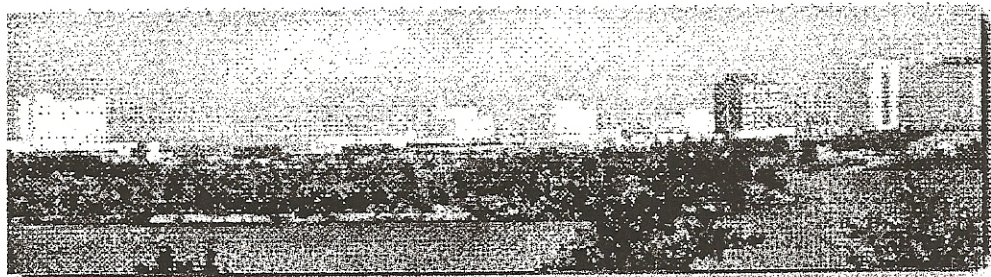


**Corporate Executives:
Roles and Responsibilities**



*Recommendations for the
Aboriginal Pipeline Group (APG)*

Clint Davis and Sarah Mercer

Completed for Wilf Blonde, CFO – Inuvialuit Regional Corporation

May 20, 2002



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I. Executive Summary

Upon inquiries by Harvard graduate student Clint Davis, the resources of the Harvard Project on American Indian Economic Development (HPAIED) were made available to the Aboriginal Pipeline Group (APG) through Wilf Blonde, Chief Financial Officer of the Inuvialuit Corporation and lead executive with the APG. Mr. Blonde and the APG accepted HPAIED's offer, requesting assistance from Clint Davis and Sarah Mercer to craft the major responsibilities of the APG corporate executives as well as provide direction to the APG representative to the Management Committee of the Mackenzie Pipeline Joint Venture (JV).

Discussions with Mr. Blonde and the Board of Directors of the APG have directed the focus of the analysis on the inherent conflict of interest faced by the APG representative as responsible for maintaining the interests of the Aboriginal communities, the APG, and the JV. It has been determined that the APG representative (most likely the President/CEO), in being accountable to all three identified parties, is in an untenable situation. Specifically, the President/CEO is expected to advocate both business and political interests at the JV. This is an unworkable situation since these two interests are often in conflict.

The report makes the following recommendations:

1. It is recommended the APG elevate the Manager of IBAs to Executive Vice-President of IBAs and task him or her with advocating, assisting and monitoring the implementation of these agreements. Negotiation and implementation of IBAs are considered very important to the Aboriginal shareholders, and it is necessary that they are confident that they have a senior executive who will always advocate their interest in IBAs. Furthermore, it is uncertain whether the President/CEO will be able to effectively meet this responsibility as a member of the JV Management Committee.
2. It is recommended the APG institutionalize a Chinese Wall within its organizational structure. This mechanism will prevent the flow of sensitive corporate information of the JV from the President/CEO to the Executive Vice-President IBAs, as well as prevent disclosure of sensitive information of the Aboriginal groups from the Executive Vice-President IBAs to the President/CEO.
3. It is recommended the APG Board of Directors send a Statement of Policy (please see Appendix C) to its senior executives as a means of establishing and maintaining the Chinese Wall. This statement is crafted to recognize the APG has an interest in ensuring the JV is a profitable concern, while at the same time realizing the importance of the negotiation and implementation of generous IBAs for the Aboriginal communities.
4. General areas of responsibilities for the APG President/CEO, the Executive Vice-President of IBAs, the Manager of Finance and the Manager of Joint Venture Construction & Operations are recommended. For the President/CEO, although applicable to each executive, advice is given on the value of building coalitions to achieve APG goals (please see Harvard Business School case in Appendix E).

II. Background

a. Current Situation

The Aboriginal Pipeline Group (APG), also known as the Mackenzie Valley Aboriginal Pipeline Corporation (MVAPC), represents the interest of 23 different aboriginal groups in the Northwest Territories. In a combined effort, these groups are trying to secure one-third ownership in a \$3 billion oil and gas pipeline to be constructed within the next few years. Tapping known onshore natural gas resources at the Taglu, Parsons Lake, and Niglintgak gas fields and accessing possible discoveries in the Mackenzie Delta and Mackenzie Valley regions, this pipeline is expected to be in operation for at least 25 years after construction.¹ The pipeline will run through the Northwest Territories from the Beaufort Sea to Alberta via the Mackenzie Valley (see map 1).² Since much of the route covers tribal land (see map 2),³ aboriginal groups are invested in wanting a profitable project that adheres to tribal standards for development.

b. Memorandum of Understanding (Appendix A)

On June 6, 2001, most of the 23 Aboriginal groups signed and agreed to the "Memorandum of Understanding for a Mackenzie Valley Pipeline" (MoU). This document asserts that the APG has worked with Imperial Oil Resources Ventures Limited, Gulf Canada Resources Limited, Shell Canada Limited, and ExxonMobil Canada Properties (Producers) "to develop mutually acceptable arrangements for the economic and timely development of a Mackenzie Valley Pipeline."⁴ The MoU establishes a Pipeline Corporate Structure that incorporates Aboriginal influence at both the shareholder and the executive levels (see figure 1).⁵ As figure 1 illustrates, Aboriginal groups are shareholders, directly linked to the Mackenzie Pipeline Joint Venture (owner and operator of the Pipeline), with the Limited Partnership serving to limit Aboriginal liability. As executives, they are indirectly linked through the APG/MVAPC, the General Partner of the Limited Partnership and a member of the JV.

Additionally, it is important to note the terms negotiated by the JV regarding Pipeline governance and operation select Imperial Oil as the Operator, responsible for developing and operating Pipeline facilities. These responsibilities require that the Operator, accountable to the Management Committee comprised of the other parties of the JV, "manage the permit application process, . . . design, construct, and operate the Pipeline, . . . [and] act as the spokesperson for the JV."⁶

¹ Imperial Oil Limited, "Mackenzie gas project overview," News releases 2002, Jan. 2002, <http://www.imperialoil.com/news/news_releases/mn_news_020107a.html>, cited 7 Feb. 2002.

² Pipeline route, <www.esso.ca/images/im_mackenzie_map.gif>, 2001, cited Feb. 10, 2002.

³ Pipeline route, <www.esso.ca/images/im_mackenzie_map.gif>, 2001, cited Feb. 10, 2002.

⁴ MoU, "Preamble," para. 3.

⁵ "Pipeline Corporate Structure Chart," Hay River PowerPoint presentation, from Wilf Blonde, dated June 5-6 (before 2002), cited Feb. 2002.

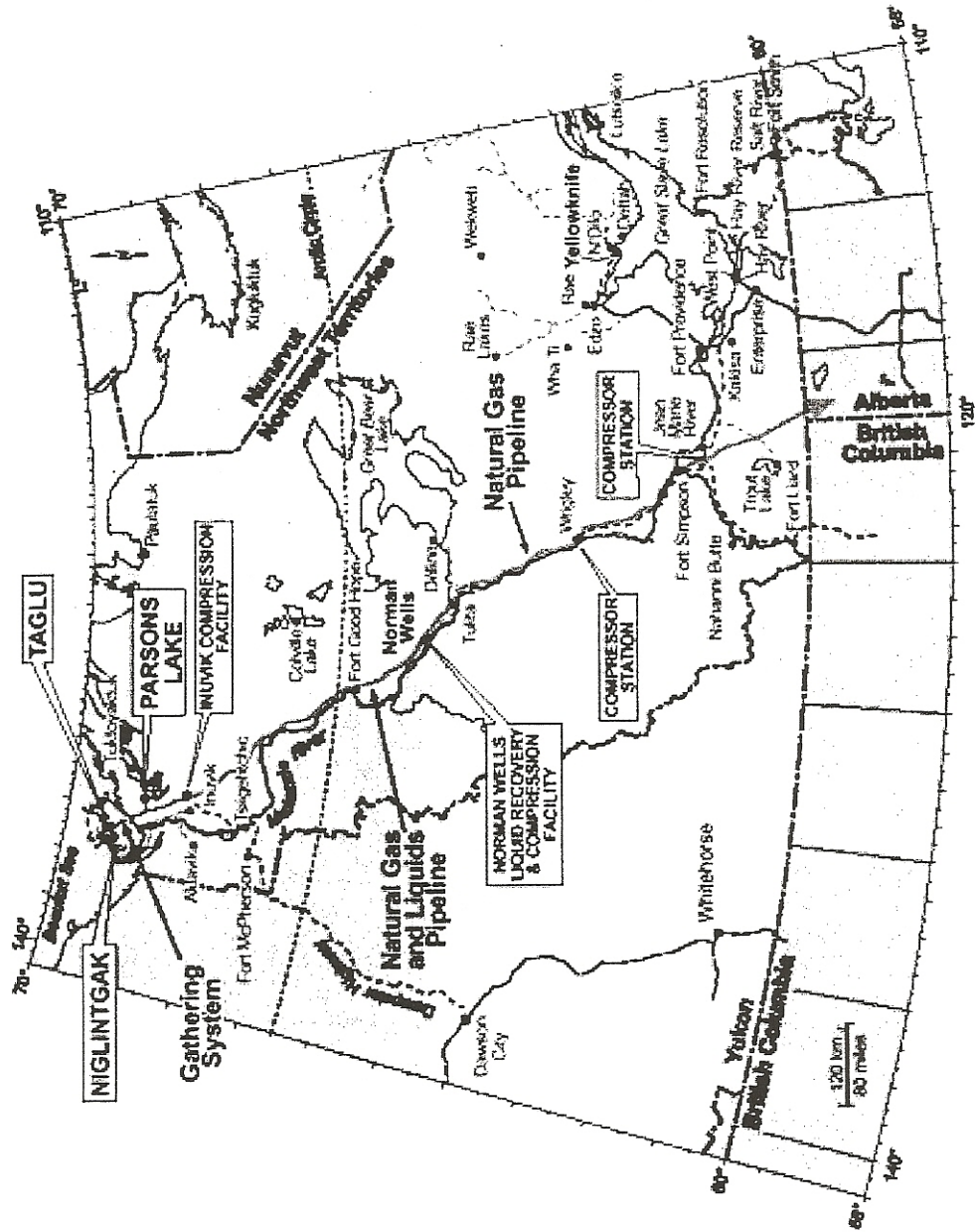
⁶ MoU, "Mackenzie Valley Pipeline Joint Venture Agreement: (d) Pipeline Operatorship," para. 1.

c. APG Corporate Structure

Figure 2 is the Corporate Structure for the Aboriginal Pipeline Group.⁷ The Board of Directors selects a President/CEO to manage the APG, along with three Managers with specific responsibilities. These are a Manager of Impact Benefits Agreements, a Manager Joint Venture Construction and Operations, and a Manager of Finance. The primary role of these officers is to represent the interests of the Aboriginal groups at the JV. The President/CEO sits on the JV Management Committee while the other Managers are members of JV Committees according to their area of responsibility.

⁷ "APG Corporate Structure Chart," Hay River PowerPoint presentation, Wilf Blonde, dated June 5-6 (before 2002), cited Feb. 2002.

Map 1: Pipeline Route



Map 2: Tribal Lands

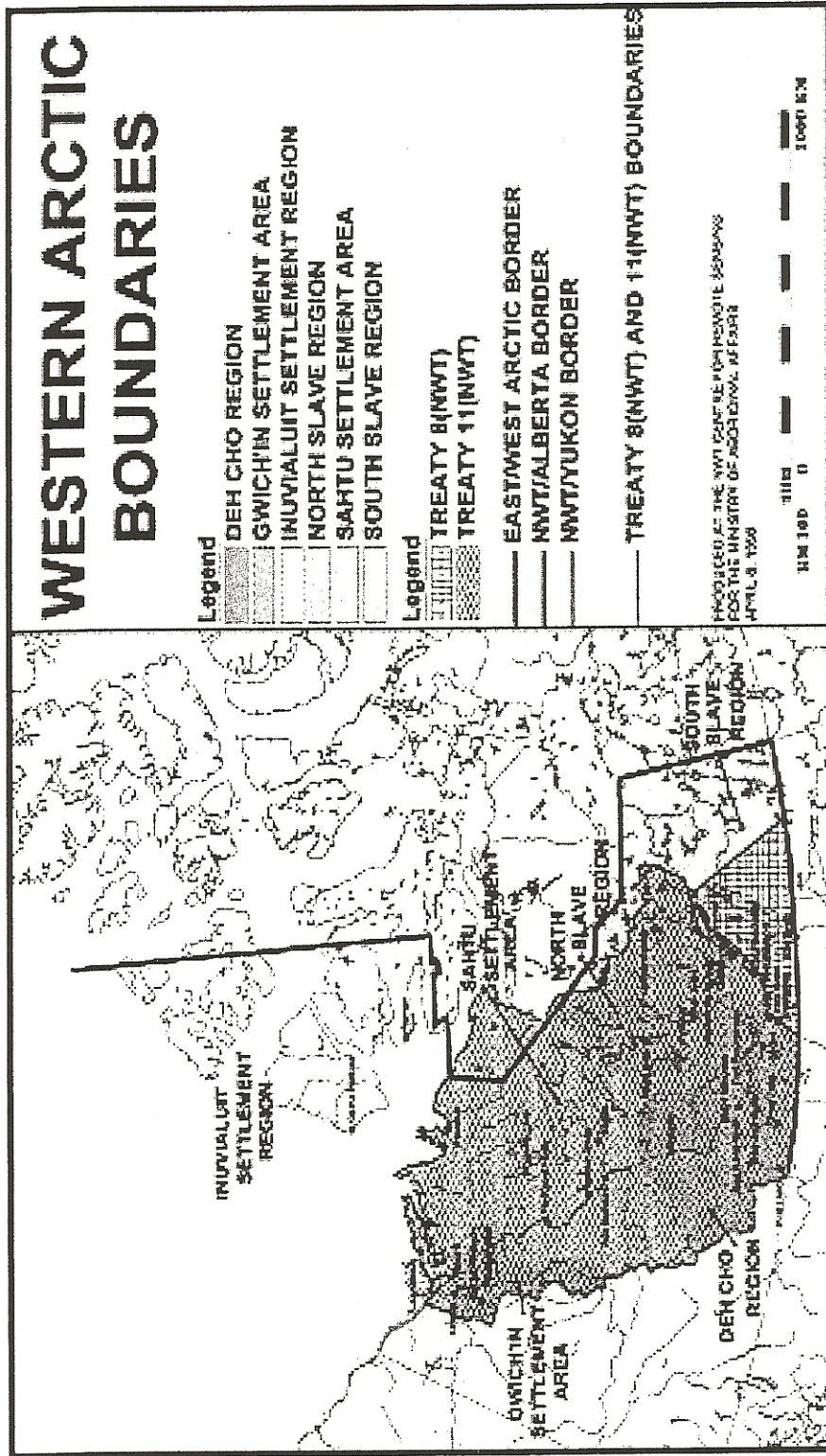


Figure 1: Pipeline Corporate Structure

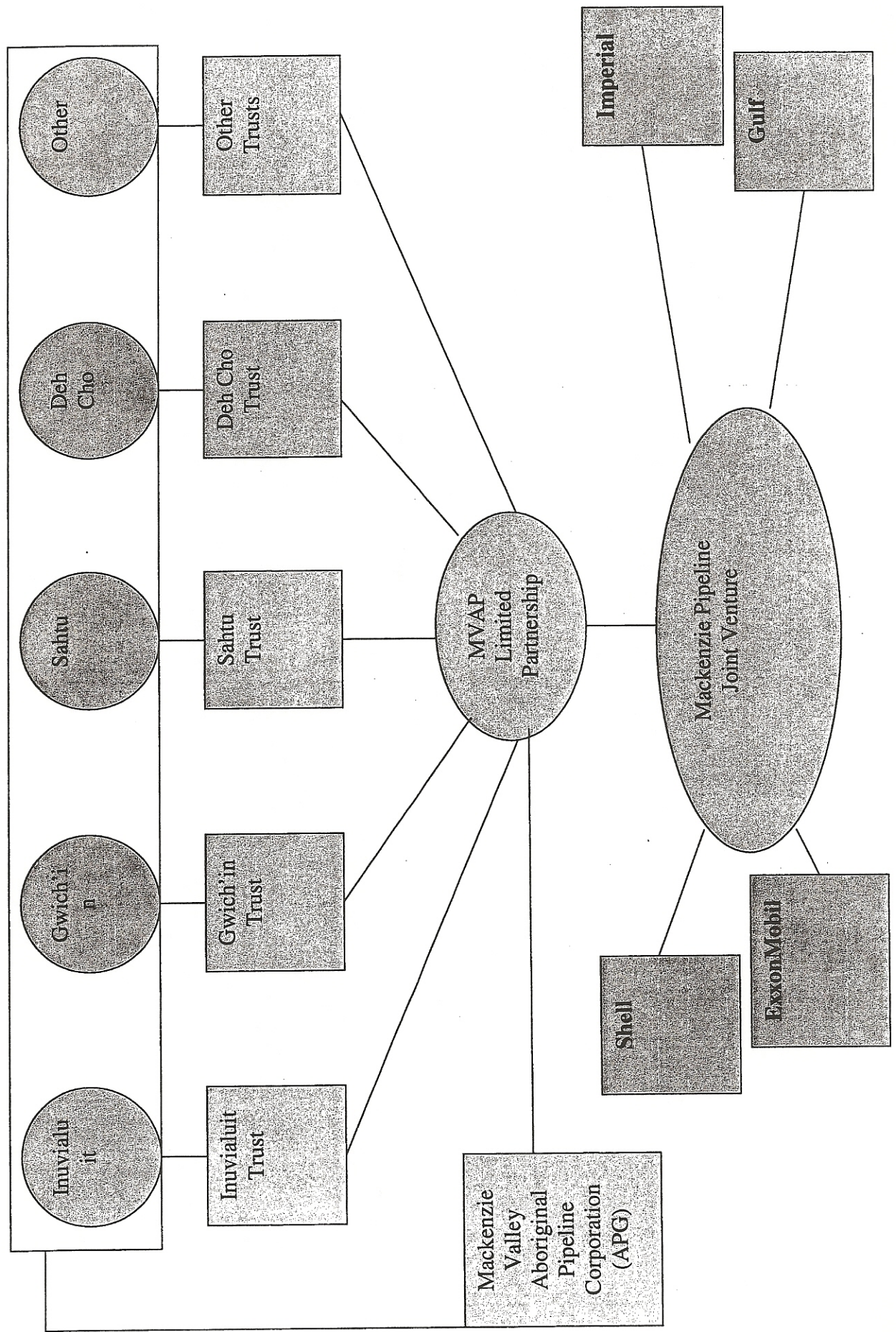
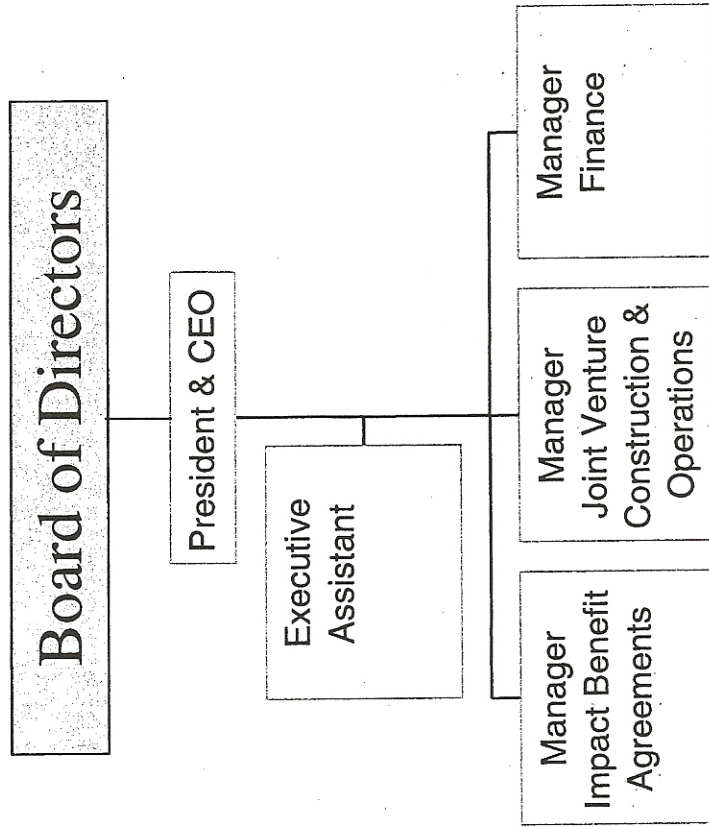


Figure 2: APG Corporate Structure



III. Assessment of Situation

a. Two Separate Interest Needs-The Conflict of Interest

As discussed in the previous section, the Pipeline Corporate Structure incorporates aboriginal influence at both the shareholder and executive levels (see figure 1). This implicitly addresses the fact that Aboriginal groups as shareholders and executives have two separate interest needs:

- 1) Political interests embodied in IBAs
- 2) Business interests embodied in aboriginal influence of business strategy through ownership.

According to the MoU, separate benefits plans and land access agreements are negotiated between each Aboriginal group and the JV.⁸ In these negotiations, the APG, an advocate for the collective aboriginal interest, is a member of the JV. As a member, the APG wields a one-third voting percentage. Though most decisions, “such as the approval of annual budgets, require a pass mark vote (e.g. 60% working interest and two or more parties),” key decisions, such as the “sale or disposal of significant joint property or modifications to the pipeline development agreement” require unanimous approval of the Management Committee.⁹

b. Debating the Political and Business Interests

These two mechanisms of exerting aboriginal influence in the areas of their interest needs are important. Among members of the APG Board, there is a common message about the importance of benefit agreements. To date, the focus of communications from the APG to the communities has been on the benefits flowing from pipeline development. This has created a concern by Board members over the lack of community awareness on the benefits of ownership. It seems community members can more easily conceptualize the tangible benefits of jobs and training as opposed to the benefits of ownership to communities as shareholders. The debate provides the criteria on which an effective organizational structure should be built and implemented in order that the APG meets its goals and satisfies the concerns of the other Pipeline owners.

⁸ “MoU,” “Benefits Protocol.”

⁹ “MoU,” “Pipeline Governance,” para. 2.

Ownership vs. IBAs

During the APG Board meetings of April 8-9, 2002 a brief discussion essentially identified various arguments supporting the ideas of ownership and IBAs. These are summarized in the text box below. While these benefits will assist NWT's Aboriginal peoples in building self-sustaining communities, the debate of ownership and benefit agreements illustrates a practical challenge facing the APG: Can the APG seek to maximize impact benefits packages if this will adversely affect the profitability of the JV?

Ownership vs. IBAs

- | | |
|--|---|
| -“voice at the table” | -concrete benefits of education, jobs, training |
| -veto power | -compensation for impacts |
| -influence over strategy | -respect for land, culture, environment |
| -impact corporate culture of producers | |

IV. Analysis

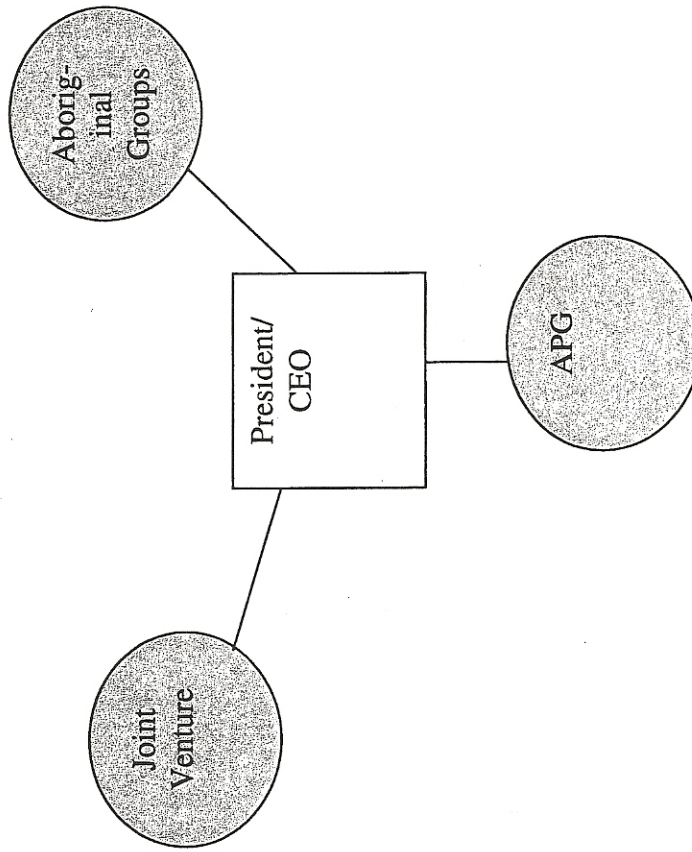
a. Effectively Realizing Both Interest Needs

The question posed in the last section highlights the separate political and business interests held by the Aboriginal groups and represented by the APG. This is workable provided the APG corporate structure adequately institutionalizes these interests. The Pipeline Corporate Structure provides a mechanism for the aboriginal groups to channel their separate interests as previously mentioned (see figure 1). The current APG Corporate Structure, however, obstructs the Aboriginal groups' ability to realize both interest needs, since there is internal conflict about how to effectively channel them (see Ownership Vs. IBAs).

b. The Challenge of One Person

At the forefront of the APG, the President/CEO is burdened with this internal conflict. As the President/CEO fulfills the roles of manager, advocate, and communicator, the tension between political and business interests becomes particularly acute. As the top APG corporate executive who is expected to serve both the interests of the JV as well as the shareholders, the CEO is at the heart of this conflict (see figure 3). As Figure 3 illustrates, the President/CEO is directly accountable to all three parties: s/he sits on the JV Management Committee, oversees the executive officers for the APG and is the most senior advocate for the aboriginal groups. The central issue is how can the APG practically sit on the JV Management Committee with the goal to maximize JV profitability while at the same time advocate and assist individual Aboriginal groups in their IBA negotiations?

Figure 3: Conflict of the CEO



c. A Case Study: Stephen P. Yokich (Appendix B)

The APG inherent conflict of interest is comparable to the situation that faced Stephen P. Yokich, former President of United Auto Workers (UAW).

In May 1998, following the Daimler-Chrysler merger, the UAW accepted one seat on the German company's supervisory board, a group analogous to a U.S. company's board of directors. Granting supervisory board seats to labor union representatives is common in Germany, since German law, unlike American law, requires that half of the supervisory board seats go to labor union representatives.

Through representation on the Board, the UAW was granted a unique opportunity to weigh in on major business strategy decisions made by Daimler-Chrysler. After the terms of representation were agreed upon, Yokich declared, "Workers are entitled to a seat at the table,"¹⁰ and made it clear that his priority was to represent the interests of the workers at the board meetings. However, by using board meetings as a platform to voice the UAW agenda, Yokich soon alienated himself. It did not take long for him to recognize that the board did not welcome the attitude he had adopted. This point is not intended to question the validity of Yokich's claims, but rather, to highlight the inability of Yokich to build coalitions with other members of the board due to his zealous approach to representing the union's interests. As a result, both corporate executives and German labor union representatives ignored the political concerns he attempted to address.

Yokich realized that if he was going to successfully advocate the political interests of the UAW, he had to be mindful of the business interests of the corporation. Perhaps Yokich's German counterparts informed him that as members of the supervisory board they are responsible for "[cutting] the deals that cut the jobs," like the deal cut by the German GM supervisory board in which the executives "pledged to invest \$450 million to renovate its Ruesselsheim complex after the union agreed to eliminate 4,000 of 10,000 jobs."¹¹

In November 2000, Yokich was severely criticized for demonstrating an "unwillingness and inability to defend jobs"¹² when he approved a cost-cutting proposal that eliminated between 20,000 and 40,000 jobs in the company's North American division. In January 2001, when Daimler-Chrysler announced another massive job cutback, Yokich was "all but invisible," leaving workers with "heightened frustration, anger, and worry."¹³ Yokich, in trying to attend to the interests of both labor and management, could not effectively represent each interest simultaneously.

¹⁰ Yokich, Stephen P., quoted in James M. Flammang, "Stephen Yokich, Strong views from the worker's side," "Tirekicking Today," Mar. 1999, <<http://www.tirekick.com/mar99/yokich.htm>>, cited April 20, 2002.

¹¹ Howes, Daniel, "UAW would regret winning boardroom seats at GM and Ford," *Detroit News*, Aug. 3, 1999, <<http://detnews.com/autos/howes/howes990803/htm>>, cited April 17, 2002.

¹² Roberts, Larry and Jerry White, "Daimler-Chrysler to cut thousands of jobs in North America," Nov. 28, 2000, <http://www.wsws.org/articles/2000/nov2000/chry-n28_prn.htm>, cited April 20, 2002.

¹³ Greilik, John T., "Workers Fume: Uncertainty, misinformation, rampant rumors keep employees on edge," *Detroit News*, Jan. 31, 2001, <<http://nuance.dhs.org/lbo-talk/0101/1925.htm>>, cited April 20, 2002.

V. Recommendation

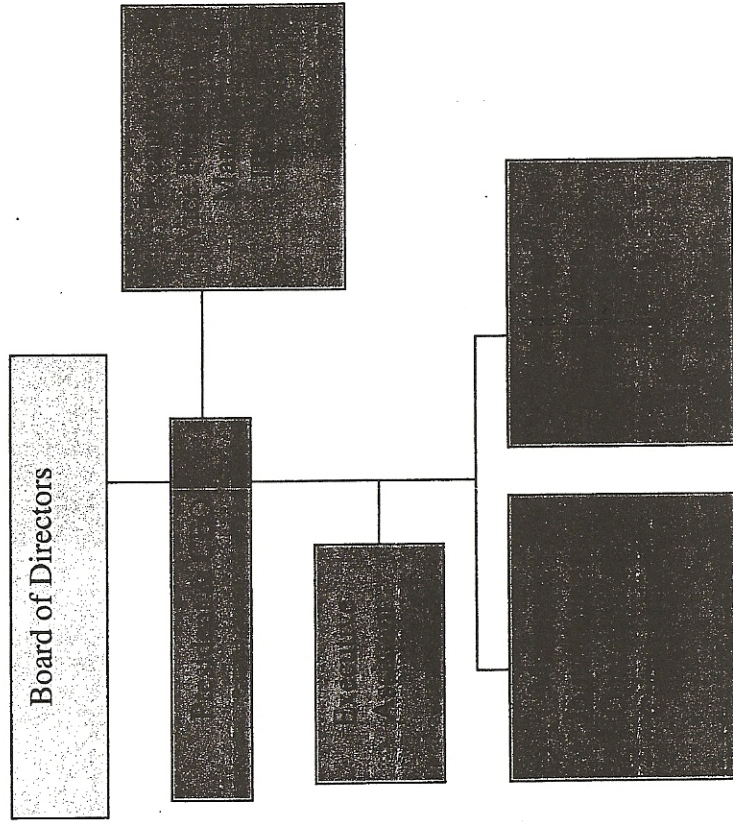
Making It Work

As previously stated, APG can manage conflicting interests so long as its organizational structure adequately separates the overlapping interest needs. However, this means a distinctive role for the President/CEO and the Manager of IBAs. The way to resolve this conflict is to amend the APG Corporate Structure separating the aboriginal groups' political interests from their business interests. Just as the Pipeline Corporate Structure has two channels, one through which political interests flow and another through which business interests flow (see figure 1), the APG Corporate Structure should be reorganized to facilitate this.

Figure 4 shows how this can be accomplished by elevating the Manager of IBAs to the senior position of Executive Vice-President of IBAs. This enables the President/CEO to freely participate in JV business decisions that maximize profitability without compromising the purpose of the APG, that is "to represent the interest of the Aboriginal Peoples of the Northwest Territories in building a business partnership to maximize ownership and benefits of a Mackenzie Valley Pipeline."¹⁴ Since IBAs are considered a cost to the JV, the President/CEO is placed in a position of trying to reduce costs while at the same time trying to guarantee benefits under this agreement. By removing him/her from the second part of the equation by delegating this responsibility to the Executive Vice-President, the APG can continue to function with credibility. This should allow the President/CEO to be a more effective participant at the JV. As well, this gives the Aboriginal groups two senior advocates for their specific needs.

¹⁴ "MoU," "Preamble."

Figure 4: New APG Corporate Structure



VI. Implementation

a. Achieving Separation—Chinese Wall (Appendix C)

As figure 4 illustrates, the APG can fulfill its multiple responsibilities through the creation of a Chinese Wall. A Chinese Wall is "...a self-enforced informational barrier consisting of systematic, as opposed to *ad hoc*, procedural arrangements. These arrangements are destined to stem the flow of knowledge (in particular, unpublished price sensitive knowledge) between different divisions within a multi-capacity financial intermediary with conflicting interests and obligations."¹⁵ This mechanism has been traditionally utilized by multi-service financial institutions. However, the conflict of interest in these organizations is arguably analogous to the conflict facing the APG. On the one hand, the bank is under a duty to keep the confidentiality of its clients corporate details divulged in the course of a transaction. On the other hand, the bank owes a duty to its investment advisory customers to use all legitimate information in making investment decisions on the customer's behalf.¹⁶ While this mechanism may not be perfect, it should provide the legal and policy safeguards that would enable the APG to function effectively, while at the same time ease the concerns of the other Producers in the JV.

Recently, the issue of how to minimize an inherent conflict of interest was considered on Wall Street. High profile stock analysts housed within prominent U.S. investment banks have been accused of misleading positive stock recommendations to land lucrative investment banking deals. These banks walked a fine line between raising capital for companies, advising investors, and trading stocks for their own accounts—activities often in direct conflict.

There is no standard Chinese Wall; rather the structure varies from firm to firm. The most common components include:

- a. Compliance Manual, to clearly identify the standards of conduct required of the firm and of employees with that firm;
- b. Systematic identification of risk areas
- c. Procedures by which risks are to be addressed, which are often handled by way of organizational compartmentalization and occasionally by physical segregation;
- d. Compliance responsibilities are clearly demarcated so employees know exactly what is expected;
- e. Routine monitoring and periodic review of compliance procedures;
- f. Contingency plans in the event of accidental disclosure of sensitive information;
- g. Procedures to determine what information (if any) can bypass the wall.¹⁷

The size of the organization does not act as an obstruction in developing this structure. In fact, a smaller firm may find it easier to instill a Chinese Wall culture given the close-knit organizational set-up. Monitoring the Wall could also be easier. A legal ruling in England has

¹⁵ *Financial Conglomerates and the Chinese Wall – Regulating Conflicts of Interest*, Harry McVea, Clarendon Press, Oxford, 1993, at p. 123).

¹⁶ *Ibid*, at p.124.

¹⁷ *Ibid*, pages 128-132.

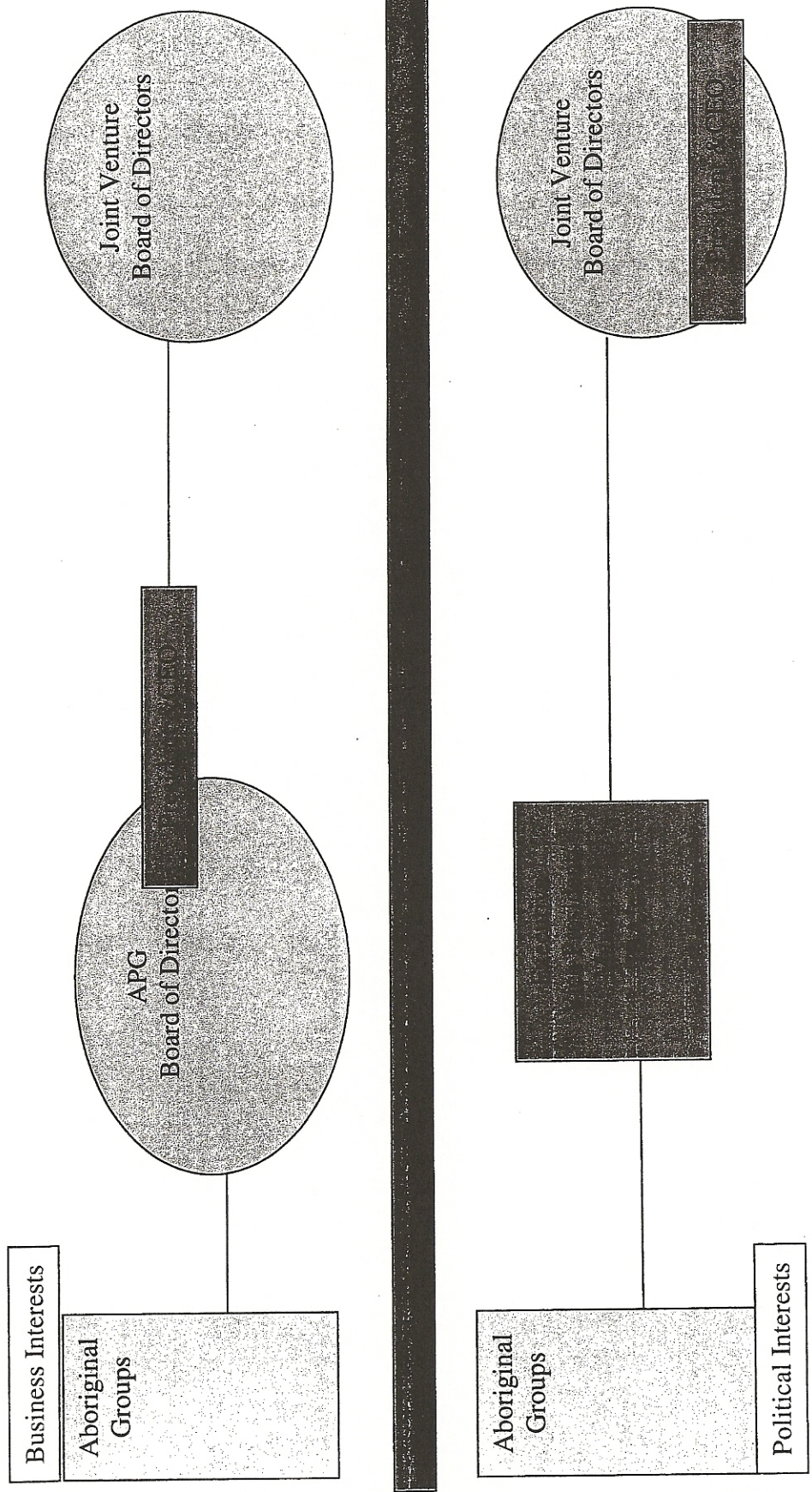
required the institutionalization of Chinese Walls. In *Prince Jefri Bolkiah v. KPMG*, the court required Chinese Walls to "...be an established part of the organizational structure of the firm, not created *ad hoc*, and dependent on the acceptance of evidence sworn for the purpose by members of staff engaged on the relevant work."

While developing a well functioning Chinese Wall will assist in minimizing the conflict of interest, the APG should not overlook the fact that their "the focus should be on people. The firm (APG) should employ people with integrity and should endeavor to place them within a culture which is sensitive to the management of conflicts of interest."¹⁸

Figure 5 illustrates how a Chinese Wall would enable each executive (President/CEO and Executive Vice-President IBAs) to meet their respective responsibilities. While the President/CEO would be the top executive in charge of the direction of APG, s/he would have minimal involvement in the creation and implementation of IBAs. His/her focus would be on the ownership component of the concern—that is, serving on the JV Management Committee to maximize returns to APG shareholders. On the other hand, the Executive Vice-President would focus on the benefits component of the concern—that is, assisting in the creation of IBAs as well as monitoring their implementation. While each individual fulfills their respective responsibilities, they or their staff would not share sensitive information with each other.

¹⁸ Ibid, page 132.

Figure 5: Chinese Wall—Separation of Interests



b. Maintaining Separation—APG Statement of Policy (Appendix D)

This proposed Statement of Policy could be used to serve as a first step in developing a compliance manual, as well as providing direction on the compliance responsibilities that are expected from the corporate executives and their staff.

The text of the Statement of Policy is found in Appendix D. Essentially, the statement recognizes the nature of the conflict of interest and the significance of the individual IBAs. It requires all APG executives advocate the principles of the Benefits Protocol in the MoU. It goes on to prohibit the sharing of sensitive JV business information with the Executive Vice-President of IBAs as well as to prohibit the sharing of sensitive IBA information (negotiation strategies, positions) with the President/CEO, the Manager of Joint Venture Construction & Operations and the Manager of Finance. Organizationally, this statement should create the necessary security barrier that will ease the concerns of the Producers. It is advisable, however, for the APG to seek counsel on the legal components of this structure.

c. APG's People—Executive Roles and Responsibilities

i) President/CEO

The APG President/CEO has a unique role. While s/he needs to meet the leadership and management demands of running a multi-million dollar operation, s/he must embody the cultural component associated with Aboriginal ownership. An important question is from what group the President/CEO be selected. There seems to be consensus on the APG Board that the President/CEO be Dene since the Dene people are the majority shareholders and it is crucial their culture is represented in its operations.

The necessary roles of responsibilities of the President/CEO are as follows:

- Manage the strategic vision of the APG;
- Establish short-term and long range strategic objectives;
- Maximize returns to APG shareholders;
- Participate as the APG representative on the Joint Venture Management Committee;
- Advocate Aboriginal ownership in the pipeline;
- Maintain open channels of communication within the APG;

As in the Stephen P. Yokich case, it is critical for the President/CEO to build the necessary coalitions to achieve his/her corporate objectives. As a minority party at the JV, the President/CEO must be able to develop supportive networks and reliable alliances in order to build credibility among the other producers. The value of building coalitions is best summarized in the following quotation from the Harvard Business School: "Learning how to build coalitions is a critical skill for getting things done within organizations. It need not be seen as a conspiratorial activity; on the contrary, building coalitions unites people so that you may work together towards a common goal" (see Appendix E).¹⁹

¹⁹ Suesse, Jennifer M., "Building Coalitions," Harvard Business School, Case 9-497-005, April 9, 1997.

ii) Executive Vice-President—Impact Benefit Agreements

The Executive Vice-President plays a crucial role in resolving the conflict of interest in the APG. The rationale for a senior corporate official is as follows: the negotiation and implementation of IBAs is considered very important to the Aboriginal shareholders; during IBA negotiations Aboriginal communities must be confident they have a senior corporate official as an advocate at the APG; this APG executive will have more comprehensive responsibilities, such as community consultations, than the other managers.

As earlier illustrated, the President/CEO will be tasked with managing the ownership component of the APG, while the Executive Vice-President will be tasked with managing the benefits component of the APG. The President/CEO will be the face of the APG to the Producers of the JV, while the Executive Vice-President will be the face of the APG to the shareholders and Aboriginal communities.

The responsibilities of the Exec Vice-President are as follows:

- Provide technical assistance to Aboriginal groups in the negotiation and implementation of IBAs;
- Monitor and advise APG executives and Board of Directors on JV compliance of IBAs;
- Act as the key communicator for Aboriginal communities to the APG on IBA issues;
- Publicly advocate compliance with MoU benefits protocol.

iii) Manager—Joint Venture Construction & Operation

The responsibility of the Manager—Joint Venture Construction & Operation stems from the requirement that any contracts awarded for the construction and operation of the pipeline, must, as specified in the MoU, comply with IBA's and other commitments.

The roles of the Manager of Joint Venture Construction & Operation are as follows:

- Participate on a Joint Venture subcommittee to monitor the pipeline construction process;
- Advocate Aboriginal employment and business opportunities;
- Participate on any Joint Venture subcommittee addressing issues of IBA compliance;
- Run the day-to-day operations of the APG.

iv) Manager—Finance

The roles and responsibilities of the APG Manager of Finance will emulate those tasks of a Chief Financial Officer in a major corporation.

These roles include:

- Supervise and maintain APG accounting systems;
- Prepare annual financial statements for the President/CEO, Board of Directors and Shareholders;
- Ensure financial transactions comply with the necessary rules and regulations;
- Advise the President/CEO and other Executive Officers on financial matters pertaining to the APG.

This executive officer will be primarily tasked with ensuring the financial operations of the APG run smoothly.

VI. Conclusion

In summary, the primary issue has been minimizing the inherent conflict of interest in the APG regarding its business interests as part owner of the pipeline, and the political interests of its shareholders in negotiating and implementing generous Impact Benefits Agreements.

In order resolve this conflict, it has been recommended the APG elevate the Manager of IBAs to Executive Vice-President of IBAs. This new position separates the conflicting ownership and benefits interests of the APG. To permit these executives to fully carry out their responsibilities, the APG should create a Chinese Wall to regulate the flow of sensitive information within the organization. This can be accomplished through the implementation of the Statement of Policy, which will govern the roles and responsibilities of the corporate executive.

Although these recommendations require structural reorganization, they do not change the purpose of the company. In fact, they allow the APG to more effectively carry out its responsibilities to the Aboriginal groups and in a manner that addresses the concerns of the Producers.