

***OOCHINEHWIN*: assessing the keyask project through the lens of aboriginal rights and community member concerns**

By Dr Peter Kulchyski

A report for the Manitoba Clean Environment Commission on behalf of the Concerned Fox Lake Grassroots Citizens.

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*“Oochinehwin”*, according to *Makeso Sahahikan Inninuwak* as articulated in the Fox Lake Cree Nation Report, is “the belief that a negative action against an animal, a person or the land could negatively impact the fate of a person, family members, or the next generation. Other behaviours that could result in *oochinehwin* include being disrespectful, being mean to orphans, and other forms of discrimination. ‘The knowledge that there are consequences for inappropriate behaviours... was an important part of the people’s worldview, and directly influenced the choices they made in their daily lives’ (FLCN 2012)”.

In the spring of 2013 an elder and traditional harvester from Gillam, Noah Massan, decided that his views were not being accurately represented through the consultation processes established by Manitoba Hydro and his band, the Fox Lake Cree Nation. Working with Agnes Pawlowska, a graduate student who had met him during her work for a brief period with the Fox Lake negotiations secretariat, he established a Concerned Fox Lake Grassroots Citizen's group, consisting of himself and a small group of elders, harvesters and knowledgeable band members. The CFLGC was granted intervener status by the Clean Environment Commission into the hearings it was planning on the environmental and social impacts of the proposed Keeyask dam; the CFLGC commissioned research and acted to represent the views and interests of citizens in the community who felt that their opposition to the construction of the Keeyask Dam had not been fairly represented.

This report is based on interviews and observations conducted in Winnipeg and in Gillam, and includes observations and informal material gathered a year earlier in Split Lake. Furthermore it builds upon the very extensive experience in a wide variety of northern communities and with emerging scholarship in the fields of the author. The central perspective adopted here involves respect for *Makeso Sahahikan Inninuwak* culture or 'ways' and respect for the manner in which that culture and those ways are protected by constitutionally entrenched Aboriginal and treaty rights. It should be noted that the doctrine of Aboriginal rights has evolved significantly in the last four decades, as has knowledge of the value and nature of indigenous cultures. Many of the legal agreements, environmental and social impact studies, and traditional knowledge reports

produced by the proponents do not reflect some of the basic points of consensus regarding the issues of Aboriginal rights and indigenous cultures that legal, historical, cultural and political scholars have developed. It is not possible to grasp the stakes involved without some wide-ranging analyses that touch on at least the environmental, legal, cultural, economic, social and political elements as they reflect on each other.

With respect, we therefore strongly recommend that the rush to build this dam be slowed. We know that the power it will produce is not now needed by Manitobans. We know that export markets may not need the power it will produce for some time. We know that the value of indigenous culture has long been underestimated by non-Aboriginal peoples; we know that other models of economic sharing are now available and look more promising than the partnership model being advanced; we know that this project will have significant local environmental impacts of a nature that would severely reduce local harvesting opportunities; we know that a cumulative assessment of all the many past projects is urgently needed before we can properly assess the impact of this one.

*I wish they didn't start it, let's put it that way. They didn't, they don't need it, ok?  
There's no need for Keeyask Dam. [Another dam] is already producing the power that they need, Kelsey's already producing the power, Long Spruce. Why do they need these dams in the first place? (Tommy Nepetaypo, CFLGC)*

We believe that the decisions to be made by the Clean Environment Commission as a result of these hearing are weighty and in fact historic. While we urge that the Keeyask

project and all its ancillary projects be halted or delayed, we will also make suggestions regarding mitigation approaches not currently contemplated by the proponents.

### **Aboriginal and Treaty Rights**

The doctrine of Aboriginal rights has evolved significantly over the past forty years (using the Calder decision at the Supreme Court of Canada in 1973 as a starting point). Whereas for about two decades Aboriginal rights were thought to derive from Aboriginal title (see for example Cumming and Mickenberg), in the 90s scholars (see Kulchyski 1994) and jurists began to see Aboriginal rights as based on indigenous culture rather than land title. In the well known van der Peet (1996) trilogy of decisions, the majority determined that “to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right”; and that has become the accepted standard legal definition. This has placed an increased value than was previously recognized on indigenous culture. In part, it means that although Canada has not ratified the United Nations Convention on Intangible Cultural Heritage (Pawlowska 2013), that form of heritage (‘practice, culture or tradition’) is an established part of Canadian constitutional law.

The sad history of hydro development – which also involved the near destruction of the Nelson River and devastating social impacts on the indigenous communities along it – took place in a context where Aboriginal rights and title were only beginning to be vigorously asserted. The Grand Rapids, Kelsey and Pine Falls dams were constructed with no local First Nations negotiations; by the time of the Churchill River Diversion and Lake Winnipeg Regulation the Northern Flood Committee of five affected communities

was able to broker a Northern Flood Agreement. In 1982 the newly repatriated constitution of Canada included a section that said “existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada are recognized and affirmed”. However, it was not until the Sioui decision on treaties in 1990 (which said that a “liberal and generous” approach must be taken in determining whether a specific agreement is a treaty) that it could be said with any assurance that the NFA was in fact a treaty. And not until the same year and the historic Sparrow decision was it determined that the word ‘existing’ in the constitution did not mean that Aboriginal peoples had to show a documented source for any specific Aboriginal right (the so called ‘empty box’ theory advanced by provincial and federal governments up to that time). From there it was a short step to the van der Peet trilogy establishing firmly that Aboriginal rights were ‘about’ indigenous culture and not solely ‘about’ indigenous land title.

By then, as Manitoba Hydro and a succession of provincial governments ignored or delayed implementation of the NFA and as the severity of the social and environmental impacts of the projects became apparent, in a context in which the Northern Flood Committee and with it the mutual solidarity of the communities was deliberately assaulted, individual communities began to sign so-called Implementation Agreements and communities not signatory to the NFA, including Fox Lake Cree Nation, began to negotiate and sign Compensation Agreements. Ironically, these agreements were negotiated just at the time when the legal value of Aboriginal rights had been entrenched. They do not reflect the newly emergent respect for Aboriginal and treaty rights that had been established at the Supreme Court of Canada, but they did pave the way for the new

round of projects long on Manitoba Hydro's planning table: Wuskwatim, Keeyask, Bipole three, and Conawapa.

Although all the agreements signed pay lip service to Aboriginal rights and to treaty rights, they in fact betray a limited or complete lack of understanding as to what constitutes those rights, and in fact a limited or complete lack of understanding as to why those rights are important. It is, after all, only since 1990 that the court determined Aboriginal rights were not exclusive to rights that could be documented, and only since 1996 that the court determined substantively that Aboriginal rights were grounded in culture. At that time there were relatively few legal scholars in Manitoba who studied these matters and Manitoba – although we have some excellent emerging scholars in the field – can not boast the presence of a scholar the stature of Brian Slattery, Sakej Henderson or Michael Jackson, who were able to have significant impacts on negotiations that took place in their respective jurisdictions.

Before turning to the implications of this legal history on the present debate, a few words are in order about treaty rights more specifically. Many but not all of the indigenous nations involved in the partnership are signatories to Treaty 5. Interestingly, the surrender or extinguishment clause of the Treaty states that the Cree “do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever to the lands included within the following limits”. That is, the treaty purports to surrender ‘rights, titles and privileges’ to lands, but says nothing of aboriginal interests, rights or title to waters (unlike new or modern treaties, which do involve extinguishment

of 'rights, title and interests' to land and waters). This means there may at some point be a legal claim on the part of treaty First Nations around water rights; such a claim would have very significant implications on the current Manitoba Hydro system of relations with treaty First Nations. It should be noted that since the Sioui decision, both what documents are classified as treaties and how the treaty promises to First Nations are to be understood fall under the rubric of a 'liberal and generous' treatment. As well, the oral histories of the treaties are now to be given significant weight in assessing treaty promises and in interpreting treaties, and, finally, the 'honour of the crown' is at stake in ensuring that treaty promises are kept.

Treaty 5, like the other historic, so called 'numbered' treaties, includes a commitment that the Cree (now known as *Inninee* or, as in the case of Fox Lake, *Inniniwak*) would be able "to pursue their avocations of hunting and fishing throughout the tract surrendered".

Finally, it should be noted that the First Nations involved in the partnership were not present or represented at the signing of the original Treaty in 1875; rather they are descendants of people who signed an adhesion to the Treaty in 1908, with one notable exception. In Split Lake, during the treaty signing ceremony, the chief was given the wrong document, an individual adhesion rather than an adhesion on behalf of his people. The error was never corrected when it was discovered in southern Canada. The people of Tataskweyak would have no reason to know that their lands may have been 'improperly' surrendered or not technically surrendered at all: who on the part of government would have an interest in letting them know? They have not been well served by the many

consultants and lawyers surrounding them who appear unaware of this historical fact (it can be easily adduced from a reading of Frank Tough's *As Their Natural Resources Fail*), potentially worth millions of dollars.

### **The Integral Nature of Hunting**

If an Aboriginal right is a 'practice, custom, or tradition integral to the distinctive culture' of the particular Aboriginal group, a compelling case can be made that, as regards *Makeso Sahahikan Inninuwak* the most integral practices are those associated with hunting, trapping, fishing and other forms of traditional harvesting. For a long time scholars have characterized northern indigenous peoples as 'hunting peoples' (see Brody), one expression of a gathering and hunting way of life that can be found among indigenous peoples in a wide variety of regions around the world (though there are also indigenous peoples who belong to agricultural cultures). Hunting was and is the generative activity that was and is the foundation for the culture, and from hunting other distinctive elements of the culture developed. While hunting (and here the term is used to imply hunting, trapping, fishing and other forms of harvesting) has evolved and changed, indigenous hunters are still very much a part of the contemporary historical moment, using new technologies and integrating their activities where possible with market demands for fur or meat.

For many years hunting cultures were stereotyped as 'primitive' or 'savage' and thought to represent an early, outdated form of society that did not deserve to be called 'civilized'. However in the last half of the twentieth century a reappraisal of hunters, lead internationally by now renowned anthropologists like Marshall Sahlins, Richard Lee, and

Eleanor Leacock among others, took place. Hunters were seen to have created their own form of an ‘affluent society’, appreciated for the degree to which it was sustainable and generally egalitarian. This, of course, accords with what *Makeso Sahahikan Inninuwak* and other *Inninux* have called *mino-pimatisiwin* or the good life, a life in balance. These views influenced a generation of anthropologists and other scholars in Canada, who began to advocate for the ethical, ecological and legal rights of hunters as hunters (see Asch, Feit, Brody, Mills, Usher among many others). Their views, that northern hunters were not a vestige of some forgotten past to be modernized out of existence but rather that hunting had far more to offer as a way of life than had been previously recognized, have come to be accepted as the scholarly consensus.

Hence, when there is discussion of Aboriginal rights in the context of *Makeso Sahahikan Inninuwak* one of the meanings at its core is the protection of hunting and related activities. Hunting is not a sideshow to the discussion of the Keeyask project rather it is integral. It is noteworthy that as well as being protected as an Aboriginal right, hunting is also specifically protected as a treaty right. This does not exhaust Aboriginal rights -- Aboriginal languages and Aboriginal spirituality deserve particular mention as other features that would have to be seen as integral – but certainly belongs near the centre of such discussions. And hunting should be very much on our minds in this process; in the assessment of the impacts of the Keeyask project on *Makeso Sahahikan Inninuwak* and on their Aboriginal and treaty rights.

Among the many hunting and fishing stories we heard, Thomas Nepetaypo's story here is interesting for its stress on 'intangible cultural heritage' in the form of the knowledge of the land:

*It was interesting what, how grandpa handled the water and the river and all that. You learn from this. My dad was like that too, he could read the river, like the palm of his hand, and how to stay safe. So we were doing that a few times. And then I crossed that river, I don't know how many times, and I walked with an old guy named Judah Frank, was a trapper, towards Gull Rapids, towards Butnoe but we had to walk further to the Gull Rapids, where the trapline was. And I stayed with him a few times in this cabin out in the bush. And all that is gone. He had to move his, his cabins are gone, they weren't, they were flooded. They didn't, Hydro never really cared, when they build the roads, they bulldoze everything down, with no compensation. The old man never got a cent for what he lost out there. In fact, his son just died not too long ago. He was the only son he had too. But that's where my mother sent me to learn to live off the land. You see, I lived with old Judah Frank. And I remember him taking me across the tracks to Kettle River to go check the nets. Cuz that was [unintelligible] back then. We didn't, Gull Rapids was too far back then. And we had five sacks of fish, man that was the hardest work I ever did, pulling it up the hill. And I had to tell him, "well push it, I can't do this by myself!" (laugh). He had a pole. (laugh) It was fun, it was a learning experience for me. The only way I got away from the old man was sneaking away. I went back home. (laugh). I asked my mother, "will you let me back in? I can't do it anymore, I think I've learned enough for now!" (laugh)*

*Cuz that's where I was most of the time. That's how I got to learn what value I had in my mind and what we were losing. (Thomas Nepetaypo, CFLGC)*

Noah Massan emphasized that trap lines were family affairs, not merely the activities involving a single individual:

*That's another thing too, back in '60s if a guy had that trapline, everybody trapped there like a happy family. Happy family. You know everybody, cuz everybody lived off the land... They asked each other, these old people, "I'm gonna go catch something", you know. She was like "go ahead", you know, everybody was just like a big happy family in the trapline. (Noah Massan, CFLGC)*

This was also eloquently emphasized by Nancy Beardy:

*My dad was a hunter for our family, whoever wanted things, eh. That's the kinda life we had, we lived off the land. And whoever came and got something it's, if they wanted something, like if we were short of lard or something, whatever, you know. Whatever. If we had fish, they'd come and ask if we had fish. They killed a, a sturgeon one time. Got a big sturgeon, holy, was he long. Oh, and we saw, I seen the movie and it was those sharks. I said "Dad, how come you're killing those sharks?" And the thing that I miss too is when we used to go pick berries, like it was a family thing. And my late mum, and my grandma and all like the*

*family would take pans and stuff with them to make bannock out in the bush and uh make tea and we'd pick berries and we'd make the jam outside and it was like a family picnic thing. That's what i miss too. (Nancy Beardy, CFLGC)*

The traditional value of sharing, so key to the worldview of hunting cultures, is highlighted here and is one of the intangible cultural features that each new wave of development modernism erodes.

The language of the Joint Keeyask Development Agreement says very little about Aboriginal or treaty rights, though buried far into the document is a clause that indicates that the JKDA is not intended to 'alter' 'aboriginal or treaty rights':

*"Nothing in this JKDA is intended to alter aboriginal or treaty rights of any of the Keeyask Cree Nations or other aboriginal peoples recognized and affirmed under section 35 of the Constitution Act, 1982 (Canada)" (Joint Keeyask Development Agreement, 24.3.1)*

The language of the clause is worded in this manner – not 'intended to alter' – so as to protect Manitoba Hydro's interest, rather than 'not intended to diminish', which would protect the First Nation's interest. This is because, by not 'altering' treaty rights, the JKDA will not be taken as a treaty in the manner of the Northern Flood Agreement. The language is also an absurdity if we follow the argument on Aboriginal rights that have been advanced here. The JKDA cannot but alter Aboriginal and treaty rights inasmuch as it will have an impact on the cultures of the signatory communities. We will not follow Manitoba Hydro in calling these communities Keeyask First Nations, but will respect

their self-designations. There is no such thing as a Keeyask First Nation, but rather an agreement that four First Nations have each independently signed with Manitoba Hydro; that agreement does not merge these distinct Nations into a single unit and should never be taken to do so.

### **The Value of a Trap line**

A trap line is a defined region in which a trapping family harvests for subsistence and for the market. In Manitoba, these are often specific areas within a First Nation's Resource Management Area. While at one time *Inninuwak* were dispersed in large family groups across their whole traditional territory, today they are concentrated in small communities, travelling out to their trap lines. The development and adoption of motorized transportation has somewhat offset the concentration of people: by using snowmobiles, motor boats and pick ups they can access hunting grounds and trap lines on daily or weekly rhythms of hunting life. While at one time children and young adults were able to walk from their cabins in the early morning to check and set snares and small traps, thus at quite early ages exposing them to the trapping lifestyle, now as a result of previous hydro development related impacts, it is more the case that some faster form of transportation is needed. Yet adult hunters can still regularly go out, do a circuit of trap checking and setting, and return home the same day or with a single overnight stay.

Often it is the case in remote northern indigenous communities that the trapping families are the local social bedrock of community life: offering safe spaces, tending to have more stable families, and people knowledgeable about the language, culture and

land base so central to community self perception. They are the traditional knowledge holders, but they are also so much more: the healers, the moral compass, the strong voices, the source of pride, in community life. This in some ways parallels the value of farming families to southern rural communities, though farmers get far more respect from policy makers than hunters do. In fact, most policy frameworks in any field – health, education, social assistance, and especially resource development – work very much directly against the interests of hunters (see Kulchyski 2006). The twentieth century has in its marrow a hidden story about the survival against extraordinary odds and systemic ignorance and bias of indigenous hunters and with them of indigenous culture itself. Hunters have taken the tools of modernity and used them to support their craft; they have made a virtue of remoteness and isolation; they have in many places successfully defied huge governments and corporations that find their existence inconvenient.

However, we cannot be sanguine about their continued survival. The Fox Lake Cree Nation at Gillam (and Bird) is a case in point. Up to a mere few decades ago they were a remote community using occasional wage work with CN to supplement subsistence hunting and gathering and commercial trapping and fishing. Slowly, with the construction of the Kelsey Dam to support the Thompson mine, then the Kettle Dam, then the Long Spruce Dam, then the Limestone Dam, with all the transmission lines, worker camps, roads, access roads, quarries, dikes, transformer stations and the concomitant influx of non-natives, the Nelson River became polluted, unpredictable and damaged beyond recognition. The territory was and is a damaged land, which in turn affected the fish and animals that hunters rely on.

And yet, some hunters and trappers continued making their patient rounds, continued to engage in modern forms of the ‘practices, customs and traditions’ of their parents and grandparents and great grandparents by maintaining a direct link to the land as a source of sustenance. The trap lines endangered by the Keeyask and Conawapa projects are among the last of the trap lines in close proximity to the communities of Bird and Gillam that most Fox Lake Cree Nation citizens call home. It is precisely as the trap lines are reduced in number to a very few, it is precisely as the very last vital bases of a culture are now threatened, that their value increases exponentially. When Noah Massan’s trap line, and Jack and Christine Massan’s trap line, and the former Frank Beardy’s trap line, are made unusable by these projects, we will have lost something irreplaceable. Flying hunters out to wherever the moose go, flying trappers out to some area they have little direct knowledge of, setting up culture camps in the bush for the young people, while worthwhile ventures will not mitigate that loss. Traditional trappers will not thrive in the temporality of institutionally organized bush planes. Intergenerational knowledge of these specific places of land will be lost. While culture camps and bush camps are useful devices to pass some traditional cultural learning and healing on to children, they do not replace being at the side of a parent and learning the old way, by watching and doing, by being bored or tired enough to listen to stories, by establishing their own embodied connection to their land.

Once these trap lines are lost they will be gone forever.

A trap line that can continue to be passed on from one generation to the next into the future indefinitely is a sustainable base for indigenous cultural survival. A hydro dam

that may, with luck, in a future generation or two, generate some profits to be managed by a small local elite, is not. A hydro dam that, again with luck (and assuming current economic trends do not hold: a very questionable assumption) may generate windfall profits that can be thrust into the winds of a barely functioning international capital market has a certain value to the people of Manitoba. But so does the survival of *Makeso Sahahikan Inninuwak* culture. The latter is constitutionally protected. The former, and there is no kind way to articulate this, is part and parcel of one dominant but largely undesirable human attribute: rapaciousness.

### **Aboriginal Traditional Knowledge Research**

Manitoba Hydro and each of the First Nations partners conducted what is called ‘Aboriginal traditional knowledge’ research around the social and environmental impacts of the proposed Keeyask project. It should be noted that this is an area of research that has undergone a dramatic sea change in the last three decades, particularly lead in recent years by an emerging generation of indigenous scholars. Environmental studies programs, building on the extraordinary land use and occupancy studies of the 1970s, became leaders in the field of what is called TEK, traditional ecological knowledge, while Native Studies programs became a focal point for research into culture and history, although Aboriginal traditional knowledge work is carried out across a wide variety of academic disciplines.

Strikingly many of the best scholarly works in the field involve intensive research with a small number of individuals. Julie Cruikshank’s path breaking *Life Lived Like a Story* is still perhaps a standard setter in the field; it involved very extended and intensive

work with three female elders from the Yukon. More recently Nancy Wachowich's *Saqijuq*, also a compelling piece of scholarship, involved work with three Inuit women, a grandmother, mother and daughter. Indigenous scholars have written about the necessity of a decolonizing aspect of such research (Smith; Cole; Battiste and Henderson) or have interrogated their own traditional knowledge in 'ethno-auto-biographical' fashion (McLeod, Blondin, Bird, Simpson) or have stressed the necessity for research protocols to be grounded in culture (Wilson). By far the best work is based on qualitative research and there are no traditional knowledge studies of any sustained value that have been conducted using quantitative methods.

In order to engage in such research the prime quality required that determines success or failure is, simply, trust. If an elder trusts the researcher, the researcher will have access to a treasure trove of knowledge that cannot adequately be described as 'data'. If an elder does not trust the researcher, she or he will not be able to produce any substantive work of value. Such trust can be built in many ways, but usually requires extended periods of face-to-face contact and often requires mutuality in time spent on the land.

Our research for this project involved some qualitative research into history and social conditions and some traditional knowledge research. We worked with a small group of elders based on face-to-face relationships. We conducted the research in the 'hothouse' environment of a highly politicized setting, but were able to build a strong relationship and generated significant findings.

It was therefore striking to hear from Dr Petch that her team of consultants, working for Manitoba Hydro, did not conduct direct research into certain areas, leaving that to the First Nations partners and subjecting the interview transcripts to data gathering techniques (see November 5, pp 2166-67). As she explained it the next day, "spirituality was considered very personal and very sensitive and it was a theme people were not prepared to discuss with us" (November 6, p 2240). For anyone who has worked in the field over the last decade, those words spell the death knell of interesting, conclusive, lasting or valuable research. While the report conducted by the consultants who were contracted by Manitoba Hydro was a dramatic improvement over the report produced for Bipole Three, it was still barely acceptable and certainly does not meet or come close to a standard of excellence now recognizable in the field. Its strength is in some of the areas of material culture, particularly archaeological sites; but other areas of material culture are barely touched upon. It should also be noted that as social scientists have become more familiar with the specific cultural features of hunting peoples there has been an increasing tendency to develop very particular research methodologies and approaches (Smith, Wilson); using the same approach that might be developed for minority cultures in Europe leaves a lot to be desired. For example the team had no knowledge of sacred boulders except what they found from archival sources. In our brief time, with far less resources at our disposal but with a direct face-to-face relationship with elders, we were informed of the existence of a separate sacred boulder from those discussed in the hearings or mentioned in the reports. We will return to this specific issue as it is of compelling urgency.

It is notable that the three community partners each prepared their own traditional knowledge studies separately from each other. They vary remarkably in quality. The reports produced by Fox Lake and York Landing are very strong documents that deserve a wide audience. They relate in some detail the impacts of past Manitoba Hydro actions on their lands and their communities, frequently using quotations from community members; they also honestly convey a sense of how agonizing the decision to work with the partnership must have been. The voices of the people from these communities do appear in direct quotations in these reports, and gives them a strong value for this process and beyond. However, it should be noted that our own sources from Fox Lake felt strongly that what they were saying was being filtered, that their views were not being reflected in these reports. The report conducted on behalf of the Cree Nation Partners does not reach the standard produced by the other communities and will hardly sustain the attention of those who are paid to read it: there are no community voices to be found anywhere in the report. The one representative indigenous voice directly quoted is that of Joseph Keeper, a very respected – indeed legendary for his earlier strong opposition to Manitoba Hydro -- elder from the community of Norway House. Having myself had occasion to speak to several elders from Split Lake I can affirm that this is unfortunate, as elders like Michael Garson Sr and Christine Garson, and traditional harvesters including Mr Spence, Ms McIvor and Ms Mazurat among others (see November 14), have a great deal of traditional knowledge to communicate. If it was communicated, such knowledge cannot be found in the report that was produced.

Although the proponents insist that the traditional knowledge they studied inflected all elements of their research and project design, it is hard to see substantive

evidence that such is the case. The studies regarding animal and fish populations do not show any strong use of elders' knowledge. Paul Nadasty's book *Hunters and Bureaucrats* demonstrates the manner in which relations between scientists and indigenous elders often do not in practice reflect the broader social value placed on Aboriginal traditional knowledge; it is in fact the rare scientist who can retrain her or himself in the protocols of this form of research. Hence, while traditional knowledge studies were developed there seems to have been little meaningful use of them through the Environmental Impact Statement produced by Manitoba Hydro. This bodes ill for the prospects of seeing traditional knowledge used in an active and affirmative manner in monitoring and managing the overall project. We do, in Manitoba, have one of the leading researchers in the field, Fikret Berkes (see *Sacred Ecology*), and a number of strong scholars who have worked with him or in related ways, including Thomas Henley who spoke so eloquently with the leadership of Shamattawa, and Stephan McLachlan who has leant his expertise to CFLCG.

### **The Partnership Agreement and the Peace of the Brave**

One of the striking features of the proponents' work is the degree of isolation in which they conduct it. There appears to be little reference to outside of province experience in these matters, an unfortunate hubris. It was telling that Ms Cole's point of reference for discussing training issues, for example, was the Limestone Dam project rather than any of the projects conducted in recent decades in Ontario, British Columbia or Quebec (see November 6 p 2207). The most egregious area in which this isolation is manifested is in the economic arrangements arrived at among the proponents, the

Partnership Agreement that ‘allows’ First Nations to borrow from Manitoba Hydro in order to be co-owners of the project.

Through the Partnership Agreements First Nations will be able to use the funds they were awarded in order to compensate them for the impacts of past projects as investment tools, which when combined with funds they will borrow from Manitoba Hydro will allow them significant minority positions as owners of the new dam. Both the community of Split Lake and the Fox Lake First Nation residents of Gillam now live in socially desperate circumstances (I cannot comment on York Landing). Resources are urgently needed to combat the acute housing crises and other attendant social ills that have grown in the community side by side with Manitoba Hydro’s prosperity. It is noteworthy that each of the members of the public health panel presentation sponsored by the Consumer’s Association of Canada affirmed to the Commission in unqualified terms the importance of housing as a social determinant of health (see November 26, pp 3738-39). It would not be a disservice, and is in fact in large measure affirmed by the community’s own traditional knowledge reports, that ‘our’ wealth – including Hydro profits and low electricity rates paid by southern users – has come at the expense of ‘their’ poverty. The whole point of these new arrangements must be to reverse this historical and deeply unjust tendency.

The Partnership Agreements effectively amount to a gamble on the future for these First Nations. If the construction can be done within the parameters of projected costs (which the Wuskwatim experience indicates is no certain matter) and if energy markets begin to expand significantly (and there are two factors working against this: the

natural gas finds through so called fracking and the general economic climate now expected to continue its moribund performance for a greater period than once anticipated), that is, in the most desirable of circumstances, the Nations can hope to begin receiving some income from them in a distant future. Debt loads will have to be paid down. Economic advisors will likely have to be hired. Lawyers will continue to claim their share. So far, what Nisachawaysihk has received from the Wuskwatim project is increased debt. There is another way.

In 2002, faced with intransigent opposition from the Cree of James Bay and Northern Quebec, then Premier Bernard Landry brokered a deal known in English as the Peace of the Braves (formally called Agreement Respecting a New Relationship Between the Cree Nation and the Government of Quebec). It guaranteed funding at a rate of seventy million dollars per year over a course of fifty years, to a total of 3.5 billion dollars, at which time the deal would be reopened with an expectation that more financial resources would be forthcoming. The money began to flow immediately after the deal was ratified, before the new hydroelectric projects in that province were even built. Instead of gambling on the possibility of deferred windfall profits, those communities chose guaranteed resources that would come to them when they needed them: now. I was informed by one of the negotiators of the agreement that the Cree of Quebec were offered a joint ownership arrangement not unlike what has been proposed here in Manitoba. They deliberately rejected it.

Although in the past Manitoba Hydro has said the two situations are not comparable, this is a dubious – indeed laughable -- proposition. In both cases, a major

public hydroelectric utility desiring to build more dams to generate electricity for profit and needing support of local Cree communities developed agreements to allow the projects to proceed. One form of agreement is the Partnership Agreement arrived at in Manitoba. The other is the Peace of the Braves.

Over the course of the past few years I have spoken with several band councilors from northern Manitoba communities, including from Tataskweyak. They have never heard of the Peace of the Braves and have affirmed that they never attended a workshop or any educational session in which they were presented with that option. The phrase ‘resource revenue sharing’, another model that could be used, also drew a complete blank.

It is my considered view that a combination of the rush to build these dams, the close interconnection between the network of consultants, lawyers and Manitoba Hydro who work for themselves and for the First Nations, the divisions between the First Nations, and the general refusal of all these parties to look outside the jurisdiction for best practices, has led to a situation in which arrangements that do not alleviate urgent social circumstances but rather gamble on uncertain prospects and hope for significant but deferred benefits are being promoted. And this is to the extreme detriment of the indigenous communities themselves. It is to their dire circumstances that we must now, unavoidably, turn.

**Today’s Communities Are A Result of Yesterday’s Actions**

While we have unfortunately not been able to access the SCHIP research prepared by Fox Lake Cree Nation, we have through both research and observation, and a study of work completed by both the proponents and some of the interveners, been able to say a few things with certainty about current social conditions. Both Tataskweyak at Split Lake and Fox Lake Cree Nation at Gillam are troubled communities, evidencing very dire social and economic circumstances. Community members who have lived through the post dam decades directly tie these circumstances to the variety negative impacts of previous Manitoba Hydro projects.

In the spring of 2012 I made two visits to Split Lake at the invitation of a coalition of community members who had engaged in an uprising that temporarily shut down the band office and the Keeyask negotiations office. I found that the existing shortage of housing was exacerbated by the very poor, low cost housing that had been built in the recent past to meet the overwhelming demand: houses (trailers really) were built on foundations of plywood. One was so infested with cockroaches that it was a danger to public health and had to be destroyed. Several were being used in spite of the extensive presence of black mold. Children were playing with mouse droppings in the temporary classrooms being used because the school had been damaged in a fire. In early spring there were homeless people gathered around the fire that had been built and sustained by the local protesters. A palpable sense of impoverishment and of frustration pervaded my conversations with local people. Although these conditions are confirmed by quantitative research it is very difficult to convey the overall sense with numerical data: on the ground Split Lake feels like a hopeless and devastated place.

While the Fox Lake Cree Nation citizens at Gillam have also experienced severe impoverishment due to the impacts of Manitoba Hydro, the community does not appear to be in as dire straights as its neighbor. However, the circumstances of Gillam create in some ways an even more socially debilitating impact: the First Nations residents live side by side with a large permanent community of well off Manitoba Hydro workers, who reside in brick homes, landscaped neighborhoods and give the appearance of any relatively affluent southern suburban social landscape. The *Makeso Sahahikan Inninuwak* at Gillam invariably live in substandard trailers, often immediately adjacent to affluent houses of Hydro employees.

*And uh, today this is how I live, I got a burnt element there, and uh, burnt knobs, and I don't know, 20 or 15 year old, of dirt there. And I got no water tap, can you look at this: see. I got cold water, but I don't have no hot water. See no hot, I don't shower or anything. This is where I get my hot water. See? I'm, I'm heating it up, I got stove on every morning. I wash like this. I heat up, I put in the tub, and I sponge bath every morning. For two years, nobody wants to help me in my home. And I ask, when I ask help in the band office, "you're on your own." How can you say that when my name is on the roster and money goes in there for me too. (Johnny Beardy, CFLGC)*

Conditions in Bird are arguably as bad or worse: in 2012 a band office in the community was so infested with mouse droppings that it was considered a health hazard and many people refused to enter: and that was an office! The Manitoba Hydro employees have subsidized electrical rates and often enjoy the use of company vehicles. The fine public

facilities of Gillam are designed to service their needs. In every element of its social fibre, the community of Gillam treats its First Nations residents as second-class citizens. In many ways, a poverty located immediately next to affluence is even more socially debilitating than a poverty that only experiences itself. The story of Gillam in this regard is an echo of the story of Grand Rapids: Hydro wealth set against a backdrop of Aboriginal poverty.

While the most common refrain in response to this circumstance is, as for example enunciated by Manitoba Hydro spokesperson Glenn Schneider in the film *Green Green Waters*, to the effect that ‘all Aboriginal communities are poor, its just a sad fact’, experienced researchers know that the north contains two distinct kinds of poverty. One is a poverty vis-à-vis western living standards that is alleviated by a strong connection to the land and traditions of the indigenous Nation. This is a modern form of the ‘affluence’ found in traditional hunting cultures. My Inuit friend, for example, Jaco Ishulutak lives in a house that is crowded and substandard, with older furniture and few amenities. But Mr Ishulutak is one of the wealthiest people I know: he eats organic meat he has procured for himself, he drinks pure water that runs directly off glaciers, he is his own boss, he is respected in his community. He is a hunter and an artist, and the intellectual demands of hunting are such that this confluence is not unusual. To the untrained eye he is poor. To the trained eye, his wealth does not take the form of excessive cash, bling, the latest technological wonders, or such. It takes the form of time, of quality of life, of community and of a rich cultural heritage. There are many communities across the mid and far north which statistically look somewhat better than, say, Split Lake, but still appear as poor. And while there is poverty there, there also exist in these places – Poplar River in

northeastern Manitoba is a good example – a form of wealth that western society has not learned to acknowledge or measure.

The poverty that exists in Split Lake and Gillam is not solely the result of systematic federal underfunding that can be found across most Aboriginal communities. Manitoba Hydro's war on the Nelson River has reduced the opportunities for well being in these places.

*Then that explosion came. Man, they set up a camp, then, and more booze started coming, even though the bar wasn't very big at the time. Booze started coming, people bringing in booze, and our boys starting to quit school at 16, just to go to work on short-term jobs. Things changed drastically around '70, '71 things really changed. My friends started quitting school to go to work. And then you got introduced to the camp, because the hotel there, the big bars. Alcohol, they all went crazy. Ain't nobody's fault, I guess, I guess we had a choice, we could've made a choice back then but I guess the excitement and the thrill of everything that hit you. It was all that money you never had, you didn't know what to do with it. We had to spend it somewhere, and there was a bar there and there was other stuff, whatever drugs were back then. (Ivan Moose, CFLGC)*

Another seemingly small but actually momentous example might be useful to demonstrate the particular way hydroelectric development has impacted indigenous communities. For an indigenous northern child, one of the compensations for not having the latest ipad in the summer is instead having a glorious place to go swimming: the nearby pristine lake or river. There, other children laugh and swim, families gather for

bbqs and picnics, and any specific child can go swimming as the fancy takes them. This element of childhood has been stolen from the children of the communities along the Nelson River. For Fox Lake citizens, the swimming place was at nearby Landing Lake, eventually so polluted by the increased air traffic that it became too polluted to use. Mitigation of this, for example in Nelson House, involves taking a bus to the Thompson swimming pool or in Gillam using the local pool, which is too expensive for many First Nations citizens to afford. In a swimming pool, the richness of the experience is lost: one abides by the rules and hours, class differences appear among the children and much of the joy is leached out of the experience. This is not a result of the so-called 'normal' poverty in Aboriginal communities; it is a direct result of Manitoba Hydro's actions.

The stories of Manitoba Hydro's impacts can be found throughout *Ninan*, and the reports conducted by Fox Lake, though our own informants were eloquent on the subject:

*My deal with Manitoba Hydro, it was the construction workers that were doing most of the, all the, all the stuff. But it was Hydro that hired all these people to come here, eh. Yeah, most all the construction workers that were doing all the, all the abuse and everything. But I guess it was Manitoba Hydro's fault cuz they were the one's that hired them and brought them over here and paid them to do this... (Jack Massan, CFLCG)*

Christine Massan provided a description of overall treatment of local people by Hydro's workers:

*I want to, uh, talk about, a little bit, until very recently, how badly treated Fox Lake members and, uh, the Métis that worked with Manitoba Hydro. It was not easy, I mean they were called out and made fun of, a lot of racist jokes and*

*pictures and that would be put up on the job site. And, uh, Manitoba Hydro had their own, uh, what do you call them, sort of like a counsellor, he would come in from Winnipeg and work with some of them. And then, uh, I was hired as a Community Liaison Officer so I did a lot of, uh, the work with trying to make things better for everybody. And I heard some pretty horror stories about things, jokes, pictures, uh, people putting things in a coffee room, say with a sticking a feather in a little doll or something. (Christine Massan, CFLGC)*

The most horrifying story we heard, in a litany of horror stories, was told to us by Nancy Beardy, who specifically said that she wanted people to hear about this, to know what happened to her, in the hopes it would not happen again.

*I was 14 by this time, eh. And that following year we came to visit and that's what happened to me when those guys attacked me. I was 13 when we came back and then that was my birthday that year and then that happened I was 14 that year and that happened. There was 3 of them in that vehicle. Sometimes I think that I can see them. That's why I turned to drinking so much at such a young age. Cuz I feel so much hurt went by. It's just amazing I went, that I'm still here sometimes because of what I did after, trying to commit suicide so many times. And um what really hurts me was when those guys grabbed me and beat me up they raped me and must have knocked me out, I don't know cuz I was fighting back. and um. For them to, like not even to acknowledge it, like not even to let people know what happened out of, um, out of this community and like higher, higher states of Hydro I mean. They, they covered it up, they seem like they did cover it up. (Nancy Beardy, CFLCG)*

We will return to the issue of sexual assault below.

Another small but telling point in this regard that emerged from our interviews came from the fact that Manitoba Hydro was not the first non-Native institution to affect the people of Fox Lake. For many years before Manitoba Hydro's presence, the dominant company in the region was Canadian National Railways. The community of Gillam owes its presence at the current location in large measure as a result of being a railway stop on the rail line to Churchill. Aboriginal workers found employment with CN over many years and adapted their seasonal rounds to the wage work they could regularly acquire. The town the established, 'on the other side of the tracks', was actually we are told on CN land. It is very striking that no one we spoke to about the CN experience harbors the kind of deep and lasting angry feelings that are often directed towards Manitoba Hydro; CN did not build a legacy of hatred in its relations with the local people in the manner that Manitoba Hydro quickly established and continues to maintain.

Every community has its own story and its own specific reasons when the cycle of real poverty takes over. Tolstoi's truism about families – 'each happy family is alike but every unhappy family is unhappy for its own distinct reason' – is true about Aboriginal communities. For many, decades of federal government perfidy has been a key causal factor in reducing communities from traditional forms of wealth to real poverty; the other key driver of such a transition has been resource development. Resource development everywhere in the north comes with heralds of modernism and bright promises of well being, and almost invariably leads to impoverishment, an impoverishment that can no longer be leavened with glorious moments out on the land following the footsteps of one's ancestors. The continuing story of Manitoba Hydro does not deviate from this latter pattern.

## **Governance From The Outside In**

It is very rare in this day and era to find anyone from outside of a community who is prepared to criticize the elected leadership of an indigenous Nation. This itself has in general been a positive historical development and is a result of the years of struggle of many First Nations to assert their capacity and their right to make decisions for themselves. We live in an era where Aboriginal self government is rightly seen as a desirable and critical goal among First Nations in Canada, and in the years that First Nations will transition towards forms that reflect that goal, elected community leaders must be respected as legitimate representatives of their people. The CFLGC, of course, is a local based organization and is free in a democratic context to air grievances and opposed views, which the Fox Lake Cree Nation has to their credit fairly acknowledged. Furthermore, where the consultants, lawyers and advisors to a Nation's leadership have mislead them or not adequately provided them with the broad information base required to make decisions, there is room for criticism aimed at promoting discussion.

In fact, although we are in the 'era of self government' as a desirable paradigm, local government decision-making powers are frequently over ridden by outside interests. Most commonly and frequently, the federal government has responded to its systematic underfunding of First Nations by putting those that find themselves in financial difficulties into receivership. Federally appointed auditors have become the new Indian agents exercising outside control of communities. However, there are several ways in which the historic and contemporary interests of Manitoba Hydro have also lead to interference in local governance.

Most prominently and specifically related to the Fox Lake Cree Nation, the creation of the municipality of Gillam has historically and continues to mark an extraordinary intrusion into the abilities of the Fox Lake Cree Nation to build and govern a community. Gillam was created as a local government district in the mid 1960s specifically to facilitate hydro development; it was one of the largest such districts in Canada. Before and after the creation of Gillam a small vibrant community of indigenous people lived across the tracks and in houses scattered through the present core of the municipality. Many of these houses were destroyed to suit the needs of hydro and its non-Native workforce. As well, a new governance structure gained control of the whole local area, passing zoning laws and establishing restrictions that made it difficult for the *Makeso Sahahikan Inninuwak* to construct the community they desired. Yet, whenever Manitoba Hydro wanted or wants a zoning law changed, an area of land to build a suburb on, or any other regulatory allowance, the municipality with alacrity acts in their interest.

*That's another thing is Manitoba Hydro can build houses where ever they want, and us, living in trailers like this, and we can't build no houses. Manitoba Hydro got everything that they want, they just build.* (Jack Massan, CFLCG)

While relations may have improved in more recent decades, the creation of the municipality was part and parcel of Manitoba Hydro's involvement in the region and from the First Nations perspective was no more or less than a land grab. It is still the case that local leaders struggle with the municipality, which does not want to allow lands to have reserve status within the boundaries it claims control of. A community divided by

class status (house or trailer, hydro employee or First Nation's citizen) finds that division articulated in the presence of two governance structures, the municipality and the First Nation. While there are benefits to the Hydro-municipality presence – paved roads, a swimming pool, excellent quality local public facilities -- this continues to severely restrict the Fox Lake Cree Nation's ability to improve the well being of those of its people who live on site.

In the process that has lead to the current agreements, Manitoba Hydro has established another intrusion in local government through the widespread use of confidentiality agreements (see 24.2.1 of the JKDA). While confidentiality agreements may be required for a select group of leaders on a narrow range of financial issues, local transparency and accountability have been negatively impacted in a manner that must be of serious concern. For example, there is currently a band councilor from Tataskweyak, Solange Garson, who cannot serve on council because she has steadfastly refused to sign a confidentiality agreement. Interestingly, the creation of the Cree Nations Partners itself has a significant impact on Tataskweyak citizens to monitor spending by their governments: previous to the Cree Nations Partners reports on spending funds acquired through compensation and implementation agreements were a mandated element of local governance. By creating the Cree Nation Partners under a regime of confidentiality, this degree of local reporting ceased, and much less transparent management of funds in part leading to the uprising of 2012 became the norm. Finally, among the Fox Lake Cree Nation research reports into the social impacts of Manitoba Hydro, the so called SCHIP reports, have been so constrained by confidentiality agreements that the researcher cannot publish or use and community members cannot see the draft report.

An additional issue of some concern surrounds the levels of voter participation required allowing the partnership agreement to proceed. While historically a majority of voters were required to engage in any major land related matters among a First Nation, and while the standard deployed during the Wuskwatim project required a majority of voters to participate (meaning that not voting counted effectively as a no), the standard used during the Keeyask project was much lower, a simple majority of voters. One wonders how low the voter turnout would have had to have been before the process lost all legitimacy, but it is clear that legitimate questions can be raised about the level of support for this project based on the relatively low standard the Fox Lake Cree Nation imposed upon itself to determine community support and agreement for their approach.

### **An Essay Concerning Predator Consultants**

A final issue concerning interference in local governance deserves special treatment here, the issue of ‘predator consultants’. While the new understandings and appreciations of indigenous cultures and Aboriginal rights have fostered a generation devoted to respectfully assisting with community development and while out of this generation an emerging cohort of lawyers, historians, geographers, anthropologists, economists, governance experts and so on have come to invent new ways of working with Aboriginal communities, there also exist individuals and agencies whose devotion to the issue begins and ends with the profit motive and whose structural interests may sometimes deviate from those of its indigenous clients. For example, legal advisors to a community on resource development agreements often will receive significant portions of their payment as a percentage or out of a final agreement. That places the advisors in the

position where it is in their financial interest to advocate for signing of an agreement, even when it may not be in the best interests of the community over the long term. Rarely are second opinions or out of province opinions solicited, and rarely is the interest of the legal team clearly enunciated. This is a structural problem that has been present across Canada.

The term ‘predator consultants’ can be used to describe consultants who consistently put their own self interest far ahead of the indigenous communities they purport to serve, without ever declaring it. Many outstanding and exemplary legal and consultant advisors have worked in northern Manitoba and can be found in these hearings. But it is also clear that predator consultants have operated in northern Manitoba and, with the significance of the financial transfers underway even in the process of negotiating these agreements, have an interest in continuing to operate there. Main industry proponents of a project, like Manitoba Hydro, have no interest in raising the issue and are satisfied as long as their proposals move forward.

Predator consultants can be identified with reference to some combination of the following criteria:

1. although they may have established a long term relationship with a First Nation, they have engaged in very little training or capacity building that would allow the First Nation itself to assume any of their functions. Such training would impede their ability to work for the First Nation on an ongoing basis. Hence they are invested in creating a ‘dependency’ relationship rather than a self-sustaining and independent First Nation.

2. A predator consultant may deploy staff time on a project for a community that approximates the whole total staff time available to the community itself in its normal functioning. If more, an equal amount, or near an equal amount of staff are working for a community through employment with a consultant, when staff resources within the First Nation are always in desperate need, this indicates a problem.
3. A predator consultant's fees will either involve a percentage of whatever final agreement is being negotiated or a fee structure that amounts to levels approximating such a percentage, often through the use of 'add ons' in specific contracts where excessive fees can be charged.
4. Predator consultants do not present communities with options, they negotiate within the parameters established by the industry interests and have no interest in pushing the envelope. They also do not recommend outside of jurisdiction second opinions.
5. Predator consultants will ensure that Request For Proposal processes lose transparency and accountability and therefore cannot be said to be meaningfully biddable by other firms.
6. Predator consultants will often retain copyright and intellectual property ownership over materials they have gathered with the First Nation.

There is no simple way to determine whether a First Nation is engaged in a relationship with predator consultants but these factors certainly would indicate a problem and give the leadership of a community pause to review their relationship. A few other common features that may signal such a problem are if the consultant/advisor is not comfortable

staying overnight or even visiting the community; if the consultant/advisor enjoys more convivial relations with the industry representatives than with the community leadership; if there is no end in sight to the paid relationship that the consultant/advisor has established with the community; if the consultant/advisor lends resources to specific community leaders during elections or referenda.

In a context where communities are in urgent need of whatever resources they can amass in order to alleviate very distressing social circumstances, and where significant financial resources are flowing to communities through negotiations and, with good fortune, implementation of agreements for the Keeyask and potential Conawapa project, it is important that community leaders periodically review their relationship with the outsiders whom they employ to assist and guide them. These criteria may assist them in that task.

### **The Keeyask Project**

Four specific and distinct issues around the Keeyask project are worth at least some comment here. The first regards training issues. It is interesting that under questioning senior Manitoba Hydro spokespeople showed no familiarity with the concept of a 'racially stratified work force', given that the issue so named has a strong bearing on the success of their efforts to incorporate *Inniniwak* workers. A racial division of labour or racially stratified work force can be used to describe a workforce that reflects and helps entrench social hierarchy based on race often found in society at large. It is a common feature of structural racism: the mainstream individuals gain all the high status positions while the racially marginalized are employed at the bottom of the work

hierarchy. Although the term ‘racism’ has been bandied about in the Clean Environment Commission hearings we have no intention of participating in mere name-calling. It is important to recognize that Manitoba Hydro’s workforces have been and remain racially divided. Indigenous workers are employed in the greatest numbers in the most menial work. The major construction supervisory positions, the long-term high status engineering positions, will continue to go to non-Natives unless affirmative measures are taken. This racial division of labour is structured into Manitoba Hydro itself as an organization and is reflected as well in the construction camps and workforces that will exist to build the Keeyask dam. It is distinct from the views of individuals working for and representing Manitoba Hydro, who may and often do hold honorable views and make strong efforts to combat this deeply socially undesirable behavior and ideology.

It is, again, unfortunate that Ms Cole felt that the number of indigenous people employed at the Wuskwatim and Limestone dam was the worthy benchmark to use in assessing the success of training and employment. And, to be clear in what is a strongly adversarial context, I am not alleging that Ms Cole is in any way a racist and admire the fact that she indicated a personal and organization sense of overall responsibility for the well being of the partner communities (see November 5, p 2169: “the social well-being of the communities is incredibly important to us”). In the context of a racially stratified work force, indigenous workers will not be retained – will quit after a short engagement – because the work environment is ‘toxic’; if indigenous workers are primarily engaged in low status and demeaning work, the informal mechanisms of insult and abuse can circulate easily in spite of official policies and cultural awareness training. Ivan Moose was among those who spoke about this issue:

*Maybe make the work site better. If you talk to the current ones that work there, they don't say very much because they're scared of repercussions, what might happen to them at work. They just, a lot of unfair treatment at work but nobody there's nobody there to talk for them. We do have sometimes, where remember that [unintelligible] liaisons, but the liaisons were just seem to be talking like they're friends to these people. They need somebody in there that's hardcore, that can say "wait a minute, wait a minute, this is enough! You can't be treating our First Nations people like this!" They got to be treated with respect. Of course they're going to ask that question, our simple answer is why [don't] you start treating our people with respect when they're on the job site. (Ivan Moose CLGC)*

Hence, bringing indigenous workers for a brief time onto a project before they feel compelled to leave is not a standard of success. And the numbers provided by Manitoba Hydro as well as evidence from Nisichawayasihk indicate that this pattern appears to have been in place during the construction of the Wuskwatim dam.

An additional issue that is serious enough to discuss here has to do with protections for First Nations' women. The experience of Nancy Beardy, who was sexually assaulted by visiting Hydro workers, should both horrify while not surprising us. Aboriginal women remain among the most vulnerable population groups in Canada and the issue of missing and murdered Aboriginal women is the most egregious exemplar of their status and struggles. Non Aboriginal workers a long way from home will take opportunities to 'cruise' nearby communities and the worst of them may prey on any single female indigenous persons they find in Thompson or in Gillam. Women in Fox Lake are concerned as well about the many children of consensual relations who will be abandoned by fathers when the camp boom ends, also clearly an aspect of the previous

history. While in a free society there are clear limits to the degree of policing of workers, perhaps three mitigations can be contemplated. First, the widespread use of pornography in work camps could be discouraged, in part by requiring that no visible pornography be displayed if any worker desires their room to be professionally cleaned. Female cleaning staff should not be subjected to demeaning images. This should also be true of public spaces where computers and televisions should not be left untended on pornographic channels or sites. In addition, if a series of posters that call for respect for Aboriginal women were prominently displayed this might remind visitors that these women are sisters, daughters, mothers and should be respected. Thirdly, cultural training that workers will undergo should contain specific components that deal with indigenous women, calling attention to the issue of murdered and missing women as a social problem, and perhaps even relating stories such as that of Nancy Beardy. Fourthly, the First Nations partners should all undergo a program of educating and informing their young women of the new danger that may surround them. Walk home programs might be established to ensure that no single young aboriginal woman is left in an abandoned and vulnerable state. While this level of detail is not necessarily appropriate to the Environmental Impact Statements, and the proponents may be already contemplating these or similar measures, we feel it is necessary to suggest whatever we can to ensure that another young life is not ruined: one incident of this sort is too many.

Sacred boulders are a key part of the tangible and intangible cultural heritage of *Inninuwak*. They are ‘tangible’, but the knowledge of them as sacred sites is intangible. Ms Petch alluded in her testimony to an archival reference to a sacred boulder near the site of the Keeyask rapids, but could not find it: “there was one site in the historical

record that Peter Fidler identifies as an offering stone at the rapids. We searched for that stone and could not find it. And I believe that it probably ended up in the river, very unstable bank at that particular area. That was the only one we were aware of” (November 6, p 2247). There was also reference to a sacred boulder on the Butnau River in the hearings, and our interviews made mention of a healing ceremony conducted ‘far off in the bush’ at a sacred boulder. These places will become more important to an emerging generation of young *Innuwak*, particularly as their opportunities to connect with their heritage through traditional harvesting activities become eroded. In contexts where hunting is no longer viable, spirituality in its traditional forms becomes of increasing importance in cultural retention. Ms Petch does not discuss how intensive her search for the offering boulder mentioned by Peter Fidler was or whether she coordinated her efforts with local elders; and the other sacred boulders alluded to do not seem to have been mapped. Before the dam and attendant activities, an urgent effort should be made to do so: two great spiritual landmarks, the ‘footprints’ and ‘weesakijak’s seat’, were effectively destroyed by the first wave of Hydroelectric development on the Nelson River. While Canadians were shocked when the former Taliban government of Afghanistan destroyed two ancient Buddhist statues, there was little public concern over our own destruction of those powerful sites. Both the doctrine of Aboriginal rights and the human rights doctrine of freedom of religion require that bulldozers do not casually destroy such a vital part of *Innuwak*, Manitoba’s and humanity’s heritage.

Finally, it is our position that the risk of mercury contamination has been seriously underestimated. Minimata disease is a horrendous and debilitating illness and should not be treated cavalierly. Ms DaSilva’s experience suggests that the issue is not so far from

home as has been suggested; as importantly and even though the different types of mercury exposure pose different though inter-related public health problems too little is still known not to treat the issue with enormous caution. As there remains an international scholarly debate about how many parts per million exposure levels are safe, and how long mercury will remain in contaminated areas, a much more purposive undertaking should be engaged to monitor the issue, and human testing must be a component of such monitoring. The precautionary principle would ideally inform our actions – not undertaking an action until we know it is safe – but in its absence it is our belief that a much more robust monitoring regime around mercury contamination be engaged, rather than a simple public awareness (“don’t eat fish”) campaign, which is the least expensive and generally ineffective response.

## **In Conclusion**

As stated at the outset, it is our view that the Keeyask dam will prove detrimental to *Makeso Sahahikan Inninuwak*. Although a whole host of experts working with the proponents have testified that the environmental impacts, when balanced by mitigation efforts, will be neutral, this defies common sense and past experience (which Fox Lake Cree have too much of). The combination of dams, roads, dikes, quarries, bipole lines, transformer stations, camps, newcomers, on top of past cumulative effects, can simply not be adequately mitigated. The lands and waters of this region will be irrevocably altered for the worse and this will affect the lives of local hunting families and therefore their Aboriginal rights. This point was made repeatedly by the people we interviewed:

*See, that's another thing, what we're saying. What are we gonna do to help the animals? Like, gotta help the Caribou. How can we help them? Well the best way to help them is, don't do anymore damage to the bush... You know, just, just leave everything, what's, how it looked before, eh. You can't, that's the best way to help the animals. Yeah, you don't, uh, just forget about all the construction that's doing, that's going on in the bush. (Jack Massan, CFLGC)*

The gains to be made through a risk-investment in the dam will be long delayed for the communities who are even now in urgent need of social support, and it is entirely possible that the communities will not gain anything but increased debt from the project, while having invested significant financial resources in it. For these reasons, we urge that the dam not be built. At a minimum, we urge that its construction be delayed until both a proper cumulative assessment of social and environmental impacts can be conducted, until the broad economic outlook for the dam is significantly improved, and until the communities themselves have a chance to properly inform themselves of alternative mechanisms for economic agreements that may be of greater benefit in the short and the long term.

What follows is a list of recommendations based in part on what has been said above.

### **Recommendations:**

1. **No dam be built:** recognizing that the Fox Lake Cree Nation has already been effected to a huge extent by previous projects and that the Keeyask project will render one of the last nearby viable trap lines of the Nation virtually unusable, it is time for the energy hungry south to find another way to meet its needs.

2. **Conduct an full and exhaustive cumulative impacts social and environmental review:** before constructing any further projects, engage in a proper review of the cumulative impacts of previous projects, including the financial arrangements associated with them.
3. **Conduct a political and economic review of agreements:** it is time for a new relationship between the Government of Manitoba, Manitoba Hydro, and the Inninuwak of northern Manitoba that provides immediate benefits and does not involve a risk for profit model.
4. **Change the word ‘alter’ to the word ‘diminish’ in 25.1.2 of this or future agreements:** this language should be in the agreement to protect First Nations, not Manitoba Hydro. A sentence can be added that says “for further clarity, nothing in this agreement shall be deemed to be a treaty as defined by s 35 of the Constitution Act (1982), Canada.”
5. **Offer an apology:** Manitoba Hydro should, in appropriate settings, offer formal apologies to each of the First Nations detailing some of the past injustices and damages inflicted.
6. **Conduct independent monitoring and review of training programs and employment:** independent researchers should be engaged to monitor and review the employment and training experience at Keeyask and make recommendations for improvements where they are called for.
7. **Subsidize electricity for First Nations partners:** if electricity can be subsidized for Manitoba Hydro employees there is no reason why it cannot be subsidized for the individuals in the communities whose resources are being used.
8. **Design camps that can be turned into sustainable local housing:** given the investment in worker camps, these should be designed on a model that would allow the structures to be properly repurposed as housing for local communities.
9. **Establish river rehabilitation plans and funds:** set aside a miniscule percentage of profits for a fund that would be used to decommission dams in a manner that allows for proper river rehabilitation, ensuring that when the time comes such funds are available.
10. **Engage in period reviews of First Nations consultants and legal advisors:** using whatever criteria deemed appropriate, but ideally engaging an outside or independent party to conduct on a periodic (five year or so) basis formal reviews.
11. **Develop a strategy for protection of Aboriginal women:** such a strategy could include specific components of the cultural sensitivity training, camp based poster campaigns, anti pornography campaigns, and local cautionary awareness.
12. **Identify, find, secure and protect sacred sites:** these would include the boulders discussed in research findings and hearings.
13. **Engage in executive employment training:** Manitoba Hydro as an organization should consider an Aboriginal executive training program, and participate in staff secondment programs with the First Nations it partners with.
14. **Increase mercury monitoring program:** ensure that people are tested before, as a baseline, and in regular periods after Keeyask construction.
15. **If another dam is contemplated, use a fundamentally different form of agreement:** at least avoid using the same plan repeatedly, the partnership model, when there is still no proof it will work for the well being of communities. Give

communities the option of revenue resource sharing, or of a peace of the braves type of agreement.

## **Bibliography**

Asch, Michael. Ed. *Aboriginal and Treaty Rights in Canada*. Vancouver; University of British Columbia Press, 1997.

Battiste, Marie and James (Sa'ke'j) Youngblood Henderson. *Protecting Indigenous Knowledge and Heritage*. Saskatoon; Purich Publishing, 2000.

Berkes, Fikret. *Sacred Ecology*. New York; Routledge, 2012.

Bird, Louis. *Telling Our Stories*. Edited by Jennifer Brown *et al.* Peterborough; Broadview Press, 2005.

Blondin, George. *When the World Was New*. Yellowknife, NWT; Outcrop, 1990.

Brody, Hugh. *The Other Side of Eden*. Vancouver; Douglas and McIntyre, 2000.

Cole, Peter. *Coyote and Raven Go Canoeing*. Montreal; McGill-Queen's University Press, 2006.

Cruikshank, Julie. *Life Lived Like a Story: Life Stories of Three Yukon Native Elders*. Vancouver; UBC P, 1990.

Cumming, Peter A. and Neil Mickenberg. *Native Rights in Canada*. Toronto; The General Press, 1973.

Feit, Harvey, Mario Blaser and Glen McRae. Editors. *In the Way of Development*. New York; Zed Books, 2013.

Kulchyski, Peter. Editor. *Unjust Relations: Aboriginal Rights in Canadian Courts*. Toronto; Oxford University Press, 1994

Kulchyski, Peter. *Like the Sound of a Drum*. Winnipeg; University of Manitoba Press, 2005.

Leacock, Eleanor and Richard Lee. Editors. *Politics and History in Band Societies*. Cambridge; Cambridge UP, 1992.

McLeod, Neal. *Cree Narrative Memory*. Saskatoon; Purich Publishing, 2007.

Mills, Antonia. *Eagle Down Is Our Law*. Vancouver, UBC P, 1994.

- Morris, Alexander. *The Treaties of Canada with the Indians*. Saskatoon; Fifth House, 1991.
- Nadasty, Paul. *Hunters and Bureaucrats*. Vancouver, UBC P, 2004.
- Sahlins, Marshall. *Stone Age Economics*. Chicago: Aldine-Therton, 1972.
- Simpson, Leanne. *Dancing On Our Turtle's Back*. Winnipeg; Arbeiter Ring, 2011.
- Slattery, Brian. "Understanding Aboriginal Rights". *The Canadian Bar Review*. Vol 66, 1987.
- Smith, Linda Tuhiwai. *Decolonizing Methodology*. London; Zed Books, 1999.
- Tough, Frank. *As Their Natural Resources Fail*. Vancouver, UBC P, 1996.
- Usher, Peter. "Staple Production and Ideology in Northern Canada". In Melody, Salter and Heyer (eds). *Communications and Dependency*. Norwood: Ablex Publishing, 1982.
- Wachowich, Nancy. *Saqiyuq*. Montreal; McGill-Queen's, 2001.
- Wilson, Shawn. *Research as Ceremony*. Halifax; Fernwood Books, 2009.

### **Cases Cited**

- Calder. Supreme Court of Canada. 1973.
- Sioui. Supreme Court of Canada. 1990.
- Sparrow. Supreme Court of Canada. 1990.
- Van der Peet. Supreme Court of Canada. 1996.