



Łíídlj Kúé First Nation

**Final Arguments of Łíídlj Kúé First Nation
to the Mackenzie Valley
Land and Water Board**

regarding

**Enbridge Line 21
Pipeline Segment Replacement Project
Land Use Permit MV2017P0013
Water License MV2017L1-0002**

January 12, 2018

The Łíídljì Kùé First Nation (“LKFN”) makes this submission to the Mackenzie Valley Land and Water Board (“MVLWB”) in respect of Enbridge’s proposed Line 21 Pipeline (also known as the Norman Wells Pipeline) Segment Replacement Program (the “Project”).

The Project occurs in the heart of the Łíídljì Kùé Dene territory, on lands which the Dene have occupied for 30,000 years and which is home for the Dene.

During the hearing, Enbridge and the Parties often referred to “Aboriginal and First Nations” rights that could be impacted by the Project. For the Łíídljì Kùé Dene, this Project involves more nuanced and critical impacts than those defined as “Aboriginal rights” in Canadian law. It involves the Dene way of life and the sacred obligations of the Dene to the land and water in the heart of the Dehcho. The sacred relationship of the Dene and their land gives rise to sacred obligations, about which the Dene gave evidence during the MVLWB hearing.

Written evidence filed by LKFN and other Dene parties in this hearing, oral Dene evidence and the cross examinations of Enbridge confirmed the conclusion reached in the *Indigenous Knowledge and Land Use Study* conducted for the Project:

[S]hould the Project be approved, there will be impacts to LKFN Aboriginal and Treaty rights and interests [...The Dene of Łíídljì Kùé] have used, currently use and will continue to use the lands and waters surrounding the Project area and that Dene ... cultural identity and wellbeing is inherently connected to this area.

Evidentiary results clearly demonstrate that the LKFN community has the potential to experience many direct and indirect negative impacts from the Project components.

LKFN Indigenous Knowledge and Land Use Study, Page 68 and 70

In the process leading up to and during this hearing, LKFN raised many concerns about the Project’s impacts on Dene rights and interests. In the initial stages of the MVLWB regulatory review, and continuing through the first phase of MVLWB hearings in the Project in October 2017, LKFN was not satisfied that its concerns about Project impacts were adequately heard or addressed by the proponent Enbridge.

LKFN was prepared to make submissions regarding the need for a number of conditions on the project, beyond those proposed by Enbridge, in order to address many unresolved issues regarding environmental mitigation and accommodation of impacted Aboriginal rights. This would have been necessary absent assurances that Dene land and water would be protected and that Dene knowledge would be a key part of the decision-making process.

LKFN had concerns regarding fish and fish habitat monitoring and protection, wildlife impact monitoring and mitigation, permafrost impacts and protection, the effect of the project on local families who actively use and rely on the project area, the socio-economic impact of the work camps, the overall Project impact on the local community and other matters.

As a result of negotiations with Enbridge – in part facilitated and encouraged by the MVLWB’s regulatory process – LKFN reached two agreements with Enbridge. These two agreements provide for concrete mechanisms that ensure, to LKFN’s satisfaction, that impacts on the environment and Aboriginal and treaty rights will be addressed for the Project.

The first of these Agreements is an Environmental Management Agreement (“EMA”), agreed to on January 11, 2018 by Enbridge and the regionally-affected First Nations (including LKFN). A summary of the EMA is attached as an appendix to this submission.

The EMA provides a framework for environmental monitoring and management for activities on Line 21. It establishes an Environmental Management Committee (“EMC”) comprised of representatives from each affected Dene community and Enbridge.

The EMC structure enables the Dene parties and Enbridge to work together towards a set of joint objectives. Those objectives include respecting and protecting the land and water essential to the way of life and well-being of the Dene for present and future generations. Those objectives also include meaningfully engaging the Dene and creating a process to facilitate collaborative information sharing.

A key component of the EMA is a Dene-led environmental monitoring program, coordinated by the Dehcho First Nations and involving all affected Dehcho communities. The monitoring program will build on the experience and structure of the existing Dehcho K’ehodi guardianship program.

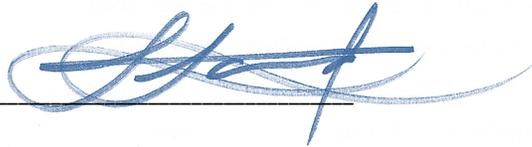
The EMA provides a process and capacity funding for Dene guardians to monitor water and fish, wildlife, cultural resources and the environment (depending on which monitoring functions the Dene parties decide are important) during the Project and once Line 21 operations resume.

The monitoring program will provide information relevant to mitigation and environmental management decisions to the EMC. The EMC structure, in turn, enables the affected Dene parties and Enbridge to jointly analyze and address environmental and socio-economic issues and concerns, using adaptive management tools. The monitoring program also ensures a meaningful mechanism to facilitate the integration of Dene knowledge into environmental review and mitigation processes.

A second agreement, the Process Agreement, has been concluded between Enbridge Pipelines and LKFN specifically. As the closest affected community to the project, LKFN raised a series of concerns about specific impacts on local harvesters and land users, and on the social fabric and economy of the local community. The Process Agreement establishes mechanisms that address mitigation of impacts on local harvesters and land users, protect LKFN community members’ safety and ability to continue harvesting and land use, facilitate better communication with the local community, and ensure that the local community is able to benefit from employment and contracting opportunities associated with the Project.

With this Process Agreement and EMA in place, Łíídljį Kúé First Nation has confidence that its remaining concerns regarding the Project have been or can be addressed. Łíídljį Kúé First Nation is therefore not asking for any further conditions on the Project and asks that the MVLWB proceed with timely approval of the Land Use Permit and Water Licence.

All of which is respectfully submitted to the Mackenzie Valley Land and Water Board on this 12th day of January, 2018.



Lorraine Y. Land

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APPENDIX

Summary of the Line 21 Dehcho Environmental Management Agreement

Enbridge Pipelines (NW) Inc. and the Dehcho First Nations, Łíídljį Kúé First Nation, Samba K'e First Nation, Pehdzeh Ki First Nation and Tthets'éhk'edélí First Nation have entered into an Environmental Management Agreement (EMA). This Agreement establishes a structure and process for addressing Dene concerns about the Line 21 Segment Replacement Project and the ongoing operation of Line 21 for an initial term ending on December 31, 2020.

The Environmental Management Agreement provides for:

- Dene-led Environmental Monitoring Program for the Line 21 Segment Replacement Project and for Line 21 activities in the Dehcho region;
- meaningfully engaging Dehcho communities in the development, implementation, management, monitoring and evaluation of measures that prevent or mitigate adverse Environmental Effects of the Line 21 Activities;
- collaborative information sharing and seeking consensus regarding Line 21 activities, including future regulatory applications and decommissioning and abandonment;
- integrating and promoting the use of Dene knowledge in environmental monitoring and management for Line 21;
- development and improvement of Dene capacity to participate in environmental monitoring and adaptive environmental management;
- formal mechanisms for Enbridge to share information about Line 21 activities and regulatory applications, collect information about environmental interests and concerns from potentially impacted Dene Communities, and resolve environmental interests and concerns; and
- formal mechanisms for Enbridge to address environmental interests and concerns of the Dehcho communities regarding regulatory applications prior to or outside of regulatory processes.

The EMA ensures that the Dehcho communities are involved in monitoring and mitigation regarding potential environmental impacts caused by Line 21 activities in the Dehcho region. This includes monitoring and mitigation planning for impacts on soil, vegetation, wetlands, water quality and quantity, plants, wildlife, wildlife habitat, heritage sites, traditionally used lands and resources, human health and noise.

A key component of the EMA is the Dene-led environmental monitoring program, coordinated by the Dehcho First Nations and involving all affected Dehcho communities. The monitoring program will build on the Dehcho K'ehodi guardianship program. Dehcho K'ehodi guardians monitoring may include water and fish, wildlife, cultural resources and the environment during the Line 21 Segment Replacement Project and once Line 21 operations resume.

The Enbridge and Dehcho community relationship is formalized through an Environmental Management Committee (EMC) with representation from Enbridge and each affected Dehcho community. The EMC will review information from Enbridge and Dene monitors, facilitate Dene participation in monitoring and potential environmental impacts, and make recommendations on environmental mitigation and follow up programs to address

potential environmental impacts. Consistent with Dene traditions, the EMC will seek to make decisions by consensus. Where consensus is not reached between Enbridge and the Dene, the EMA provides for various mechanisms including dispute resolution and the ability to make submissions through the regulatory process. The EMA also provides a process for independent peer review.

The EMA provides an important vehicle for ensuring that Dehcho community concerns expressed about the Line 21 Segment Replacement Project and Line 21 activities generally are addressed by:

- supporting Dene-led community monitoring programs to monitor fish, wildlife, cultural and environmental impacts of Line 21;
- ensuring that Dene people and Dene knowledge are directly engaged in determining and implementing appropriate mitigation measures to address the potential impacts of Line 21 activities on land, water, air, wildlife and other environmental values in the region; and
- ensuring timely and robust information exchange between Enbridge and the Dehcho communities in order to facilitate efficient and effective decision-making about Line 21 concerns.