

**CLEAN ENVIRONMENT COMMISSION
HEARING ON THE KEYASK HYDROPOWER PROJECT**

**MANITOBA MÉTIS FEDERATION
FINAL WRITTEN SUBMISSIONS**

I. OVERVIEW OF WRITTEN SUBMISSION

The Manitoba Métis Federation (“MMF”) submits that the Commission should not recommend the Keeyask Hydropower Project (the “Project”) to the Minister of Manitoba Conservation and Water Stewardship (“MCWS”) at this time.

The environment assessment, in its current form, is deficient with respect to identifying, assessing and mitigating the Project’s effects on the Métis community, as required by the Scoping Document approved by MCWS. Until these requirements are met, the Project should not be licensed.

In the alternative, if the Commission decides to recommend the Project to the Minister for licensing, the MMF requests that a series of recommendations (non-licensing and licensing conditions) be made to the MCWS Minister as set out in Appendix A and further explained in these written submissions.

II. THE MÉTIS NATION, THE MANITOBA MÉTIS FEDERATION AND THE MÉTIS COMMUNITY IN THE PROJECT STUDY AREA

The Métis Nation

The Métis – as an aboriginal people – evolved out of the relations of European men and Indian women who were brought together as a result of the early fur trade. While the initial off-spring of these relations were individuals who simply possessed mixed European and Indian ancestry, the unique history and development of the Métis people in what was known as the “Old Northwest” made way for the birth of a new aboriginal people – the Métis Nation.

The Métis emerged as a distinct “Nation” with their own language (Michif), culture, self-government, national symbols, land use customs, harvesting traditions and collective consciousness.¹ In *Cunningham v. Alberta*, [2011] 2 S.C.R. 670, the Supreme Court of Canada described this emergence and history as follows:

¹ In *R. v. Blais*, [2003] 2 S.C.R. 236, para. 42, the Supreme Court of Canada recognized that “[m]embers of Métis communities in the prairie provinces collectively refer to themselves as the “Métis Nation”, and trace their roots to the western fur trade.”

[5] The Métis were originally the descendants of eighteenth-century unions between European men - explorers, fur traders and pioneers - and Indian women, mainly on the Canadian plains, which now form part of Manitoba, Saskatchewan and Alberta. Within a few generations the descendants of these unions developed a culture distinct from their European and Indian forebears. In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture. The descendants of Francophone families developed their own Métis language derived from French. The descendants of Anglophone families spoke English. In modern times the two groups are known collectively as Métis.

Beginning in the late 1700s, distinct Métis settlements arose along the Great Lakes, throughout the Prairies and into the McKenzie District. Métis settlements were established at strategic locations within the fur trade network such as at the Red River Settlement, including, the French and English parishes, Fort Qu'Appelle, Wood Mountain, Cypress Hills, Fort Edmonton, Fort Benton, Cumberland House, Green Lake, Fort William, etc.

Within what is now known as Manitoba, strategic settlements were established in order to transport furs and goods from the western Prairies to Churchill, York Factory and the Red River Settlement, which was the gateway to get those items through to James Bay as well as Montreal. Just some of these locations included St. Laurent, Turtle Mountain, Pembina, San Clara/Boggy Creek, Portage, Waboden, Norway House, Cross Lake, Nelson House, etc.

These Manitoba settlements, along with other settlements throughout the Métis Nation, were inter-connected and dependent on each other. While some Métis lived year round at some of these locations, numerous visited and moved between them while participating in their traditional lifestyle (i.e. participating in the buffalo hunts, the fur trade, etc.). Through this mobile network that was driven by trade, harvesting, kinship connections and way of life, the Manitoba Métis Community, as a part of the larger Métis Nation, emerged.

While the map below from the Atlas of Saskatchewan, which identifies the various locations of the Métis scrip commissions and where Métis scrip was taken circa late 1800s to early 1900s, is not a comprehensive representation of where all of the Métis Nation's settlements in Manitoba were during this period, it does provide a general geography on where Métis populations were located during this timeframe.



Similar to First Nation rights and claims, the Métis Nation’s pre-existence in the “western territories”—prior to Canada’s westward expansion—is what grounds the inherent rights of the Métis as an “Indigenous people” as well as their constitutional rights, claims and interests as one of the recognized “aboriginal peoples of Canada”, as confirmed in s. 35(2) of the *Constitution Act, 1982*.

In *Manitoba Métis Federation et al. v. Canada et al.*, [2013] S.C.J. No. 14 (the “MMF case”), Supreme Court explained this reality as follows:

[1] Canada is a young nation with ancient roots. The country was born in 1867, by the consensual union of three colonies -- United Canada (now Ontario and Quebec), Nova Scotia and New Brunswick. Left unsettled was whether the new nation would be expanded to include the vast territories to the west, stretching from modern Manitoba to British Columbia. The Canadian government, led by Prime Minister John A. Macdonald, embarked on a policy aimed at bringing the western territories within the boundaries of Canada, and opening them up to settlement.

[2] This meant dealing with the indigenous peoples who were living in the western territories. On the prairies, these consisted mainly of two groups -- the First Nations, and the descendants of unions between white traders and explorers and Aboriginal women, now known as Métis. [Emphasis added.]

Courts in Manitoba have also recognized the Métis Nation's distinct identity and existence. In *R. v. Goodon*, [2009] M.J. No. 3 (Man. Prov. Crt) (the "*Goodon* case"), the Manitoba Provincial Court concluded,

[46] The Metis community of Western Canada has its own distinctive identity. As the Metis of this region were a creature of the fur trade and as they were compelled to be mobile in order to maintain their collective livelihood, the Metis "community" was more extensive than, for instance, the Metis community described at Sault Ste. Marie in *Powley*. The Metis created a large inter-related community that included numerous settlements located in present-day southwestern Manitoba, into Saskatchewan and including the northern Midwest United States.

Similarly, based on its extensive research and study, the Royal Commission on Aboriginal Peoples concluded the following with respect to the Métis Nation,

The Métis Nation includes by far the largest proportion of Canada's Métis population. ... What we can say is that the Métis Nation is the most significant Métis collectivity in Canada. It unquestionably constitutes an Aboriginal people within the meaning of section 35 of the Constitution Act, 1982 and an Aboriginal nation for purposes of negotiations with other governments. ... It is widely acknowledged that the Métis Nation is culturally distinct and that it has a demonstrated social cohesiveness as well as political determination and effectiveness throughout its eventful history.²

The Manitoba Métis Federation

The MMF represents the Manitoba Métis Community throughout the province of Manitoba. The MMF was created in 1967 as a continuation of the Métis Nation's long history of representing itself from the days of Riel's provisional government to modern day constitutional and legal processes. One of its key objectives, as set out in the MMF Constitution, is to represent and advances the collective rights, interests and ambitions of the Manitoba Métis Community as a part of the Métis Nation.³

² Royal Commission on Aboriginal Peoples Final Report, Vol. IV, Perspectives and Realities: Métis Perspectives, pp. 203, 232, 252.

³ Exhibit #MMF-003: MMF Concerns and Issues Presentation, p. 39.

Currently, the MMF has over 52,000 members in its Registry who are over the age of 18 years old. Up until very recently, the MMF has not registered children, so the MMF's current membership largely does not include this significant part of the Métis population in Manitoba. The 2006 Census estimated that the Metis population in Manitoba was 71,000. The MMF estimates there are approximately 100,000 Métis in Manitoba, including, adults and children.⁴

Based on its membership registration system and democratic institutions, the MMF represents the Manitoba Métis Community at the provincial, regional and local levels. Province-wide ballot box elections are held every four years to choose the MMF Board of Directors, which includes the MMF President who is the Chief Executive Officer, leader and spokesperson for the Federation as well as a Vice-President and two Board Members from each of the MMF's seven Regions. In addition, the Spokesperson from the Métis Women of Manitoba sits on the MMF Board of Directors. All MMF members over the age of 18 years are eligible to vote in MMF elections.⁵

As well, the MMF's governance structure includes "Locals", which promote Métis culture and represent MMF members at the local level. MMF members over the age of 18 years and who are members of a given Local elect the Local's leadership every four years. In total, there are over 80 active MMF Locals spanning Manitoba. Collectively, these MMF governance structures work together to represent the Manitoba Métis Community.⁶

Further, the MMF has long been recognized by other levels of government as the representative body of the Manitoba Métis Community. For example, the MMF has bilateral and tripartite self-government processes in place with both the federal and provincial governments on a wide variety of topics. Métis child and family services in Manitoba has been transferred to MMF-created institutions.⁷ The MMF has also recently executed a harvesting agreement with the Manitoba Government, which recognizes collectively-held Métis harvesting rights and the MMF's harvesting laws and Métis harvester identification system.⁸

Similarly, courts have repeatedly recognized the MMF as the representative of the Manitoba Métis Community. In the *Goodon* case, the trial judge held, "[e]vidence was presented that the governing body of Metis people in Manitoba, the Manitoba Metis Federation, has a membership of approximately 40,000, most

⁴ Exhibit #MMF-003: MMF Concerns and Issues Presentation, p. 40.

⁵ Exhibit #MMF-003: MMF Concerns and Issues Presentation, pp. 40-42.

⁶ Exhibit #MMF-003: MMF Concerns and Issues Presentation, p. 42.

⁷ *The Child and Family Service Authority Act*, C.C.S.M. c.C90.

⁸ KHLP-077: MMF-Manitoba Harvesting Agreement.

of which reside in southwestern Manitoba.”⁹ Most recently, the Supreme Court of Canada concluded the following in the MMF case:

[44] ... The Manitoba Act provided for individual entitlements, to be sure. But that does not negate the fact that the appellants advance a collective claim of the Métis people, based on a promise made to them in return for their agreement to recognize Canada's sovereignty over them. This collective claim merits allowing the body representing the collective Métis interest to come before the court. We would grant the MMF standing. [Emphasis added.]

The Métis Community in the Project Area

The MMF represents a rights-bearing Métis community in the Nelson watershed. Members of this rights-bearing Métis community live in various locations and settlements within the Project’s local and regional study areas, including, Gillam, Split Lake, Ilford. This Métis community also has more heavily concentrated population of members who live in Thompson as well as Waboden, Thicket Portage and Pikwitonei (the “Bay Line Communities”).

Collectively, the Métis living in these various town, settlements and locations within the Nelson watershed form a regional rights-bearing Métis community, which is an indivisible part of the larger Manitoba Métis Community. Members of this regional Métis community use and rely on the Nelson River system. They also hunt, fish, trap and gather throughout the watershed. These historic practices are protected as Aboriginal rights under s. 35 of the *Constitution Act, 1982*.

The test for establishing Métis rights protected by s. 35 of the *Constitution Act, 1982* was first set out by the Supreme Court in *R. v. Powley*, [2003] 2 S.C.R. 207.¹⁰ At its core, the *Powley* test requires a Métis community to provide evidence that they had a historic presence in a given region prior to “effective control” (i.e., after first contact by Europeans but prior to Europeans effectively establishing political and legal control in a particular area) and an ongoing presence in that region that is in continuity to the historic population.¹¹

⁹ *Goodon, supra*, para. 43.

¹⁰ The *Powley* test includes ten parts: (1) characterization of the right, (2) identification of the historic rights-bearing community, (3) identification of the contemporary rights-bearing community, (4) verification of the claimant’s membership in the contemporary community, (5) identification of the relevant time frame, (6) whether the practice is integral to the claimants’ distinctive culture, (7) establishment of continuity between the historic practice and the contemporary right, (8) whether or not the right was extinguished, (9) if there is a right, was there an infringement, (10) whether the infringement is justified.

¹¹ *Powley, supra*, para. 37.

In *Powley*, the Supreme Court recognized that the Métis community within a given region is not tied to one specific settlement, but can shift locations and adapt in order to respond to economic or social changes (i.e., moving within a given region for employment needs or forced relocations, populating new settlements or towns that are established, etc.).¹² However, in order to meet the *Powley* test the community must be connected to the historic Métis population in the region and has continued to the practice being claimed as the Aboriginal right (i.e., hunting, fishing, etc.).¹³

Within the Nelson watershed, the Métis developed a regional presence as early as the mid 1800s. This presence is well-documented in historic fur trade records, including, Hudson Bay Company post journals. Without question, Metis lived within and used this region well before Manitoba's expansion as a province in 1905, which would likely be the earliest date effective control could be argued in this region.

During the treaty-making processes with First Nations in the north (i.e., the negotiations for and signing of the various Adhesions to Treaty 5), Halfbreed scrip was concurrently applied for in locations such as Cross Lake (1908 & 1909), Split Lake (1908), Nelson House (1908), York Factory (1910) and Churchill (1910) in order:¹⁴

To satisfy any claims existing in connection with extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such person, to such extent and on such terms and conditions as may be deemed expedient.¹⁵

Clearly, if there were only First Nation individuals in this region at this time, there would have been no applications for Halfbreed scrip. Moreover, Halfbreed scrip acknowledged the "claims" of the Halfbreed in connection to their Indian title. If Métis in the region had no claims, why take and issue scrip? The answer is simple: there was a small and identifiable Métis population in the region at the time effective control was asserted in the region by the Crown through treaty-making and scrip issuance.

This recognition of an identifiable Métis population in the region continued into the mid 20th Century. In 1956, the Manitoba Government issued an Order-In-Council to conduct a "Study of the Population of Indian Ancestry Living in Manitoba." In 1959, the report from this study was published under the

¹² *Powley, supra*, para. 26.

¹³ *Powley, supra*, para. 24.

¹⁴ Exhibit #MMF-003: MMF Concerns and Issues Presentation, p. 10.

¹⁵ *Dominion Lands Act*, 1879, SC, c. 31, s. 125(e).

authorship of Jean H. Legassé.¹⁶ Based on surveys taken through across Manitoba, Métis populations were identified in the following locations:

- Gillam (52),
- Bird (11),
- Ilford (23),
- Split Lake (3),
- Pikwitonei (106),
- Thicket Portage (167),
- Waboden (209).

Notably, the Lagassé report understood and clearly regarded the Métis as distinct from Indians. The report described the Métis as “those living in poor houses... not living as a white person... poor standards of living... living like the Indians ... [and] those living under poor circumstances” Further, anyone who was employed, or who lived in decent housing, or who conformed to the general requirements of non-Aboriginal society were not defined as Métis.

Collectively, the report identified over 4,497 Métis living north of the 53rd parallel in 1959. Lagasse notes that these figures are an underestimation: “it is estimated that 80% of the people of Métis ancestry in Manitoba are not included in the study population” (1959: 77). The idea that there was no identifiable Métis population in the region contradicts the Manitoba Government’s own records.

This acknowledgement of a Métis population in the region continued into the 1970s. Although not recognized as a distinct, rights-bearing Aboriginal group at the time because of jurisdictional and legal assumptions that have proven to be wrong in law, the presence of the Métis in the areas covered by the Northern Flood Agreement (“NFA”) is acknowledged in that agreement.¹⁷ Again, if there were absolutely no Métis in the region, why would there be any reference to the Métis be included in the NFA?

Contemporary census records have also continued to identify a distinct Métis population in the region. Contrary to assertions by the Partnership, even after the passage of Bill C-31 in 1985, which allowed many individuals who were considered Non-Status Indians or Métis to become registered as status “Indians”, a stable Métis population maintained in locations such as Gillam (approx. 100 people), Thompson (approx. 1,500 people), Churchill (approx. 150) and approximately 2,500 Métis throughout Census Division 22 and 23.¹⁸

¹⁶ Exhibit #MMF-003: MMF Concerns and Issues Presentation, p. 11.

¹⁷ Exhibit #CAC-006: Northern Flood Agreement.

¹⁸ Exhibit #MMF-003: MMF Concerns and Issues Presentation, pp. 13-18.

In addition, in September 2012, the MMF and the Manitoba Government signed a Harvesting Agreement, which recognizes collectively-held Métis harvesting rights in a significant portion of the province. The agreement also sets out a two-year process for research and discussions in relation to the other areas where the MMF asserts Métis harvesting rights, including, the Nelson watershed area. During this interim period, Métis harvesting has been accommodated in these other areas by virtue of MMF Harvester Card holders being reimbursed for the costs of provincial licenses obtained. At the end of the two year period in September 2014, if parties are not in agreement with respect to the recognition of Métis harvesting rights in other areas, the agreement contemplates a reference on these issues to the Manitoba Court of Appeal.¹⁹

Métis community witnesses also testified with respect to their perspective of the Métis community and their rights in the region. Métis living in locations such as Thompson, Gillam, Ilford and the Bay Line Communities saw themselves as one community, not separate and discrete settlements. Further, the Métis witnesses testified to their ancestral and kinship connections throughout the region, similar to First Nations.²⁰

MS. CAMPBELL: But because as Metis people we are kind of spread out. We live in different places, and we live sometimes beside a First Nations band, or live in our own communities or we live in towns and cities, we're a little bit more spread out. ... So the difficulty becomes for us, it's almost like they don't know how to work with us and they don't know how to get us all together. But yet we're waiting, we're waiting for somebody to talk to us ...²¹

The Métis community witnesses also testified about their frustration of not being recognized as a distinct Aboriginal community with rights. While addressing these rights-related issues are not in the purview of the Partnership or the Commission, they provide important context for the persistent pattern of denial and indifference the Métis community faces with their exclusion from the Project being just another symptom of this denial.

Is it time? It's way past time. The time was there a long time ago. And if that's the direction that Hydro is seeking to go, and I'm hoping that's the direction your current president is going in, but they need to start sitting down not only with First Nations, but other Aboriginal people that exist.²²

¹⁹ KHLP-077: MMF-Manitoba Harvesting Agreement.

²⁰ CEC Transcripts, Métis Community Witness (Mr. Chornoby), December 3, 2013, p. 4723 (lines 23-25); CEC Transcripts, Métis Community Witness (Ms. Lagimodiere), December 3, 2013, p. 4682 (lines 2-7).

²¹ CEC Transcripts, Métis Community Witness (Anita Campbell), December 3, 2013, p. 4675 (lines 11-24).

MR. ANDERSON: But the other day my girl told me, my youngest girl, that she applied and has her Treaty from the Split Lake band, so now she's Treaty. But the rest, my sons, my three sons and my other two daughters, they are still Metis. They are staying Metis because I keep telling them that, you know, we'll get our rights. You know, we've got to keep -- but I really, I'm getting older, but I'm not going to run and hide anymore like with my hunting and that. I don't -- I live in Wabowden and I have been there for a long time, but I'm not -- I'm tired of running and hiding. ... My ancestors suffered the same as Treaty, anything else like that and, you know, I would just like to be recognized that I have rights too. And just because I am Metis, you know, you don't. But I do, I do have rights.²³

The evidence outlined above, along with other evidence not before the Commission, documents a small (i.e., in comparison to the First Nation population and the Manitoba Métis Community's population in other regions of the province), dispersed and stable Métis population throughout the Nelson watershed. The MMF represents Métis in the region who ancestrally connect to the Métis who applied for and receive Métis scrip in the early 1900s. Further, the MMF represents other Métis who now live in the region and are ancestrally connected to the historic Métis population in the Nelson watershed as well as the north generally as a part of the Manitoba Métis Community. This constant Métis presence in the region prior to and following effective control is what grounds the MMF's claims and Métis rights in the Project's study area.

The Project's Impacts on the Métis Community

In June 2013, after the Partnership had delayed in committing to a reasonable budget for the Métis community to participate in the Project's EA, the MMF signed an agreement with Manitoba Hydro to undertake a limited study with respect to understanding Métis traditional use in the Project study area as well as socio-economic conditions.²⁴ Unlike the KCNs, who had over ten years to conduct work related to the Project at a cost of over \$140 million, the MMF was limited to a budget of approximately \$300,000.00 (of which only 50% of funding has been advanced) and less than 6 months to collect baseline and conduct an effects assessment

Despite best efforts, the MMF was unable to complete all aspects of the proposed work by December 2013. Although it did not agree that all of the necessary work could be completed for \$300,000.00 or within the timelines proposed by the Partnership, the MMF agreed to the workplan because it wanted

²² CEC Transcripts, Métis Community Witness (Ms. Campbell), December 3, 2013, pp. 4749 (lines 2-8).

²³ CEC Transcripts, Métis Community Witness (Mr. Anderson), December 3, 2013, pp. 4711 (lines 2-13) and 4714 (lines 8-12).

²⁴ Exhibit #KHLP-070: MMF Keeyask Workplan.

to at least conduct some research and have some information. Further, the MMF was fully aware of the Partnership's strategy to continue to delay and make the MMF look unreasonable in order to rely on that as an explanation for having no assessment on the Métis community. So, while not ideal, the agreement was a start.

To date, a limited Métis Traditional Land Use and Knowledge Study (“TLUKS”) has been completed in order to collect some baseline data about Métis use in the region. This TLUKS shows Métis use along the Nelson River system as well as within the geographic areas where AEAs offsetting programs are proposed to be implemented for the KCNs.²⁵

The information from the TLUKS is not sufficient to conduct an effect assessment. This aggregated information, along with information collected with respect to Métis socio-economic conditions, will be brought back to the Métis community and interviewees in order to discuss perceived and potential effects from the Project as well as the Métis community’s positions with respect to the Project’s risks. As described further below, it is the MMF’s position that this work by the Métis community must be completed prior to licensing of the Project.

As outlined in the MMF’s presentation, based on preliminary discussions with Métis leadership, harvesters and members in the region, the following concerns with respect to the Project’s effects have been identified by the Métis community:²⁶

- Impacts on Métis harvesting practices (i.e., additional pressures on Métis areas of traditional use and harvest, no data to monitor effects on Métis, no recognition of Métis harvesting rights, etc.).
- The water system in the region is inter-connected and the rivers and lakes relied on by Métis are connected to Nelson River. The “damage” from the past continues today with huge variations of water levels continuing and significant erosion that damages Métis way of life and economies. Keeyask will compound this damage.
- The project will have cumulative and regional impacts that have been ignored (i.e., confluence of multiple construction projects at same time, looking at projects separately rather than as one, excluding upriver assessment, additional changes in water levels for energy export, etc.).
- The project’s “spill over” effects on Thompson and Métis community in region (i.e., higher rents put squeeze on Métis who are often working poor

²⁵ Exhibit #MMF-008: MMF TLUKS on Keeyask Generation Project

²⁶ Exhibit #MMF-003: MMF Concerns and Issues Presentation, pp. 48-49.

and not home owners, increase in money, drugs and outsiders in region as a whole, additional stresses on supports in Thompson, etc.).

- Cultural and socio-economic impacts (i.e. benefits for First Nation incentivizes identification and registration as status Indians even though children may have First Nations and Métis cultural roots, creates regional bias against Métis cultural understanding and prominence, etc.).
- Métis “invisibility” in region amplified (i.e., all systems and benefits created to address impacts on First Nations and ignore Métis as a distinct Aboriginal group, no monitoring on Métis as a collective, creating a “have” and “have not” scenario between First Nations and Métis in region, etc.).
- Psychological stress and worrying of Métis individuals, families and community about their collective futures in region they call home.
- No consideration of “significance” of project’s effects from the Métis perspective, so there will be no data to measure effects on Métis – as a distinct group – in the future.

Métis community witnesses also testified about their concerns and perceived impacts from the Project, which have not been addressed by the Partnership.

MS. CAMPBELL: They built camps in Wuskwatim. They built like what people were terming as a little town. They had a church, or a little Sunday service. They had a store. They had a mini bar, I think is what is called a mini bar. They had housing in those trailers. So they built a little town. They even had a cultural centre in Wuskwatim. But people still came from Wuskwatim. Because where do you go when you're off? You still need to go somewhere. And so Split Lake, Split Lake -- Thompson is called the hub of the north for a reason. We are the hub. People need to come there, whether it's for medical, whether it's for your banking, whether it's for your shopping, whether it's for legal, whether it's for any other necessity, you need to come to Thompson. Because there is no other place you are going to be able to go. For people to think you're going to stay in Gillam is not going to happen. ... People are now waiting to see what Keeyask is going to do with the housing in Thompson, because it will do something.²⁷

²⁷ CEC Transcripts, Métis Community Witness (Ms. Campbell), December 3, 2013, pp. 4468 (lines 2-25).

III. THE MMF'S SUBMISSIONS IN RELATION TO THE PROJECT

The Partnership's Denial of the Existence and Rights of the Métis Community in the Project Area

Despite the facts of history and the MMF's repeated assertions outlining Métis claims in the region, the Partnership has denied the very existence of any Métis individuals or a Métis community with rights, interests and claims in the Project's study areas. This position continues to be maintained by the Partnership.²⁸

This ignorance flows from a long history of denial of rights and injustice against the Métis in this region.²⁹ Prior to 1982, the very existence of the Métis—as a distinct Aboriginal people—was often denied. Moreover, until the *Powley* case in 2003, collectively-held Métis rights, flowing from the post contact emergence of the Métis, were similarly denied. If rights or any benefits for the Métis were recognized, they were often provided to individuals—not collectively.

In the last decade, the appreciation of the Métis as a distinct Aboriginal people with constitutionally-protected rights that require recognition, consultation and accommodation in the same way that First Nation do has increased. Unfortunately, Manitoba Hydro and its Keeyask Cree Partners have not accepted this new reality. This willful blindness leads to a deficient environment assessment and will ultimately make the Project vulnerable to future judicial reviews, if it is licensed without resolution of these issues. This is in no one's interest, including, the MMF, the Partnership, the Crown and Manitoba ratepayers.

While the MMF is not asking the Commission to make a determination with respect to the existence of a rights-bearing Métis community in the region, it is asking the Commission to make a non-licensing recommendation to the Minister so this type of situation is avoided in the future. In the current situation, without any direction from the Crown, the Partnership has made determinations with respect to denying Métis rights and failing to assess the Project's effects on the Métis community—as a collective—in comparison to the Keeyask Creen Nation Partners.

It is the MMF's position that proponents should not be making determinations with respect to the rights of Aboriginal groups, First Nations and Métis alike. Moreover, proponents should not be left in a position where they can avoid assessing effects on an Aboriginal community—as a collective group—them through an environmental assessment process. This could have been avoided if

²⁸ Exhibit KHLP-103: Response to CEC Final Questions, p. 134.

²⁹ The MMF notes the irony that the Keeyask Cree Nations Partners in this region also faced this same history of denial and injustice at the hands of government and their current partner—Manitoba Hydro.

the government had clearly identified the relevant Aboriginal communities that should be engaged and involved in the environmental assessment process. Instead, this was left to the Partnership with its internal biases and self-interest, which resulted in the exclusion of the Métis community in a meaningful way.

While the MMF acknowledges that the Crown has discretion on how it will deal with its duty to consult and accommodate Aboriginal groups on licensing decisions, the MMF submits that the identification of which Aboriginal groups should be engaged for the purposes of assessing biophysical or socio-economic effects as a part of an environmental assessment should be determined by the government as a part of the finalization of a Scoping Document for a major development such as this one.

This pro-active approach would avoid running into situations where exclusions are only identified after an environmental assessment is complete and filed. Logically, if the government makes a decision to exclude a specific Aboriginal groups at the Scoping Document phase, that decision could be challenged by an Aboriginal group that disagrees at the beginning of the environmental assessment process. This avoids leaving it to the end of the process, which could result in delays and additional costs for Class 3 projects. Moreover, this approach puts this decision in the government's hands—not the proponents of the Commission.

NON-LICENSING CONDITION RECOMMENDATION

The Manitoba Government identify the relevant Aboriginal groups (i.e., First Nations and/or the MMF) a proponent should engage with in undertaking their environment assessment as well as assessing potential project effects as required in a Scoping Document.

The MMF also asks that the Commission make two non-licensing recommendations with a view to ensuring that: (1) previous government commitments to all Aboriginal peoples, including, the MMF in relation to new major resource developments is fulfilled, and, (2) the current exclusion of the Métis from the NFA be considered in light of current legal and constitutional realities.

NON-LICENSING CONDITION RECOMMENDATION

Based on recent court decisions on Métis issues and ongoing discussions between the MMF and the Manitoba Government under the MMF-Manitoba Points of Agreement on Métis Harvesting, the Manitoba Government should evaluate and consider the implications of the ongoing exclusion of the Métis, as a distinct Aboriginal community, from the Northern Flood Agreement with a view to potentially identifying alternative processes to address Métis issues, concerns and outstanding claims.

NON-LICENSING CONDITION RECOMMENDATION

The Manitoba Government should ensure its previous acceptance of the recommendation set out in Article 4.1 of the Aboriginal Justice Inquiry Implementation Committee Report is met. Upholding these types of government commitments to Aboriginal communities is important to all Manitobans as well as in building sustainable communities and protecting the environment.

The Environment Assessment Fails to Assess the Project's Effects on the Métis Community

The Project's Scoping Documents, as approved by the provincial and federal government respectively and which are deemed to be equivalent to each other, set out the requirements a proponent must meet in relation to conducting an environmental assessment. These are not mere suggestions to a proponent. They are obligations a proponent must fulfill. Notably, during the Commission's final questions to the Partnership, the Commission Chair reaffirmed this point by stating "[a]nd it is incumbent upon the proponent to meet the requirements of that scoping document."³⁰

The evidence shows that the Partnership's EA does not fulfill the requirements of the Scoping Document in relation to developing and undertaking an environmental assessment with the involvement of all potentially impacted Aboriginal communities such as the Métis community in the region. Moreover, the EA does not identify, assess or mitigate the Project's effects on Aboriginal communities other than the KCNs.

The uncontested evidence before the Commission is that there are significant information gaps in the EA with respect to the Métis community in the Project's study areas and the Project's impacts on that community.³¹ The MMF's experts testified that vital and required information with respect to the Project's potential effects on Métis moose and caribou harvesting as well as socio-economic impacts on the Métis as an Aboriginal group were missing from the EA.

We have an impact assessment on moose and caribou, but I don't see any information on how this would feed back into traditional resource use for Metis.³²

³⁰ CEC Transcripts, Final Questions to Partnership, January 6, 2014, page 6524 (lines 4-6).

³¹ Exhibit #MMF-004: MSES Report on Ungulate Information Gaps; Exhibit #MMF-007: MSES Report on Socio-Economic Information Gaps.

³² CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, p. 4828 (lines 14-17).

Furthermore, in that precautionary approach, the Partnership must present public views on the acceptability of things such as the project implementation, or assumptions used to predict effects, strategies that avoid adverse effects, and follow up and monitoring strategies. This hasn't been done for the Metis. I think this further highlights the potential inadequacy of using a regulatory significance. It may be a fine line to be walking, depending on the resource use in the region. We need to identify the amount of uncertainty the Metis are willing to accept. The Partnership needs to communicate with the Métis and understand their perspective. And decision makers need to be aware of the uncertainty in the data and the assessment.³³

...

The Partnership does not actually explain why the Metis were not identified as a distinct Aboriginal group in the local study area for the purposes of the socio-economic impact assessment. ... This two-tiered approach to involvement and assessment that is based on the in vicinity distinction between First Nation and Aboriginal is concerning. A public involvement program alone is insufficient to identify, document, assess and mitigate potential Métis specific project effects.³⁴

... I started my presentation ... noting that the assessment makes a distinction between in vicinity First Nations and other population in the local study area. But as we heard yesterday in the panel and today by the community members, the Metis in the area are an Aboriginal group. And if the application had considered in vicinity Aboriginal groups, the Metis would have been considered as a distinct and separate Aboriginal group. ... The point I did make is that the Metis as an Aboriginal group were not assessed and the effects on the Metis have not been mitigated.³⁵

By and large, the Partnership's consistent response to these deficiencies was that it is of the opinion that there is "no rights bearing Métis community" in the Keeyask area. It has maintained this position for years, despite the MMF repeatedly outlining its credible rights assertions in meetings and the facts of history (as set out above) that ground the MMF's rights claim in the region. Moreover, the Partnership maintains this position in the face of the Manitoba Government's interim accommodation for Métis harvesting in the region based on credible rights claims (i.e., Métis in the area are reimbursed for their provincial licenses unlike other Manitobans).

³³ CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, pp. 4791-4792.

³⁴ CEC Transcripts, Testimony of Meghan Birnie (MSES), December 3, 2013, p. 4807.

³⁵ CEC Transcripts, Testimony of Meghan Birnie (MSES), December 3, 2013, p. 4854.

The crux of the Partnership's argument is that since "we say there is no Métis community here" there are not any Project effects on Métis that can't be addressed through mitigation measures for the general population. This position ignores that Métis in the region are not simply a collection of mixed ancestry individuals, but are a part of an Aboriginal community with collective rights and interests. Impacts must be assessed on the Métis—as a collective. Moreover, collective impacts on Aboriginal communities cannot be addressed through mitigation measures for the general population. Ms. Birnie, the MMF's expert, confirmed this point as follows,

These collective [socio-economic] impacts cannot be addressed through mitigation measures designed for non KCN Aboriginal and non-Aboriginal individuals living in the Keeyask study area.³⁶

The MMF also notes that neither the federal or provincial governments have stated they agree with this Partnership position or approach. In fact, section 7.2 of the EA Guidelines states the following with respect to Aboriginal Consultation: "The proponent will actively solicit Aboriginal concerns from groups other than the Keeyask Cree Nations." (emphasis added) Clearly, if no other Aboriginal groups were of concern to the governments reviewing the EA, why would they go out of their way to make this point of including non-KCN groups?

Flowing from the Partnership's exclusion of other Aboriginal communities from comparable processes, the evidence shows the Partnership did not engage the Métis community with respect to the determination of VECs (EA Guidelines, s. 6.2.1), did not examine opportunities to mitigate the adverse effects of the Project on Aboriginal groups' current use of lands and resources for traditional purposes and other Aboriginal interests (EA Guidelines, s. 7.2), did not consider Métis perceived changes attributed to the Project (EA Guidelines, s. 9.1), etc.

In addition, unlike the KCNs who negotiated Adverse Effects Agreements ("AEAs") with Manitoba Hydro that included "a series of agreed upon mitigation measures, the purpose of which is to address and resolve the present and future adverse effects of the Keeyask Generation Project on members of the four First Nations, including impacts of the Project on their collective rights and interests and impacts of the Project on the exercise of Aboriginal and Treaty rights,"³⁷ the Partnership's position that there is no rights-bearing Métis community in the region has excluded the MMF from any equivalent discussions.

Instead, the evidence shows that the Partnership delayed meaningful engagement with the MMF and filed its EA almost a year before it arrived at any agreement with the MMF to collect limited baseline information about Métis

³⁶ CEC Transcripts, Testimony of Meghan Birnie (MSES), December 3, 2013, p. 4821 (lines 1-6).

³⁷ Exhibit #KHLP-103: Response to CEC Final Questions, p. 27.

presence, lifestyle and traditional use in the region and allow the MMF to identify and assess the Project's effects on the Métis community.³⁸ The MMF submits that these delays were largely a result of the Partnership's disrespectful and adversarial positions towards the recognition of the Métis community and its rights within the region,³⁹ which it continues to maintain today.⁴⁰ The MMF submits it is very hard to have a relationship or build trust with a proponent that denies the very existence of the Métis community.

Despite the MMF's best efforts to have this work completed before the end of the CEC hearing process, only a traditional land use study, based on the limited sampling provided for by funding from the Partnership, could be completed by the end of December. However, the MMF stresses that it was not obligated to meet the requirements for the proponent—the proponent was. The MMF submits that the Partnership should not be able to benefit from its deliberate delays and limited engagement of the MMF, resulting in the complete lack of an assessment of the Project's effects on the Métis community within the EA.

Moreover, the MMF's expert noted that the Partnership has only stated it will consider any additional information presented to it through the studies to be completed by the MMF. It has not committed to consider the information as an effects assessment and to ultimately fulfilling the Scoping Document's requirements in relation to effects assessment on non-KCN Aboriginal groups.⁴¹

Based on the evidence set out above, the MMF submits that the Project should not be recommended to the Minister until the requirements of the Scoping Document in relation to other Aboriginal groups are met.

RECOMMENDATION

The Commission withhold its recommendation of the Project for licensing until the following is completed in order to ensure the requirements of the Scoping Document are met in relation to the Métis community:

1. Allow the MMF to complete the preliminary baseline and effects assessment work identified within the agreement executed June 21, 2013 within a reasonable time frame (i.e., by end of March 2014);
2. If the results of this work identify effects or indicate impacts are possible, a further impacts assessment process be completed consistent with the

³⁸ Exhibit #KHLP-079: Contribution Agreement on MMF Engagement on Project

³⁹ CEC Transcripts, Testimony of MMF President David Chartrand, December 2, 2013,

⁴⁰ Exhibit #KHLP-103: Response to CEC Final Questions, p. 134.

⁴¹ CEC Transcripts, Testimony of Meghan Birnie (MSES), December 3, 2013, pages 4848 (lines 23-25) — 4849 (lines 1-21).

processes used for the KCNs and set out in the Scoping Document;

3. Once a more fulsome impact assessment is complete, a MMF-Partnership agreement or arrangement be negotiated in order to address Métis-specific mitigation measures as well as Métis participation in future monitoring in relation to the Project.

In the alternative, if the Commission recommends the Project for licensing to the Minister, the MMF requests that a licensing condition be recommended which requires the Partnership to complete the effects assessment process with the MMF, as required by the Scoping Document. The MMF is concerned, based on its experience to date with the Partnership, that it will maintain its denial of any Métis community in the region and not follow through on ensuring the Project's effects on the Métis are identified, assessed and mitigated.

LICENSING CONDITION RECOMMENDATION

Prior to construction, the Partnership shall address the issues, concerns and effects of the Project with other willing Aboriginal communities, including, the MMF, who live within and use the Nelson watershed with a view to arriving at mutually agreeable agreements or arrangements that set out processes that address necessary Aboriginal community specific mitigation measures, provide opportunities for participation in monitoring relevant to an Aboriginal community's traditional use and culture, present ongoing information in relation to the Project's construction and operation. Reasonable costs associated with the negotiation of these agreements or arrangements shall be borne by the Partnership. If a mutually agreeable arrangement or agreement is not reached with a willing Aboriginal community, including, the MMF, who live within and use the Nelson watershed within a reasonable period, the Partnership shall provide a report outlining its efforts and reasons an agreement or arrangement could not be reached to the Director who may determine that this licensing condition has been met through best efforts.

The Gaps in Moose Harvesting Sustainability Plan

The Partnership developed a Moose Harvest Sustainability Plan (MHSP) that is intended to function as mitigation for effects of the Project on moose populations and as a monitoring plan once the Project has commenced. One of the gaps identified in the above-mentioned exhibits is that Métis moose harvest information does not appear to be incorporated into the MHSP. A consequence of this potential oversight is that moose harvest numbers for the model in the MHSP may be underestimated which could result in an overestimate of available moose for sustainable harvest and subsequently could result in an unintentional overharvest in future years (please see CEC Rd 1 MMF 0011 / CEC Rd 2 MMF 0050 for more details).

During the hearing, counsel for the Partnership indicated that “in developing the plan, they [Tataskweyak Cree Nation] did capture all Métis moose harvest information pertinent to the area covered by the plan.”⁴² A reference was requested and provided in support of this statement titled *Moose Harvest Information* which was a copy of CEC Rd 2 MMF-0040b. However, this information request response confirms that effects on uses of lands and resources by Manitoba Métis were not evaluated by the Partnership.

In this response, the Partnership stated that “specific data on the magnitude of Métis harvest of moose in the Split Lake RMA have not been gathered to date” (CEC Rd 2 MMF-0040b). The response further indicated that the Partnership has “useful insight” into Métis harvest through a “Licensed Hunting mortality factor” and a “Black Box mortality factor”. Given that the magnitude of Métis harvest is simply not known in the Split Lake Regional Management Area (SLRMA) prior to September 2012,⁴³ the Partnership cannot be sure if MCWS moose harvest data, gained via provincial licensing, adequately covers Métis harvest in the SLRMA. Further, no details with respect to the Métis harvest for the period 2012-2014 has been incorporated into the MHSP. Finally, at the end of September 2014, the two year interim accommodation period under the MMF-Manitoba Harvesting Agreement will be over. At this time, if a mutually agreeable resolution of Métis harvesting issues is not achieved as contemplated in the agreement, the MMF may instruct Harvester Card holder to begin harvesting again without obtaining provincial licenses. This would likely be when construction of the Keeyask project would be begin, if it is ultimately licensed by the Minister.

Similarly, the Black Box mortality incorporated into the MHSP model may not be sufficient to account for additional Métis harvest. Black Box mortality was incorporated into the model in the MHSP to account for factors that cannot be measured easily (e.g. accidents, disease, poaching). The Partnership stated that Black Box mortality “probably” accounts for Metis harvest, but that “more specific data from Métis hunters would improve these assumptions” (CEC Rd 2 MMF-0040b). Assumptions could and should be verified with the collection of Métis harvest information.

The identified gap regarding the lack of incorporation of Métis moose harvest information into the MHSP is still outstanding. The Partnership has not specifically collected Métis harvest data and is reliant on the assumption that Métis moose harvest is covered in those two factors discussed above. Given the fact that the very limited Métis TLUKS shows Métis moose hunting in the SLMA, the Métis harvest should be incorporated based on the precautionary principle.

⁴² CEC Transcripts, Statement by KHLP Counsel, December 3, 2013, pp. 4851-4852.

⁴³ Prior to entering into the MMF-Manitoba Harvesting Agreement, all MMF Harvester Card holders in the region harvested pursuant to their Métis rights under the Métis Laws of the Hunt and did not obtain a provincial license. As such, the Métis harvest was not captured in the provincial licensing scheme. Further, information on the Métis harvest was not shared with MCWS because there was no recognition of the MMF harvesting laws and system by MCWS.

LICENSING CONDITION RECOMMENDATION

Prior to construction, the Project's Moose Sustainability Plan be updated to include and address any additional information related to the harvesting of moose by other proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed.

Creating Further Inequities Amongst Aboriginal Groups in the Region

Article 1.17 of NFA states that a "Settlement" means a community together with all non-treaty Indians and Metis, collectively, whose principal residences are adjacent to a community and within the area commonly described by the name of the community, notwithstanding that the location of such residence may also be described by some other, more particular name." Article 18.3 of NFA goes on to state that "Canada and Manitoba, to the extent it is practical to do so will seek to avoid creating inequities within any settlement that would adversely affect the relationship between a community and other residents of a settlement."

The Partnership has acknowledged that Keeyask's JKDA and AEAs flow from the NFA and various subsequent agreements that have been negotiated and signed between the various parties to the NFA. The Partnership confirms that benefits and mitigation measures available to members of the KCNs under the JKDA and AEAs are not available to Métis living in Settlements. Nor are equivalent benefits or mitigation measures made available to Métis.

The MMF submits that the implementation of these Keeyask agreements will create inequities between First Nations and Métis living in Settlements as well as the region as a whole. Moreover, as can be seen through the Keeyask environmental assessment and Commission hearing process, the relationship between Métis and First Nation will be adversely affected given the increasing disparity between the two groups and adversarial situation being created between "haves" and "have nots" with respect to sharing in benefits related to Keeyask.

The testimony of the Métis community witnesses highlighted the tensions that already exist. The evidence is clear that existing inequities will only be amplified as additional benefits and new mitigation measures will be provided to First Nations flowing from Keeyask, but exclude similarly situated Métis.

MR. MADDEN: And in the region, do you have a relationship with Manitoba Hydro or the Partnership?

MS. LAGIMODIERE: No, just my Hydro bill.

MR. MADDEN: And what do you see the effects of there being no relationship being on the I in the region?

MS. LAGIMODIERE: Well, I'm embarrassed to say it, but I feel like I don't exist. I feel like my people don't exist, my I family doesn't exist. I feel like we're invisible to them. And yet we're there and we're, you know, we're valuable people, we're valuable, we contribute ... I just, you know, I don't understand it. I don't understand it because I think we have valuable contributions to make.⁴⁴

...

MR. CLEVELAND: None of my children are I. They are all Treaty. There is no benefits to being I when my kids were growing up. So they just took their mom's Treaty number. ... Just because of the benefits and perks of being Treaty versus being I. I think in terms of survival, I mean you know, in terms of education and medication and housing, they have that option. Whereas I is very limited. So I guess anybody in order to survive would maybe potentially jump ship.⁴⁵ ...

MR. CHORNOBY: If I was to damage my own boat, I wouldn't be compensated anything for it. So that's why I would put it underneath my wife's name.⁴⁶ ...

MR. CAMPBELL: But the other day my girl told me, my youngest girl, that she applied and has her Treaty from the Split Lake band, so now she's Treaty. But the rest, my sons, my three sons and my other two daughters, they are still I. They are staying I... My ancestors suffered the same as Treaty, anything else like that and, you know, I would just like to be recognized that I have rights too. And just because I am I, you know, you don't. But I do, I do have rights.⁴⁷

NON-LICENSING RECOMMENDATION

The Manitoba Government should ensure its obligations under section 18.3 of the Northern Flood Agreement, which seeks to avoid creating inequities within any settlement amongst Status Indians, Non-Status Indians and Métis be considered in relation to the construction and operation of the Project.

⁴⁴ CEC Transcripts, Métis Community Witness, December 3, 2013, pp. 4691-4692.

⁴⁵ CEC Transcripts, Métis Community Witness, December 3, 2013, p. 4730 (lines 3-9).

⁴⁶ CEC Transcripts, Métis Community Witness, December 3, 2013, p. 4724 (lines 21-24).

⁴⁷ CEC Transcripts, Métis Community Witness, December 3, 2013, p. 4711.

Uncertainty with Respect to the Summer Resident Caribou Herds

The evidence shows that there is substantial uncertainty with respect to the Project's impacts on the summer resident caribou herds. The MMF's expert, Abbie Stewart, testified with respect to this issue as follows,

Essentially, we need some clarification on those analysis, because right now there is a lot of uncertainty. There is uncertainty with the herd association, uncertainty with the core range, and uncertainty with the model that was developed and the validation of that model. So all of that uncertainty is built into that prediction we have.⁴⁸ ...

So we have passed a threshold here, an Environment Canada threshold, and now we are into a transition zone. And this transition zone, once we have passed the threshold -- the definition of a threshold is where we have small changes in the landscape, we can have disproportionately large responses from a population. And so anywhere in the zone, even an incremental impact could result in a much larger response than one would expect.⁴⁹ ...

And the risk that the Metis would be willing to accept, we don't know what that level of risk is. The Metis should consider that the EIS may underestimate the cumulative effect of increased linear feature density on summer resident caribou populations. This slide is a recap of the issues I've highlighted for summer resident caribou. In the left-hand column we have EIS benchmarks that were used. They used a few others, these are just the ones that I spoke about today. With respect to the calving and rearing habitat model for summer resident caribou, I highlighted the baseline data may be insufficient, and model development and validation is unclear. And as a consequence to this, if baseline data are insufficient and the model isn't quite accurate, then mitigation measures reliant on that model output may not be accurate. So we don't have a good understanding of the effectiveness of that mitigation. ... So the amount of uncertainty I think really needs to be highlighted and acknowledged in the impact assessment.⁵⁰ ...

Now, the assessment was to use a precautionary approach, according to the CEAA guidelines. And the precautionary approach means that the burden of proof that a project is not harmful falls on those taking the

⁴⁸ CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, p. 4781 (lines 3-10).

⁴⁹ CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, p. 4785 (lines 17-25).

⁵⁰ CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, pp. 4790-4791.

action. So it is up to the Partnership to convince us that the project will not be harmful.⁵¹ ...

Furthermore, in that precautionary approach, the Partnership must present public views on the acceptability of things such as the project implementation, or assumptions used to predict effects, strategies that avoid adverse effects, and follow up and monitoring strategies. This hasn't been done for the Metis. I think this further highlights the potential inadequacy of using a regulatory significance. It may be a fine line to be walking, depending on the resource use in the region.⁵² ...

We need to identify the amount of uncertainty the Metis are willing to accept. The Partnership needs to communicate with the Métis and understand their perspective. And decision makers need to be aware of the uncertainty in the data and the assessment.⁵³

The Partnership has not engaged with the Métis community in relation to its comfort with that uncertainty. Nor has it given confidence with respect to this issue in the EA.

Inclusion of other Proximate Aboriginal Communities in the Project's Research and Monitoring Activities

Currently, the Partnership excludes all other Aboriginal communities who live within or rely on the Nelson watershed from any research and monitoring activities related to the Project's effects on the water system and environment. Simply put, there is no place for any other Aboriginal groups. This is unacceptable to the MMF.

Within the Wuskwatim Hydropower Project License, the proponent was required to establish an ongoing advisory committee that included other potentially impacted Aboriginal communities. This advisory committee would not affect the existing Partnership structures, but would complement those processes by creating a more transparent and inclusive process with respect to planned research and monitoring related to Keeyask.

⁵¹ CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, p. 4791 (lines 13-19).

⁵² CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, pp. 4791 (lines 20-25) – 4792 (lines 1-5).

⁵³ CEC Transcripts, Testimony of Abbie Stewart (MSES), December 3, 2013, pp. 4792 (lines 6-11).

LICENSING RECOMMENDATION

The Partnership shall establish an ongoing advisory committee comprised of the KCNs, along with other willing proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed for the purpose of providing guidance on the research and monitoring activities set out in any Project license. Reasonable costs associated with the participation of each Aboriginal community in this advisory committee shall be borne by the Partnership based on an annual or multi-year workplan.

Failure to Conduct a Proper Cumulative Effects Assessment

The MMF supports the submissions of Consumers Association of Canada, Pimickamak and Peguis with respect to the Partnership's failure to undertake a proper cumulative effects assessment on the Project. Métis community witnesses also testified about the current disturbed environment in the watershed.

MR. CHORNOBY: I see that there's a lot more erosion of the trees and I seen where the -- I seen small islands of moss with trees on them floating down the river. I had only seen it twice but I had seen it. It's very hard to get into the shoreline because of all the debris along the shorelines. There is trees that are literally floating logs and stuff. With the boats, you have to be very careful when you're travelling with your family.⁵⁴

Métis community witnesses also testified about how the terms "clean" and "green" energy for hydro are simply not true when you see the effects that the Métis and other Aboriginal communities live with.

MR. CAMPBELL: A friend of mine from Boggy Creek, I met him at a meeting somewhere, four, five years ago. He's a Metis, but he's never really seen the commercial fishing side of it, hey. So this fall he came down, he came and stayed with me for a week, and he was all excited because we were going on a 95-mile boat ride to get to the camp, and we are going through Sipiwesk, through the Nelson River. And he knew something about Hydro, he knew that there was some dams on there and that. And when I took him through the lake there, like he couldn't believe it. Like, honestly, some of the banks are as high as this here, just straight like that. And the water doesn't have to go that high. The water just has to soften it up 10 feet in and everything -- but, you know, he couldn't believe it. And he always thought that Hydro, I guess what he thought was, how you seen in the old days how, you know, the wheel would go around in the water, but you didn't need to bring the water way up to -- and you know, he honestly couldn't believe it, because he thought because -- and I see

⁵⁴ CEC Transcripts, Testimony of Métis Community Witness (Mr. Chornoby), December 3, 2013, p. 4724 (lines 5-14).

the same advertisements -- clean energy. Like, you know, it doesn't hurt anything. But I think now he knows. And I just told him, when you get back down south, like let the people know, and maybe then there will be people who will get concerned about it.⁵⁵ ...

You know, we do have to move ahead, there's a lot of people, but do we really have to destroy everything doing it? Like I don't think we do.⁵⁶

The MMF supports the need for the Commission's non-licensing recommendation from the Bipole III hearing with respect to undertaking a regional cumulative effects assessment and the Minister's commitment regarding this recommendation to be undertaken prior to Keeyask's construction. It is only through a reliable, independent cumulative effects assessment can the true cost of Keeyask to the Métis community and other communities be fully appreciated and understood.

LICENSING RECOMMENDATION

Prior to construction, an independent regional cumulative effects assessment be completed in relation to the Nelson watershed. The scope and content of this assessment shall be developed in consultation with willing proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed. Costs associated with this assessment shall be borne by Manitoba Hydro.

⁵⁵ CEC Transcripts, Testimony of Métis Community Witness (Mr. Campbell), December 3, 2013, p. 4707.

⁵⁶ CEC Transcripts, Testimony of Métis Community Witness (Mr. Campbell), December 3, 2013, p. 4709 (lines 11-14).

APPENDIX A

SUMMARY OF MMF SUBMISSIONS AND RECOMMENDATIONS

It is the MMF' submission that the Commission should withhold its recommendation of the Project for licensing until the following actions are completed in order to ensure the requirements of the Scoping Document are met in relation to the Métis community:

1. Allow the MMF to complete the preliminary baseline and effects assessment work identified within the agreement executed June 21, 2013 within a reasonable time frame (i.e., by end of March 2014);
2. If the results of this work identify effects or indicate impacts are possible, a further impacts assessment process be completed consistent with the processes used for the KCNs and set out in the Scoping Document;
3. Once a more fulsome impact assessment is complete, a MMF-Partnership agreement or arrangement be negotiated in order to address Métis-specific mitigation measures as well as Métis participation in future monitoring in relation to the Project.

In the alternative, the MMF submits that the following non-licensing and licensing condition recommendations be made by the Commission to the Minister in relation to the Project:

Non-Licensing Recommendations

1. The Manitoba Government identify the relevant Aboriginal groups (i.e., First Nations and/or the MMF) a proponent should engage with in undertaking their environment assessment as well as assessing potential project effects as required in a Scoping Document. This identification of relevant Aboriginal communities should occur during or before the finalization of a Scoping Document. The determination of what Aboriginal groups a proponent should engage with should not continue to be left to proponents without guidance from the Manitoba Government. This type of identification process will provide greater clarity to proponents as well as focus any potential disputes between Aboriginal groups (who feel they should be engaged) with the Manitoba Government – not an Aboriginal group and a proponent.
2. The Manitoba Government should ensure its previous acceptance of the recommendation set out in Article 4.1 of the Aboriginal Justice Inquiry Implementation Committee Report is met. Upholding these types of

government commitments to Aboriginal communities is important to all Manitobans as well as in building sustainable communities and protecting the environment.

3. Based on recent court decisions on Métis issues and ongoing discussions between the MMF and the Manitoba Government under the MMF-Manitoba Points of Agreement on Métis Harvesting, the Manitoba Government should evaluate and consider the implications of the ongoing exclusion of the Métis, as a distinct Aboriginal community, from the Northern Flood Agreement with a view to potentially identifying alternative processes to address Métis issues, concerns and outstanding claims.
4. The Manitoba Government should ensure its obligations under section 18.3 of the Northern Flood Agreement, which seeks to avoid creating inequities within any settlement amongst Status Indians, Non-Status Indians and Métis be considered in relation to the construction and operation of the Project.

Licensing Recommendations

1. Prior to construction, the Partnership shall address the issues, concerns and effects of the Project with other willing Aboriginal communities, including, the MMF, who live within and use the Nelson watershed with a view to arriving at mutually agreeable agreements or arrangements that set out processes that address necessary Aboriginal community specific mitigation measures, provide opportunities for participation in monitoring relevant to an Aboriginal community's traditional use and culture, present ongoing information in relation to the Project's construction and operation. Reasonable costs associated with the negotiation of these agreements or arrangements shall be borne by the Partnership. If a mutually agreeable arrangement or agreement is not reached with a willing Aboriginal community, including, the MMF, who live within and use the Nelson watershed within a reasonable period, the Partnership shall provide a report outlining its efforts and reasons an agreement or arrangement could not be reached to the Director who may determine that this licensing condition has been met through best efforts.
2. The Partnership shall establish an ongoing advisory committee comprised of the KCNs, along with other willing proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed for the purpose of providing guidance on the research and monitoring activities set out in any Project license. Reasonable costs associated with the participation of each Aboriginal community in this advisory committee shall

be borne by the Partnership based on an annual or multi-year workplan.⁵⁷ (This participation may be addressed in the arrangement or agreement reached in the licensing recommendation set out above).

3. Prior to construction, the Project's Moose Harvest Sustainability Plan be updated to include and address any additional information related to the harvesting of moose by other proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed.
4. Prior to construction, an independent regional cumulative effects assessment be completed in relation to the Nelson watershed. The scope and content of this assessment shall be developed in consultation with willing proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed. Costs associated with this assessment shall be borne by Manitoba Hydro.

⁵⁷ This License Condition recommendation is similar to the Wustwatim Power Limited Partnership Environment Act License No. 2699, Clause 14.