



CANADA ENERGY REGULATOR ONSHORE PIPELINES REGULATIONS

REVIEW OF DISCUSSION PAPER

Manitoba Métis Federation

June 29, 2022



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Executive Summary

On August 28, 2019, the *Canadian Energy Regulator Act (CER Act)* came into force and transitioned the National Energy Board (NEB) to the Canada Energy Regulator (CER). As part of this regulatory regime change, the CER began efforts to revise its existing policy, guidance, and regulations to ensure conformity and alignment with the measures set out in the CER Act. In January 2022, the CER released its *Onshore Pipelines Regulations Review Discussion Paper* (the Discussion Paper).

In response to the Discussion Paper, the Manitoba Métis Federation has prepared the following report in which each of the six discussion topic objectives were reviewed. The review identified issues, opportunities, and recommendations related to the rights and interests of the Manitoba Métis, also known as the Red River Métis, with respect to the lifecycle oversight of CER-regulated facilities, in particular onshore pipelines in the Red River Métis Homeland. Each of the individual discussion objectives and twenty-nine corresponding discussion questions of the CER underwent technical review and analysis. The relevant discussion questions were provided with responding comments and recommendations. Issues were identified in which greater consideration of Red River Métis Citizens' rights and interests and involvement in the lifecycle oversight, regulation, and environmental protection are needed.

Based on the technical review, three themes were identified. The themes intersect all six topics. They provide a foundation on which objectives and the Onshore Pipeline Regulations (OPR) itself can be revised to include and protect the rights and interests of the Red River Métis. The three themes are described below:

1. The involvement of impacted Métis Citizens in the lifecycle oversight and regulation of CER-regulated facilities through both field monitoring and condition compliance activities is essential. However, that role at present is limited to projects where such conditions require this involvement. It is not a standard regulatory oversight requirement.
2. There needs to be a clear distinction of the roles, responsibilities, and accountabilities held within the CER as an assessment body and lifecycle regulator. With the transition to the CER, the Commission now functions as the assessor of some projects, the lifecycle regulator (including compliance, monitoring and inspection duties), and the Crown Consultation Coordinator. Specifically, Crown Consultation should have a degree of third-party impartiality, so this triple-role gives the perception of being a conflict of interest. In addition, under the structure of the new act, the dual role of Crown Consultation and assessor/regulator can create confusion and uncertainty when considering systems of accountability around condition compliance, lifecycle regulation, integrity management, and any other matters that fall under the purview of the OPR.
3. All objectives and potential opportunities outlined in the discussion paper must be considered in the context of the *United Nation Declaration on the Rights of Indigenous Peoples*



(UNDRIP) Act to support reconciliation with Métis, First Nation, and Inuit Peoples, and ensure that lifecycle oversight and regulation of CER-regulated facilities is done so with the Free, Prior, and Informed Consent of potentially impacted Indigenous Nations. UNDRIP must be considered as a result of [the United Nations Declaration on the Rights of Indigenous Peoples Act](#) receiving Royal Assent and coming into force on June 21, 2021. This Act provides a roadmap for the Government of Canada and Indigenous Peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations.

Along with the above themes, this comment submission provides several issues and recommendations for the CER's consideration in revising the OPR. For the CER to maintain and fulfill its commitment to Reconciliation CER must engage in a Nation-to-Nation collaborative relationship with the MMF to review and advance these recommendations, either through direct amendments to the OPR or changes to other aspects of the CER's regulatory framework, as required. Undertaking this process in true partnership and good faith will be critical to ensure that the Red River Métis have a meaningful role in the development and implementation of a revised OPR, as well as the CER's Regulatory Framework and Strategic Plan more broadly.



1.0 Introduction

1.1 Background Information

On August 28, 2019, the *Canadian Energy Regulator Act (CER Act)* came into force alongside updated environmental assessment legislation in the form of the *Impact Assessment Act*. This regulatory and legislative change also came with a transition of the National Energy Board (NEB) to the Canada Energy Regulator (CER).

As part of this regulatory regime change, the CER commenced efforts to revise its existing policy, guidance, and regulations to ensure conformity and alignment with the measures set out in the CER Act. This included revisions to the CER Filing Manual, release of the 2022–2025 Regulatory Framework Plan, development of the CER Strategic Plan, and the formation of an Indigenous Advisory Committee. Most recently, the process to update and amend the Onshore Pipeline Regulations (OPR) to ensure alignment with the new Act has commenced. As part of this process, the CER is seeking input from Indigenous Peoples, regulated companies, landowners, and other stakeholders. The review will address all areas of the OPR and may result in changes to other parts of the CER's regulatory framework, including regulatory documents and guidance such as the CER's Filing Manual.

To support the review of the OPR, the CER released its *Onshore Pipelines Regulations Review Discussion Paper* (the Discussion Paper) in January 2022 alongside a call for participant funding applications facilitated by the Impact Assessment Agency of Canada. According to the Discussion Paper, the purpose of the review is as follows:

The CER's objective for this review is to deliver a regulation that supports the highest level of safety, security and environmental protection, advances Reconciliation with Indigenous peoples, addresses transparency and inclusive participation, provides for predictable and timely oversight and encourages innovation. The OPR will continue to function as a single regulation that applies to all CER-regulated companies across the many regions of Canada.

1.2 Project Objectives

As the self-government for a distinct Indigenous People originally based in the Red River Valley, the Manitoba Métis Federation (MMF) has a responsibility to protect Métis rights, claims, and interests that depend on balancing and respecting environmental protection and stewardship with economic and resource development in a responsible manner. With much of our Homeland taken up by energy and natural resource infrastructure, including CER-regulated facilities, it is important for the MMF's perspectives on the oversight and regulation of these facilities to be considered and actioned by Canada.



A main objective of this report is to provide feedback on the Canada Energy Regulator’s Discussion Paper on the Onshore Pipeline Regulations Review, along with the Overview of the CER OPR Discussion Paper that was released, and the corresponding regulatory guidance found within *Canadian Energy Regulator Onshore Pipeline Regulations SOR/99-294*. A second objective is to convey feedback shared by Red River Métis Citizens through engagement sessions, once these sessions have occurred.

2.0 Methodology and Scope

2.1 Technical Review

The “Onshore Pipeline Regulations Review Discussion Paper” (the Discussion Paper) is divided into six key topics:

- Lessons Learned
- Reconciliation with Indigenous Peoples
- Engagement and Inclusive Participation
- Global Competitiveness
- Safety and Environmental Protection
- Implementation Objectives

Each topic includes discussion on how OPR regulations, the broader CER regulatory framework, and the CER’s strategic plan have or could guide and support meeting the objectives of each topic. At the end of each section there are several follow-up questions for consideration, culminating in a total of twenty-nine questions throughout the Discussion Paper. The full set of questions from the Discussion Paper are available in Appendix B of this submission.

Technical Reviewers examined the Discussion Paper, considering potential impacts to Red River Métis Citizens’ constitutionally protected rights and interests. The technical reviewers provided a summary of issues related to each topic. They also provided comments and recommendations on how the objectives and regulatory requirements within the OPR can be improved to ensure that Red River Métis rights and interests are adequately incorporated into the lifecycle regulation and oversight of CER-regulated facilities within the Red River Métis Homeland.

Based on this initial technical review, knowledge gaps and additional questions were identified to guide engagement discussions with Red River Métis Citizens.



Community engagement will be conducted as part of Phase 2 of the process set out by the CER. Upon the completion of community engagement sessions, additional feedback on key issues, perspectives, and recommended amendments to the OPR will be provided by the MMF to the CER. It is the MMF's expectation that the CER will thoroughly consider and address the comments that are provided by Red River Métis Citizens as part of this process.

2.2 Community Engagement

[TO BE CONDUCTED IN PHASE 2].

3.0 Red River Métis (Manitoba Métis)

3.1 History and Identity

The Red River Métis—as a distinct Indigenous people—evolved out of relations between European men and First Nations women who were brought together as a result of the early fur trade in the Northwest. In the eighteenth century, both the Hudson Bay Company and the Northwest Company created a series of trading posts that stretched across the upper Great Lakes, through the western plains, and into the northern boreal forest. These posts and fur trade activities brought European and Indigenous peoples into contact. Inevitably, unions between European men—explorers, fur traders, and pioneers—and Indigenous women were consummated. The children of these families developed their own collective identity and political community so that “[w]thin a few generations, the descendants of these unions developed a culture distinct from their European and Indian forebears” and the Métis Nation was born—a new people, indigenous to the western territories (*Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 5; *2008 MBPC R. v. Goodon*, 59 at para. 25; *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 2).

The Métis led a mixed way of life. “In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture” (*Alberta v. Cunningham*, at para. 5). The Métis were employed by both of the fur trades’ major players, the Hudson’s Bay and Northwest companies. By the early 19th century, they had become a major component of both firms’ workforces. At the same time, however, the Métis became extensively involved in the buffalo hunt. As a people, their economy was diverse; combining as it did, living off the land in the Aboriginal fashion with wage labor (*MMF v. Canada*, at para. 29).

It was in the Red River, in reaction to a new wave of European immigration, that the Red River Métis first came into its own. Since the early 1800s, the Red River Métis — as a part of the larger Métis Nation—has asserted itself as a distinct Indigenous collective with rights and interests in its Homeland. The Red River Métis share a language (Michif), national symbols (infinity flags), culture



(i.e., music, dance, dress, crafts), as well as a special relationship with its territory that is centered in Manitoba and extends beyond the present-day provincial boundaries.

The Red River Métis has been confirmed by the courts as being a distinctive Indigenous community, with rights that are recognized and affirmed in section 35 of the *Constitution Act, 1982*. In *R. v. Goodon*, the Manitoba court held that:

The Métis community of Western Canada has its own distinctive identity [...] the Métis created a large inter-related community that included numerous settlements located in present-day southwestern Manitoba, into Saskatchewan and including the northern Midwest United States. This area was one community [...] The Métis community today in Manitoba is a well-organized and vibrant community (paras. 46-47; 52).

This proud independent Métis population constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed “all of the area within the present boundaries of southern Manitoba from the present-day City of Winnipeg and extending south to the United States” (para. 48).

The heart of the historic rights-bearing Métis community in southern Manitoba was the Red River Settlement; however, the Red River Métis also developed other settlements and relied on various locations along strategic fur trade routes. During the early part of the 19th century, these included various posts of varying size and scale spanning the Northwest Company and the Hudson Bay Company collection and distribution networks.

More specifically, in relation to the emergence of the Métis—as a distinct Indigenous Nation in Manitoba—the Supreme Court of Canada wrote the following in the *MMF v. Canada* case:

“[21] The story begins with the Aboriginal peoples who inhabited what is now the province of Manitoba—the Cree and other less populous nations. In the late 17th century, European adventurers and explorers passed through. The lands were claimed nominally by England which granted the Hudson’s Bay Company, a company of fur traders’ operation of out London, control over a vast territory called Rupert’s Land, which included modern Manitoba. Aboriginal peoples continued to occupy the territory. In addition to the original First Nations, a new Aboriginal group, the Métis, arose—people descended from early unions between European adventurers and traders, and Aboriginal women. In the early days, the descendants of English-speaking parents were referred to as half-breeds, while those with French roots were called Métis.

[22] A large—by the standards of the time—settlement developed at the forks of the Red and Assiniboine Rivers on land granted to Lord Selkirk by the Hudson’s Bay Company in 1811. By 1869, the settlement consisted of 12,000 people, under the governance of Hudson’s Bay Company.



[23] In 1869, the Red River Settlement was a vibrant community, with a free enterprise system and established judicial and civic institutions, centered on the retail stores, hotels, trading undertakings and saloons of what is now downtown Winnipeg. The Métis were the dominant demographic group in the Settlement, comprising around 85 percent of the population [approximately 10,000 Métis], and held leadership positions in business, church and government.”

The fur trade was vital to the ethnogenesis of the Red River Métis and was active in Manitoba from at least the late 1770s, and numerous posts and outposts were established along cart trails and waterways throughout the province. These trails and waterways were crucial transportation networks for the fur trade (Jones 2014; 2) and were the foundation of the Red River Métis’ extensive use of the lands and waters throughout the province. In the early 20th century, the Red River Métis continued to significantly participate in the commercial fisheries and in trapping activities, which is well documented in Provincial government records.

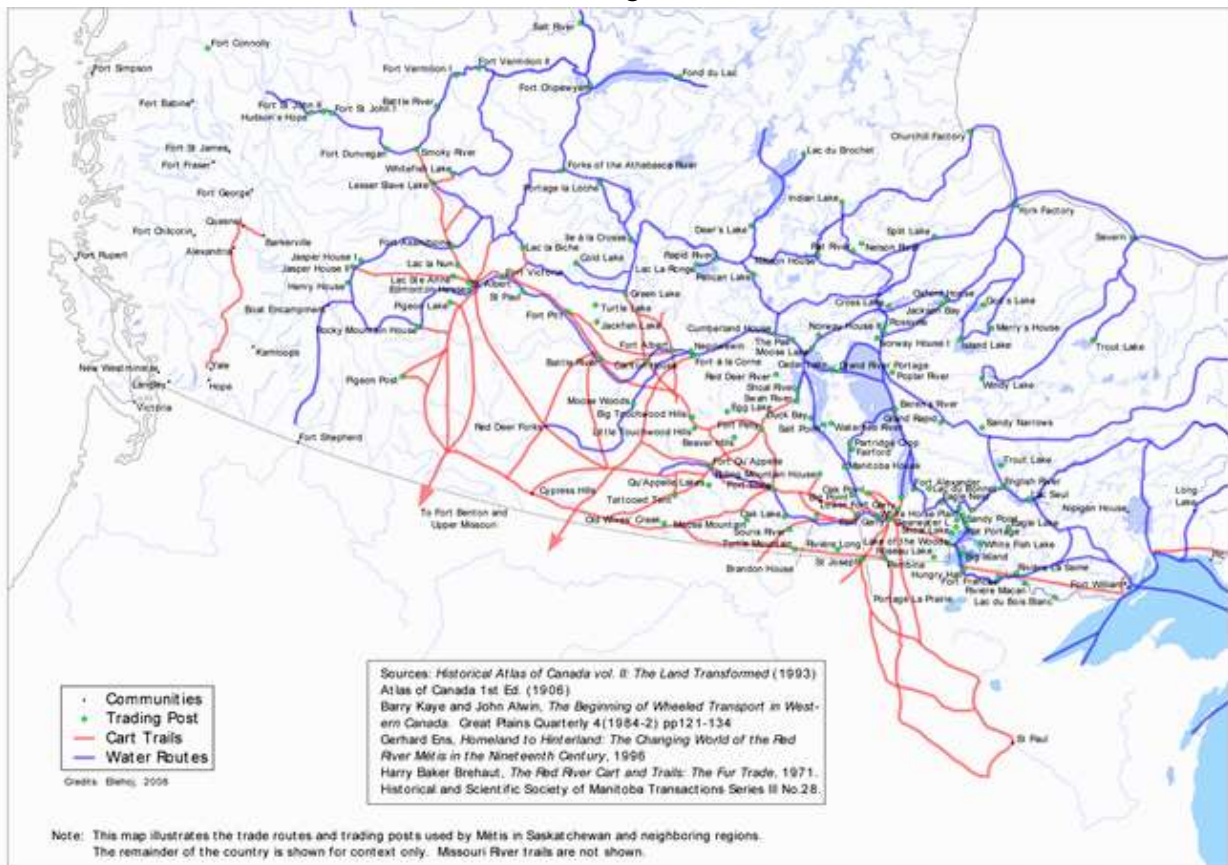


Figure 1. The Fur Trade Network: Routes and Posts Prior to 1870

3.2 Manitoba Métis Federation

On July 6, 2021, Canada and the MMF signed the Manitoba Métis Self-Government Recognition and Implementation Agreement which is the first agreement to give immediate recognition to an existing Métis government, namely, the Manitoba Métis Federation, which is



the existing democratically elected government of the Manitoba Métis – also known as the Red River Métis. This Agreement will be followed by a Treaty between the MMF and Canada and ensures that the MMF will continue to provide responsible and accountable self-government. The MMF is the democratically elected government of the Red River Métis. The MMF is duly authorized by the Citizens of the Red River Métis for the purposes of dealing with their collective Métis rights, claims, and interests, including conducting consultations and negotiating accommodations (as per MMF Resolution No. 8). While the MMF was initially formed in 1967, its origins lie in the 18th century with the birth of the Red River Métis and in the legal and political structures that developed with it. Since the birth of the Métis people in the Red River Valley, the Red River Métis asserted and exercised its inherent right of self-government. For the last 50 years, the MMF has represented the Red River Métis at the provincial and national levels.

During this same period, the MMF has built a sophisticated, democratic, and effective Métis governance structure that represents the Red River Métis internationally. The MMF was created to be the self-government representative of the Red River Métis—as reflected in the Preamble of the MMF’s Constitution (also known as the MMF Bylaws):

“WHEREAS, the Manitoba Métis Federation has been created to be the democratic and self-governing representative body of the Manitoba Métis Community;”

In addition, the following is embedded within the MMF’s objectives, as set out in the MMF Constitution as follows:

- “1. To promote the history and culture of the Manitoba Métis, also known as the Red River Métis, and otherwise to promote the cultural pride of its Citizenship.
2. To promote the education of its Citizens respecting their legal, political, social, and other rights.
3. To promote the participation of its Citizens in community, municipal, provincial, federal, Aboriginal, and other organizations.
4. To promote the political, social, and economic interests of its Citizens.
5. To provide responsible and accountable governance on behalf of the Manitoba Métis, also known as the Red River Métis, using the constitutional authorities delegated by its Citizens.”

The MMF is organized and operated based on centralized democratic principles, some key aspects of which are described below.



President: The President is the leader and spokesperson of the MMF. The President is elected in a national Election every four years and is responsible for overseeing the day-to-day operations of the MMF.

Cabinet: The MMF Cabinet leads, manages, and guides the policies, objectives, and strategic direction of the MMF and its subsidiaries. All 23 Cabinet Members are democratically elected by Red River Métis Citizens.

Regions: The MMF is organized into seven regional associations or "Regions" throughout the province (Figure 3): The Southeast Region, the Winnipeg Region, the Southwest Region, the Interlake Region, the Northwest Region, the Pas Region, and the Thompson Region. Each Region is administered by a Vice-President and two Regional Executive Officers, all of whom sit on the MMF Cabinet. Each Region has an office which delivers programs and services to their specific geographic area.

Locals: Within each Region are various area-specific "Locals" which are administered by a chairperson, a vice-chairperson, a secretary, and a treasurer (or a secretary-treasurer, as the case may be). Locals must have at least nine Citizens and meet at least four times a year to remain active. There are approximately 140 MMF Locals across Manitoba.

The MMF has created an effective governance structure to represent the Red River Métis. It is important to bear in mind that there is only one large, geographically dispersed, Red River Métis. Red River Métis Citizens live, work, and exercise their section 35 rights throughout and beyond the province of Manitoba.



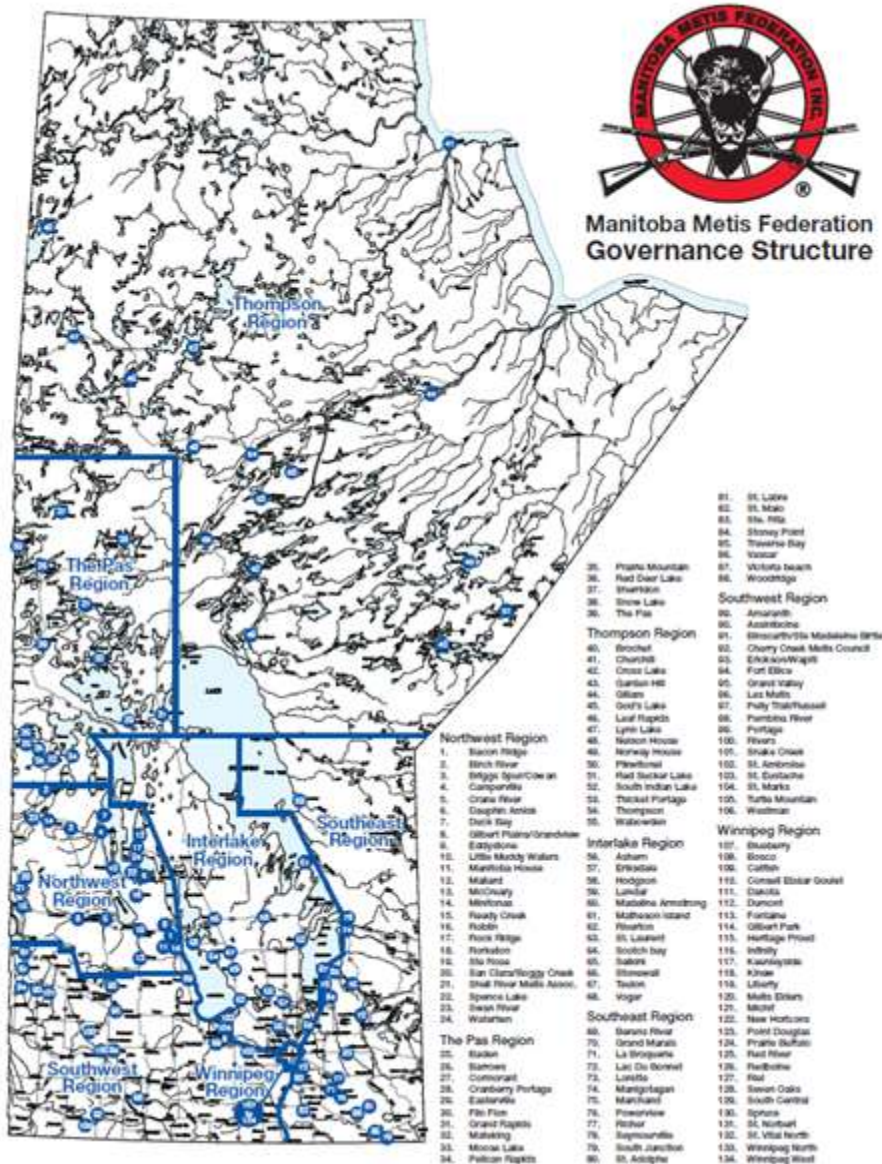


Figure 3. Manitoba Métis Federation (MMF) Regions

3.3 MMF Resolution No. 8

Among its many responsibilities, the MMF is authorized to protect the Aboriginal rights, claims, and interests of the Red River Métis, including those related to harvesting, traditional culture, and economic development, among others.

In 2007, the MMF Annual General Assembly unanimously adopted Resolution No. 8 that sets out the framework for engagement, consultation, and accommodation to be followed by Federal and Provincial governments, industry, and others when making decisions and developing plans and projects that may impact the Red River Métis. Under MMF Resolution No. 8, direction has been



provided by the Red River Métis for the MMF Home Office to take the lead and be the main contact on all consultation undertaken with the Red River Métis. Resolution No. 8 reads, in part that:

...this assembly continue[s] to give the direction to the Provincial Home Office to take the lead and be the main contact on all consultations affecting the Métis community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Métis...

The MMF Home Office works closely with the Regions and Locals to ensure the rights, interests, and perspective of the Red River Métis are effectively represented in matters related to consultation and accommodation.

Resolution No. 8 has five phases:

- Phase 1: Notice and Response
- Phase 2: Funding and Capacity
- Phase 3: Engagement or Consultation
- Phase 4: Partnership and Accommodation
- Phase 5: Implementation

Each phase is an integral part of the Resolution No. 8 framework and proceeds logically through the stages of consultation.

3.4 Red River Métis Rights, Claims, and Interests

The Red River Métis possess Aboriginal rights, including pre-existing Aboriginal collective rights and interests in lands recognized and affirmed by section 35 of the Constitution Act, 1982, throughout Manitoba. The Manitoba court recognized these pre-existing, collectively held Métis rights in *R. v. Goodon* (at paras. 58; 72):

I conclude that there remains a contemporary community in southwest Manitoba that continues many of the traditional practices and customs of the Métis people.

I have determined that the rights-bearing community is an area of southwestern Manitoba that includes the City of Winnipeg south to the U.S. border and west to the Saskatchewan border.

As affirmed by the Supreme Court of Canada, such rights are “recognize[d] as part of the special aboriginal relationship to the land” (*R. v. Powley*, 2003 SCC 43, at para. 50) and are grounded on a “communal Aboriginal interest in the land that is integral to the nature of the Métis distinctive community and their relationship to the land” (*MMF v. Canada*, at para. 5). Importantly, courts have also recognized that Métis harvesting rights may not be limited to Unoccupied Crown Lands (*R. v. Kelley*, 2007 ABQB 41, para. 65).



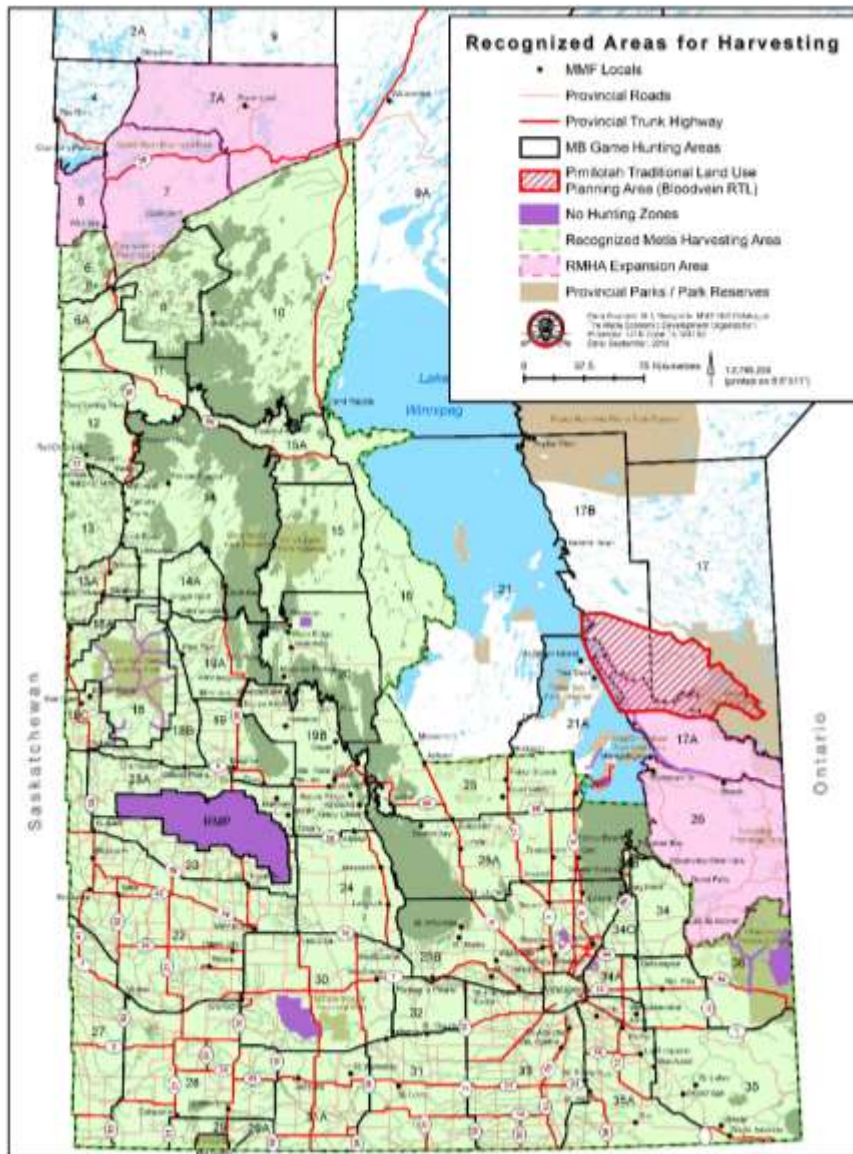


Figure 4. MMF-Manitoba Harvesting Agreement Recognized Manitoba Métis Harvesting Zones

The Crown, as represented by the Manitoba government, has recognized some aspects of the Red River Métis’ harvesting rights through a negotiated agreement: The MMF-Manitoba Points of Agreement on Métis Harvesting (2012) (the MMF-Manitoba Harvesting Agreement). This Agreement was signed at the MMF’s 44th Annual General Assembly and “recognizes that collectively-held Métis Harvesting Rights, within the meaning of section 35 of the Constitution Act, 1982, exist within the [Recognized Métis Harvesting Zone], and that these rights may be exercised by Red River Métis Rights Holders consistent with Métis customs, practices and traditions...” (MMF-Manitoba Harvesting Agreement, section 1). In particular, the MMF-Manitoba Harvesting Agreement recognizes that Métis rights include “hunting, trapping, fishing and gathering for food



and domestic use, including for social and ceremonial purposes and for greater certainty, Métis harvesting includes the harvest of timber for domestic purposes” throughout an area spanning approximately 169,584 km² (the “Métis Recognized Harvesting Area”) (MMF-Manitoba Harvesting Agreement, section 2; Figure 4). The MMF further asserts rights and interests exist beyond this area, which require consultation and accommodation as well.

Beyond those rights already established through litigation and recognized by agreements, the Red River Métis claims commercial and trade-related rights. Courts have noted that Métis claims to commercial rights remain outstanding (*R. v. Kelley* at para. 65). These claims are strong and well-founded in the historical record and the customs, practices, and traditions of the Red River Métis, and it is incumbent on the Crown and Proponents to take them seriously.

As noted above, the Red River Métis has its roots in the western fur trade (*R. v. Blais*, 2003 SCC 44 at para. 9 [Blais]; *R. v. Goodon* at para. 25). The Red River Métis are descendants of early unions between Aboriginal women and European traders (MMF v. Canada at para. 21). As a distinct Métis culture developed, the Métis took up trade as a key aspect of their way of life (*R. v. Powley* at para. 10). Many Métis became independent traders, acting as middlemen between First Nations and Europeans (*R. v. Goodon* at para. 30). Others ensured their subsistence and prosperity by trading resources they themselves hunted and gathered (*R. v. Goodon* at para. 31, 33, & 71). By the mid-19th century, the Red River Métis had developed the collective feeling that “the soil, the trade and the Government of the country [were] their birth rights.” (*R. v. Goodon* at para. 69(f)). Commerce and trade are, and always have been, integral to the distinctive culture of the Red River Métis. Today, the Red River Métis have an Aboriginal, constitutionally protected right to continue this trading tradition in modern ways to ensure that their distinct community will not only survive, but also flourish.

Unlike First Nations in Manitoba, whose commercial rights were converted and modified by treaties and the Natural Resources Transfer Agreement (NRTA) (*R. v. Horseman*, [1990] 1 SCR 901), the Métis’ pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the NRTA (*R. v. Blais*) and continue to exist and be protected as Aboriginal rights. First Nations’ treaty rights in Manitoba are, for example, inherently limited by the Crown’s power to take up lands (*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para 56). Métis rights, in contrast, are not tempered by the “taking up” clauses found in historic treaties with First Nations. Métis rights must be respected as they are, distinct from First Nations’ rights and unmodified by legislation or agreements.

In addition to the abovementioned rights to land use that preserve the Métis culture and way of life, the Red River Métis have other outstanding land related claims and interests with respect to lands. These include claims related to the federal Crown’s constitutional promise to all Aboriginal peoples, including the Red River Métis, as set out in the Order of Her Majesty in Council Admitting Rupert’s Land and the North-Western Territory into the Union (the “1870 Order”) which provides that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be



considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The manner in which the federal Crown implemented this constitutional promise owing to the Red River Métis—through the Dominion Lands Act and the resulting Métis scrip system—effectively defeated the purpose of the commitment. Accordingly, the MMF claims these federal Crown actions constituted a breach of the honour of the Crown, which demand negotiations and just settlement outside of the ‘old postage stamp province’ within Manitoba as well.

The MMF also claims that the Dominion Lands Act and the resulting Métis scrip system were incapable of extinguishing collectively held Métis title in specific locations where the Red River Métis are able to meet the legal test for Aboriginal title as set out by the Supreme Court of Canada. These areas in the province, which the Red River Métis exclusively occupied—as an Indigenous people—prior to the assertion of sovereignty, establish a pre-existing Métis ownership interest in these lands.

The Red River Métis also have an outstanding legal claim within what was the ‘old postage stamp province’ of Manitoba relating to the 1.4 million acres of land promised to the children of the Métis living in the Red River Valley, as enshrined in section 31 of the Manitoba Act, 1870 (MMF v. Canada at para 154).

This land promised was a nation-building, constitutional compact that was meant to secure a “lasting place in the new province [of Manitoba]” for future generations of the Métis people (MMF v. Canada at para 5). This “lasting place” was to have been achieved by providing the Red River Métis a “head start” in securing lands in the heart of the new province (MMF v. Canada at paras 5-6).

Instead, the federal Crown was not diligent in its implementation of section 31, which effectively defeated the purpose of the constitutional compact.

In March 2013, the Supreme Court of Canada found that the federal Crown failed to diligently and purposefully implement the Métis land grant provision set out in section 31 of the Manitoba Act, 1870 (MMF v. Canada at para 154). This constituted a breach of the honour of the Crown. In arriving at this legal conclusion, the Court wrote:

“What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in section 35 of the Constitution Act, 1982 and underlying section 31 of the Manitoba Act, remains unachieved. The ongoing rift in the national fabric that section 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import (MMF v. Canada at para 140).”

This constitutional breach is an outstanding Métis claim flowing from a judicially recognized common law obligation which burdens the federal Crown (MMF v. Canada at paras 156; 212). It can



only be resolved through good faith negotiations and a just settlement with the MMF (see for example: *R v Sparrow*, [1990] 1 SCR 1075 at paras 51–53; *R v Van der Peet*, [1996] 2 SCR 507 at paras 229, 253; *Haida* at para 20; *Carrier Sekani* at para 32). Lands both within the ‘old postage stamp province’ as well as in other parts of Manitoba—since little Crown lands remain within the ‘old postage stamp province’—may need to be considered as part of any future negotiations and settlement in fulfillment of the promise of 1.4 million acres, together with appropriate compensation.

On November 15, 2016, the MMF and Canada concluded a Framework Agreement for Advancing Reconciliation (the “Framework Agreement”). The Framework Agreement established a negotiation process aimed, among other things, at finding a shared solution regarding the Supreme Court of Canada’s decision in *MMF v. Canada* and advancing the process of reconciliation between the Crown and the Red River Métis. It provides for negotiations on various topics including, but not limited to, the “quantum, selection and management of potential settlement lands.” Negotiations under the Framework Agreement are active and ongoing.

4.0 Review Findings

4.1 Responses to CER Discussion Questions

The Discussion Paper contained 29 questions on topics ranging from advancing Reconciliation to safety and environmental protection and lessons learned from implementation of the OPR. As part of the MMF’s comment submission, we have noted which question(s) each item corresponds to in the table provided in Appendix A. The full set of questions from the CER Onshore Pipeline Regulations Discussion Paper have been provided in Appendix B of this submission for reference. Please note, the MMF’s responses to the questions and comments within this submission should be considered preliminary and high-level in nature as a plan for further engagement will need to be established between the MMF and CER to inform more specific aspects of the CER’s amendments to the OPR.

4.2 Summary of Community Engagement Findings

This section of the report will be updated upon the completion of community engagement with Red River Métis Citizens. Following the completion of this community engagement and the corresponding issues, comments, and recommendations, it is the expectation of the MMF that the CER will engage with the MMF to discuss and advance relevant amendments and adjustments to the OPR of importance to the Red River Métis.



5.0 Conclusion

For the CER to maintain and fulfill its commitment to Reconciliation, the MMF maintains that the CER must engage in a collaborative relationship with the MMF to review and advance these recommendations, either through direct amendments to the OPR or changes to other aspects of the CER's regulatory framework, as required. Undertaking this process in true partnership and good faith will be critical to ensuring that the Red River Métis have a meaningful role in the development and implementation of a revised OPR, as well as the CER's Regulatory Framework and Strategic Plan more broadly.



Appendix A: Comment and Recommendation Tracking Table

Table 1. Comment and Recommendation Tracking Table.

Comment #	Section	Applicable Discussion Paper Question	Issue	Technical Review Comments and/or Recommendations	Follow-up Questions for MMF Engagement (where applicable)
1.	Section 1. OPR – Lessons Learned	General Comment	The Overview of the Discussion Paper posted on the CER website indicated that the discussion paper would include a summary of “lessons learned,” described as “what we have learned over the past 20 year using the Onshore Pipeline Regulations, including areas where we know improvement is needed.” While Section 1 of the discussion paper includes a description of the current function of the OPR and states that the CER is seeking feedback on the OPR and its implementation, the MMF was disappointed to find that the discussion paper itself did not actually include a summary of this nature. A description of the CER’s lessons learned from the past 20 years of using the OPR would have provided a helpful focus for this review, informed by areas where the CER was already aware of the nature of changes that were needed in the regulations, and where more focus needed to be applied.	To inform ongoing engagement, it would be helpful for the CER to publish a summary of lessons learned as described in the Overview of the Discussion Paper for discussion during phase 2 or to be provided alongside the “What We Hear” Report the CER will be releasing in late fall 2022.	Do you have any experiences or concerns related to CER-regulated pipelines within the Red River Métis Homeland?
2.	Section 1. OPR – Lessons Learned	Question 1	<p>Section 1 of the discussion paper states that “the OPR requires regulated companies to establish, implement and maintain management systems and protection programs to anticipate, prevent, manage and mitigate conditions that may adversely affect the safety and security of the company’s pipelines, employees, the public as well as property and the environment” and that “a carefully designed and well-implemented management system supports a strong culture of safety, and is fundamental to keeping people safe and protecting the environment.” Section 6 of the OPR currently reads:</p> <p><i>The purpose of these Regulations is to require and enable a company to design, construct, operate or abandon a pipeline in a manner that ensures (a) the safety and security of persons; (b) the safety and security of pipelines and abandoned pipelines; and (c) the protection of property and the environment.</i></p> <p>While the MMF is supportive of pipeline security and of the safety of employees and the public, a foundational issue in the current OPR, from MMF’s experience with regulated companies, is that the purpose and objective of the OPR is defined far too narrowly. There is no mention in the purpose of the OPR or in any other section of Métis, First Nations, and Inuit Peoples or requirements for regulated companies to conduct consultation, engagement or build relationships with them or accommodate Section 35 rights and interests. As a result, the OPR do not sufficiently compel regulated companies to uphold principles of consent, reconciliation and the sovereignty and jurisdiction of Métis, First Nations, and Inuit Peoples in their operations.</p>	<p>The purpose of the OPR should be updated to reflect:</p> <ol style="list-style-type: none"> 1. the objective of the CER is to “advance Reconciliation with Indigenous peoples in manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples” (Discussion Paper, p. 3) 2. the mandate of the CER to “exercise its powers and perform its duties and functions in a manner that respects the Government of Canada’s commitments with respect to the rights of the Indigenous peoples of Canada” (CER Act, Section 11) 3. requirements for: <ol style="list-style-type: none"> a. the meaningful integration of the knowledge of Métis, First Nations and Inuit Peoples in the design, construction, operation and abandoning of a pipeline b. mitigating impacts to the rights and interests of Métis, First Nations and Inuit Peoples c. sharing benefits of projects with impacted Métis, First Nations and Inuit peoples d. the involvement of Métis, First Nations and Inuit Peoples in project ownership and decision-making 4. a commitment to require regulated companies to secure Free, Prior and Informed Consent of Métis, First Nations and Inuit Peoples. 	Not applicable.



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				<p>5. the CER's commitment to "advancing the TRC [Truth and Reconciliation] Calls to Action," specifically "Calls to Action 43, 44 and 92 which call the government and business sector of Canada to adopt UNDRIP as a reconciliation framework and to apply its principles, norms and standards to policy and core operational activities involving Indigenous peoples and their lands and resources" (Discussion Paper, p. 3)</p> <p>All subsequent sections in the OPR should be updated or replaced to reflect this updated purpose statement.</p>	
3.	Section 1. OPR – Lessons Learned	Question 1	<p>Section 1 of the Discussion Paper describes a management system as "a systematic approach designed to effectively manage and reduce risk" that "anticipates, prevents, manages and mitigates conditions that may adversely affect the safety and security of the company's pipelines, employees, the public, as well as property and the environment" (p. 2). The Discussion Paper goes on to describe that the OPR requires that a management system "be clear; have good documentation and 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, able to anticipate issues" and that a carefully designed and well-implemented management system "supports a strong culture of safety, and is fundamental to keeping people safe and protecting the environment" (p. 2)</p> <p>While the MMF agrees these are good objectives for the management system of a regulated company, and that this serves as a good summary of the requirements set out in Section 6.1 – 6.5 of the OPR, they do not make any mention of regulated companies relationships with Métis, First Nations and Inuit Peoples, and therefore do not reflect the mandate of the CER to "exercise its powers and perform its duties and functions in a manner that respects the Government of Canada's commitments with respect to the rights of the Indigenous peoples of Canada" (CER Act, Section 11), or the assertion that "the CER expects regulated companies to work differently to support Reconciliation with Indigenous peoples" (Discussion Paper, p. 3).</p>	<p>Regulations for management systems should be updated to include requirements for:</p> <ol style="list-style-type: none"> 1. The meaningful integration of the knowledge of Métis, First Nations, and Inuit peoples in the design construction, operation and abandoning of a pipeline 2. Accommodating (avoiding, mitigating, and compensating) impacts to the Rights and interests of Métis, First Nations and Inuit Peoples 3. Sharing benefits of projects with impacted Métis, First Nations and Inuit Peoples <p>The involvement of Métis, First Nations and Inuit Peoples in project decision-making, monitoring and compliance and environmental protection planning.</p>	Not applicable.
4.	Section 2. Reconciliation with Indigenous peoples	Question 2	<p>Section 2 of the Discussion Paper states that "the CER aims to make meaningful change in the CER's requirements and expectations of regulated industry to advance Reconciliation" and that CER expects "regulated companies to work differently to support Reconciliation with Indigenous peoples" (p. 3). Question 2 requests feedback on how the OPR can contribute to the advancement of Reconciliation with Indigenous Peoples.</p> <p>To make such "meaningful changes," a vital addition change to the OPR is the addition of requirements for regulated companies to establish and</p>	<p>Requirements for lifecycle agreements with impacted Indigenous Nations should be included in the OPR. Requirements for these agreements should include, but not be limited to, the following items:</p> <ul style="list-style-type: none"> • Participation in cultural heritage and archaeological assessments • Participation in traditional land and resource use assessments • Participation in environmental monitoring 	Not applicable.



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			<p>maintain lifecycle agreements with potentially impacted Indigenous communities covering all stages of the project lifecycle, including planning/approval, construction, operation, and maintenance (including integrity digs) and decommissioning. This will</p> <ol style="list-style-type: none"> 1. Provide a meaningful mechanism of consent for impacted Métis, First Nation and Inuit Nations 2. Contribute to the protection of heritage resources 3. Contribute to the protection of traditional land and resource use, and sites of significance for Indigenous peoples on a pipeline right-of-way 4. Allow the CER to ensure the Duty to Consult <i>and Accommodate</i> has been fulfilled, 5. Allow for <ol style="list-style-type: none"> a. the benefits of projects to be meaningfully shared between the regulated company and impacted Nations, b. jurisdiction and oversight of projects to be meaningfully shared between the CER and impacted Nations. 	<ul style="list-style-type: none"> • Participation in facility monitoring (e.g. pipeline or transmission line monitoring) • Identification and protection of species considered by Indigenous communities to be at risk • Environmental, cultural heritage and socio-economic mitigation and follow-on programs • Economic benefits – procurement, supply chain, other • Linear corridor restoration and maintenance with native species, with attention to vegetative species of importance to Indigenous communities or key wildlife of importance to Indigenous communities • Review of project infrastructure enhancements and improvements that may be available to improve and provide capacity for regional infrastructure and services (e.g. oil pipeline pump stations require transmission reinforcement and/or additional regional power generation that can benefit rural/remote communities and regions; emergency management resources that can be deployed for emergencies beyond the regulated infrastructure) • Spill response capacity and resources, including training, equipment and service contracts • Integrating Indigenous Knowledge • Emergency response capacity and resources, including training, equipment and service contracts • Regulatory compliance monitoring 	
5.	<p>Section 2. Reconciliation with Indigenous peoples – Heritage Resources</p> <p>Section 5. Safety and Environmental Protection – Management Systems</p>	Question 3 & Question 16	<p>The protection of cultural heritage and archaeological resources is a commitment that the CER and operators need to demonstrate and uphold throughout the life of a project, not just during the assessment, planning, and construction phases of the project. Of particular importance is ensuring the protection of cultural heritage resources during integrity management activities such as integrity digs and large-scale maintenance repairs. As such, the requirements within both the OPR and CER’s guidance on integrity management for facilities should include:</p> <ol style="list-style-type: none"> 1. Chance-find protocols collaboratively developed and implemented with impacted Nations as part of the condition compliance of a project 2. A clear mechanism for providing both operators and their third-party contractors with these chance-find protocols, and a commitment to enforcement action should they fail to comply with the protocols 3. Clear, direct cultural heritage monitoring requirements throughout the life of the Project. This includes the integration of cultural 	<p>Strong requirements regarding the protection of cultural heritage resources are something that should be reflected in both the OPR and any CER-guidance on integrity management systems for pipeline operators. The OPR and integrity management guidance should include clear requirements regarding:</p> <ul style="list-style-type: none"> • The development of chance-find protocols done so collaboratively with impacted Indigenous Nations and governments, including the Red River Métis and the MMF • The requirement for operators and their third-party contractors to review, implement, and comply with these protocols • A stated commitment by the CER to enforcement action when these protocols are not complied with 	<ul style="list-style-type: none"> • Are there any cultural heritage resources of importance to you in these areas (show maps with CER-regulated facility right-of-ways overlaid)? • How would you like to see these resources protected? • What role should the MMF play in the protection of cultural heritage resources and sites near CER-regulated facilities?



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			heritage components in joint inspections carried out by the CER and Indigenous Nations.	<ul style="list-style-type: none"> The inclusion of cultural heritage monitoring in joint inspections carried out by the CER and Indigenous Nations Options for alternative dispute and conflict resolution to ensure impacted Indigenous Nations, including the Red River Métis, have a forum for raising issues when needed 	
6.	Section 2. Reconciliation with Indigenous Peoples - Traditional Land and Resource Use, and Sites of Significance for Indigenous Peoples	Question 4	Under the current process, strong inclusion of traditional land and resource use (TLRU), and sites of significance is arguably facilitated as a result of conditions of approval placed on the project. Specifically, conditions related to the consideration of outstanding TRLU site investigation information. This is combined with a productive relationship between impacted Indigenous Nations and the proponent/ applicant of the proposed project. Although the new act and updated filing manual does include language to promote stronger inclusion of TLRU, there is still a gap regarding the consideration and inclusion of TLRU information provided outside of either the development of an environmental and socio-economic assessment (ESA) or the CER Hearing for the project. As a result, there is a need for stronger mechanisms for the inclusion and application of TLRU information throughout the life of a project, including during operations, maintenance, as part of accidents, malfunctions, and emergency response, and to inform the either the decommissioning or leave to abandon of the facility at the end of its operational lifecycle.	The OPR and CER management system guidance require revisions to ensure any traditional land or resource use information provided outside of the planning, assessment, and pre-construction phases of a project are appropriately considered and, where necessary, mitigated and protected. This includes but is not limited to guidance pertaining to: <ul style="list-style-type: none"> Integrating TLRU information into ongoing monitoring activities for the project A procedure or checklist for operators to follow when revising their Environmental Protection Plans or management systems to reflect this information A process for collaboration and dispute resolution between operators and impacted Indigenous Nations, including the Red River Métis, when there is dispute on how to offset, manage or mitigate potential interactions with TLRU sites An indication of how TLRU information will be used in instances of accidents, malfunctions, or other emergencies, including appropriate notification to impacted harvesters and land users 	Not applicable.
7.	Section 2. Reconciliation with Indigenous Peoples - Indigenous Knowledge	Question 5	In addition to the guidance provided in the comment/ response for Question 4 above, two important aspects of including Métis knowledge are the inclusion of Métis cultural practices along with abiding by MMF protocols set out in MMF Resolution No. 8. These cultural practices and protocols are specific to the Red River Métis and as a result need to be followed for any CER-regulated facilities in our homeland. Other Indigenous Nations also have their own cultural protocols and traditions that need to be respected for projects in their respective territories. As a result, the OPR guidance should be updated and revised to include requirements around abiding by Nation-specific cultural and consultation protocols, including the use of Métis Knowledge in lifecycle oversight and regulation activities related to onshore pipelines.	The OPR needs to be updated to include the measures indicated above in Question 4. In addition, language regarding the treatment and use of Indigenous Knowledge to include key cultural and consultation protocols when engaging with Indigenous Peoples, including Red River Métis Citizens, needs to be reflected in the revisions made to the regulations.	How would you like the CER to consider your traditional knowledge and/or harvesting information as part of the regulation of pipelines in the Red River Métis Homeland?



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8.	Section 2. Reconciliation with Indigenous Peoples - Involvement of Indigenous peoples in Pipeline Oversight	Question 6	As was noted in our response to Question 2, one of the key tools that could be used to support the participation of Métis Citizens in pipeline oversight is through the use of lifecycle agreements that outline the terms, conditions, and roles an impacted Indigenous Nation, including the MMF could play in oversight throughout the life of the project. In addition to these agreements, the OPR could look to integrate requirements that draw on structures and processes the CER either already has in place or is in the process of developing. For example, the CER now has an Indigenous Advisory Committee, an Indigenous Monitoring program, supports joint inspections between the CER and impacted Indigenous Nations, and has and continues to use Indigenous advisory and oversight committees on several projects it regulates. The next logical step from the perspective of the MMF is to codify these various programs, policies, and committees into the legislation and regulations that govern pipeline oversight within the CER.	The CER needs to revise the OPR and related lifecycle policy and guidance to ensure the various policies, programs, and structures that promote Indigenous participation and oversight are codified in the legislation and regulation as mandatory practices and requirements that the CER and operators must follow when it pertains to Indigenous participation, including participation of the MMF in lifecycle oversight activities.	Not applicable.
9.	Section 3. Engagement and Inclusive Participation - Planning for Pipelines and Related Company Activities	Question 7	A tool that the MMF will often rely upon when engaging with companies is the development of communication protocols between the company and the MMF that identify roles, responsibilities, terms, and conditions regarding the flow of information between parties. These protocols are typically guided by MMF Resolution No. 8, along with key project or site-specific issues of importance to the Métis for the Project. However, the establishment of such agreements is often determined by the company's willingness to work with the MMF and /or approval conditions that require Indigenous engagement to extend beyond the CER Hearing and licensing process for the project. The OPR could better support these collaborative interactions and a smoother flow of information by outlining communication and information requirements that companies must follow for keeping impact Indigenous Nation, including the MMF informed of activities happening in our respective homelands. To ensure a distinctions-based approach is taken to facilitate this collaboration the requirements should provide a checklist or a roadmap companies must follow to set up relevant and appropriate protocols with impacted Indigenous Nations, including the MMF.	The CER should revise the OPR or regulatory framework to include a checklist or roadmap for companies to follow for lifecycle engagement and communication with impacted Indigenous Nations. The checklist should live within a policy framework that creates certainty for communities that this will be a mandatory requirement, not a condition specific one and should include provisions to review and adhere to Nation-specific consultation protocols. The steps within the checklist should be collaboratively developed with Indigenous Nations and included as a milestone or discussion point for the Phase 2 engagement associated with the CER OPR review.	How would you like to stay informed regarding activities, incidents, or other updates related to CER-regulated pipelines in the Red River Métis Homeland?
10.	Section 3. Engagement and Inclusive Participation	Question 8	The Preamble of the CER Act affirms the Government of Canada's commitment to transparent processes that are built on early engagement and inclusive participation. The Discussion Paper states that "the CER expects that companies communicate and engage proactively with those potentially affected by company activities" (p. 5). A significant deficiency in the OPR and more broadly in the current regulatory regime related to proactive engagement and communication is the manner in which regulated companies are able to significantly repurpose, expand or significantly reconfigure an existing pipeline system under the guise of piecemeal applications for maintenance or expansions to portions of a right-of-way over the course of a number of years. This is a	While further engagement is needed to determine how the piecemeal applications for maintenance or expansions could be fully addressed in the updated OPR. However, in the interim the OPR should be updated to include specific requirements for a regulated company to be transparent about all of its plans for upcoming and future works on a pipeline system and how currently proposed works will interact with past and future applications. The CER must require this information to be included in project applications, and where CER staff or intervenors identify substantive connections in terms of a	Not applicable.



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			significant issue that must be addressed in the updating of the OPR, as it rejects principles of transparency, prevents the effects of a pipeline systems reconstruction and operation from ever being truly or comprehensively assessed, and prevents meaningful engagement that considers the big picture and end purpose for which these piecemeal applications are being filed.	company's operational objectives for a pipeline system and potential environmental effects between separate applications, these applications should be combined and considered jointly. When applications are filed by a regulated company that could have been anticipated at the time of filing a previous related application but were not, the CER should be able to withdraw the approvals granted for the previous application and reconsider it jointly with the new application.	
11.	Section 3. Engagement and Inclusive Participation	Question 8	The Preamble of the CER Act affirm the Government of Canada's commitment to transparent processes that are built on early engagement and inclusive participation. The Discussion Paper states that "the CER expects that companies communicate and engage proactively with those potentially affected by company activities" (p. 5). While the OPR currently includes requirements for pipeline design, construction, operation and maintenance, decommissioning and abandonment, it doesn't include requirements for a company's engagement with Métis, First Nations and Inuit peoples in the consideration of a project's regulatory filing and effects assessment. While requirements for such regulatory filings are included in other regulations, there is a gap in the requirements for a regulated company to engage with Métis, First Nations and Inuit peoples as it considers which regulatory mechanism it should select for a project to best consider its impacts.	The OPR should be updated to include a section related project planning and effects assessment, that specify requirements for a regulated company's engagement with Métis, First Nations and Inuit peoples in the early stages of considering a project and selecting a regulatory mechanism. In a subsequently filed application, the proponent must be required to demonstrate the regulatory mechanism selected to regulate projects is supported by impacted Indigenous Nations. Further, the CER should eliminate the 40-km pipeline length for triggering environmental assessments and replace with a consultative project screening and scoping approach that examines the real impacts of a proposed project and assumes that an environmental assessment will be triggered, unless it can be proven that impacts will be negligible and that Indigenous communities' consent to any project going forward without an environmental assessment. From the MMF's perspective, tying the trigger for an environmental assessment to environmental impacts ensures that the process addresses significant adverse environmental and socio-economic impacts regardless of the length of pipeline proposed and will eliminate project proponents piecemealing project pipeline lengths into segments under 40 km to avoid environmental assessment requirements.	Not applicable.
12.	Section 3. Engagement and Inclusive Participation	Question 9	The availability of clear, plain language information presented in a culturally relevant and visually appealing manner is an important step toward promoting transparency with Indigenous Nations, including the MMF as well as the public more broadly. Currently, most information, including the OPR is required to be available in English and French only. However, there are several Indigenous languages, included Michif spoken by Métis, First Nations, and Inuit across Canada. An important step for transparency would be ensuring a greater availability of information on the	For the OPR and related summary information be made available in a more accessible format. This includes the use of visual graphics and/ or audio-visual aids available not only in English and French, but in Michif and other Indigenous languages spoken. In addition, having the information provided in a plain language format, ideally in centralized place, such as the Participation Tool-kit that the CER has available.	<ul style="list-style-type: none"> • What sort of information would you like on the oversight and regulation of pipelines in the Red River Métis Homeland? • How would you like to receive this information?



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			regulation and oversight of CER-regulated facilities was available in Indigenous languages, including Michif.		
13.	Section 3. Engagement and Inclusive Participation	Question 10	<p>As was noted in the Discussion Paper, “[the] preamble of the CER Act expresses the Government of Canada’s commitment to assessing how groups of women, men, and gender-diverse people may experience policies, programs, and projects, and to take action that contributes to an inclusive and democratic society and allows for all Canadians to participate fully in all spheres of their lives.” For gender and other intersecting identities, including Métis identity, energy projects within our homeland have the potential to impact people differently. In addition, individuals with different identity factors bring unique perspectives and lived experience that could inform how the OPR is implemented. As a result, the CER needs to consider both:</p> <ul style="list-style-type: none"> • How women, youth, people with disabilities, 2SLGTBQQIA+, Indigenous peoples, and people with intersecting identities could inform and advise the CER on conducting inclusive oversight activities, and • How individuals of diverse and intersecting identities, including Métis women, youth, Elders, 2SLGTBQQIA+, and people with disabilities are uniquely and disproportionately impacted by natural resource development projects, including CER-regulated pipelines and how to ensure those impacts are adequately addressed throughout the entire lifecycle of the project. 	<p>It is recommended that the CER seek to revise the OPR and other relevant aspects of the CER’s regulatory framework to ensure impacts experienced by Métis women, youth, people with disabilities, 2SLGTBQQIA+, and people with intersecting identities are considered and addressed throughout the operational lifespan of CER-regulated facilities.</p> <p>In addition, it is recommended that the CER consider developing formal advisory and/ or feedback structures where the individuals who are or have experienced these impacts firsthand can advise the CER on how to best address these effects in a timely and considerate manner.</p>	Not applicable.
14.	Section 4. Global Competitiveness	Question 11	Question 11 within the Discussion Paper speak to concerns related to regulatory certainty and procedural fairness as considerations for contributing to Canada’s global competitiveness. The MMF is of the perspective that procedural fairness includes having appropriate processes and structures in place for ensuring the Duty to Consult and Crown Consultation are carried out in an effective manner. However, since transitioning from the NEB to the CER, the coordination of Crown Consultation has shifted from Natural Resources Canada’s jurisdiction to also being housed under the CER alongside its functions as both an assessor and lifecycle regulator. This triple role is concerning to the MMF as the MMF is of the perspective that Crown Consultation functions to provide accountability to the CER and operators, and as such, should have a somewhat impartial objective view. However, moving this function to the CER eliminates or at least gives the perception that this objectivity, accountability, and commitment of good faith has been limited.	To better support procedural fairness, good faith engagement, and ultimately contribute to Canada’s global competitiveness there needs to be a demonstration that the Duty to Consult is carried out effectively, including through an accountable Crown Consultation process separate from the regulator. As result, at a minimum the CER needs to demonstrate how Crown Consultation team enforce and promote this objectivity and accountability. This includes but is not limited to demonstration of how ethical walls are enacted within the CER to ensure this accountability is maintained. If such separations cannot be demonstrated, then the CER ought to consider delegating the responsibility of Crown Consultation to another federal regulator or ministry such as the Impact Assessment Agency of Canada or Natural Resources Canada.	Not applicable.
15.	Section 4. Global Competitiveness	Question 13	Currently, Indigenous hiring, procurement, and content – both in monitoring and oversight but also in business contracting and procurement	As a starting point the CER should aim to implement a performance metric both for its own operations and as a	Not applicable.



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			<p>are currently regarded as measures to aspire toward, as an indicators of good corporate and social responsibility results for a project. However, if Indigenous hiring and content were shifted to be treated as performance metrics companies and the CER were evaluated against this would offer a mechanism for enhanced oversight and transparency through stronger requirements to involve Indigenous peoples, governments, and businesses in the lifecycle regulation of pipelines.</p> <p>In practical terms this could involve setting specific targets for companies and the CER to strive toward for Métis, First Nations, and Inuit content. For example, on the CER side, performance metrics could include the number of joint inspections carried out by the CER and impacted Indigenous Nations. For example, on the company side, it could include targets with respect to number or percentage of monitors and/ or businesses contracted who are Métis, First Nations, or Inuit-owned and operated. As a starting point, the CER could look to the targets set out in the current government's Ministerial Mandate letter for Public Services and Procurement that set a target to have at least 5% of federal contracts awarded to businesses managed and led by Indigenous Peoples and use this target as a performance metric to evaluate themselves and companies against.</p>	<p>standard to hold companies to strive to meet the targets set out in the current government's Ministerial Mandate letter for Public Services and Procurement that set a target to have at least 5% of federal contracts awarded to businesses managed and led by Indigenous Peoples. In addition to setting this target, the CER should work collaboratively with the MMF and other Indigenous governments to develop systems and accountability for performance metrics, such as Environmental Social Governance (ESG) criteria, to ensure that performance metrics can be realistically achieved and maintained in a sustained manner.</p>	
16.	Section 5. Safety and Environmental Protection	Questions 17, 19, and 20	<p>A particular challenge that the MMF has encountered and observed when engaging with companies is the statement that third-party contractors are independent of the pipeline operators and so are not necessarily beholden to similar conditions or requirements. This is particularly true around the communication, notification, and consultation requirements a company has to impacted Indigenous Nations or abiding by environmental commitments established between a company and an impacted Nation.</p>	<p>The OPR and corresponding elements of the regulatory framework should be revised to ensure third-party contractors are beholden to the same requirements and practices of pipeline operators. In particular, ensuring contractors conducting environmental work are following the same communication and notification protocols companies have with Indigenous Nations, in particular cultural heritage chance-find protocols.</p>	Not applicable.
17.	Section 5. Safety and Environmental Protection	Question 21	<p>Currently the OPR includes very clear explicit guidance on continuing educations programs and emergency response involvement measures of nearby municipalities, fire departments, police, medical facilities, and members of the public residing nearby. However, there are currently no explicit requirements for the involvement of nearby Métis, First Nations, or Inuit communities, first responder services, or facilities. As a result, it means while non-Indigenous responders and communities are being provided with the information and protocols necessary to effectively respond to emergencies, Indigenous counterparts are being excluded, presenting a risk to Métis, First Nations, and Inuit peoples who may be impacted should an accident, malfunction, rupture or other project-related emergency occur.</p>	<p>The OPR, specifically the language within sections 32 – 35 of the regulations need to be revised to ensure nearby Indigenous communities, first responders, and medical facilities are receiving the same information and training as non-Indigenous communities, services, facilities, and members of the public. Failure to do poses a major safety risk to nearby Indigenous communities, including MMF Regions where CER-regulated facilities are located.</p>	Not applicable.



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18.	Section 5. Safety and Environmental Protection	Question 23	<p>When it comes to the connection between project-specific Environmental Protection Plans (EPP) and a company's wider Environmental Protection Program there are two key areas where improvements could be made:</p> <ul style="list-style-type: none"> • First, both the project-specific plan and company-wide program need to better consider and integrate cumulative impacts the company's infrastructure is or could have on Indigenous and local communities. This includes identifying measures for managing, mitigating, and remediating impacts where possible. • Second both the project-specific plans and company-wide programs should have integrated efforts to incorporate Métis Knowledge and land use information that had been provided to the proponent from impacted Indigenous communities. For project-specific plans, this data can inform site-specific protections and for broader company programs this could inform planning and oversight their wider operations and practices with respect to environmental protections. 	The OPR and CER Filing Manual should be revised to include clearer requirements for integrating information between project-specific and company-wide EPPs, with a particular focus on more integrated information regarding Indigenous Knowledge and land use and cumulative impacts.	Not applicable.
19.	Section 5. Safety and Environmental Protection	Question 24	<p>Within the OPR and the Remediation Process guide, contaminated site management focuses primarily on following the guidance provided by the Canadian Council of Ministers of the Environment (CCME) and Health Canada when contemplating measures and methods to be applied when developing and implementing a Remedial Action Plan. However, what is not considered when determining if a site has been successfully remediated or rehabilitated is what does successful contaminant abatement mean for Métis, First Nations, or Inuit harvesters and rights-holders who may use the land and waters at or near the site of contamination. This includes consideration of how this contamination and subsequent remedial action restores safety and confidence for Indigenous peoples who choose to exercise their rights in this area and the rights-based and psycho-social impacts from a failure to consider the rights, interests, and well-being of Indigenous peoples when making such determinations.</p>	Both the OPR and Remediation Process Guide need to be revised to ensure the impacts to rights, interests, and well-being of Métis, First Nations, or Inuit harvesters and rights-holders are criteria that are factored into the Remedial Action Plan guidance provided. This includes guidance or a checklist jointly developed with the MMF and other impacted Indigenous Nations that identifies the steps the CER and companies need to take when assessing and remediating contaminated sites to ensure potential rights-based, psycho-social, and subsistence-based impacts are appropriately addressed.	What measures would the CER or companies need to take in order for you to have confidence that a contaminated site is properly remediated or rehabilitated?
20.	Section 6. Implementation Objectives	Question 28	<p>When considering compliance promotion, it is important for the CER to consider the role Indigenous Nations can play in participating in and contributing to these functions. Specifically, the demonstrate leadership and commitment to Reconciliation, the CER should seek to integrate cultural awareness and competence into compliance promotion activities. As a starting point, the CER could partner with the MMF and other Indigenous governments for the development and delivery of cultural awareness training as an aspect of compliance promotion. Cultural awareness contributes to compliance promotion, especially when considered in the context of enhanced requirements for lifecycle engagement with impacted Indigenous Nations, paired with further</p>	The CER should work collaboratively with the Red River Métis through the MMF, other impacted Indigenous Nations and governments, and the CER Indigenous Advisory committee to develop culturally relevant methods for Indigenous Nations to contribute to and be involved in compliance promotion activities. The potential activities that are undertaken could be a question the CER discusses further in Phase 2 of the OPR review process and seeks to implement through its strategic plan and/or regulatory framework.	Not applicable.



Comment #	Section	Applicable Discussion Paper Question	Issue	Technical Review Comments and/or Recommendations	Follow-up Questions for MMF Engagement (where applicable)
			regulatory requirements around the consideration and inclusion of the TK and TLRU information shared throughout the life of projects as well as enhanced Indigenous monitoring requirements within the CER.		
21.	Section 6. Implementation Objectives	Question 29	<p>The MMF is interested in playing a strong role in working alongside the CER in the development of technical guidance related to the OPR, and lifecycle regulation more broadly. This includes but is not limited to:</p> <ul style="list-style-type: none"> • The MMF contributing perspectives from citizens alongside technical and regulatory guidance; • The MMF being provided adequate capacity funding to develop and contribute technical guidance; • The MMF being able to evaluate the results of this technical guidance; and • The MMF being involved in ongoing compliance promotion and lifecycle regulation activities where this technical guidance is being applied. 	The CER and the MMF should work collaboratively on the development of technical guidance in a manner that abides by the MMF's Resolution No. 8 and ensures that the MMF holds an active role in ongoing compliance promotion and lifecycle regulation activities where this technical guidance is being applied.	How would you like to continue to stay informed about CER-regulated facilities in your area?



Appendix B – Discussion Paper Questions

1. What's working well in relation to the OPR, and its implementation, and what could be improved?
2. How can the OPR contribute to the advancement of Reconciliation with Indigenous peoples?
3. How can the OPR contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities?
4. How can the OPR contribute to the protection of traditional land and resource use, and sites of significance for Indigenous peoples on a pipeline right-of-way, during construction, and operations and maintenance activities?
5. How can the use of Indigenous knowledge be addressed in the OPR?
6. How can the OPR address the participation of Indigenous peoples in pipeline oversight?
7. How can the OPR support collaborative interaction between companies and those who live and work near pipelines?
8. How could communication and engagement requirements in the OPR be improved?
9. How could the CER improve transparency through the OPR?
10. Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:
 - a. those people implementing the OPR; or
 - b. those people who are impacted by the operational activities addressed in the OPR?
11. How can the OPR support a predictable and timely regulatory system that contributes to Canada's global competitiveness?
12. How can the OPR support innovation, and the development and use of new technologies or best practices?
13. What company-specific or industry-wide performance metrics could the CER consider to support enhanced oversight and transparency for CER-regulated facilities?
14. Are there opportunities within the OPR for data and digital innovation that could be used by the CER and by companies regulated by the CER?
15. How can the OPR be improved to address changing pipeline use and pipeline status?
16. What further clarification, in either the OPR (e.g. structure or content), or in guidance, would support company interpretation and implementation of management system requirements?
17. How should information about human and organizational factors, including how they can be integrated into a company's management system, for both employees and contractors, be provided in the OPR, and/or described in related guidance?
18. How can the OPR improve the connection between company safety manuals and the overarching Safety Management Program, for both employees and contractors?
19. How can respect and personal workplace safety be assured at CER-regulated sites?
20. How should the CER be more explicit about requirements for contractor management?
21. How should the OPR include more explicit requirements for process safety?
22. How can the OPR drive further improvement to the environmental performance of regulated companies?
23. How can the connection between the Environmental Protection Plan, specific to an individual pipeline, and the company's Environmental Protection Program, designed for a company's pipeline system, be improved?
24. How can contaminated site management requirements be further clarified, in the OPR or in guidance?
25. Are there any matters related to the Emergency Management Program in the OPR that require clarification? If so, what are they? Are there any matters for which further guidance is required?
26. How could the requirement for a Quality Assurance Program be improved or clarified in the OPR?
27. How can the OPR incorporate the key issues identified in the Safety Advisory regarding the strength of steel and the relative strength of the weld area?
28. What are your recommendations for compliance promotion at the CER?
29. How do you want to be engaged by the CER in the development of technical guidance?

