

**Carry the Kettle First Nation  
Impact Study and Issues Report**

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## **1. Introduction**

This study/ report is being produced to fulfill the requirements of the CEFA between Carry the Kettle First Nation and the Energy East (TCPL) proposal to change the substance shipped in the mainline pipeline from natural gas to crude oil and to build and adapt the pipeline to accommodate that process. Energy East has provided detailed information about the proposed changes, construction and process which they will undertake. The pipeline currently runs through Carry the Kettle Reservation # 76-34 which is the main residential Reserve held by the First Nation. The pipeline also runs through Carry the Kettle traditional lands, which are described in the traditional land use study and the construction of additional pipelines and many pumping stations are proposed within the traditional lands of the First Nation.

The pipeline proposes to ship approximately 1.1 million barrels of oil per day over 4,500 kilometers of pipe across Canada. Within the Carry the Kettle Traditional lands it involves conversion of a portion of the Canadian Mainline (Natural Gas to Oil) and new construction of pump stations along the route as well as a Tank Terminal at Moosomin, Saskatchewan and a pressure control valve at Burstall, Saskatchewan.

After reviewing the information provided by Energy East the First Nation notes that the conversion of the pipeline, building of pumping stations, pressure control facilities, the Moosomin lateral line and tank Terminal will likely have effects upon the First Nation's ability to conduct traditional hunting and gathering on their traditional lands. Further, the activities on the residential reserve will have local effects upon the First Nation especially during construction. The First Nation wishes to bring several issues to the attention of Energy East with respect to the effects the pipeline and pipeline construction may have on the First Nation.

In order to consult with respect to this pipeline and its potential effects upon the First Nation, the parties entered into a CEFA which included funding a traditional land use study, performing an environmental study and health research as well as conducting several meetings and proposed community meetings to review any issues or concerns the First Nation has with

respect to the proposal. In addition to the CEFA Energy East and TCPL participated in a further consultative process which gave rise to the signing of a relationship agreement and a term sheet. Under this agreement, the longer-term relationship between Carry the Kettle First Nation and TCPL including Energy East was discussed. The issues discussed included past payments for taxes, lease agreements and longer term consultation. Since these issues have been dealt with under the agreement they will not be reviewed here. However, it was contemplated under the agreement that there would be a liaison committee which would be assigned the task of dealing with issues which would come up from time to time and include the general consultation issues which would have to be addressed, including helping to coordinate community meetings, emergency response and on-going relationship issues.

This study and Report will focus on issues associated with the CEFA agreement and some items which may be appropriate topics of discussion in the liaison committee. These issues include: impacts upon traditional land use, planning issues with respect to the pipeline and land use on the Reserve, the security of an oil pipeline including possible spills and emergency response operations, economic opportunities, and the possible different use of pipelines in the future.

## **2. Traditional Use and Longer Term Infringement Issues**

Carry the Kettle First nation has outlined the history of the First Nation in its traditional land use study completed under the CEFA Agreement. In this history, the First Nation has suffered repeated and significant infringements upon its Treaty rights to hunt fish and trap, beginning immediately after Treaty was signed. Not only were the actions of the Government violations of the intent of the Treaty but these unlawful acts could be considered genocidal as documented in the traditional land use study. The intent of the Government appears to have been to clear the prairies of Indigenous Peoples to make way for settler immigration no matter what the cost to the First Nations. Although the political climate has changed considerably in Canada, the malfeasance of the past has not been addressed.

Since 1982, Supreme Court decisions have established that Treaties cannot be interpreted to mean that the First Nations lose all their rights to their traditional livelihood as a result of the lands taken up clause or as a result of other infringements. The principles of Treaty interpretation have established that the understanding and intent of both parties is important and the understanding of the Indigenous Peoples is key to interpreting the legal force of the Treaties. However, the actions of the Government during the critical times of the CTK history indicate that the Government agents believed the First Nation had given up their rights to the lands and were to be forced to survive only on their reserves. Not only did they attempt to restrict CTK members to their reserve but they illegally took a large portion of the reserve away selling it off to unscrupulous land speculators.

During and shortly after CTK People were forced to the Indian Head Reserve they were subjected to starvation and rotten rations. They were not given ammunition to hunt. They were forced to survive on a reserve originally with a lake and fish, but afterward the first illegal surrender, with nothing. The wild game of the shrinking reserve became depleted. From the beginning their rights to a traditional livelihood were violated and rendered illusory. But their trials were not over. The residential schools followed, removing their language which was tied so intimately with their society's fabric. They were prevented from practicing their spiritual

ceremonies and prosecuted when they left the reserve to hunt as promised under treaty. They were taught that hunting off the reserve was poaching.

It has only been after the inclusion of Aboriginal rights in the Canadian Constitution in 1982 that First Nations and other Aboriginal Peoples have had a clear legal path to protecting their rights and defending the Treaties. The renaissance of Aboriginal culture, language and traditional practices started well before the constitutional amendments of 1982, but has been gaining steam ever since. The effects of genocide, racism, residential schools and so many other violations, were thought at one time, to be impossible to overcome. However, the resilience of the Carry the Kettle People and so many other Indigenous Peoples in Canada and around the world is changing and will help make Canada a better country in so many ways.

The courts have set out the consultation process with respect to incremental infringements on Aboriginal Rights which is to include a research process during which the Aboriginal rights are studied and compared with the effects of the new developments. But compensation for past infringements of the right to livelihood is not considered in the current system neither is this basic term of the treaty fully considered. The courts outline processes for dealing with different degrees of current infringements through consultation, but for past rights violations and infringements, the current administrative process has only considered actions of land claims, treaty land entitlement claims and various specific claims. The right to a traditional livelihood, however, which is certainly one of the most important treaty rights, does not fit into these claims categories and the only current recourse is to slog through the court system once again. Nevertheless, there are current actions currently initiated to pursue the general infringement on livelihood including an action involving Beaver Lake First Nation and another involving Blueberry River First Nation. When First Nations have attempted to claim past cumulative violations of livelihood rights incidental to a project proposal, the Courts, instead of dealing with them, have proposed that, if First Nations have claims in this regard they must assert that their right has been rendered illusory or the right to hunt is no longer meaningful and claim breach of treaty. Hardly a proper method of defending such an important term of treaties.

Why has such an important term of the Treaty been relegated to such an unimportant legal status? Perhaps it is not fully understood and is still thought to be a threat to economic development.

Proper treaty interpretation shows that Treaty 4 promises that the CTK People should have been able to continue their traditional livelihood after treaty was signed. But this promise was impossible to fulfill by the hunting of bison after 1876, when at the same time both Governments were eliminating the bison herds. But this does not justify the subsequent actions of the Government. As described in the Traditional Land Use Book, at Treaty time much of the wildlife in their preferred areas (Cypress Hills) was depleted which made exercising their livelihood rights to harvest other species almost impossible. Government agents periodically refused ammunition to the CTK hunters in the Cypress Hills and withheld rations to force the CTK People to move from the Cypress Hills, to the reserve chosen by the Government at Indian Head at the site of an old Indigenous graveyard. The Nakota People refused many times to leave the Cypress Hills, knowing they would only use such a barren part of their lands when hunting bison, which were no longer there. Despite their refusal to leave the Cypress hills, they were given starvation diets and then marched to the new reserve on the prairie. Upon arrival, they were threatened that if a group of armed men were found away from their reserve they would be arrested or worse, even if they claimed they were hunting. Confined to the reserve, they were forced to live on rations and what they could produce by farming. They tried to harvest fish and game on the reserve but a large portion of their reserve containing a lake was illegally taken from them. Although they would try to survive on fish and rabbits when in difficulties, they were illegally forced to remain on the depleted, shrinking reserve. Shortly after the march from the Cypress Hills several CTK members died of starvation directly because of these genocidal policies of the Government.

Thereafter, even if they tried to hunt off the reserve, all the lands surrounding the reserve were taken up by settlers many of whom would not permit Aboriginal hunting. The bison were gone and animals like elk were discouraged from staying on the prairies by settler hunting, breaking up of fields, and competitive native hunting. From the very beginning of Treaty, CTK First Nation was prevented from exercising this right to a traditional livelihood.

Their leaders knew that their traditions were not only their source of food but were essential to their cultural survival as well. Their leaders were unable to support their families and were thrown into a new unfamiliar social structure, where their leadership and respect for their traditional knowledge and spiritual guides were denied. Not only were they exposed to huge physical and nutritional challenges, they also suffered social genocide. The First Nation children were taken to residential school where they started to lose their language and were unable and discouraged from learning their traditional practices. This apartheid policy went on for years pushed by an assimilation strategy.

Meanwhile, settler society occupied the adjacent lands, developed new industries and exploited various new resources including oil and gas and potash. Railways, electrical lines and highways were built. Many local roads were constructed, all done without any consultation or consideration of their right to a traditional livelihood. When the gas pipelines were constructed in the early 50s, the Government made a deal to cross the reserve without consulting with the CTK People. Infringements on their opportunity to hunt, fish and gather have continued, further reducing their opportunity to exercise their right. Finally, when they could begin to hunt off the reserve the Provincial hunting laws were inappropriately applied to First Nations people again violating their rights. Only recently has the First Nation been able to recapture a fuller ability to hunt and fish on their traditional lands. So, the question remains, has their right to a traditional livelihood been permanently rendered illusory?

After 1982 and the development of a process for consultation through Supreme Court decisions, there was some acknowledgement of the right to hunt through the requirements set out in project approval processes used by the NEB and joint federal panels. The panels accepted that the First Peoples depended upon the environment to generate wild meat and berries and the effects on the availability of these elements became part of the environmental assessment process. However, when this consultation and assessment process was in its infancy, the new Conservative Government viewed the process as an impediment to economic growth and development and streamlined the system by excluding most projects from review and consultation.

As the Canadian prairies developed during the 20<sup>th</sup> century farming and ranching were the original economic drivers. Clearly these activities created cumulative effects upon the Carry the Kettle First Nation's ability to hunt, fish and gather. These additional effects include the introduction of invasive plant species, plowing under and destroying native plants used for harvesting herbs, medicines, vegetables and berries, and the fertilizer and pesticides used in farming practices have polluted the herbs, rivers, streams and lakes where they fish. Other major industries have more recently developed particularly intensive oil and gas developments. This industry has created a history of oil spills and gas leaks which have very negative health effects upon wildlife, plants and humans. This industry is using lands and travelling on roads and bringing development into areas otherwise used for hunting and gathering. The potash industry is only recently attempting to consult with adjacent Aboriginal Groups. These are all cumulative activities infringing upon the CTK First Nation's right to a traditional livelihood but no proper cumulative impacts studies on Aboriginal and Treaty rights are being done.

The levels of diabetes in the First Nation combined with other digestive sicknesses is evidence that they are not getting enough wild game or foods. No consistent studies have been done which assess if the First Nation can kill enough wild meat to meet their needs or pick enough berries or gather enough herbs or catch enough fish. We do know that opportunities for fishing have almost completely disappeared at CTK.

The Traditional land use maps provided below show intensive use of the CTK reserve for traditional practices but the reserve is not big enough to support such a large population. Some areas close to the reserve such as the Moose Mountains and Qu'Appelle Valley are used significantly. Often these areas are used because of relatives of CTK members allow them to share their resources on reserve. Also the lakes in the valley are used. These areas are associated with other reserves of other First Nations and involve competitive hunting and gathering which must be taken into consideration when attempting to assess cumulative impacts on Treaty rights.

These maps also show hunting at great distances from the reserve even into territories outside of the historical traditional territories as shown on the second map. If these CTK maps

are compared with maps of First Nations who do not have significant development surrounding their reserves you can see the contrast. Unconstrained hunting of First Nations show concentrations of hunting directly around the reserve lands diminishing as the distance from the reserve grows – except for cases where specific species are not located close to the reserve.<sup>1</sup> If the CTK had been permitted to remain in the Cypress Hills, their maps of activity would likely have been normal, showing activities close to their reserve area. However, they were forced onto the current location. This is therefore an ongoing infringement of their rights.

If we look closely at the maps we can see the efforts to return to the Cypress Hills but also they go to the Moose Mountains, as so many other First Nations in the area do also.<sup>2</sup> They travel to Manitoba to parks and go further north to forested areas to hunt and gather. These longer trips increase the expense and difficulty of hunting and gathering which is a result of the accumulation of local infringements closer to the reserve.

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<sup>1</sup> See traditional land use studies for the Athabasca Chipewyan First Nation, Mikisew Cree First Nation, Chipewyan Prairie Dene First Nation, Fort McMurray First Nation and Fort McKay First Nation prepared by Fish Creek Consulting and Twin River Consulting.

<sup>2</sup> White Bear First Nation has been negotiating with the Moose Mountains Park Authorities to introduce a co-management system including the many First Nations who use the Park for hunting. They are dissatisfied with the lack of understanding on the part of the Park officials of the Aboriginal rights of so many First Nations.

Figure 1: Current Traditional Land Use Area

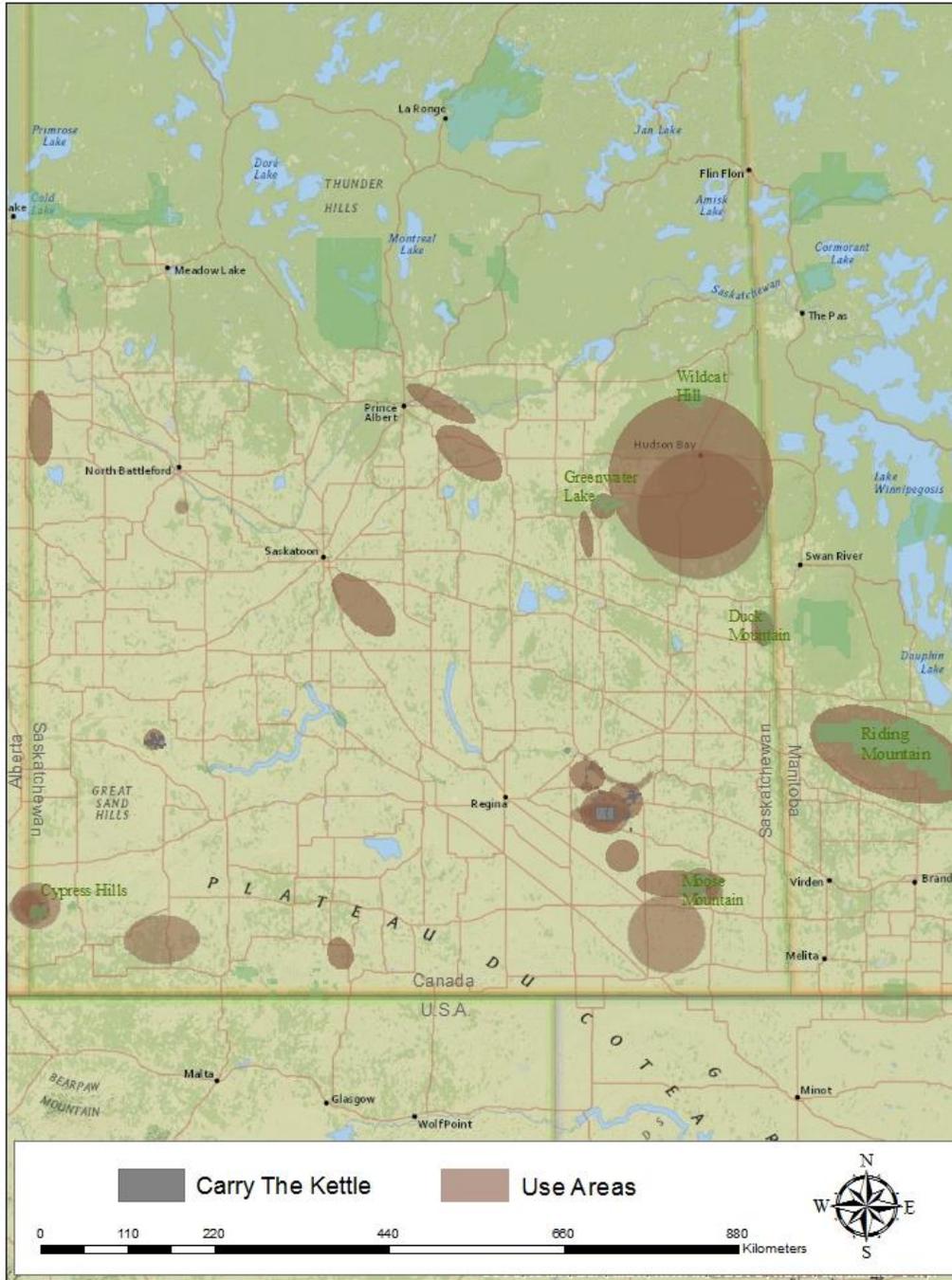
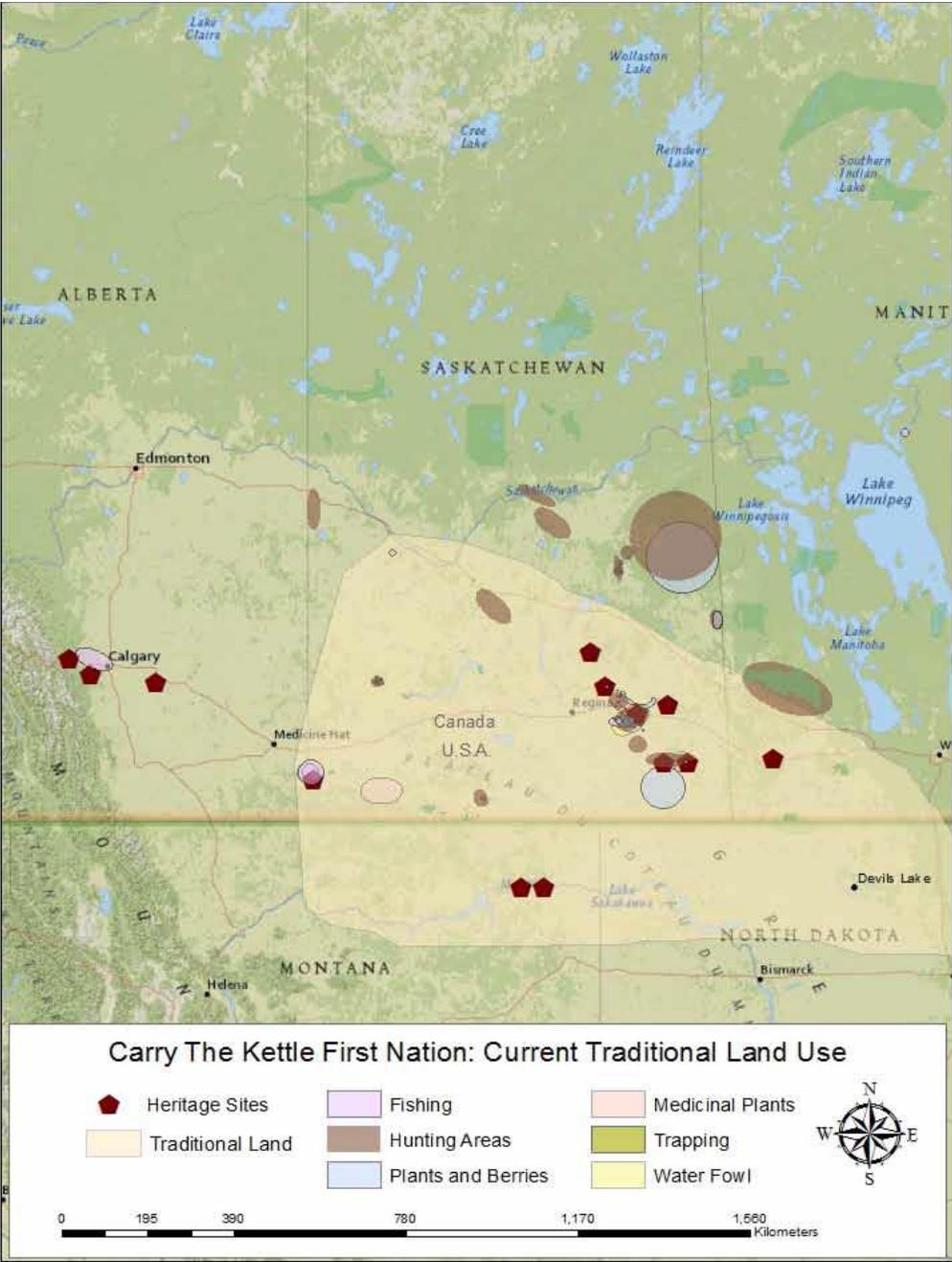


Figure 2: Current Land Use Areas with Historical Land Use Area



Given the history of the First Nation and the locations of the more current hunting and gathering activities the maps are showing a First Nation attempting to recover its ability to hunt



Clearly this method is only illustrative and a cumulative impacts model would have to use a biophysical resource map as the base map. This map illustrates the volume of Aboriginal People holding rights to harvest a traditional livelihood from this area.

The second major data required would be an assessment of the biophysical resource capacity of the available hunting and gathering areas accessible to all those first nations. The total data sets would also include data for other users of wildlife and likely future infringements on currently available lands. Such an analysis would allow a determination of the total resources required versus the total resources available over time. Then the incremental effects or cumulative effects or impacts of one more project could be measured. When this is compared with additional future industrial proposals which may reduce the availability of the resources, a proper cumulative impact analysis can be performed. These two additional data sources would complete a cumulative analysis of the CTK right to livelihood. Otherwise, given the current methods, no real cumulative impact analysis of the project can be done.

Energy East has inquired about impacts of the proposed pipeline on *current* traditional land use. Energy East has also provided funding to produce a study of land use which now includes an historical analysis of the Nakota and Carry the Kettle People's land use from before contact to the present. This history provides one of the first steps required in a full cumulative impacts analysis of the traditional livelihood of the Carry the Kettle People.

Unfortunately, much of the land which provides convenient hunting opportunities for CTK has been "taken up" under the Treaty and the laws with respect to this taking up process are only beginning to be refined by the Supreme Court of Canada. In the meantime, there were periods where the CTK Treaty rights to hunt fish and trap were rendered meaningless. The history of the land use provides a different perspective on current infringements. In recent cases of consultation, it has been said that pipelines like Energy East would have minimal impacts upon the traditional livelihood because the pipeline route is already taken up and pipelines are already operated on those lands. However, if the First Nation has already experienced a process where they were prevented from exercising their rights in a meaningful way, any additional impact, the smallest incremental impact could be too much.

The infringements have exposed the First Nation to impacts on the survival of its language. CTK has discovered that even though they are losing the language they likely have the best last chance at preserving the original and historical Nakota language. This makes preservation and revitalization of the language a priority. This is why the First Nation asked for assistance with the School particularly in language programs because the language is such an important part of the traditional culture and support for the language is also support for future traditional livelihood activities. The First Nation was looking for support for cultural activities which will support regaining opportunities to exercise their traditional livelihood and lead to healing.

The First Nation wishes to regain lost access to big game opportunities, lost opportunities to fish, lost opportunities to gather berries and medicines. Even though these have been lost often due to illegal or unjustified infringements, they can be regained and contribute to the renaissance of the Indigenous culture of the Carry the Kettle Nakota People. Before these resources can be regained the cumulative impacts assessment process must be included in a regional planning network which through planning future outcomes can facilitate regaining access to these rights. This is what makes cumulative impacts studies so powerful. Once they are completed they can be used as a planning tool to accommodate future land use. CTK is looking to the longer term relationship with other Canadians to assist in the process of regaining the opportunity to practice their rights.

### **3. Health study**

A review of the periodical health assessments was done to determine if there were anomalies which might be relevant to pipeline activities. The health study information is being collected on a periodic basis and will continue to be monitored.

#### **4. Environmental Study**

A study of the effects of pipelines on the CTK reserve was conducted for the purposes of independently informing the First Nation on the potential environmental issues they may be facing.

#### **5. Ground Water and Air Quality Concerns**

Chief Elsie Jack has stated many times that the First Nation is concerned about the potential impacts of new drilling technologies and multiple hydraulic fracturing in the region. This is an indirect effect of pipeline construction on the region as more drilling and production will be created as the oil industry is able to deliver and sell the oil it produces. However, due to the restrictions on consultation and the failure of the Crown to consult on these important issues, the review of the pipeline is the only forum under which this issue can be addressed. The concern is based on the fact that the CTK Reserve has very high quality water which is in high demand. Any deterioration in that quality would be devastating to the First Nation. CTK understands that the industry is regulated and attempts to avoid any contamination of groundwater during drilling and production processes. CTK is concerned about the potential for a breach of ground water protection measures but is also concerned that shallow level fracturing could result in fracturing into the ground water zone. Since regional aquifers are poorly understood as is water migration, this is a significant concern of the CTK People.

Also, related to this issue is the air quality in southeastern Saskatchewan. Our Hunters are already noticing a deterioration of air quality in southeast Saskatchewan as a result of increased oil and gas exploration and production activity. This decline in air quality has already pushed hunters out of the area and they prefer to hunt in areas further away to avoid the potential effects of the pollution both on themselves and the potential effects on the animals they hunt.

## **6. Reserve Planning Issues**

The Energy East Pipeline would follow the existing right of way currently on the Reserve. This right of way divides the Reserve and creates some challenges for planning purposes.

1. One question that has arisen is can the southern portion of the reserve be serviced by local natural gas lines from suppliers in the north or visa versa. What are the extra costs the First Nation could suffer if local lines can be built across the right of way or alternatively what are the additional costs because they cannot be built?
2. There are currently houses which are outside of original set-backs but may be uncomfortably close to an oil pipeline rather than a gas pipeline. What are the possible emergency conditions which would require set-backs, how are they determined and should the existing houses be moved?
3. Given the possibility of leaks, or catastrophic events, what are the parameters of the emergency planning process? How close should emergency services be to the Reserve and what services are required and appropriate for these events? Are these services be provided for areas outside of the Reserve?
4. What would possible oil spills do to the land around the pipeline? What is the estimate of the likelihood of oil spills on or close to the CTK reserve. Could oil spills affect the ground water. How would the clean-up process proceed? What are the standards of the clean-up process? What is the containment area of a spill. What is the largest possible amount of oil which could be spilled and what is the largest area that could be affected on the reserve?

## **7. Economic opportunities**

Economic opportunities with the construction and operation of the pipeline are very important to the CTK First Nation. The First Nation has a JV with a very qualified major construction and operations company and has been making impressive efforts to stick handle through the procurement processes of Energy East. The First Nation would like to follow through with the discussions contemplated in the Relationship Agreement with respect to this issue. In addition,

the First Nation has other JVs and individual entrepreneurs looking to work in the construction phase of the project. We would like to understand the processes which are being planned to accommodate the CTK expertise which is available. CTK is also still available to participate in any training activities that may be associated with Energy East construction and operations.

## **8. Future Consultation**

CTK understands that there has been a postponement of the regulatory process but would be interested in pursuing the planning of a first meeting of the Liaison Committee to coordinate any issues or discussions, meetings or consultations which should take place.

## **9. Conclusion**

Carry the Kettle First Nation has endured significant challenges to its very survival as an Aboriginal community. These challenges included violations of its ability to survive particularly on the Treaty right to a traditional livelihood. The First Nation will continue to pursue this issue with Federal and Provincial authorities and looks to its partners to support the First Nation in these efforts. The First Nation also will participate diligently in the Liaison Committee's work which will include ongoing consultations about the Energy East and TCPL relationship with CTK as well as any items which arise which are out of the ordinary – especially issues related to community health, water and air quality and emergency services.