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**BY E-MAIL**

The Honourable Greg Rickford  
Minister of Energy, Northern Development and Mines  
Whitney Block, Room 5630, 5<sup>th</sup> Floor  
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Toronto, ON M7A 1W1  
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Dear Minister Rickford:

**Re: Indigenous Consultation – Imperial’s Waterdown to Finch Pipeline Project – EB-2019-0007**

We are counsel to the Huron-Wendat Nation (“HWN” or the “Nation”).

This letter follows your Ministry’s email to Maxime Picard of the HWN dated November 12, 2019, in which the Ministry suggested that the HWN’s concerns regarding the above-noted project have been addressed, and it is now appropriate to release a Letter of Sufficiency to the Ontario Energy Board concerning Imperial’s consultation and accommodation of the HWN in relation to the Waterdown to Finch Pipeline Project (the “Project”).

The Ministry is mistaken that the HWN’s concerns have been addressed. These concerns are serious and ongoing. While the HWN has been engaged with Imperial in discussing these concerns, the Nation is not satisfied that its concerns have been adequately addressed. The Nation has a number of concerns that Imperial, which has been delegated the procedural aspects of the Crown’s duty to consult and accommodate, has not yet mitigated or accommodated. As such, neither the procedural nor substantive aspects of the duty of consultation for this Project have been discharged.

**Rights of the HWN**

The proposed Project runs through the ancestral lands of the HWN, and the Crown is required to discharge its duty to consult and accommodate the HWN with respect to the Project’s impacts and potential impacts on the Nation’s Aboriginal and treaty rights.

The HWN is a signatory to a treaty with the Crown concluded in 1760 which recognizes and protects, *inter alia*, the HWN’s cultural and spiritual practices. This treaty has been recognized by the Supreme Court of Canada (see *R. v Sioui*, [1990] 1SCR 1025).

The HWN also has inherent rights protected by section 35 of the *Constitution Act, 1982*. These rights include, but are not limited to, the right to the integrity of the Nation's archaeological and burial sites.

The importance to the HWN of its right to the integrity of the Nation's archaeological and burial sites cannot be overstated, nor can the importance to the HWN of asserting and protecting that right.

The HWN has an ongoing obligation to ensure the respect and protection of its archaeological and cultural heritage in Ontario. This sacred obligation is especially strong in relation to protecting its ancestors' burial sites, as the HWN believes that the spirits of the ancestors continue to reside with their bones.

The HWN's Council adopted a resolution on June 15, 2015 describing the rights of the HWN in Ontario and the HWN's sacred obligation to protect its archaeological and burial sites in Ontario (the "Resolution"). The Resolution states that all necessary measures must be taken to ensure the respect and protection of Huron-Wendat cultural and archaeological sites.

The proposed Project involves archaeological fieldwork, including digging test pits; digging trenches and entry points for trenchless drilling; general construction work; and operation of a pipeline. Each of these activities poses significant risk to archaeological and burial sites in the Project area. In fact, archaeological sites have already been disturbed, and artifacts have already been destroyed, in the course of the Stage 2 archaeological assessment. It is to be expected that such damage will continue over the archaeological and construction phases of the Project.

Such damage is of concern to the HWN generally. However, it is of particular concern with respect to a known archaeological site, the Parsons site, which is one of the Nation's most important archaeological sites uncovered to date.

When complete, the Project will function as a pipeline carrying fuel in close proximity to the Parsons site, other archaeological and burial sites uncovered and disturbed during the course of archaeological fieldwork and construction, and further sites that are not uncovered throughout construction but that will nevertheless be at risk of damage in the event of a spill from the pipeline.

The impacts that have been felt by the HWN to date (disturbance and destruction of sites and artifacts), the impacts that the HWN expects to continue to experience (continued disturbance and destruction of sites and artifacts), and the impacts that the HWN hopes never to encounter, but which remain very real risks (a pipeline spill in the vicinity of an archaeological or burial site) are significant impacts concerning which the Crown has a duty to consult with, and to accommodate, the HWN.

## **Concerns Identified by Grand Chief Sioui**

This correspondence is by no means the first time that the HWN has advised your Ministry of its concerns regarding the Project's impacts on the Nation's rights, and of Imperial, and hence the Crown's, failure to discharge its duty to consult and accommodate the HWN in regards to those impacts.

Grand Chief Sioui raised the Nation's concerns with your Ministry by letter dated September 4, 2019. The concerns outlined in the Grand Chief's letter included that the Project has the potential to "disturb, badly damage, and even destroy the Parsons Site and other archaeological sites in the pipeline's path."

Grand Chief Sioui further stated in his letter that "If the Crown fails to ensure that the duty to consult and accommodate is adequately discharged by Imperial, my Nation will honour our Council's commitment to protect the Nation's archaeological heritage by taking the steps necessary to protect the Parsons Site."

The concerns outlined in the Grand Chief's letter, and the Nation's commitment to taking the steps required to ensure that its right to the integrity of its archaeological and burial sites is respected and honoured by the Crown, remain true today.

## **Ongoing Concerns**

Your Ministry suggested in its email of November 12, 2019 that the HWN's ongoing concerns with the Project related only to chance find, emergency and spill response plans.

While those plans are certainly of concern to the HWN, they are far from being the Nation's only concern.

With respect to the plans, it is accurate that Imperial has shared draft plans with the HWN and sought the HWN's comments on these draft plans. The HWN has provided these comments, which are not minor in nature and which have not been addressed to date. Specifically:

- SPPL Emergency Response Plan: Imperial has not yet drafted a site-specific emergency plan for the Parsons Site, or an emergency plan for incidents in the vicinity of other archaeological or burial sites. Imperial's generic SPPL Plan most definitely does not address the HWN's specific concerns about the Project's impacts and potential impacts on its right to the integrity of its archaeological and burial sites.
- Waterdown to Finch Project Spill Prevention and Response Plan: This plan does not address how Imperial will respond to spills in the vicinity of other archaeological or burial sites, and does not address the HWN's specific concerns about the Project's impacts and potential impacts on its right to the integrity of its archaeological and burial sites.

- Chance Find Contingency Plan: The HWN has made extensive comments on Imperial's draft Chance Find Plan, none of which have been addressed to date. The HWN's main concern (but by no means its only concern) with the draft Plan is that it does not adequately address what will occur in the event that human remains or an ossuary are found.

With respect to the HWN's ongoing concerns more broadly, the HWN has continued to engage in dialogue with Imperial in an effort to have Imperial understand the impacts and potential impacts the Project has had and will continue to have on its right to the integrity of its archaeological and burial sites. As noted above, the importance of non-disturbance of archaeological and burial sites to the HWN cannot be overstated. The Nation is bound by its tradition, customs and beliefs, as reflected in the 2015 Resolution, to ensure that these sites are protected.

Unfortunately, there have already been impacts on the HWN's archaeological sites, and it is expected that these impacts will continue throughout not only the archaeological fieldwork, or the construction phase, but over the course of the Project's lifespan. More than one archaeological site has been disturbed, and artifacts have been destroyed. This will continue as the Project's fieldwork and construction progress.

There is also the risk that the pipeline poses in terms of a spill – this risk will exist so long as the pipeline is in use, and would have potentially catastrophic impacts on any archaeological or burial sites in a leak's vicinity.

Given the seriousness of the risks posed by the Project, and the existing, anticipated, and potential impacts on the Nation's right caused by the Project, adequate steps must be taken not only to consult with the HWN, but also to accommodate the Nation.

Accommodation can take the following forms: avoidance of avoidable impacts, and mitigation of, and compensation for, impacts that cannot be fully avoided.

The HWN is not satisfied that the steps proposed by Imperial to date adequately ensure the avoidance, mitigation or compensation for existing, anticipated and potential impacts on the HWN's right. For example, as noted above, none of the HWN's comments on the draft plans have been incorporated into the plans to date, and the plans therefore do not address the HWN's concerns. More broadly, Imperial has not taken adequate accommodation steps, in terms of ensuring avoidance of, or mitigation and compensation for, existing and potential impacts caused by the Project. As such, the duties of consultation and accommodation delegated to Imperial have not to date been fulfilled. Since Imperial has not yet met this duty, neither has the Crown.

In light of the above, it is the HWN's position that it would be inappropriate for the Ministry to release the Letter of Sufficiency to the Ontario Energy Board at this time. Moreover, in the event that Ministry does release the Letter of Sufficiency over the HWN's objections and the OEB relies on that Letter in its approval of the Project, the Ministry will risk judicial review of the Project's approval.

We trust that the Ministry will take the HWN's objection to the release of the Letter of Sufficiency into close consideration, and will not release the Letter at this time.

Yours truly,



Renée Pelletier  
Managing Partner

- c. Emma Sharkey, Ministry of Energy, Northern Development and Mines (by email)
- Sherri Evers, Imperial Oil (by email)
- Kelly Williams, Imperial Oil (by email)
- Board Secretary, Ontario Energy Board (by email)
- Grand Chief Sioui, Huron-Wendat Nation (by email, c/o Maxime Picard)
- Maxime Picard, Huron-Wendat Nation (by email)