maintained and implemented during operations?</i>	
Discussion Question K16	<i>What other improvements can be made to the discussion and guidance for mitigation and enhancement measures?</i>	No comment at this time.
Discussion Question K17	<i>To what extent should environmental events and climate change be included in cumulative effects assessments?</i>	Bearspaw supports environmental events and climate change being wholly incorporated in cumulative effects assessments.
Discussion Question K18	<i>How is the cumulative effects assessment relevant to positive effects as well as adverse effects?</i>	No comment at this time.
Discussion Question K19	<i>What factors are important in choosing the appropriate baseline for cumulative effects assessment?</i>	<p>Bearspaw supports the justification of baseline selections. In the context of Indigenous rights, an appropriate baseline may vary between communities. It is important to consider that proponents may be required to choose different baselines for different communities, or to host workshops with potentially impacted Indigenous communities where participants work together to establish a project-specific baseline for assessing impacts to rights.</p> <p>For Bearspaw, the factors that are most important for baseline selection are when Bearspaw members were last able to exercise their rights unhindered – this is usually thought to be around the time of signing Treaty 7. This is also because Bearspaw Knowledge Keepers alive today still hold the oral histories and stories from relatives and ancestors who lived around the time of Treaty signing and can recount stories about what it meant to meaningfully exercise Bearspaw’s rights at that time.</p>
Discussion Question K20	<i>To what extent should the use of offsets and the applicant’s confidence in achieving no net loss relieve an applicant from having to include a cumulative effects assessment in their ESA?</i>	<p>Bearspaw suggests a principle of net-gain be applied to offsets and recommends that applicants not be exempt of a cumulative effects assessment where no net-loss is demonstrated.</p> <p>Again, it is also Bearspaw’s experience that applicant assessments fail at the impact-identification stage of Indigenous rights assessments. This creates a cascade of</p>

Section/Question	Quote	Comment
		failure throughout the assessment process and an inevitable contribution to cumulative effects where proponents often say there is none.
Discussion Question K21	<i>What other improvements can be made to the discussion and guidance for cumulative effects?</i>	No comment at this time.
Discussion Question K22	<i>Would a framework similar to the significance tables used in the NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?</i>	See comment on Discussion Question K20. Without accurate identification of potential impacts to Indigenous rights, and without understanding the Commission's approach to weighing proponent information against Indigenous knowledge, significance determinations are moot.
Discussion Question K23	<i>What considerations should apply when making the significance determination for federal lands?</i>	No comment at this time.
Discussion Question K24	<i>What other improvements can be made to the discussion and guidance for significance?</i>	No comment at this time.

Topic Paper M. Filing Manuals – Rights of Indigenous Peoples

Section/Question	Quote	Comment
Discussion Question M1	<i>Does the proposed split into two sections (i.e., an amended ESA section and a new “Rights and Interests of Indigenous Peoples” section) improve clarity?</i>	See comments on Paper K.
Discussion Question M2	<i>What overarching topics are important to highlight as applying throughout the applicant’s ESA and “Rights and Interests of Indigenous Peoples” sections?</i>	See comments on Paper K.
Discussion Question M3	<i>What other restructuring of the “Rights and Interests of Indigenous Peoples” section might improve clarity, readability, and better highlight important issues?</i>	See comments on Paper K.
Discussion Question M4	<i>Would having separate sections in the Filing Manual (e.g., one describing VCs focused on the rights and interests of Indigenous Peoples and another describing biophysical and socio-economic VCs) improve clarity?</i>	See comments on Paper K.
Discussion Question M5	<i>How would such a split impact the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples?</i>	See comments on Paper K.
Discussion Question M6	<i>What VCs should be included in the “Rights and Interests of Indigenous Peoples” section and which should stay in or also be included in the ESA section?</i>	See comments on Paper K.
Discussion Question M7	<i>What is the best way to document, monitor, manage, and report on protection and enhancement measures for VCs focused on the rights and interests of Indigenous Peoples?</i>	See comments on Paper K.
Discussion Question M8	<i>How can information relevant to the rights and interests of Indigenous Peoples best be</i>	See comments on Paper K.

Section/Question	Quote	Comment
	<i>documented to ensure site-specific information and relevant commitments are maintained and implemented during construction and operations?</i>	
Discussion Question M9	<i>What are the opportunities and challenges of Indigenous-led assessments and studies for Indigenous Peoples (e.g., timing, funding, scoping, integration)?</i>	<p>Bears paw experiences multiple challenges with Indigenous-led assessments:</p> <ol style="list-style-type: none"> 1) Project Size: For projects that do not trigger a hearing, which is the vast majority of pipelines, there is inadequate capacity and time for involvement. In these instances, the impacts go largely unassessed and unaddressed. Industry is largely incentivised to split their projects for these lesser approval process to lessen their consultation requirements and project costs at the expense of Bears paw. 2) Funding: Bears paw relies on funding from proponents to complete our assessments. The depth and quality of Bears paw's assessments is dependent on the amount of funding received to complete the work. Where proponents provide inadequate funds, Bears paw is unable to complete meaningful engagement with Elders and Knowledge Keepers to gain a complete understanding of potential impacts. 3) Timelines: Proponent timelines are compressed and do not allow Bears paw sufficient time to complete our engagement activities. 4) Integration: Further to issues of compressed timelines, these do not allow for a meaningful, iterative process in which proponents should review and discuss Bears paw's assessment findings. Instead, Bears paw's information is used in applications in an extractive manner and proponents make their own determinations without further engagement and understanding.
Discussion Question M10	<i>What are the opportunities and challenges of Indigenous-led assessments and studies for applicants (e.g., timing, funding, scoping, integration)?</i>	Not directed to Bears paw.

Section/Question	Quote	Comment
Discussion Question M11	<i>How can Indigenous-led assessments and studies be integrated with the applicant's assessment and still support the objective of "one project, one assessment"?</i>	A paradigm shift is required to enable a meaningful integration of Indigenous-led assessments into applicant assessments. Indigenous communities should be engaged on their assessments well in advance of the proponent developing its application (as with data collection activities for other VCs) to integrate this information early on in the application process.
Discussion Question M12	<i>When the timing does not match, how can Indigenous-led assessments and studies be integrated with the applicant's assessment and still meet the CER's legislated time limits of 450 days for pipeline and power line certificate applications?</i>	If applicants are provided information by way of Indigenous-led assessment – or otherwise – after their application has been submitted and the hearing has begun, applicants should be required (at a minimum) to submit supplemental documentation that assesses how the new information changes the original assessment of impacts to Indigenous rights, or other VCs. Applicants often argue that they should not be required to do this if the Commission already found application completeness and initiated the hearing process. However, Bears paw would argue that the Commission should require further consideration and assessment in light of new or additional information.
Discussion Question M13	<i>What are the opportunities and challenges for Indigenous Peoples with the CER's existing guidance?</i>	Significance determinations – and the broader assessment of impacts to rights – often places all Indigenous communities under an umbrella and perpetuates impact inequity. Assessments and subsequent significance determinations should be made for individual communities based on the information made available to the Commission and significance criteria must be set by the communities.
Discussion Question M14	<i>What are the opportunities and challenges for applicants with the CER's existing guidance?</i>	Not directed to Bears paw.
Discussion Question M15	<i>What additional guidance, if any, should the Filing Manuals provide to applicants to identify the potential effects of the project on the exercise and practice of the rights of Indigenous Peoples?</i>	Additional guidance to applicants on the identification of potential impacts to Indigenous rights may not support better assessments, because applicants may treat these as exercises to check off to complete their applications. In Bears paw's experience, the word of the applicant is often accepted over Bears paw's lived experiences. Instead, Bears paw would like to understand the weight and consideration given by the Commission to Bears paw's

Section/Question	Quote	Comment
		information and evidence related to impacts to Bearspaw's rights.
Discussion Question M16	<i>Would a framework similar to the severity table used in the Commission's NEBC Recommendation Report be appropriate for inclusion in the Filing Manual?</i>	See comments on Paper K.
Discussion Question M17	<i>Should applicants submit a draft determination of the severity of the project effects on the rights of Indigenous Peoples? This would be similar to the CER's expectations that applicants submit draft determinations of the significance of valued components in the applicants' ESA, which helps inform the Commission's determinations about significance in the Commission's ESA.</i>	Any draft determinations of significance should not be submitted to the Commission without rigorous engagement and consultation with Indigenous communities. Indigenous communities should also be provided the opportunity to make their own findings of significance for submission to the Commission.
Discussion Question M18	<i>How should applicants integrate their assessment of the potential effects of a project on the rights of Indigenous Peoples with their VC-based assessments? For example, how should applicants demonstrate the overlaps and interconnections between the potential effects of a project on the rights of Indigenous Peoples and VC-based assessments (i.e., the assessment of biophysical and socio-economic VCs, and VCs focused on the rights and interests of Indigenous Peoples)?</i>	See comments on Paper K.
Discussion Question M19	<i>What are the opportunities and challenges for Indigenous Peoples of being involved in the applicant's inspection, monitoring and follow-up plans and programs (e.g., timing, funding, scoping, integration)?</i>	See comments on Discussion Questions B8, C8 and D5.
Discussion Question M20	<i>What are the opportunities and challenges for applicants of involving Indigenous Peoples in their inspection, monitoring and follow-up</i>	Not directed to Bearspaw.

Section/Question	Quote	Comment
	<i>plans and programs (e.g., timing, funding, scoping, integration)?</i>	
Discussion Question M21	<i>How should applicants involve Indigenous Peoples in monitoring and managing the effects of the project on the rights and interests of Indigenous Peoples during construction and operation?</i>	See comments on Discussion Questions B8, C8, and D5.
Discussion Question M22	<i>How does the concept of “sites of Indigenous significance” compare with heritage resources and traditional land and resource use? Where might there be overlap (including with existing legislative responsibilities by jurisdictions)?</i>	For Bears paw, sites of significance are rooted in Bears paw culture and values and may hold deep spiritual significance. These might be important storied places, ceremonial sites, or important family areas. Heritage resources can hold important historical value but may not be connected to the cultural and spiritual context for Bears paw.
Discussion Question M23	<i>What are the opportunities and challenges for Indigenous Peoples of integrating the concept of “sites of Indigenous significance” into the applicant’s assessment?</i>	In Bears paw’s experience, site-specific information is precarious in impact assessments. Often, applicants do not treat these sites with the same holistic view as Bears paw. This means that applicants may neglect impacts to the spirits within a site of significance, or they may neglect impacts to Bears paw’s cultural identity and sense of place. The concept of “sites of Indigenous significance” will require a shift in applicant and Commission understanding of the pervasive nature of potential impacts and the holistic, interconnected nature of Bears paw’s rights.
Discussion Question M24	<i>What are the opportunities and challenges for applicants of integrating the concept of “sites of Indigenous significance” into their assessment?</i>	Not directed to Bears paw.