

**CROWN CONSULTATION AND ACCOMMODATION REPORT
for the
LINE 3 OIL PIPELINE REPLACEMENT PROGRAM
(ENBRIDGE PIPELINES INC.)
(OH-002-2015)**

Prepared by the Major Projects Management Office

October 31, 2016

Disclaimer

If there is any inconsistency or ambiguity between this report and the National Energy Board Report (OH-002-2015), the National Energy Board Report (OH-002-2015) shall prevail.

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1.0 Introduction

The Government of Canada is committed to renewing the relationship with Aboriginal peoples to one based upon recognition of rights, respect, cooperation and partnership. This commitment places a new emphasis on ensuring that the Crown's constitutional duty to consult, and where appropriate, accommodate Aboriginal peoples is undertaken meaningfully, effectively, and in a manner that upholds the Honour of the Crown.

A duty to consult arises when the following three conditions are present:

- the Crown contemplates conduct;
- the Crown has actual or constructive knowledge of established or potential Aboriginal or treaty rights, as defined under section 35 of the *Constitution Act, 1982* (section 35 rights); and,
- that conduct or decision may have adverse effect on these section 35 rights.

Since May 2016, following the receipt of a recommendations and decisions report on the Line 3 Replacement Program (the Project), by the National Energy Board (NEB), the Crown has been undertaking consultations with Aboriginal groups. The Major Projects Management Office (MPMO) within Natural Resources Canada has been acting as the Crown Consultation Coordinator for the Project. The MPMO is responsible for ensuring the Crown's duty to consult is carried out and for assessing the adequacy of consultation. At all times, the consultation process has sought to uphold the Honour of the Crown, with an emphasis on respect and cooperation.

To the extent possible, the Crown relies on existing consultation mechanisms from the NEB's process. The Crown's objective throughout this process was to understand how the Crown's contemplated conduct (i.e., the potential Governor in Council decision to direct the NEB to issue a Certificate, subject to terms and conditions) could potentially impact section 35 rights and to solicit input on how to address or otherwise accommodate these potential impacts, where appropriate.

1.1 Purpose of the Report

This report documents the Crown's consultation with Aboriginal groups, including any potential accommodation measures, with respect to the potential impacts of the Project on section 35 rights.

This report:

1. Describes the consultation process undertaken by the Crown with Aboriginal groups;
2. Reports the views of Aboriginal groups on how the Crown conduct may potentially impact their rights;

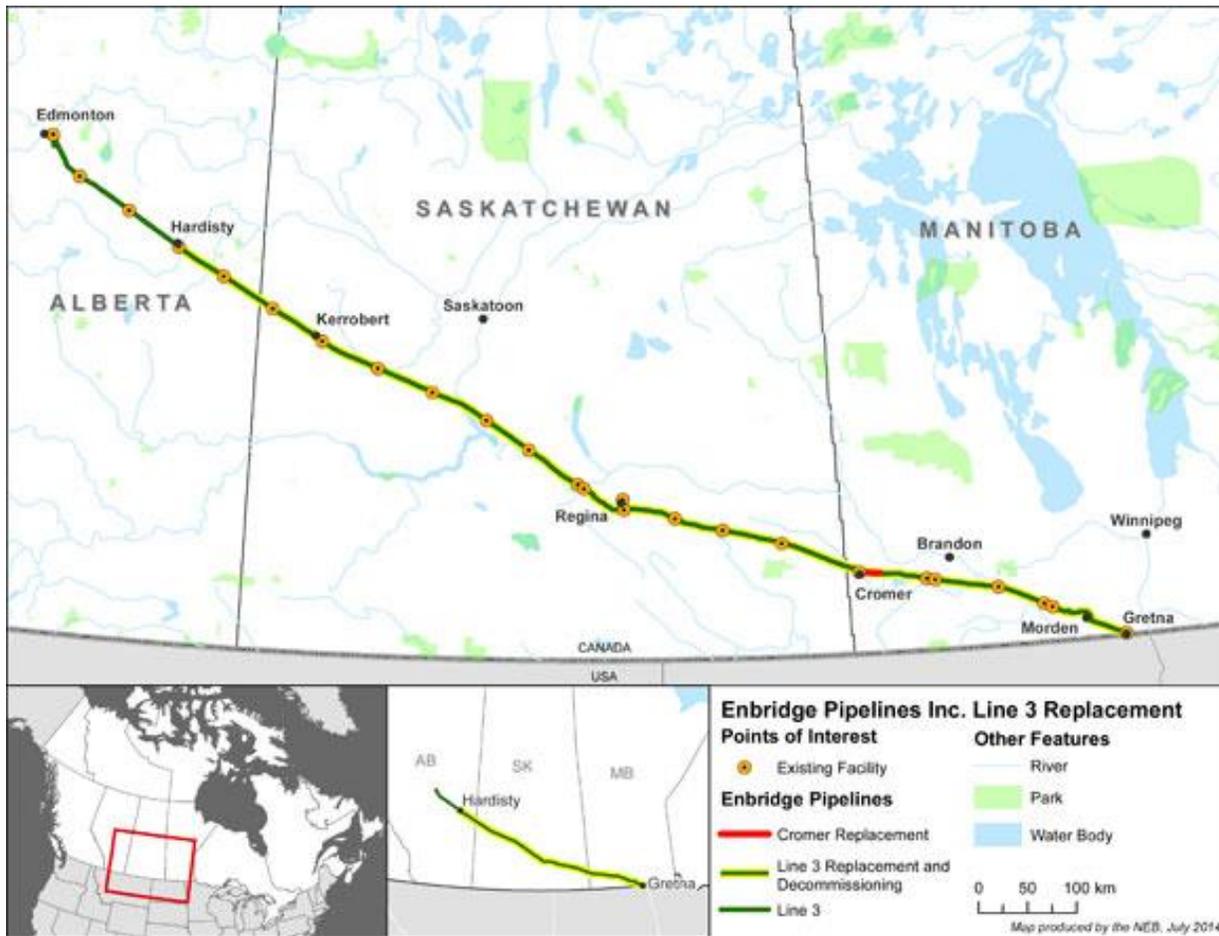
3. Explains the Crown's assessment regarding the potential impacts of the Crown conduct on section 35 rights;
4. Outlines accommodation measures proposed to address potential impacts on Aboriginal rights; and,
5. Presents the Crown's conclusion on the adequacy of consultation and whether the duty to consult was met.

1.2 Project Description

On November 5, 2014, Enbridge Pipelines Inc. (Enbridge) filed an application under sections 52 and 58 of the *National Energy Board Act*, and section 45.1 of the *National Energy Board Onshore Pipeline Regulations* seeking approval for the Line 3 Replacement Program with the NEB. Enbridge applied for permission to construct and operate approximately 1,096 km of new pipeline to replace the majority of the existing Line 3, as well as to decommission the corresponding part of the existing pipeline, from Enbridge's Hardisty Terminal, located near Hardisty, Alberta, to Gretna Station, located near Gretna, Manitoba (Figure 1).

The Project is a "designated project" pursuant to subsection 2(b) of the *Canadian Environmental Assessment Act, 2012*, for which the NEB is the responsible authority.

Figure 1: Location of Line 3 Project



The Project represents a \$4.8 billion proposal to replace an existing 1,067 km of pipeline. Line 3 is one of the six crude oil pipelines that make up the Enbridge oil mainline system and is a “mixed-service” line, meaning it carries a variety of crude oils, including sweets, light and high sour, and light synthetics. Due to the physical condition of the existing pipeline, it is currently being operated under a series of pressure restrictions, voluntarily imposed by Enbridge to limit its capacity to 390,000 barrels per day. The Line 3 replacement program would restore the capacity of the pipeline to the original 760,000 barrels per day.

The proposed project includes the construction of approximately 1,096 km of a new 914.4 mm crude oil pipeline, built to modern standards. It would also entail the addition of remotely operated sectionalization valves, the addition of 18 pump stations and associated infrastructure and equipment to be built either within existing rights of ways or on newly secured land, the addition of tankage at the Hardisty Terminal. Enbridge has also proposed the in-place decommissioning of approximately 1,067 km of the existing 863.6 mm crude oil pipeline once the replacement pipeline is in operation.

Eighty-eight percent of the new pipeline would follow existing right of ways. At the close of the NEB hearings Enbridge had secured 98.5% of the additional right of way required, coming primarily from private land owners. Unoccupied Crown land constitutes less than 5% of the project land area or under 50km.

1.3 Overview of Crown Consultation Process and Timelines

As the coordinator of Crown consultations, the MPMO has led the Crown consultations with Aboriginal groups in four phases:

- **Phase 1: Early Engagement Phase**

In advance of the project application the NEB sent letters to 102 Aboriginal groups advising them about the project. From the submission of the project description by the proponent to the start of the NEB project review process, the NEB held early engagement sessions with the 15 Aboriginal groups that requested meetings to discuss the NEB hearing process, the NEB participant funding program and how to participate in the hearing. The Crown participated in these meeting either in person or by phone and outlined for Aboriginal groups its consultation approach on the Project. At the same time, the Crown encouraged groups to participate in the NEB's hearing process as the NEB was best positioned to consider potential impacts, and develop conditions that could address those impacts.

- **Phase II: NEB Hearing Phase**

During this time, Aboriginal groups were encouraged and funded to participate in the NEB hearings and to provide information to help inform the NEB recommendation report. Through its own participation in this process, the Crown developed a stronger understanding of the interests and concerns of Aboriginal groups related to the proposed project.

- **Phase III: NEB Recommendation Phase**

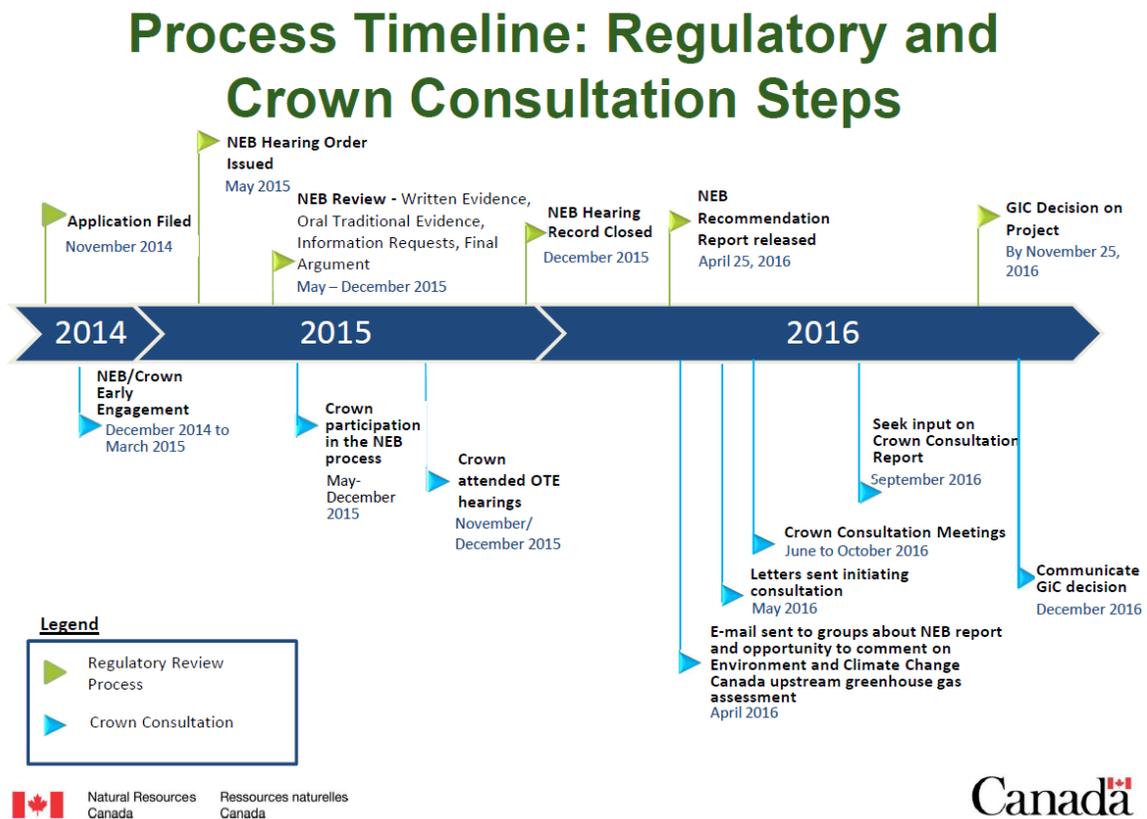
On April 25, 2016, following the close of the NEB hearings on December 14, 2015, the NEB delivered its recommendation report to the Minister of Natural Resources. The report included a recommendation to the Governor in Council (GIC) to direct the NEB to issue a certificate of public convenience and necessity to Enbridge for the project subject to 89 conditions, including that the proponent fulfill all the commitments made during the hearing and in its filings.

- Phase IV: Post-NEB Recommendation Report Phase**
 Following receipt of the NEB recommendation report, the Governor in Council extended the legislated time limit by four months to ensure adequate time to consult Aboriginal groups. The Crown consulted Aboriginal groups on the NEB recommendations to understand the impacts of the Project that were not addressed in the NEB recommendation report and conditions; where those impacts could be mitigated and where they could not be mitigated; and how any outstanding impacts could be accommodated.

The NEB’s regulatory review and environmental assessment and subsequent report supported the Crown in helping identify how the Crown’s conduct in relation to the Project might adversely impact section 35 rights and how the recommended conditions in the report may accommodate potential impacts on those rights. The responsibility for ensuring the legal duty to consult is appropriately discharged ultimately rests with the Crown.

Figure 2 shows how the Crown consultation phases relate to the NEB regulatory review and environmental assessment, which is described in further detail in Section 3.0. Timelines associated with the various activities and decisions are also shown.

Figure 2: Process timeline for the Line 3 Replacement Program review (including Crown consultations)



2.0 Engagement by the Proponent with Aboriginal Groups on the project

This section summarizes Enbridge's engagement process and the distinction between the Proponent's engagement and the Crown consultation process.

As a requirement under the NEB Filing Manual, Enbridge was required to identify, engage and consult with potentially impacted Aboriginal groups prior to filing an application for the Project with the NEB. Enbridge was also required to report to the NEB on these activities, and to provide a description of any issues or concerns raised by these Aboriginal groups as part of its Application.

Further to this requirement under the NEB Filing Manual, Enbridge outlined the following objectives for the Project's consultation program:

- share information about the project;
- seek stakeholders, landowners, and regulatory agencies' input for the project; and,
- provide an opportunity to participate in the development of mitigation measures.

Enbridge began engaging with potentially impacted Aboriginal groups in 2013.

In June 2013, Enbridge initiated the Project's consultation program by identifying 2,400 stakeholders interested in and/or potentially affected by the Project including landowners, occupants, tenants and Crown disposition holders with land interests that crossed or were within 200m of the Project right-of-way (RoW); local governments; federal and provincial regulatory agencies; landowner groups, general public; NGOs; recreation groups; trappers, guides and outfitters; and navigable water users. Of the parties listed, 77 were Aboriginal groups.

In August 2013 and March 2014, Enbridge sent project notifications to potentially affected Aboriginal groups providing information on the project. Enbridge encouraged Aboriginal groups to contact them to discuss issues or concerns relating to the Project.

The NEB hearing record shows that Enbridge has engaged over 150 Aboriginal groups and organizations in regards to the Project.

As part of its engagement with Aboriginal groups near to the project area, Enbridge negotiated engagement agreements with groups to support the common identification of opportunities for them to participate in, and benefit from, the Line 3 Replacement Program. These agreements commonly include funding to support collaboration between the group and the proponent, to build capacity within the community and for other initiatives, as well as to support the development of traditional land use studies to provide information to the review process.

The Crown is typically not party to these agreements unless the Crown has a direct material interest in the Project, which is not the case for Line 3. When the Crown is not a party to an agreement it is also generally not privy to the parameters of any such agreement even if it may have a general awareness of its existence.

As such, while the Crown does consider existence of agreements between Enbridge and section 35 rights holders, from the perspective of ensuring that Aboriginal people are able to benefit from a project, this report can only consider what Aboriginal groups or proponents have voluntarily shared with the Crown. Where the Crown had no information about an agreement between the proponent and Section 35 rights holders, this report assumes that no such agreement exists.

3.0 Regulatory Review, including Environmental Assessment, Process

This section provides an overview of the NEB regulatory review and environmental assessment, including the participation of Aboriginal groups in the process, leading to the NEB recommendation report to the Governor in Council.

In November 2014, the NEB received Enbridge's application and on February 4, 2015, announced that it would undertake a regulatory review and environmental assessment and public hearing, to determine, amongst other things, whether the Project is likely to cause significant adverse environmental effects.

In February 2015, the NEB released a Notice of Public Hearing and Application to Participate for Aboriginal groups and stakeholders to apply for participant status to support their engagement in the review process. This is to allow those that may be impacted by a project to share with the NEB any concerns or comments they may wish to register to inform the environmental and socio-economic analysis undertaken by the NEB. Information sessions were also organized, along with online sessions to provide more information on participating in the hearing process.

The NEB received 81 applications to participate in the Line 3 process by the original March 31, 2015 deadline, with another 14 submitted in the following months. Thirty-nine were granted Intervenor status and 26 were granted Commenter status – 16 were denied standing as their application referred to another proponent's project. The NEB provided participant funding, totalling close to \$1 million, to 33 groups, including 31 Aboriginal groups, to enhance their capacity to participate in the review (see section 3.1.1).

On May 4, 2015, the NEB issued its initial hearing order, establishing the process for the public hearing, which included the opportunity for intervenors to file evidence and information requests. On August 28, October 30 and November 13, 2015, the NEB issued procedural updates, related to the structure and timing of the public hearings. The NEB also released draft conditions for the project on November 23 and draft decommissioning conditions on November 26, 2015. The oral hearings closed on December 14, 2015, the same day that the hearing record closed. Following the close of the hearings and receipt of final arguments, the NEB Panel considered all information presented to prepare its recommendation report.

The regulatory review and environmental assessment by the NEB is the initial part of the NEB's broader role as a lifecycle regulator. The NEB also regulates all elements of the construction, operation, and abandonment of pipelines that cross international borders or provincial boundaries, as well as the related pipeline tolls and tariffs. As such, the NEB is in a good position to ensure that the conditions are fully adhered to by Enbridge throughout the Project's lifecycle. Should the project be approved, and Enbridge decides to proceed with it, the NEB will use this same oversight to regulate the Project facilities and components going forward.

The Crown relied on the NEB hearing process to help collect and consider information to inform a complete assessment as to the proposed mitigation of the effects of the Project, including potential impacts on Aboriginal rights. In this regard, the Crown relies on the NEB’s regulatory review process, to the extent possible, to complement the Crown consultation process and fulfill aspects of its constitutional duty to consult, and as appropriate, accommodate impacts on Aboriginal interests.

3.1 Participation of Aboriginal groups in the regulatory review process

Under the NEB’s Enhanced Aboriginal Engagement process, the NEB engaged with Aboriginal groups potentially impacted by the Project to ensure they were aware of how to participate in the hearing process and how to obtain funding to support that engagement.

In October 2014, in advance of the receipt of the Project application, the NEB sent letters to 102 Aboriginal groups to advise them of the start of the review of the Line 3 Replacement Program. This letter included an offer to meet with groups to provide them further information on the regulatory process and the role of the NEB in the review. The NEB and the Crown met with 15 groups as per their request.

The NEB also invited Aboriginal groups to participate in its regulatory review and environmental assessment as either commenters or intervenors, including collectively with other groups with common interests.

Thirty-five Aboriginal groups participated as intervenors and two participated as commenters in the NEB process. In November and December 2015, the Board also held Oral Traditional Evidence hearings in Winnipeg and Calgary, with 14 Aboriginal groups providing testimony.

The Crown incorporated the information gathered during the NEB early engagement sessions and submitted by groups either intervening or commenting in the hearing process as part of the assessment and mitigation of the effects of the Project.

3.1.1 Funding to support participation in the NEB review process

In October 2014, the NEB announced the availability of \$500,000 to facilitate participation in the public hearings for the Line 3 Replacement Program. There were 33 eligible applications received requesting approximately \$2.6M. The Funding Review Committee reviewed the applications and awarded a total of \$999,000 to the 33 applicants (Table 1).

Table 1: Allocation of funds for participation in the NEB hearings for the Line 3 Replacement Program

| Applicant | Amount awarded |
|-------------------------------------|-----------------------|
| Asini Wachi Nehiyawak Mountain Cree | \$5,000 |
| Assembly of Manitoba Chiefs | \$40,000 |
| Canupawakpa Dakota Nation | \$35,000 |
| Dakota Plains Wahpeton Oyate | \$47,000 |

| | |
|----------------------------------------------------------|------------------|
| Dakota Tipi First Nation | \$35,000 |
| ERIII Metis Nation Saskatchewan | \$40,000 |
| Ermineskin Cree Nation | \$38,000 |
| File Hills Qu'Appelle Tribal Council | \$45,000 |
| Friends of Michel Society (Michel First Nation) | \$30,000 |
| Frog Lake First Nations | \$35,000 |
| George Gordon First Nation | \$35,000 |
| Kahkewistahaw First Nation | \$36,000 |
| Keeseekoose First Nation | \$25,000 |
| Keith Kuhl | \$10,000 |
| Manitoba Métis Federation | \$48,000 |
| Moosomin First Nation | \$36,000 |
| Ocean Man First Nation | \$38,000 |
| Ochapowace Nation | \$35,000 |
| Pasqua First Nation | \$5,000 |
| Peguis First Nation | \$40,000 |
| Piikani Nation | \$25,000 |
| Pine Creek First Nation | \$15,000 |
| Poundmaker Cree Nation | \$38,000 |
| Roseau River Anishinabe First Nation | \$15,000 |
| Samson Cree Nation | \$35,000 |
| Siksika Nation | \$38,000 |
| Southern Chiefs Organization | \$40,000 |
| Stewart Crone | \$10,000 |
| Stoney Nakoda First Nation | \$40,000 |
| Sweetgrass First Nation | \$30,000 |
| Thunderchild First Nation | \$25,000 |
| Treaty 2 Territorial Alliance (Anishinaabe Agowidiwinan) | \$15,000 |
| White Bear First Nations | \$15,000 |
| Total | \$999,000 |

3.2 National Energy Board Panel Report Conclusions

On April 25, 2016, the NEB Panel released its final report on the Project. As part of its conclusions, it found that the Project is in the public interest under CEAA 2012 and is not likely to cause significant adverse environmental effects. The Panel also noted that the replacement of the pipeline is likely to result in enhanced overall safety. As such, it recommended that the Governor in Council direct the NEB to produce the certificate to proceed.

The NEB Panel identified the major potential impact of the Project to be its construction, and found that with the implementation of the mitigation measures proposed by Enbridge, the Project would not be likely to cause significant adverse environmental effects.

The NEB Panel also recommended the in-place decommissioning of the existing pipeline, but retained the right to order the proponent to remove the decommissioned pipe at a later date if it deemed it necessary. The NEB Panel also proposed conditions requiring comprehensive ongoing monitoring of the decommissioned pipeline by Enbridge as this will be one of the largest decommissioning projects to date, and this data could inform their future analysis of similar projects.

Other conditions would require Enbridge to make additional filings in advance of starting decommissioning and in advance of an abandonment application for some related infrastructure, e.g. pumping stations.

The Panel made note of the fact that Aboriginal groups filed submissions both in favour and in opposition to the Project, while concluding that Enbridge's engagement efforts had been sufficient. There are conditions that will require Enbridge to continue engaging Aboriginal groups, and facilitate their involvement in monitoring the construction of the project.

The Panel also took the unique step of recommending that the NEB work with industry and Aboriginal groups to identify ways in which Aboriginal groups can be involved in monitoring of pipeline projects in general (though this is not enforceable compared to conditions), reflecting the level of importance placed on this issue by Aboriginal groups.

The Panel recommended 89 Certificate Conditions to strengthen public safety, protection of the environment, and ensure continued consultation between Enbridge, landowners and Aboriginal peoples.

Thirty-seven are Certificate conditions pursuant to s. 52 of the NEB Act. Thirty are Order conditions pursuant to s. 58 of the NEB Act, where the Panel's decision is final, and 22 are Decommissioning Order Conditions (also pursuant to s.58 of the NEB Act).

These conditions can be categorized according to project phase:

- 13 apply generally to the proposed activities;
- 38 apply prior to and during construction;
- 21 apply post-construction and during operations;
- 11 apply prior to and during decommissioning; and
- 6 apply after decommissioning is complete.

By subject matter, the conditions can be categorized as:

- 18 apply across all aspects of the project;
- 12 focus on pipeline integrity, and a further 3 on safety and integrity;
- 5 focus on emergency management;
- 19 focus on consultation; 17 focus on environment; and 5 focus on the environment and consultation together;

- 4 focus on socio-economic aspects of the project, while a further one focuses on the environment and socio-economic aspects; and
- 5 are general in nature.

In addition, Enbridge made a large number of commitments throughout the NEB process. These commitments add to the conditions, for example by ensuring Aboriginal participation in the Project, and would be tracked via Certificate condition 14.

Many of the conditions have been recommended by the NEB to address bio-physical and socio-economic effects which may be relevant to addressing impacts on Aboriginal interests. See section 5 of this report for a discussion of the NEB Panel recommendations.

3.3 Governor in Council decision-making process

After the NEB has submitted its report, the Governor in Council has a legislated timeline of 90 days to render a decision on the report. The Governor in Council may, on recommendation of the Minister of Natural Resources:

- 1) order the NEB to issue a certificate to allow the Project to proceed;
- 2) order the NEB to dismiss the application; or,
- 3) refer the NEB recommendation or conditions back to the NEB for reconsideration.

In January 2016, the Minister of Natural Resources and the Minister of Environment and Climate Change announced interim measures to be applied to projects already undergoing regulatory review as part of a longer-term plan to review the environmental assessment process and to modernize the NEB.

One of the interim measures was for the Government of Canada to “**undertake deeper consultations with Aboriginal peoples and provide funding to support participation in these consultations**”. To ensure sufficient time to apply this measure to the review of the Line 3 Replacement Program, the federal Minister of Natural Resources sought an extension to the legislated time limit for the GiC decision-making timeline by four months, increasing it from three months to seven months in total.

The Governor in Council’s new legislated time limit to make a decision on the NEB recommendations is November 25, 2016. This Crown Consultation and Accommodation Report will be provided to the Minister of Natural Resources for consideration in preparing a recommendation to the Governor in Council, and be shared with relevant colleagues to support a decision on the Project.

The Government also committed to seek and consider the views of the public as well as assess the upstream greenhouse gas emissions that would be associated with the Project.

To respond to these commitments, an online questionnaire was launched on May 25, 2016 and remained open until September 15, 2016, to seek public input on the project, including from nearby communities. A summary of these comments will be made public.

On April 25, 2016, Environment and Climate Change Canada released a draft upstream greenhouse gas (GHG) assessment for the project, for a 30 day public comment period, though officials have committed to accepting comments from Aboriginal groups received during Crown consultations. A final assessment will be made public.

4.0 Crown Consultation with Aboriginal Groups on the Contemplated Crown Conduct

This section outlines how the Crown identified Aboriginal groups potentially impacted by this Project and how the consultation was conducted and information was tracked.

4.1 Potential and Asserted or Established Section 35 rights

This section summarizes the historical and contextual information related to Aboriginal groups whose rights and title, or other interests, have the potential to be adversely affected by the Project, should it be approved.

4.1.1 Historic Treaties

Many Aboriginal groups potentially impacted by the Line 3 Replacement Program are First Nation signatories to the numbered treaties negotiated with the federal government between 1871 and 1921 (specifically Treaties 1, 2, 4, 6 and 7, see Figure 3). These treaties and the associated Oral Promises provide for certain gathering, hunting and fishing rights within each treaty territory. Specifically, in exchange for a surrender of rights, title and privileges whatsoever to the lands, the Crown agreed to set aside land as reserves, to provide both one-time and annuity payments, and to allow First Nations pursuit of their “usual vocations of hunting, trapping and fishing.”

In understanding the scope and nature of the rights and obligations under historic treaties, the Crown is guided by the text of the treaty, as well as the understandings and intentions of the First Nations and Crown participants to the making of the treaty or subsequent adhesions, following rules of treaty interpretation articulated by the Supreme Court of Canada.

The Crown also understands that in Manitoba, Saskatchewan and Alberta, the treaty rights were modified following the conclusion of the *Natural Resource Transfer Agreements*, restricting the hunting, trapping and fishing rights for the purpose of food.

The Crown views these aspects as being consonant with the terms of historic treaties insofar as the mode of life and livelihood referred to in the report were the hunting, trapping and fishing activities protected by the treaty. Rights protected under these historic treaties may also include harvesting activities undertaken for spiritual and cultural purposes.

The Crown further recognizes that some groups are pursuing Treaty Land Entitlement or other processes with Canada to access land previously not provided, as was promised under the treaties.

Figure 3: Historic Treaties across the Prairies in Canada



Source: <https://www.aadnc-aandc.gc.ca/eng/1100100032297/1100100032309>

As stated by the Supreme Court of Canada in *Mikisew (SCC, 2005)*, and recently reaffirmed in *Grassy Narrows (SCC, 2014)*¹, the Crown's right to take up lands under historic treaties is not absolute, and is subject to the duty to consult and, if appropriate, accommodate the treaty First Nations' interests before reducing the area over which their members may continue to pursue hunting, trapping and fishing rights.

Although all historic treaty First Nations are entitled to engage in hunting, fishing and trapping activities within the whole of their treaty area, where a treaty First Nation no longer has a meaningful right to hunt, trap or fish in relation to the territory over which it traditionally hunted, trapped or fished, this would result in a treaty infringement.

¹ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para. 56 and *Grassy Narrows First Nation v. Ontario (Natural Resources)*, [2014] 2 SCR 447 at paras. 50-3.

While treaty adherents have rights to hunt, trap and fish throughout their entire treaty area, land use information and other evidence filed with the NEB was reviewed to understand key interactions between the Project and First Nation's traditional use areas, including for spiritual and cultural use.

4.1.2 Métis Nations

Métis are Aboriginal peoples of Canada. Section 35 of the *Constitution Act, 1982* protects the customs, practices and traditions that were historically important features of Métis communities, who emerged subsequent to European "contact", and prior to the exercise of "effective control" by the European settlers. For Métis to be able to exercise section 35 rights, they must be able to demonstrate they are members of a modern Métis community that has ancestral linkages to an historic rights bearing Métis community. The test for establishing Métis section 35 rights was set out by the Supreme Court of Canada decision in *R. v. Powley*².

In Manitoba, Saskatchewan and Alberta there are varying provincially recognized harvesting rights for Métis, in which it is recognized that Métis have the right to harvest for food and commercial purposes, with varying implementation of this recognition on a jurisdictional basis (see Figure 4 for Manitoba). Where a recognized harvesting area or region, including such areas or settlements would potentially be impacted by the Project, Canada approached consultation at the moderate to high end of spectrum. Where the region or harvesting area was not within the potential area of impact, consultation was approached at the lower end of the spectrum.

Métis in Manitoba are recognized to have section 35 rights to hunt for food and domestic use in specific areas, which have been affirmed by provincial and federal courts. In 2012, the province of Manitoba reached an agreement with the Manitoba Métis Federation to legally recognize Métis Natural Resource Harvesting Rights in specific areas of the province.

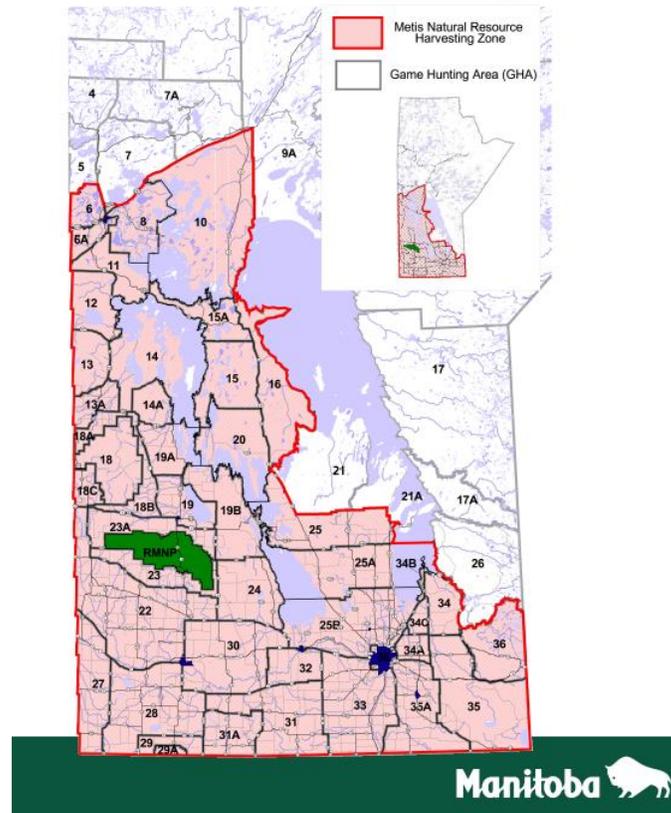
In 2004, the Métis Nation of Alberta signed an Interim Métis Harvesting Agreement with the Government of Alberta. In 2007 the policy was revised to recognize the right of Métis living in communities north of Edmonton to harvest generally within a 160 km radius of the community.

Métis groups in Saskatchewan have recognized harvesting zones in the north of the province while a provincial harvesting agreement is being sought.

² *R. v. Powley*, [2003] 2 SCR 207

Figure 4: Recognized Areas for Metis Natural Resource Harvesting in Manitoba

Recognized Areas for Metis Natural Resource Harvesting



Source: http://www.gov.mb.ca/conservation/resource_harvesting.html

4.1.3 Non-Treaty Rights

Non-treaty Aboriginal groups may have section 35 rights, including in relation to traditional territories. While the contemplated action relates to a Project that is proposed largely for areas covered by historic treaties, the Crown identified several non-treaty Aboriginal groups with actual or asserted section 35 rights that could be potentially impacted by the contemplated action.

As such, the Crown consultation process ensured that all participating Aboriginal groups could highlight or assert any Aboriginal right, even if that right was not grounded in a Treaty, when they believed the right could potentially be impacted by the contemplated action.

4.2 Aboriginal Groups Identified for Consultation

In fall 2014, the Crown, based on its standard procedure for a major resource project, developed a list of potentially affected Aboriginal groups by the project with advice from the NEB, the proponent and Indigenous and Northern Affairs Canada (INAC).

Approximately 145 individual Aboriginal groups and organizations were initially identified as potentially impacted by the Project, however through further review the list was amended to 109 in October 2014. This list was developed through the consideration of groups, whose reserves, treaty territories and traditional territories fall within 100 km on either side of the zone of impact represented by the Project, and therefore there may be a potential impact on their established or asserted section 35 rights. This analysis was also informed by information developed or provided to INAC or the NEB during other processes.

The following tables (2, 3, and 4) list the 109 Aboriginal groups (and organizations who may represent groups) in Manitoba, Saskatchewan and Alberta included in the final Crown list.

Table 2: Aboriginal Groups located in Alberta

| Aboriginal Groups | |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Alexander First Nation | 14. Piikani (Peigan) First Nation |
| 2. Alexis Nakota Sioux Nation | 15. Saddle Lake Cree Nation |
| 3. Asini Wachi Nehiyawak Traditional Band | 16. Samson Cree First Nation |
| 4. Blood (Kanai) First Nation | 17. Siksika First Nation |
| 5. Enoch Cree Nation (15) | 18. Stoney Nakoda First Nation |
| 6. Ermineskin Cree Nation | 19. Tsuu T'ina First Nation |
| 7. Frog Lake First Nation | 20. Treaty 7 Management Corporation (the tribes of the Blackfoot Confederacy, (Siksika, Piikani (Peigan) and Kainaiwa (Blood)), Tsuu T'ina (Sarcee), the Stoney (Bears paw, Chiniki, and Wesley/Goodstoney) |
| 8. Louis Bull Tribe | |
| 9. Métis Nation of Alberta Zone 3 | |
| 10. Métis Nation of Alberta Zone 4 (17) | |
| 11. Michel First Nation | |
| 12. Montana Cree First Nation | |
| 13. Paul First Nation | |

Table 3: Aboriginal Groups located in Saskatchewan

| Aboriginal Groups | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 21. Ahtahkakoop (Shell Lake) First Nation | 49. Nekaneet First Nation |
| 22. Big Island Lake First Nation (Joseph Bighead Cree First Nation) | 50. Ocean Man First Nation |
| 23. Beardy's and Okemasis | 51. Ochapowace First Nation |
| 24. Carry the Kettle First Nation | 52. Okanese First Nation |
| 25. Central Urban Metis Federation Inc. | 53. One Arrow (Willow Crees) First Nation |
| 26. Chachacas First Nation | 54. Onion Lake First Nation |
| 27. Chief Big Bear First Nation | 55. Pasqua First Nation |
| 28. Cote First Nation | 56. Peepeekisis First Nation |
| 29. Cowessess First Nation | 57. Piapot First Nation |
| 30. Day Star First Nation | 58. Pheasant Rump Nakota Nation |
| 31. Fire Hills Qu'Appelle Tribal Council (Carry the Kettle, Little Black Bear, Muscowpetung, Nekaneet, Okanese, Pasqua, Peepeekisis, Piapot, Standing Buffalo, Star Blanket, Wood Mountain) | 59. Poundmaker First Nation |
| 32. Fishing Lake First Nation | 60. Red Pheasant First Nation |
| 33. Flying Dust First Nation | 61. Sakimay First Nation |
| 34. George Gordon First Nation (Kaneonuskatew) | 62. Saulteaux First Nation |
| 35. Kahkewistahaw First Nation | 63. Standing Buffalo Dakota Nation |
| 36. Kawacatoose First Nation | 64. Star Blanket First Nation |
| 37. Keeseekoose First Nation | 65. Stony Knoll (Young Chipeeweyan) First Nation |
| 38. Kinistin Saulteaux Nation | 66. Sweetgrass First Nation |
| 39. Little Black Bear First Nation | 67. The Key First Nation |
| 40. Little Pine First Nation | 68. Thunderchild (Piyesiw-awasis) First Nation |
| 41. Lucky Man First Nation | 69. Touchwood Agency Tribal Council (Day Star, Fishing Lake, George Gordon, Kawacatoose, Muskowekwan) |
| 42. Métis Nation of Saskatchewan | 70. Thunderchild (Piyesiw-awasis) First Nation |
| 43. Métis Nation of Saskatchewan Eastern Region III | 71. Wahpeton Dakota Nation |
| 44. Métis Nation of Saskatchewan Western Region III | 72. Whitecap Dakota Nation (Moose Woods) |
| 45. Moosomin First Nation | 73. Wood Mountain First Nation |
| 46. Mosquito, Grizzly Bear's Head, Lean Man First Nation | 74. Yellow Quill First Nation |
| 47. Muscowpetung First Nation | 75. Yorkton Tribal Council (Cote, Keeseekoose, The Key, Ocean Man, Sakimay, Kahkewistahaw) |
| 48. Muskowekwan First Nation | |

Table 4: Aboriginal Groups located in Manitoba

| Aboriginal Group | |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 76. Assembly of Manitoba Chiefs | 95. Pinaymootang (Fairfield) Anishinabe First Nation |
| 77. Birdtail Sioux First Nation | 96. Pine Creek First Nation |
| 78. Brokenhead Ojibway First Nation | 97. Rolling River First Nation |
| 79. Buffalo Point First Nation | 98. Roseau River Anishinabe First Nation |
| 80. Canupawakpa Dakota First Nation | 99. Sandy Bay First Nation |
| 81. Dakota Ojibway Tribal Council (Birdtail Sioux, Dakota Tipi, Long Plain, Roseau River, Sandy Bay, Swan Lake, Waywayseecappo) | 100. Sapotaweyak Cree Nation |
| 82. Dakota Plains Wahpeton First Nation | 101. Sioux Valley Dakota Nation |
| 83. Dakota Tipi First Nation | 102. Skownan (Water hen) First Nation |
| 84. Ebb and Flow First Nation | 103. Southern Chiefs Organization |
| 85. Gambler's First Nation | 104. Swan Lake First Nation |
| 86. Keeseekoowenin (Riding Mountain Band) First Nation | 105. Tootinaowaziibeeng Treaty Reserve |
| 87. Lake Manitoba First Nation | 106. Treaty 2 Territorial Alliance (Ebb and Flow, Keeseekoowenin, Lake Manitoba, O-Chi-Chak-Ko-Sipi and Skownan) |
| 88. Long Plain First Nation | 107. Waywayseecapo First Nation |
| 89 – 92. Manitoba Métis Federation (Southeast, Southwest Winnipeg) | 108. West Region Tribal Council (Ebb and Flow, O-Chi-Chak-Ko-Sipi, Rolling River, Skownan, Pine Creek, Gamblers, and Keeseekoowenin and Tootinaowaziibeeng) |
| 93. O-Chi-Chak-ko-Sipi (Crane River) First Nation | 109. Wuskwi Sipiik (Indian Birch) First Nation |
| 94. Peguis First Nation | |

The Crown's approach to Phase IV of the consultation process is described below.

4.2.1 Establishing the Depth of Duty to Consult in Phase IV

The Crown undertook a depth of consultation analysis for each Aboriginal group potentially impacted by the Project to determine the extent of consultation owed to each Aboriginal group. This analysis took account of the following factors for each Aboriginal Group:

- strength of the case for any section 35 rights that may be adversely affected; and
- degree of potential impact of contemplated Crown action or activity to adversely impact section 35 rights.

The Crown considered these two factors for each Aboriginal group's use of lands and resources in proximity to areas potentially impacted by the Project.

To assess the potential severity of impacts on section 35 rights, the Crown considered such factors as areas of traditional use by Aboriginal groups; the past, present and anticipated future uses; the current baseline conditions of these areas; the context through which rights and traditional practices are exercised; the availability of other lands where the meaningful exercise of interests could occur if needed; residual effects of the Project; the extent to which the Project could impact Aboriginal groups' use of the Project area; and the measures proposed to mitigate adverse impacts. The Crown then sought to consult each Aboriginal group in a manner consistent with the conclusions of its depth of consultation analysis. Should new information have been identified during the consultation process with an impact on the depth of consultation determined for a group, the Crown adjusted its approach. Figure 5 illustrates how the Crown tailored its consultation with each Aboriginal group.

The Crown compiled information to conduct this analysis from a number of sources, including:

- Submissions to the NEB by Enbridge
- Submissions to the NEB by Aboriginal groups
- Correspondence between the Crown and individual groups; and,
- The federal government's Aboriginal and Treaty Rights Information System.

Figure 5: Depiction of the assessment of depth of consultation and accommodation

| | Anticipated Negligible/ Very Weak Rights Claim | Anticipated Weak Rights Claim | Anticipated Moderate Rights Claim | Anticipated Strong Rights Claim | Modern Treaty Settlement, (including in process); Reserve Lands |
|---------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------------------------|
| Low Degree of Potential Adverse Impact | Nothing Required - opportunity to participate through public consultations | Recommended Letter, Info, Request for Aboriginal group to identify interest in contemplated conduct | Letter, Info, Input Welcomed on Project | Letter, Info, Consultation Session if Requested | Letter, Info, Consultation Session Anticipated |
| Moderate Degree of Potential Adverse Impact | Nothing Required - opportunity to participate through public consultations | Recommended Letter, Info, Request for Aboriginal group to identify interest in contemplated conduct | Letter, Info, Consultation Session if Requested | Letter, Info, Consultation Session Anticipated | Letter, Info, Consultation Session Most Likely Required |
| High Degree of Potential Adverse Impact | Recommended Letter, Info, Request for Aboriginal group to identify interest in contemplated conduct | Letter, Info, Input Welcomed on Project | Letter, Info, Consultation Session Anticipated | Letter, Info, Consultation Session(s) Most Likely Required | Possible Collaborative Development of Consultation Model (Protocol Agreement) |

Source: *Aboriginal Consultation Interactive Guidebook, Natural Resources Canada, January 2011*

4.2.2 Phase IV Consultation Activities

Following the release of the NEB recommendations report on April 25, 2016, the Crown corresponded with the 109 groups and organizations on the Crown list to advise them of the publication of the NEB's report and the start of a 30-day comment period on a draft upstream greenhouse gas assessment on the Project, developed by Environment and Climate Change Canada.

On May 9, 2016, the Crown initiated the post-hearing consultation process by sending letters and (when applicable) funding applications to all the groups and organizations on the Crown list to seek their input on the NEB report and for assistance in identifying any outstanding issues or concerns in regards to this Project. Representative organizations were offered funding to the extent that they represented rights-holding groups for the purpose of Crown consultations.

For Aboriginal groups that were owed a moderate or high duty to consult, the Crown invited those groups to apply for funding specifically allotted in Budget 2016 to support their participation in Phase IV consultations. The Canadian Environmental Assessment Agency followed up to offer assistance in completing the funding application in advance of the May 30, 2016, deadline. In responding to several groups' requests for more time, the deadline was extended to June 14, 2016, when a funding review committee was convened to review the funding applications received. The MPMO also followed up with groups to identify convenient dates to hold consultations.

During this time the MPMO followed up by phone with groups on the low range of the consultation spectrum and responded to several requests for more information and meetings, all of which were accommodated.

Between June and October 2016, the MPMO met with the 36 Aboriginal groups and organizations who sought meetings on the Line 3 Replacement program.

The objectives of these meetings were to solicit from groups any outstanding issues and concerns with the NEB recommendations report on the Line 3 Replacement Program and to identify any potential accommodation measures for Government's consideration with its decision on the Project. Meeting summaries were developed by the Crown and shared back with the Aboriginal groups to ensure accuracy.

A draft of this Crown Consultation and Accommodation Report was also shared with Aboriginal groups for review and comment to help ensure that the Crown had adequately understood groups' participation in the consultation process, their strength of claim, potential impacts on interests and any outstanding concerns, including whether they are addressed by the NEB conditions, proponent commitments or other measures.

In addition to reviewing and commenting on this report and the group-specific annexes developed by the Crown, groups were also offered the opportunity to provide a submission to directly describe any outstanding concerns, issues or other views with respect to the Project.

4.2.3 Federal Funding

A Participant Funding Program supported Aboriginal participation in consultation activities in the post-NEB hearing phase. Based on an interdepartmental agreement, administration of the Participant Funding Program was carried out by the Canadian Environmental Assessment Agency (CEAA) on behalf of the MPMO.

Funds were identified for this engagement in Budget 2016. The Crown invited groups to apply for funding, offering \$8,500 to high groups and \$4,250 to moderate groups, with more offered to groups operating as a collective. These funds were identified to support groups' review of the NEB report and their meaningful discussion with the Crown on any issues that may remain outstanding, along with the consideration of measures to mitigate potential impacts, if necessary.

Of the 66 groups offered funding, 28 submitted funding applications and the Crown put in place contribution agreements with 24. The remaining four groups were provided with funding agreements for signature however these were not returned to the Crown to initiate funding.

As of October 2016 the Crown had allocated the following funding (Table 5):

Table 5: Allocation of funds for participation in the post-NEB report consultations on the Line 3 Replacement Program

| Applicant/Recipient Name | Funding Amount Approved (\$) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Canupawakpa Dakota Nation | 8,500.00 |
| Carry the Kettle First Nation | 4,200.00 |
| Ermineskin Cree Nation #138 | 8,500.00 |
| File Hills Qu'Appelle Tribal Council, on behalf of Peepeekisis First Nation, Piapot First Nation, Little Black Bear First Nation, Okanese First Nation and Star Blanket First Nation | 25,119.04 |
| Friends of Michel Society, on behalf of Michel First Nation | 4,250.00 |
| Gambler First Nation | 4,230.00 |
| George Gordon First Nation (Kaneonuskatew) | 4,250.00 |
| Keeseekoose First Nation | 4,250.00 |
| Manitoba Métis Federation Inc. | 8,500.00 |
| Métis Nation of Alberta Region III | 4,200.00 |
| Métis Nation of Saskatchewan Eastern Region III | 4,250.00 |
| Moosomin First Nation | 4,250.00 |
| Mosquito, Grizzly Bear's Head, Lean Man First Nation | 4,250.00 |

| | |
|----------------------------------------------------------------------------------------------------------|-------------------|
| Ocean Man First Nation | 4,250.00 |
| Ochapowace First Nation | 8,500.00 |
| Peguis First Nation | 8,500.00 |
| Pheasant Rump Nakota First Nation | 4,250.00 |
| Piikani First Nation | 4,025.50 |
| Pine Creek First Nation | 4,250.00 |
| Poundmaker First Nation | 4,250.00 |
| Rolling River First Nation | 4,250.00 |
| Roseau River Anishinabe First Nation | 8,500.00 |
| Sakimay First Nation | 8,200.00 |
| Samson Cree Nation | 4,250.00 |
| Stoney Nakoda Nations, on behalf of Bears paw First Nation, Chiniki First Nation and Wesley First Nation | 4,250.00 |
| Swan Lake First Nation | 8,500.00 |
| Whitecap Dakota First Nation | 4,250.00 |
| Total | 168,974.54 |

4.3 Crown Consultation Record and Tracking of Key Issues

Following each meeting with an Aboriginal group, Crown officials developed a draft meeting record and shared it with the group to ensure that the conversation was captured correctly and to seek concurrence on any outstanding action items. The meeting records informed the development of group-specific annexes.

The Crown also kept track of correspondence with each Aboriginal groups, both to share information and to arrange meetings, and note any questions or issues that may be raised through this correspondence, to ensure they were addressed.

The Crown developed an issue tracking tool that was developed to identify issues raised by Aboriginal groups during the NEB process and updated it during consultations. The tool also included an analysis by the Crown as to the extent that proposed conditions by the NEB would be likely to address the concerns of Aboriginal groups or if a gap existed. The tool was updated as consultations progressed, and to inform consideration of areas in which accommodation measures may be necessary. This tool was also informed by the analysis provided by the NEB to the MPMO in June 2016, as per the Project Agreement between departments, of the issues raised by all Aboriginal groups throughout the hearing process.

5.0 Potential Impacts of Contemplated Crown Conduct on Section 35 Rights and Interests

This section summarizes the issues raised by Aboriginal groups through the NEB regulatory review and environmental assessment and during Crown consultations. A separate document was also prepared detailing the issues raised by each Aboriginal group. Each annex has been shared in draft form with the respective Aboriginal group and will be shared again when finalized. These annexes will not be published with the report because they contain third-party information.

5.1 Issues Raised by Aboriginal Groups during the Regulatory Review and Environmental Assessment and Crown Consultation Processes

Aboriginal groups raised the following issues:

- A. Impacts on hunting and gathering, and other traditional land uses, during construction
- B. Impacts on hunting and gathering, and other traditional land uses, during operation
- C. Impact on sites of cultural or heritage significance during construction
- D. Impact on use of lands for cultural purposes during operations
- E. Adequacy of the NEB review process
- F. Adequacy of the proponent's engagement process
- G. Adequacy of the Crown consultation process
- H. Environmental impacts during construction
- I. Ongoing (or cumulative impacts) on wildlife and vegetation
- J. Potential impacts from the decommissioning process
- K. Potential environmental impacts of a spill
- L. Need for further emergency planning measures
- M. Need for further benefits for communities
- N. Human health considerations
- O. Historical contamination

5.1.1 Common Aboriginal Group Concerns Related to Potential Impacts on Rights

- A. Impacts on hunting and gathering, and other traditional land uses, during construction**
- B. Impacts on hunting and gathering, and other traditional land uses, during operation**
- C. Impact on sites of cultural or heritage significance during construction**
- D. Impact on use of lands for cultural purposes during operations**

Issue: The construction and operation of the Project could have a negative impact on Aboriginal groups' ability to practice their right to hunt, gather, fish and use the land for cultural purposes.

During the NEB process and in ensuing meetings with the Crown, 38 groups raised that despite the submissions of the proponent, there is hunting, trapping and gathering activity, along with other cultural activities, in the vicinity of the existing or new right of way, which could be impacted by the construction or ongoing operation of the project.

Some potential impacts identified include the loss or alteration of habitat for wildlife, impacts on wildlife movement, increased predation or reduced availability of food sources, and disturbances or impacts to areas of cultural importance as a result of events, such as a spill.

Many Aboriginal groups identified a need for ongoing monitoring of the project throughout its lifecycle, and the importance of their participation in this process, based upon their connection to the land and the potential for them to experience more directly any potential impacts resulting from a spill or other negative event.

It was also commonly noted that while the NEB Panel focussed on the potential positive impacts resulting from the replacement, the land has already been significantly altered from its original state from the installation of the original Line 3 pipeline in the 1960s, further development of the mainline system and resource extraction and industry across the prairies.

Commitments made by Enbridge

In its filings to the NEB, Enbridge submitted that the land tenure along the right of way for Line 3 would appear to preclude the possibility of traditional land use activities within the Project area. It noted that it had thus not identified any potential project-specific impacts on traditional practises, but would evaluate avoidance and mitigation measures if new information becomes available through ongoing engagement with Aboriginal groups.

Enbridge submitted that it will continue to engage with Aboriginal groups and consider traditional use information that they provide. It committed to provide information about sites of interest or concern to its Environment, Construction and Risk Management groups for consideration in risk modelling and in the development of mitigation measures.

In regards to sites of cultural importance, Enbridge had been conducting archaeological assessments since 2014, though this work did not specifically incorporate Aboriginal knowledge. Enbridge committed to provide the reports it submitted to provincial bodies to Aboriginal groups upon request. They also conducted site by site assessments of areas identified by Aboriginal groups during the hearing process.

Enbridge has stated that Aboriginal groups will continue to have the opportunity to identify wildlife of traditional economic importance.

Enbridge has stated it will consider traditional knowledge and issues about traditional land uses through its ongoing engagement process, and to also consider potential avoidance or mitigation measures.

Enbridge confirmed that Aboriginal traditional knowledge will be considered as part of the ongoing monitoring of the Project, and that it will consider the further information acquired through the completion of Traditional Land Use studies to enhance its existing environmental protection measures.

Enbridge proposed the development of an Aboriginal Construction and Reclamation Observation Plan to facilitate Aboriginal groups to observe work done during the pre-construction, construction and post-construction phases of the Project.

Conditions proposed by the NEB that may serve to address this issue

In its report, the NEB state that with the mitigation measures proposed by Enbridge, along with the Panel's conditions, any impact on the use of lands for hunting, trapping or other cultural activities should be minimal and likely temporary, if not reversible.

The NEB has proposed 23 conditions to be imposed on Enbridge that would limit any potential environmental impacts of the project, including:

- Certificate (and Section 58) condition 3 requires Enbridge to implement all the policies, practises, programs, etc. related to the protection of the environment contained in its Application and related submissions during construction; and,
- Certificate (and Section 58) condition 6 requires Enbridge to file updated Environmental Protection Plans for the construction of pipelines and Section 58 facilities.

The NEB also proposed conditions that will require the collection of any outstanding information related to Aboriginal traditional land use, through the completion of land use studies (Certificate condition 10), and require that Enbridge continue to consult with Aboriginal groups in advance of construction and through operation of the Project, including identifying how communities' outstanding concerns may be addressed (Certificate conditions 11 and 29).

Certificate condition 14 (Commitments Tracking Table) requires Enbridge to report to the NEB on all the commitments, including pertaining to ongoing Aboriginal engagement and monitoring of the environment, made throughout the review process.

Certificate condition 37 (Operational Consultation Report) also requires Enbridge to report to the NEB on the outcomes of its consultation plans.

In regards to areas of cultural significance, no direct impact is anticipated but the NEB did propose the following condition relating to areas of potential interest:

- Certificate condition 18 (and Section 58 condition 13) require that Enbridge has filed for and received any archeological and heritage resource permits and clearances before construction commences.

With regard to noise, Section 58 conditions 26 and 28 require the development of a noise mitigation plan and ongoing reporting of the results of noise monitoring.

The NEB noted the interest of many Aboriginal groups to be able to participate in the ongoing monitoring of the Project throughout the review, along with the concerns raised by the proponent about accommodating the large number of groups potentially interested in doing so. Certificate condition 12 (Aboriginal Monitoring Plan) requires the development of a monitoring plan involving Aboriginal groups throughout the construction process.

The Panel also made a unique policy recommendation for the NEB staff to explore the development of a monitoring committee, in cooperation with industry and Aboriginal groups, for all pipelines, based on the strong degree of interest in this matter raised during the review.

Crown's conclusion

The Crown understands that the ongoing ability to exercise Aboriginal and treaty rights is critical to Aboriginal culture and to Canada. As we heard many times, Aboriginal groups consider themselves to be the stewards of the land, on which they also depend and continue to use for cultural purposes. As a result, groups highlighted the importance of having a continuing role in ensuring the project is operated in a safe and secure fashion.

The Crown is of the view that the commitments made by Enbridge and the NEB conditions will help ensure that the ability to hunt, gather and fish, and also undertake cultural activities, would only be minimally disrupted by the Project.

Certificate condition 12, requiring the development of an Aboriginal Monitoring Plan, will be especially important in ensuring that groups are able to identify areas of concern and minimize impacts. Certificate condition 10 requires Enbridge to incorporate information resulting from traditional land use studies into its mitigation plans. Enbridge has also committed to consider other information shared through ongoing consultations, which would be required by Certificate conditions 29 and 37, in its operations.

At the same time, the Crown also notes that Aboriginal groups also expressed interest in more formal involvement in monitoring during the post-construction phases of the project to be able to identify any impacts to the environment and to traditional land use. The Crown is also undertaking a review of the issue of ongoing monitoring, in the context of this and other pipeline projects.

5.2 Crown Consideration of Other Common Aboriginal Group Concerns in regards to the Line 3 Replacement Program and Review

E. Adequacy of the NEB review process

Issue: Inadequate time allocated for submissions and the lack of financial resources and internal capacity to effectively engage in the NEB review process.

In filings to the NEB, nine groups requested further time to submit their applications to participate, provide or respond to information requests and submit other evidence, including final arguments. The NEB accommodated these requirements where feasible, including accepting all late applications to participate from Aboriginal groups.

Several groups noted their view that the format and information about the Oral Traditional Evidence hearings created the impression that these hearings were intended to limit groups' scope in presenting traditional knowledge.

It was also remarked upon by several groups that the participant funding offered was minimal compared to the effort required to substantively review and respond to materials filed, and participate in a significant and meaningful manner in the review.

Several groups noted that delays in concluding engagement agreements with Enbridge limited their ability to produce and provide traditional land use studies in time to address the hearing requirements, thereby challenging their ability to share information about traditional use of their lands.

During Crown consultations, groups related that they may not have shared all information available as to their traditional use of the land with the NEB due to confidentiality concerns. There was also a lack of confidence expressed in the NEB's impartiality and many groups underlined their view that Aboriginal Traditional Knowledge can only be fully assessed by Aboriginal people.

There was a common interest in understanding more about how the conditions proposed by the NEB will be enforced. Some groups made suggestions related to revising environmental assessment processes more broadly, and specifically the NEB review process.

Commitments made by Enbridge

It would not be for a proponent to propose commitments to address issues raised with respect to the NEB hearing process.

Conditions proposed by the NEB that may serve to address this issue

The NEB sought to accommodate issues raised throughout the process, such as by extending deadlines for the submission of evidence.

The proposed NEB conditions (Certificate condition 10, Section 58 condition 7 and Decommissioning orders 7 and 13) require the completion of outstanding Traditional Land Use investigations before construction can begin and in advance of implementing decommissioning actions, along with other conditions requiring evidence of ongoing consultations with Aboriginal groups, and work to address outstanding concerns.

The NEB also has in place the means to accept and protect confidential information for inclusion in the hearing process.

Crown's conclusion

The Crown understands the value of traditional knowledge in resource development. The Crown also understands that in order to meaningfully participate in the review process and in consultations, financial resources are required for staff, expertise and the completion of traditional land use studies.

Aboriginal participation and knowledge is critical in being able to move forward with this project in a way that protects our environment. For these reasons, the NEB offered participant funding to those groups who applied to participate during the hearing process and the Crown offered additional funding to Aboriginal groups for Phase IV consultations.

Moving forward, the Crown encourages Enbridge to work closely with potentially affected Aboriginal groups to complete their traditional land use studies and for Aboriginal groups to voice any outstanding concerns that they may have throughout the Project, as required under Certificate conditions 10, 12, 29 and 36.

Enbridge has committed to continuing to engage with Aboriginal groups and Certificate conditions 11 and 12 that require that they address the concerns raised by Aboriginal groups and file a plan for their participation in monitoring. The Crown is of the view that taken together, these conditions and commitments will ensure that Aboriginal groups are meaningfully engaged throughout the Project.

Further, an NEB official accompanied Crown representatives in the post-report consultation process to respond to questions about the NEB's role and hearing process and its approach to life cycle regulation, to assist groups in participating in future projects (including as to the filing of confidential information) or to understand how they can continue to engage with the regulator with respect to Line 3.

While it is beyond the scope of this specific project, the Minister of Natural Resources has been mandated by the Prime Minister to modernize the National Energy Board and to ensure its composition reflects regional views and has sufficient expertise in such fields as environmental science, community development, and Aboriginal traditional knowledge. As part of this modernization process, the Minister will seek the views of Canadians on reforms to the NEB and the *National Energy Board Act* through the appointment of an expert panel on modernization. The comments shared with the Crown during the consultation process as they pertain to the future of the NEB will be provided to the Panel responsible for that work, and the Crown has further encouraged groups to engage directly in the process.

F. Adequacy of the proponent's engagement process

Issue: Not being meaningfully consulted by Enbridge and that Enbridge had not conducted negotiations with them on economic benefits agreements in good faith with adequate time.

During the hearing process many groups raised concerns as to Enbridge's ongoing engagement and consultation processes, including demonstrating an understanding and appreciation of groups' concerns with respect to potential impacts on the land and their rights. Concern was also noted as to the consideration and inclusion of Aboriginal Traditional Knowledge in Enbridge's assessments and resulting revision of project design or mitigation measures. During the ensuing consultation process, 20 communities shared with the Crown that they had concerns about the proponent's ongoing commitment to engagement with Aboriginal groups.

Several groups highlighted the delay in reaching engagement agreements with the proponent as an inhibiting factor in their ability to participate in the NEB process.

Some reported finding that the tone of conversations with Enbridge changed following the close of the hearing record and that their ongoing requests for information were not always addressed in a timely fashion. A number noted that they had outstanding concerns as to the potential to participate in the Project in a beneficial way.

Commitments made by Enbridge

In its submissions to the NEB, Enbridge stated that it has, and will continue, trying to develop successful working relationships with the Aboriginal groups in the vicinity of its operations, based in part by fulfilling its Aboriginal and Native American Policy.

Enbridge committed to continuing to consider and include Aboriginal traditional knowledge in the planning and operation of the project.

It noted the previous levels of Aboriginal economic participation in recent projects and committed to achieving comparable levels on Line 3.

Conditions proposed by the NEB that may serve to address this issue

Based on the information made available to it, the Board evaluated Enbridge's activities with respect to engaging and consulting with Aboriginal groups and found them to be sufficient.

However, they also underlined the importance of ongoing and productive relationships and noted that more could be done on the part of the proponent to enhance its relationships and partnerships with Aboriginal groups. The Panel stated that it expects Enbridge to engage in ongoing dialogue throughout the lifecycle of the project, and meaningfully consider and address issues and concerns brought forward, including via traditional land use information.

The Board proposed the following conditions to address these concerns, including:

- Certificate conditions 10, 11, 29 and 37, will require the proponent to consider information resulting from traditional land use studies and develop and implement consultation plans;
- Section 58 conditions 10 and 21, Decommissioning orders 8 and 11, which further require development and implementation of consultation plans specific to those portions of the project, during both construction/decommissioning and beyond; and,
- Section 52 condition 37, Section 58 condition 30 and Decommissioning order 19, which require the filing of reports summarizing the outcomes of consultation plans, including assessing their overall effectiveness and reflecting changes made.

Crown's conclusions

The Crown concurs with the NEB that the relationship between Enbridge and potentially affected Aboriginal groups is an important one. Aboriginal groups should be engaged throughout the life of the Project and to be able to voice their concerns and see any outcomes reflected in their engagement. When specifically requested to do so during consultations, the Crown shared groups' concerns directly with the proponent.

Enbridge has made the commitment to continue engaging with groups throughout the lifecycle of the Project. Certificate conditions 29 and 37 require Enbridge to file with the NEB a plan for their ongoing consultation with Aboriginal groups and report on how the concerns raised have been or will be addressed. The Crown would encourage Enbridge to provide potentially affected Aboriginal groups a copy of these reports, and that Aboriginal groups should bring forward to Enbridge and the NEB any concerns they may have with respect to these assessments.

The Crown therefore concludes that taken together, these conditions and commitments will help ensure that Aboriginal groups are meaningfully engaged by Enbridge throughout the life of the Project.

G. Adequacy of the Crown consultation process

Issue: Crown consultation process was considered as taking place too late in the review process.

Several groups noted to the Crown that they appreciated the intention to pursue meaningful consultation, but that it is late in the review process to be speaking directly with groups and their view that Canada is limited in how it can respond to groups' concerns.

While many groups shared with Canada their outstanding concerns with respect to the project, others noted that additional studies or analysis would be required before they would be in a position to meaningfully engage with the Crown (in some cases as these were not completed based on what they saw as the lack of engagement with the proponent or concerns with the NEB process). Select groups asked for further funding to support this work, or for additional meetings to discuss areas of concern.

Specifically, five groups requested the timeline for consultation be extended to further facilitate this work and additional discussions.

Crown's conclusions

The Crown sought to consult potentially-affected Aboriginal Peoples in a manner consistent with the government's commitment to renew the relationship with Aboriginal peoples on a nation to nation basis. To that end, the Crown's consultations were also consistent with the Government's Interim Strategy, which included the principle that no proponent would go back to square one. As a result, the Crown's process of relying on the NEB to the extent possible, remained in place. This engagement began before the initiation of the NEB review, during which time Aboriginal groups were encouraged to share their concerns with the NEB.

To ensure transparent consultations, the Crown provided a preliminary strength of claim and depth of consultation assessment to each Aboriginal group. To avoid errors in this report and record, the Crown consulted with each group on individual meeting summaries, a draft of this report and the relevant annex to each group containing a detailed summary of the group's input on the potential impacts of the project on Aboriginal rights and any proposals for accommodation measures.

In May 2016, to provide more time for consultations with Aboriginal groups, the Governor in Council approved an extension of four months to the legislated time limit. In October 2016, based on requests from several groups, the Crown further extended the deadline for providing comments on this draft report. To ensure that input and potential impacts on rights of all the potentially affected Aboriginal groups were meaningfully considered, the Crown provided timeline extensions, offered participant funding and went to meet groups who indicated their wish to do so, and accommodated requests for rescheduling meetings. The Crown also contacted all potentially affected Aboriginal groups by phone and email in order to ensure that all views had been expressed.

The Crown took into serious consideration any requests for further studies or time but based on its analysis of the available information, has not found it to be necessary in terms of the Governor in Council's ability to take a decision. There were opportunities to submit this information during the review process. The Crown believes that groups' concerns about outstanding studies will be addressed by the conditions proposed by the NEB, such as those requiring the completion of traditional land use studies before the commencement of construction. Further, should the Project be approved by the Governor in Council, it would be one decision point in a potential series of decisions, many of which will trigger further Crown consultation.

The Crown believes that it has met its duty to consult owed to Aboriginal groups for this Project.

H. Environmental impacts during construction

Issue: Construction on the project could have negative impacts on wildlife and vegetation, including species at risk.

During the NEB hearing process and in Crown consultations, 11 Aboriginal groups noted concern about potential environmental impacts on wildlife and vegetative species along the right of way, including those traditionally hunted or gathered. This included impacts presented by noise or other disturbances, such as the construction around waterways.

Commitments made by Enbridge

In its submissions to the NEB, Enbridge described the standard and further mitigation measures it proposes to use to minimize any potential impact on the environment.

Conditions proposed by the NEB that may serve to address this issue

The NEB noted the commitments made by Enbridge and concluded that based on the information provided and with the implementation of the protection procedures proposed, the environmental impacts from this project are not likely to be significant.

They noted that this work will take place in an area of existing and ongoing disturbances, which is in large part under agricultural development.

They imposed a number of conditions to ensure these measures are implemented, including Section 52 conditions 2, 3, 6, 14 and 36, which require the construction of the line to respect the commitments they have made, file an environmental protection plan and report on the monitoring of the project.

Crown's conclusions

Through the NEB process and consultations, the Crown heard accounts of how resource development had negatively affected the environment. The land is not only physically important, it is spiritually and culturally important to all. Aboriginal groups raised concerns relating to the adverse effects on vegetation, wetlands, wildlife, and wildlife habitat during the construction phase of the Project.

In regards to these issues, the NEB has recommended Certificate conditions 2, 3, 6, 14 and 36 as well as Order conditions 2, 3 and 6, to limit the potential negative environmental impacts. Specifically, Certificate condition 6 requires Enbridge to file an updated Project-specific Environmental Protection Plan to communicate all environmental protection procedures and mitigation measures to employees, contractors and regulators. Aboriginal groups will have an opportunity to view and comment on the plan as well as bring forward any outstanding concerns.

The Crown believes that these conditions and commitments appropriately accommodate any potential adverse effects on the environment during construction phase of this Project, notably by ensuring that Aboriginal groups will have the opportunity to be engaged throughout the lifecycle.

I. Ongoing (or cumulative impacts) on wildlife and vegetation

Issue: Potential adverse direct and cumulative effects on the environment and traditional land and resource use, including those on water crossings, vegetation, wetlands, wildlife and wildlife habitat.

Ten groups noted during either the NEB hearing process or in ensuing Crown consultations about the potential for impacts on wildlife and vegetation, through the ongoing operation of the line or via the cumulative impact of the land of this project in addition to further developments.

Commitments made by Enbridge

Enbridge noted that this project is situated in an area of ongoing disturbance, mainly due to agricultural activities.

It put forward that the project would represent a limited further disturbance to water quantity and quality, fish and fish habitat, vegetation, wetlands, wildlife and air quality. They did not make specific comments to mitigate the potential cumulative and ongoing effects represented by the project.

Conditions proposed by the NEB that may serve to address this issue

The NEB noted that a robust post-construction monitoring program is a fundamental tool to ensuring that potential adverse effects are effectively mitigated. They proposed Section 52 condition 36 (Post-Construction Environmental Monitoring Reports) to establish minimum requirements for this work.

They further noted that this work will take place in an area of existing and ongoing disturbances, and therefore the potential environmental effects of the project would be most effectively minimized by focussing in the areas where there has been less development. The NEB stated that most impacts would be limited to the construction period, though the decommissioned Line 3 could also have some effects. They have thus proposed Decommissioning order 12 to monitor and verify the effectiveness of treatment programs designed to minimize further effects.

They noted greater potential impacts on air quality and vegetation, and have put in place conditions (Section 58 20 and 28 pertaining to air quality and Section 52 6 and 14 pertaining to monitoring vegetation) in place to address potential impacts.

Crown's conclusions

During the NEB hearing process and subsequent consultations, Aboriginal groups raised concerns regarding the direct and cumulative adverse effects post-construction on vegetation, wetlands, wildlife and wildlife habitat. They are worried that the continued development of resources will lead to long-term negative impacts on the environment and the well-being of their communities.

The Crown believes that any development of our resources must be done in a way that goes hand-in-hand with protecting the environment, both now and for future generations. Therefore, in regards to concerns raised about potential adverse direct and cumulative effects on the environment and traditional land and resource use, NEB Certificate conditions 6, 11, and 36 as well as Decommissioning order 6 will ensure that potential adverse impacts are minimized. Enbridge has also made commitments to help mitigate the Project's impacts, including continuing to consider information shared by groups in its operations, and monitoring and evaluating the effectiveness of its environmental mitigation during its post-construction monitoring program.

The Crown has noted groups' concern that this project represents a further disturbance in a long history of change in the prairies.

The NEB did consider the cumulative impacts represented by this project and concluded that it will mainly take place in an existing right of way in an area of ongoing disturbance (mainly due to agricultural development). As such, the Crown believes that these conditions and commitments will appropriately accommodate the concerns raised.

J. Potential impacts from the decommissioning process

Issue: the in place decommissioning of the project could have long term environmental impacts.

Three groups have noted their concern via the Crown consultation process with the in-place decommissioning of the existing Line 3 pipe.

Commitments made by Enbridge

Through its submissions to the NEB, Enbridge noted as potential areas of concern the ability of the decommissioned line to act as a conduit, or for residual contaminants from the existing pipe to have an impact on water or soil.

Enbridge proposed a number of treatment measures, including applying buoyancy controls and flushing the pipe as part of decommissioning.

Conditions proposed by the NEB that may serve to address this issue

Ongoing monitoring will be required for the decommissioned sections of the pipeline, as mandated by the NEB. The NEB also retained the right to order the future removal of the pipeline if needed. Relevant orders by the NEB include:

- Decommissioning orders 2 and 3, which require that Enbridge follow the policies and programs outlined in its Application and other submissions;
- Decommissioning order 11, which requires Enbridge to submit a final Decommissioning Plan before beginning work; and,
- Decommissioning orders 18 and 20, which require Enbridge to notify the NEB of any planned remedial actions to the decommissioned pipe, and as to ongoing status reporting on the decommissioned line.

Before commencing decommissioning, the proponent must also submit reports to the NEB related to consultations with Aboriginal groups, along with a plan to address any outstanding Traditional Land Use investigation, and mitigation measures proposed to address the effects of the process on rights. They must also continue to consult with Aboriginal groups throughout the decommissioned period.

Crown's conclusions

The Crown recognizes the concerns raised by groups as to the ongoing presence of a decommissioned pipeline near their communities. Several noted the potential environmental impact it could represent and recommended that the pipeline be removed.

The NEB has assessed the proposal and noted the logistical challenges in the complete removal of the line. They have put in place 22 decommissioning orders to ensure that it represents a minimal risk, and have retained the right to order its removal at a later date. Enbridge has committed to continuing to monitoring the decommissioned line as part of its ongoing responsibilities for the right of way, as it contains others operating pipelines.

There are several decommissioning orders requiring Enbridge to continue to engage with Aboriginal groups in relation to the previous line, and based on those orders and the proponent's conditions, the Crown believes that groups will have the opportunity to have their concerns addressed, and if necessary, acted upon.

K. Potential environmental impacts of a spill

Issue: a spill, either on land or in water, could result in far reaching environmental and cultural impacts.

Many Aboriginal groups registered to the NEB and the Crown their concerns that a spill during operations would have serious impacts on the environment and their communities.

Twenty-six Aboriginal groups identified to the NEB a need for ongoing monitoring of the project throughout its lifecycle, and the importance of their participation in this process, based upon their connection to the land and the potential for them to experience more directly any impacts resulting from a spill or other negative event.

Commitments made by Enbridge

In its submissions to the NEB, and responses to information requests, Enbridge proposes a number of standard and site-specific mitigation measures to reduce impact to water quality and committed to ongoing post-construction monitoring. Enbridge has stated that with technology and in place procedures, the likelihood of a spill is extremely low, but that further mitigating and contingency plans will be in place.

Conditions proposed by the NEB that may serve to address this issue

The NEB agreed that while the scale of a release could vary widely based on a number of factors, if a large-scale malfunction were to take place, there could be many significant adverse impacts on Aboriginal groups.

However, it was of the view that with the implementation of the designs and measures as proposed by the proponent, and by responding to the following conditions, a large scale release is unlikely to take place and Enbridge would be prepared to respond appropriately should it occur.

They did agree that, in the case of a spill or similar release, there could be significant adverse environmental effects to the use of lands, waters and resources for traditional purposes, however that the potential for such an event would actually be reduced by the replacement of the existing pipeline with a new one.

- Section 52 Conditions 8, 15, 16 and 17 require Enbridge to provide specific information about all watercrossings, their trench designs (when applicable), and the mitigation measures against floods and potential environmental impacts
- Condition 9 (emergency preparedness) also requires information on spill contingency measures
- Condition 26 requires activities to protect against spills during pressure testing
- Condition 35 requires the implementation of emergency response exercises

The proponent would also be bound by the Onshore Pipeline Regulations, specifically clauses 34 and 35 which require the development of an emergency response manual for the project, and ongoing engagement with the public and Aboriginal communities interested.

Further, the Board noted that the replacement of the existing pipeline is likely to enhance the overall safety of the pipeline, with a lower potential for negative impact.

Crown's conclusions

The Crown understands the sincere concern of groups as to the potential for a spill occurring in areas near to where they live or where they continue to hunt, gather or fish, based on their Aboriginal and treaty rights.

The Crown is in agreement that such a spill could represent a serious impact on Aboriginal rights.

The Government of Canada is committed to ensuring the safe and secure transportation of resources, including through pipelines.

Specific to this project, the NEB has proposed a number of conditions designed to minimize the potential for leaks resulting from the new pipeline, including during construction, along with the measures outlined in the Onshore Pipeline Regulations. The *Pipeline Safety Act* came into force in June 2016 and is designed to strengthen Canada's pipeline safety system, based on prevention, preparedness and response, and liability and compensation.

The Crown believes that these measures are sufficient to ensure as best as possible the safe operation of the pipeline and to minimize the potential for a leak. The Crown also notes that the NEB stated that the replacement of the pipeline is likely to increase the likelihood of its safe operation, compared to the existing line. Should a spill occur, there are a number of measures in place to require the proponent to act quickly to fulfill its responsibility, and the proponent would carry the liability for any resulting damages.

L. Need for further emergency planning measures

Issue: Concerns related to potential pipeline failures or accidents.

Five groups raised during both the NEB hearing process and in the ensuing Crown consultations their position that there should be community-specific emergency response plans.

Commitments made by Enbridge

Enbridge submitted that its Emergency Management Program and other documents are designed to provide a standard set of procedures, to be modified and adapted based on the specifics of an event. Its documents require it to liaise with local first responders and maintain a list of community and other contacts to notify in the case of an incident.

Conditions proposed by the NEB that may serve to address this issue

The NEB also proposes conditions related to emergency response:

- Section 52 Condition 9 (and Section 58 Condition 9) requires Enbridge to file an emergency response plan specific to Line 3 ; and,

- Condition 35 requires Enbridge to undertake an emergency response exercise within 18 months of commencing operation.

The Onshore Pipeline Regulations also require an emergency response manual to be in place, and for the proponent to interact with the local, including Aboriginal, communities on the plan and its updates, along with the agencies that may be involved in an emergency response about the pipeline and the procedures to be followed in the case of an incident.

Crown's conclusions

The Crown heard from many groups, some who have directly experienced a spill that emergency plans are important to have in place so that they understand the steps to be taken in the case of a leak. Communities also want to ensure that should a spill occur, there would be communication with them, and compensation to help them address any damages.

Both the proposed NEB Certificate conditions and the Onshore Pipeline Regulations require emergency planning manuals to be developed by the proponent, and for them to communicate with interested parties about them. Recent NEB policy modifications now require that these plans be made public.

The proponent has stated that it does not develop specific plans, as requested by communities, but rather a broad manual that can be adapted to different situations. The Crown encourages communities to participate in the emergency response exercises required by the Certificate conditions to ensure that the particularities specific to them may be considered by the proponent, and to provide to them updated contact information to ensure receipt of notifications in the case of an event. The Crown believes that there are sufficient mechanisms in place to ensure that groups have the opportunity to learn more about, and contribute to, emergency planning related to the Project.

M. Need for further benefits for communities

Issue: The inability to compel Enbridge to share in revenues derived from the Project as well as concerns about the inability to guarantee that communities have the opportunity to participate in and benefit from the Project.

Sixteen communities noted to the Crown or the NEB their interest in receiving socio-economic benefits for their community members resulting from this project, through employment or procurement opportunities. Several noted that revenue sharing on the part of the proponent or the Government should be considered to reflect the potential risk borne by communities of having the project operate in their traditional and treaty lands.

Commitments made by Enbridge

Enbridge stated that it is committed to ensuring Aboriginal participation in the project and will include Aboriginal businesses and other partnerships in requests for proposals where the capacity exists.

It stated it is working with Aboriginal partners to create and roll out training programs to lead towards work opportunities and anticipates a level of participation for Aboriginal workers of between 10% to 30% in varying sections of the pipeline.

Conditions proposed by the NEB that may serve to address this issue

Certificate condition 14 (Commitment tracking table) will require reporting on the proponent's commitment to hiring and working with Aboriginal community members.

Crown's conclusions

The Crown heard many times during consultations that Aboriginal groups want to benefit from the economic opportunities that this Project can bring.

The Crown does not receive direct royalties from this project and does not have a mechanism in place to direct revenues, but is of the view that Aboriginal communities should have the opportunity to benefit from the project. The Crown also notes that landowners also assume risk resulting from the project. Landowners commonly agree to allow a company to construct and operate a pipeline on a landowner's properties through an easement agreement, though through both the *National Energy Board and Pipeline Safety Acts*, the proponent maintains the liability for any damage to lands resulting from their pipeline.

Enbridge has made a number of commitments as to the hiring of Aboriginal people and has also communicated to the Crown that it is working to develop effective partnerships with communities to identify opportunities for business development and procurement, including via engagement agreements. The Crown has shared with the proponent some of the concerns expressed by communities as to the realisation of these commitments, and will expect that the proponent demonstrate its ongoing commitment to working with Aboriginal communities in the vicinity of the Project. The Crown also has in place a number of programs designed to support the development of Aboriginal businesses and skills.

The Crown believes that these conditions and commitments appropriately accommodate the concerns raised by Aboriginal groups regarding ongoing economic participation in the Project.

N. Human health impacts

Issue: construction or leak events could have human health considerations.

Fifteen Aboriginal groups shared information about concerns as to human health impacts resulting from both the construction of the pipeline and potential leaks, which could also be extended to the health of animals and vegetation hunted or gathered.

Commitments made by Enbridge

Enbridge submitted during the review process that the construction and operations of the project should not have an impact on human or animal health. They have committed to continue to engaging around monitoring air quality levels near the Hardisty complex.

Conditions proposed by the NEB that may serve to address this issue:

The NEB proposed several (Section 58 conditions 20, 26, 28 and 29) conditions to reduce noise and air emissions around construction, along with the Onshore Pipeline Regulations providing guidance to ensure the safe operation of the pipeline.

Crown's conclusions

Based on the conditions proposed by the NEB, and the measures in place to minimize the potential of a spill event, the Crown believes that there should be minimal potential impact on human health resulting from the project.

O. Historical contamination

Issue: previous spills may not have been adequately addressed by the proponent.

Three groups provided evidence to the NEB of existing contamination from the pipeline corridor, which the proponent has committed to continue to remediate.

Commitments made by Enbridge

Enbridge committed to addressing communities' outstanding concerns with respect to historical contamination, and while believes it had effectively decontaminated the specific sites of concern, would address further areas during the decommissioning process.

Conditions proposed by the NEB that may serve to address this issue:

Through the Onshore Pipeline Regulations, along with Certificate condition 36, Enbridge would be required to undertake further work following the abandonment of the last operating pipeline in the corridor to reclaim the natural environment as best possible. The NEB also directed Enbridge to work with some of the specific groups who raised concerns.

Crown's conclusions

The Crown notes groups' ongoing concern about previous contamination events, and the potential for further impact resulting from the operation of the new line or decommissioning of the previous.

The NEB has directed Enbridge to continue to work with communities and put in place a number of conditions that will require them to address their commitments to mitigate impacts and reclaim the natural environment as best possible.

6.0 Conclusions

The Crown heard a range of concerns from Aboriginal groups about the proposed replacement and decommissioning of the Line 3 pipeline. These views reflect groups' commitment to stewardship of the land and traditional territories, as well as a strong desire to ensure development does not impede the ability of future generations to carry out those activities. During the interim period, the Government's decisions on major projects are guided by five principles:

1. No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and Northern regulatory boards;
2. Decisions will be based on science, traditional knowledge of Aboriginal peoples and other relevant evidence;
3. The views of the public and affected communities will be sought and considered;
4. Aboriginal peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated; and
5. Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.

The Government has committed to a renewed relationship with Aboriginal peoples based on a nation-to-nation engagement. In relation to groups' concerns directly linked to the project's potential impact on section 35 rights, the Crown has assessed those concerns against the conditions proposed by the NEB, commitments made by Enbridge and relevant federal legislation. The Crown concludes that those conditions and commitments are responsive to, and reasonably accommodate, the concerns raised. The Crown particularly notes the importance of Certificate condition 12, requiring Aboriginal engagement in monitoring the construction of the project, along with the interest of groups being engaged throughout the operation of the project. The Crown also noted the interest of groups in participating in the project to be able to share in its potential economic benefits and hopes that Enbridge will use all the tools available to ensure this takes place.

The Crown believes that other concerns will be addressed by the Government's commitment to modernize the National Energy Board and to review the environmental assessment legislation.