



WA N I S K A T A N

An Alliance of Hydro Impacted Communities

November 30, 2020

Minister Responsible for Conservation and Climate
Manitoba Conservation and Climate
Water Power Act Licensing Section
1007 Century Street Winnipeg, Manitoba R3H 0W4

Re: Churchill River Diversion Final Licencing Decision

Dear Minister Sarah Guillemard,

Please accept this letter as an official comment on the final licencing decision for the Churchill River Diversion (CRD) project as part of the public comment submission process. We object to the inclusion of the Augmented Flow Program (AFP) in the final licence of the CRD, since it was not part of the interim CRD licence. We also note that the original licence was issued in 1973, just as Aboriginal rights were gaining prominence and well before those rights were enshrined in the 1982 constitution. Hence, there is no mention of Aboriginal or treaty rights as a condition or constraint on Manitoba Hydro's actions, and it has behaved accordingly. Below we review some of the impacts of the project and call for a more meaningful consultation process with affected Indigenous communities before any final licence is granted.

The Wa Ni Ska Tan Alliance of Hydro-Impacted Communities is made up of over 25 First Nation and Métis communities with representation from leadership and/or community members, 23 researchers from eleven universities, and over 20 environmental and social justice NGOs and legal firms. We have participated in the National Energy Board Hearings on the Manitoba-Minnesota Transmission Project in 2018, organized a delegation to present at the United Nations Permanent Forum on Indigenous Issues in 2019, and we also presented in 2019 to the Standing Senate Committee on Energy, the Environment and Natural Resources with regard to Bill C-69. This was all done to highlight the ongoing environmental degradation and impacts that remain unaddressed, despite erroneous information distributed by Manitoba Hydro to that effect.

As an Alliance we have been documenting the many adverse impacts of hydro development in Manitoba, which are environmental, economic, cultural, and social in nature. The construction of mega dams throughout Northern Manitoba and their accompanying “man camps” have resulted and are still resulting in rape and sexual assault, racism, substance abuse, displacement and relocation of entire communities, the loss of traditional livelihoods, suicide, environmental degradation caused by construction, hydro corridors, fluctuating water levels, and flooding. This same environmental degradation leads to boating and snowmobile accidents, injuries, and deaths. This is far from an exhaustive list, but these impacts give you an idea of what happens when a crown corporation is allowed to operate with limited accountability and little to no meaningful consultation with the communities they are impacting.

Manitoba Hydro, as a Crown Corporation and the province's major energy utility, has a duty to act honourably in its dealings with Indigenous peoples. We believe, and have documented, that it has not done so with regard to hydro-electric development in the province of Manitoba. It is due to these impacts and Manitoba Hydro's failure to address Indigenous concerns that we are sending this letter. According to the Manitoba Government's own Policy Statement regarding their duty to consult:

“The Manitoba government recognizes it has a duty to consult in a meaningful way with First Nations, Métis communities and other Aboriginal communities when any proposed provincial law, regulation, decision or action may infringe upon or adversely affect the exercise of a treaty or aboriginal right of that First Nation, Métis community or other aboriginal community.”

We would like to express our concern that several communities impacted by the Churchill River Diversion have not been adequately consulted by the Manitoba Government during their final licencing decision process, nor have meaningful and honourable efforts been made to conduct the consultation. The communities of South Indian Lake (SIL), O-Pipon-Na-Piwin Cree Nation (OPCN) and Tataskweyak Cree Nation (Split Lake) have not been consulted as per their Section 35 Constitutional Rights. The Supreme Court of Canada has affirmed through multiple decisions – Taku River, Haida Nation, Mikisew Cree, Little Salmon/Carmacks, Rio Tinto, Chippewas of the Thames and Clyde River – that Indigenous communities must receive meaningful consultation in proportion to the amount of impact that federal and provincial government decisions and operations will have on their Aboriginal rights and title.

Along with the meaningful consultation there must be accommodation as required under the Constitution of 1982. To consider a decision without meaningful consultation and the required accommodations is scandalous and reflects poorly on the honour of the Crown, in this case Manitoba. Due to the well-known extent of the material impacts on these communities - economic, environmental, social, cultural and otherwise - the depth of the consultation required as per their constitutional rights as Indigenous peoples is extensive, and would seem to also require accommodation. To date, the level of consultation has been far from sufficient. There is evidence that Manitoba may have been conducting contact with these First Nations for 10 or more years but are not approving official requests for consultation, which have been initiated multiple times without success. It does call into question whether this was the original

intent of this contact process, and if so, this is not how the Crown or representatives should conduct themselves.

In May 2016 the Minister of Indigenous and Northern Affairs announced Canada is now a full supporter, without qualification, of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This declaration is a framework that affirms the rights of Indigenous peoples to language, culture, self-determination and traditional lands. UNDRIP should provide the minimum standard for the government's dealings with Indigenous communities, which includes the Government of Manitoba when dealing with First Nations regarding hydroelectric developments. The concept of free, prior and informed consent needs to be incorporated into the negotiation process.

South Indian Lake (SIL) was once the third largest whitefish fishery in North America. However, after the CRD their industry was decimated and their entire community relocated. To make matters worse, every year, through the Augmented Flow Program, Manitoba Hydro is granted permission by the Manitoba Government to exceed the amount of flooding allowed by their original license. The excessive flooding disrupts animal migration patterns, damages fish stocks, and devastates the local economy of South Indian Lake. It also shows how little respect Manitoba Hydro and the Manitoba Government has for the communities they work with and the agreements they make. Scientific evidence produced in 2012 suggests that the decline of the fishery and SIL/OPCN economy is directly related to the operation of Missi Falls Control Structure with the AFP, evidence that both Manitoba Hydro and Manitoba may be ignoring. There is also confirmation that both MB Hydro and the provincial government have not conducted meaningful dialogue with resource and agreement stakeholders since 2013 and are simply “going through the motions” in dialogue to delay action on serious environmental concerns.

In 1992, the mass environmental destruction sparked a “compensation” agreement with South Indian Lake. It involved 8,500 acres of Crown-owned land for the future reserve and a small amount of \$18 million provided to the community. To mitigate the environmental impacts, the South Indian Lake Environmental Committee was created and funded \$1.34 million annually. Unfortunately, in 2013, Manitoba Hydro cut funding to the committee in half making environmental mitigation almost impossible. In conversation directly with local stakeholders and resource users, it has been confirmed that there has been no significant environmental monitoring or more importantly action in regard to impacts since 2013-14. That Manitoba allows a Crown Corporation to conduct themselves in such a manner is not only irresponsible, but disrespectful.

O-Pipon-Na-Piwin Cree Nation (OPCN) is the most affected community by the CRD and AFP. OPCN has not signed an implementation agreement and continues to fight for implementation of the original Northern Flood Agreement. Thus, they have not received compensation or ability to protect the land and resources they reside on. The fishing industry in OPCN declined by 90%, as fish stocks plummeted and employment became almost unfeasible. Since 1996, two decades after initial flooding of CRD, the fishery had rebounded to pre-CRD levels. Since then, Lake

Whitefish have been severely impacted by the damages caused by the actions of Manitoba Hydro, with the operation of the AFP, with no direct mitigation or actions to address adverse effects.

It is our understanding that OPCN had submitted a reasonable proposal that had strong content on education in relation to CRD, Aboriginal & Treaty Rights, Sec. 35 and potential impacts, yet Manitoba has been strongly resistant and at this stage, given Manitoba's timeline to "approve" the final licence, is in fact a rejection. How this can be construed as sufficient efforts to conduct meaningful consultation is beyond us. Manitoba has also submitted the Regional Cumulative Effects Assessment (RCEA) of the CRD to the RCMP for investigation, signally a need for a much deeper inquiry. The RCEA therefore cannot honourably be included as a possible accommodation measure.

In recent years, it has been made clear that northern First Nations have been victims of rape, sexual assault, racism, and other forms of discrimination and abuse. York Factory First Nation, Tataskweyak Cree Nation, War Lake First Nation, and Fox Lake Cree Nation have all called for a public inquiry into these abuses. The recent final report of the *National Inquiry into Missing and Murdered Indigenous Women and Girls* has also called for a public inquiry into Manitoba Hydro's projects through their Calls for Justice for Extractive and Development Industries (13.4, Page 196):

*"We call upon the federal, provincial, and territorial governments to fund further inquiries and studies in order to better understand the relationship between resource extraction and other development projects and violence against Indigenous women, girls, and 2SLGBTQQIA people. At a minimum, we support the call of Indigenous women and leaders for a public inquiry into the **sexual violence and racism at hydroelectric projects in northern Manitoba.**" [emphasis added]*

We are asking the Minister responsible for the final licensing decision of the Churchill River Diversion project to delay its approval and immediately enter into meaningful discussions with all stakeholders to address impacts and accommodation but also to consider and implement mutually acceptable options for an adjusted CRD that is beneficial to everyone. Indigenous cultures, lives and livelihoods are at stake with this decision, and we implore you to take our concerns and those of others seriously.

Sincerely,



Stéphane McLachlan, PhD
Professor, University of Manitoba
Primary Investigator, Wa Ni Ska Tan Alliance of Hydro-Impacted Communities