



O'CHIESE FIRST NATION

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May 12, 2021

Roslyn King
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Impact Assessment Agency of Canada
Prairie and Northern Region
Canada Place
Suite 1145, 9700 Jasper Avenue
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Sent via email: roslyn.king@canada.ca
iaac.heartland.aeic@canada.ca

Dear Ms. King,

RE: O'Chiese First Nation Review of the Draft Tailored Impact Assessment Guidelines for Heartland Complex Expansion Project ("the Project")

This letter is sent on behalf of O'Chiese First Nation Chief and Council. The Chief and Council of O'Chiese First Nation have the elected authority and responsibility to protect the Inherent and Treaty Rights of O'Chiese First Nation. The Treaty Rights of O'Chiese First Nation are recognized by Treaty No. 6 and section 35, *Constitution Act, 1982*.

O'Chiese First Nation is bound by *Kaa-Ke-Chi-Ko-Moo-Nan*, O'Chiese First Nation's Great Binding Law ("Natural Laws"). As such, O'Chiese First Nation operates under its own distinct set of legal principles and laws that have been in place since time immemorial, which we understand and expect are protected by Treaty and Section 35 of the *Constitution Act, 1982*. These Natural Laws are the foundation for O'Chiese First Nation Peoples. We write to you today to initiate our participation in this western regulatory system to protect our Inherent and Treaty Rights. We do so reluctantly, as our participation in past regulatory processes did not result in the protection of our rights, or our laws.

On March 24, 2021, the Impact Assessment Agency of Canada ("IAAC") released its Draft Tailored Impact Statement Guidelines ("DTISG") for review and comment, which outlines what will be included and considered in the Impact assessment, including impacts on Indigenous communities before, during and after the Project duration by Value Chain Solutions. Comments on the DTISG were requested by May 17, 2021.

Before offering comment on the DTISG, O'Chiese First Nation would like to comment on the additional worksheet requested for completion, outlining Valued Components ("VCs") to O'Chiese First Nation. O'Chiese First Nation believes that it is inappropriate IAAC requested this document be completed along with comments on the DTISG. At this time, we have not received adequate capacity from the Crown or the proponent to properly identify O'Chiese First Nation specific VCs

tailored to this Project. Every regulatory process in unique and O'Chiese First nation has a Nation specific process that needs to be undertaken. For example, prior to identifying and describing possible project effects on valued components, O'Chiese Consultation Office must undertake a technical review of the Project documentation and facilitate information sharing with O'Chiese Elders and knowledge keepers who will provide guidance on the specific environmental, health, social and economic conditions that might be subject to change due to the Project. When capacity funding is received, and ample time given, we will initiate proper discussions with the Nation to identify VCs that reflect the rights interests of O'Chiese First Nation. O'Chiese First Nation will not compromise its identified methodology for selection of VCs. Identifying impacts to O'Chiese First Nation rights is too important to short cut the process.

O'Chiese First Nation provides the following preliminary comments on the DTISG.

Overarching Comments

An overarching comment, relevant to every section discussing impacts on Indigenous communities, is the need to connect these impacts to impacts on rights held by Indigenous peoples, including inherent, treaty and Aboriginal rights. These conversations about potential impacts on landscapes, social and cultural activities, food and economic issues, cannot occur without understanding the tandem impacts on Inherent and Treaty rights.

A further overarching issue is the use of Indigenous knowledge only in cases of an absence of Western thought, or in addition to Western thought. Instead, Indigenous knowledge should be integrated, centered, and extended in use to areas not previously conceived by Western society to incorporate Indigenous knowledge. For example, instead of only using Indigenous knowledge in discussions around sustainability for Indigenous nations, Indigenous knowledge can also be included in areas such as economic concerns and can be expanded beyond just use in Indigenous nations to the broader public.

In addition, O'Chiese First Nation is concerned about the ways in which Indigenous knowledge is being separated from Western knowledge, and used only to fill gaps in Western understanding, or used in addition too. O'Chiese First Nation stresses the importance of their distinct traditional legal principles, laws and knowledge, and that the information and concerns that stem from these knowledge bases should be incorporated in every section in this document, and not exist simply within a given section.

1.1 Factors to be considered in the impact assessment

Section 1.1 outlines the factors to be considered in the impact assessment, and should include considerations around COVID-19, including increased time for review of documentation and collections of information in Indigenous communities.

4.4 Alternative means of carrying out the Project

Within this section, the Project sets out the alternative means of carrying out the project, indicating that the Impact Statement must identify and consider the potential environmental, health, social and economic effects and impacts on the rights of Indigenous peoples. O'Chiese First Nation provides the following comments for consideration.

DTISG Excerpt	O’Chiese First Nation Comment
<p>The following information sources <i>may</i> inform the assessment of alternative means of carrying out the Project:</p> <ul style="list-style-type: none"> • Any regional or strategic assessment • Any study or plan that is conducted or prepared by a jurisdiction or an Indigenous governing body related to the area affected by the Project and provided with respect to project; • Any relevant assessment of the effects of the Project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the Project; • Indigenous knowledge, community knowledge, comments received by the public, and comments received from jurisdictions; and • Other studies or assessments realized by other proponents. 	<ul style="list-style-type: none"> • O’Chiese proposes that the permissive language of <i>may</i> be changed to <i>must</i>, requiring that the listed areas be pursued as sources of information to inform the assessment of alternative means for carrying out the Project. • Further, there should be response by the Project proponent indicating why these alternatives are not being considered/used, or if they are incorporated, it should be identified and acknowledged how. • O’Chiese First Nation does not condone the use of previous studies or assessments conducted by O’Chiese First Nation and realized by other proponents for other projects. This is a distinct and separate regulatory process that must utilize information provided from O’Chiese specific to this Project. There are clear disclaimers in every OCFN Report that requires written permission from OCFN be obtained first.

5.1 Summary of public engagement activities

In this section VCS states that “engagement activities must be inclusive and ensure that interested members of the public have an opportunity to share their views”. O’Chiese First Nation requests clarity on this section regarding what ‘inclusive’ and ‘opportunity’ entail, and whether these are aligned with the values of United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) and generally accepted Duty to Consult and Accommodation best practices.

6.0 Description of engagement with Indigenous groups

In this section VCS states that “engagement with Indigenous groups must involve ongoing information sharing”. O’Chiese First Nation requires clarity regarding what ongoing information sharing looks like. O’Chiese further requests that this section be expanded to include the language of *free, prior and informed consent* from UNDRIP. This language considers not only ongoing information sharing, but also recognition of adequate time, capacity and funding to engage with this ongoing information sharing.

Further, when this section does use the language of *free, prior and informed consent* from UNDRIP, it states that the intention is to achieve consensus. It is O’Chiese First Nations’ understanding that consent does not equal a pre-supposed goal. Therefore, clarity is required on what *free, prior and informed consent* looks like. It cannot be only lip service paid to this concept.

6.1 Indigenous knowledge considerations

Considerations around collection of Indigenous knowledge should also be expanded to include the potential implications of COVID-19 which may impact timelines of this impact assessment process.

Further, O’Chiese First Nation emphasizes the importance of avoiding essentializing language that paints Indigenous knowledge as standard across all Indigenous nations in Canada. It should be stressed that Indigenous knowledge is unique to every First Nation, Metis and Inuit nation. It is recommended to avoid using blanket assumptions and conclusions based on majority beliefs, and minority beliefs should also be included in analysis to avoid essentializing.

7.4 Effects assessment methodology

This section should be expanded to include the impacts of climate change on the project, and how climate change (i.e., increased forest fires) may increase risks such as oil spills.

This section also states to “take into account the tolerance thresholds regarding the potential negatives effects that Indigenous peoples have identified”. O’Chiese First Nation requests clarity on what these tolerance thresholds are, and who is determining them.

7.5. Mitigation and enhancement measures

O’Chiese First Nation proposes that this section, and every section on mitigation and enhancement, including sections 8.4.1.3, 8.4.2.3, 8.4.3.3, 8.5.3, 8.6.3, 8.7.3, 8.8.3, 8.9.3, 8.10.3, 9.3, 11.3, 12.5, 13.1.2, and 15.0 should require the project to consider mitigation and enhancement measures suggested by Indigenous communities. This includes a requirement to provide feedback on why these suggestions were or were not incorporated. Further, if violations or Project impacts remain unmitigated, accommodation measures must be agreed upon as well for the previous sections.

8.0 Biophysical Environment

This section acknowledges the connected nature of environmental, health, social and economic effects with the biophysical, but should also acknowledge the deeply interconnected and holistic nature of these effects as well within many Indigenous communities and their knowledge systems. The additional sub-sections within Section 8 should then be expanded to include the addition of Indigenous knowledge around the specific biophysical area. At present, only section 8.6.1, 8.7.1, and 8.9.1 acknowledge the specific possible impacts on Indigenous communities, but still have no section for the addition of Indigenous knowledge or require input from Indigenous communities on mitigation or enhancement.

In addition, the conditions necessary for O’Chiese First Nation and other additional Indigenous communities to exercise their rights in their preferred manner must be assessed, and this may include factors beyond the biophysical.

9.2.1 Biophysical determinants of health

This section references tolerance thresholds for potential adverse effects on health. While the adverse health effects are identified by Indigenous communities, O'Chiese First Nation requests clarification on what these tolerance thresholds are and who is determining them.

10.4.1 Baseline conditions

This section outlines the baseline conditions around community well-being and should *require* the addition of indicators proposed by Indigenous groups.

It also includes consideration for LGBTQ and two-spirit people. O'Chiese First Nation would like clarity on how these demographics are being reached. There is also a need to be considerate of language, as two-spirit is not a universal Indigenous term.

10.4.2 Effects on community well-being

The language used in this section should be drawn from the Missing and Murdered Indigenous Women Inquiry that occurred in Canada.

10.5 Mitigation and enhancement measures

This section lays out the language of tolerable thresholds around community well being. O'Chiese First Nation requests clarity on what these thresholds are and who is determining them.

In addition, it requests that Indigenous community's mitigation suggestions be prioritized, and if not enacted, require a response as to why they were not enacted.

Further, O'Chiese First Nation suggests that in addition to suggestions of cultural sensitivity or awareness training, VCS look to the Missing and Murdered Indigenous Women Inquiry to draw from their recommendations to help reduce gendered and sexual violence.

12.0 Indigenous peoples

O'Chiese First Nation requests clarification on what defines a reasonable opportunity for Indigenous peoples to review information, and whether this is covered by *free, prior and informed consent* as defined by the UNDRIP. O'Chiese First Nation requests further clarification on what funding and in what amount will be offered to Indigenous nations.

In addition, this section indicates that the Project only need work with Indigenous groups who show an interest in this project. O'Chiese First Nation is concerned about the way in which this forces Indigenous nations to participate within Western structures such as the IAAC in order to have their input validated. It also fails to consider the amount of money and capacity Indigenous nations need to engage with the large amount of development projects occurring across Alberta. Based on this information, O'Chiese First Nation believes that it is important that the concerns of Indigenous Nations that did not want to engage with these processes also be included.

12.1.1 Baseline conditions

This section outlines the baseline conditions for Indigenous physical and cultural heritage and structures, sites or things of significance. O’Chiese First Nation noted that while there is acknowledgement that Indigenous laws are connected to the land, that this should be brought up earlier as an area of importance and consideration.

12.2. Current use of lands and resources for traditional purposes

O’Chiese First Nation stresses that the identification of Traditional Land Use (“TLU”) sites should not be a proxy for identification of impacts, nor should it be used to verify whether Indigenous communities exercise their rights in a particular area. Instead, the focus must remain on potential impacts to Inherent and Treaty rights, regardless of TLU evidence provided.

12.3.2 Effects on Indigenous health, social and economic conditions

This section includes considerations of the impacts of the boom-and-bust cycles of oil and gas on community health. O’Chiese First Nation proposes that this be expanded to include what climate change and worst-case scenarios would mean for Indigenous communities and their rights.

12.4.1 Baseline conditions

This section outlines the baseline conditions for the rights of Indigenous peoples. While this section indicates that Indigenous peoples should be involved in determining what rights are affected by the Project, it is more appropriate that Indigenous peoples should be leading this section, and all avenues identified by Indigenous communities should be explored and addressed. This will require additional funding to assist with capacity in order to preform a proper assessment of impacted rights. O’Chiese First Nation emphasizes that this assessment can only be preformed after the community has ample time to review the completed Impact Assessment by VCS.

This section also requires that baseline conditions regarding Indigenous rights includes pre-existing impacts that already exist in the area, due to other industrial projects. O’Chiese First Nation wants to note that it must be included that these pre-existing conditions are not used as an excuse to also participate in the impacting of rights (i.e., fishing rights have already been affected by run off in the area, so the Project can also have run off into rivers) and instead are understood as compounding factors.

12.4.2 Impacts on rights of Indigenous peoples

This section gives an ideal scenario that Indigenous groups receive adequate information on the project to determine the impact on their rights but does not *require* that Indigenous groups receive this information. O’Chiese First Nation suggests that this be required, and clarified in the language of UNDRIP on free, prior and informed consent. Indigenous peoples have the right to ample information that is freely given to make determination on impacts on their rights. This section also requires “mutually agreeable solutions” to concerns, which is again not in the language of consent of the UNDRIP. A presupposed end goal where both parties benefit is not equal to consent, which implies that an Indigenous nation can say no.

Language should be specific to state that impacts on rights *must* be assessed by Indigenous nation's methodology indicated by the specific community unless they do not want to.

15.0 Cumulative effects assessment

Language in this section should be changed to "the proponent *must* refine its analysis by taking into account selected VCs... including those of particular concern by Indigenous groups". Further, the assessment of cumulative effects should include effects on Indigenous rights.

16.1 Follow-up program framework

This section outlines the follow-up program framework, and the plan to involve Indigenous communities in ongoing monitoring and related Project activities. O'Chiese First Nation would like clarification on how VCS will provide financial support and assist in increased capacity so that O'Chiese and other Indigenous communities can continue to participate in follow-up programs.

18.0 Description of the Project's contributions to sustainability

O'Chiese First Nation is seeking clarification about the requirement that the impact statement must also describe the Projects contribution to sustainability as defined by Indigenous groups. The nation is curious which groups have defined sustainability, whether a consensus needs to be met regarding this definition, whether this definition already exists, and what sort of consultation will occur to define this term if not already defined?

Sincerely,

<Original signed by>

Andrew Scott
Consultation Director
O'Chiese Consultation Office