

# MANITOBA CLEAN ENVIRONMENT COMMISSION

**IN THE MATTER OF** section 6(5)(b) of the *Environment Act*,  
C.C.S.M. c. E125;

**AND IN THE MATTER OF** a review by the Clean Environment Commission (“CEC”) of the Environmental Impact Statement for the Manitoba Hydro Manitoba-Minnesota Transmission Project (the “Project”) pursuant to the Terms of Reference of the Minister of Sustainable Development dated December 31, 2016, and updated on February 15, 2017.

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## WRITTEN SUBMISSIONS OF THE MANITOBA METIS FEDERATION (“MMF”)

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### **The Manitoba Métis: Canada’s Partner in Confederation**

1. The Manitoba Metis Community is a part of a larger Aboriginal people—the Métis Nation—that emerged from the descendants of unions between European traders and explorers and Aboriginal women in what was historically known as the ‘Northwest.’ While not defined with precision, the ‘Northwest’ was described from a geographic perspective centered in Montreal and what was then known as Upper Canada (i.e., the Prairies were ‘north’ and ‘west’ of those central Canada locations). This history was acknowledged by the Supreme Court of Canada in *Cunningham v. Alberta*, 2011 SCC 37, a copy of which is attached to these submissions at **Tab 1**:

[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.

2. In *Manitoba Metis Federation v. Canada* 2013 SCC 14 (the “MMF Case”), a copy of which is attached to these submissions at **Tab 2**, the Supreme Court of Canada recognized that the Manitoba Métis were one of the “[I]ndigenous peoples” who were

living in the “western territories” as the new country of Canada began its westward expansion following Confederation in 1867 (para. 2).

3. Our people emerged with our own nationhood, identity, culture, traditions and language (Michif) in the Northwest in the early 1800s. The story of the Battle of Seven Oaks in 1816 is our origin story and was the first of many self-government and rights assertions by our people in our Homeland, including the Sayer trial, the Battle of Grand Couteau, the Red River Resistance, land related petitions, the Battle of Batoche, among many others. The history of the Métis Nation, and in particular of the Manitoba Metis Community, is set out in greater detail in the report of Dr. Arthur Ray entitled “Métis Economic Communities and Settlements in the 19th Century”, a copy of which is attached to these submissions at **Tab 3**, and the report of Gwynneth Jones entitled “The Métis of Southern Manitoba in the Nineteenth Century: A Historical Report,” a copy of which is attached to these submissions at **Tab 4**. Both of these reports were filed as evidence and relied on by the court in *R. v. Goodon*, 2008 MBPC 59, a copy of which is attached to these submissions at **Tab 5**.
4. Similar to Indian peoples (i.e., First Nations), our ancestors lived, used and relied on our Homeland and were in possession of their lands. Our people had our own government, laws and traditions that were rooted in our lands and nationhood. This Métis perspective was reflected in Louis Riel’s writings in 1885:

When the Government of Canada presented itself at our doors it found us at peace. It found that the Metis people of the North-West could not only live well without it ... but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy or respect, because it was exercised over a country that belonged to it.

5. In the MMF Case, the Supreme Court of Canada also recognized our well-established existence as a distinct Aboriginal community in the Red River Valley, which included the Red River Settlement amongst other proximate locations:

[23] In 1869, the Red River Settlement was a vibrant community, with a free enterprise system and established judicial and civic institutions, centered on the retail stores, hotels, trading undertakings and saloons of what is now downtown Winnipeg. The Métis were the dominant demographic group in the Settlement, comprising around 85 percent of the population [approximately 10,000 Métis], and held leadership positions in business, church and government.

6. While a significant Métis population developed at the Red River Settlement by the early 1800s, the Manitoba Metis Community also included other settlements and relied on various locations along strategic fur trade routes throughout what is known as present day Manitoba. During the early part of the 19th century, these included various posts of

varying size and scale spanning the Northwest Company and Hudson Bay Company collection and distribution networks, as appears from a copy of a map entitled “The Fur Trade Network: Routes and Posts Prior to 1870,” which is attached to these submissions at **Tab 6**.

7. As Canada attempted to expand westward from Ontario, the Crown had to deal with us—as a distinct Indigenous people—with rights and interests in the Red River Valley and beyond. For example, following the well-known events of 1869/70 at the Red River Settlement, we ultimately became one of the founding peoples of this country: Canada’s negotiating partner in bringing Manitoba into Confederation. This led to what we view as our “treaty” with Canada, which is embedded in parts of the *Manitoba Act, 1870*. Again, the writings of Louis Riel in 1885 are insightful to understanding the Métis perspective:

There were two societies who treated together. One was small, but in its smallness had its rights. The other was great, but in its greatness had no greater rights than the rights of the small...

8. Unfortunately, the constitutional compact made between our people and Canada was ultimately broken and defeated by the federal government through delays in fulfilling the purpose of the promise embedded within s. 31 of the *Manitoba Act, 1870*. This broken promise—flowing from a breach of the honour of the Crown—was at issue in the MMF Case, wherein the highest court of the land validated the Manitoba Métis Community’s outstanding claim against the federal Crown and called for reconciliation in order to address this long-standing rift in the constitutional fabric of our country (MMF Case, para. 140).

### **The Manitoba Métis: Our Customs, Practices and Laws in Relation to Our Lands**

9. As noted above, prior to Canada’s arrival on our doorstep, our people had developed our own self-government and laws in relation to our Homeland, including our provisional government as well as the “Laws of the Prairies,” which is attached to these submissions at **Tab 7**.
10. Further, for successive generations, our people played a pivotal role in provisioning the fur trading posts that made up the Northwest Company and Hudson Bay Company collection and distribution systems by supplying agricultural produce, buffalo meat as pemmican and dry meat and, of course, furs. Though unique Indigenous way of life was closely tied to hunting, we maintained a diversified economy that relied on the bounty of our Homeland in order to maintain our community and distinct way of life.
11. For example, in addition to supplying meat in support of the fur trade, Métis also took up small-scale farming, harvesting wild rice, berries, salt, maple sugar and seneca root. The Hudson’s Bay and Northwest Companies both benefited from the contribution of produce. This mixed economic strategy contributed to our distinct Métis culture, which continues today in our Homeland.

12. Specifically, the buffalo hunt, as a part of the Métis seasonal round described above, became essential to Métis way of life and the economy of the Manitoba Metis Community. In particular, pemmican made from powdered buffalo meat, fat and berries, became the ideal non-perishable food item to carry on long voyages. This was a key staple that fueled the fur trade network. Notably, the Supreme Court of Canada has acknowledged that “[t]he buffalo robe trade was the Métis’ primary livelihood and one of the backbones of their economy” (MMF Case, para. 193).
13. As a part of our self-government as a people, the buffalo hunt relied on the organization of hundreds of men, women and children, not to mention carts and horses to transport the meat for hundreds of miles. During a hunt, every family member played a role. Butchering, dry meat preparation and pemmican making, as well as hide preparation and tanning, were the responsibility of women and children. Men hunted. In addition to feeding traders, families and settlers, buffalo was used for clothing, moccasins, tents and more.
14. In order to manage this aspect of the Métis seasonal round and economy, the Manitoba Metis Community developed unique laws and governance institutions. Métis buffalo hunt rules—also known as the Métis Laws of the Hunt—were developed, laid out, strictly adhered to and enforced. Notably, these Métis created rules and laws in relation to our use of our Homeland and harvest continue today in the form of the MMF Laws of the Hunt, which are attached to these submissions at **Tab 8**.

## **The Manitoba Metis Federation**

### *The MMF’s Representative Role on behalf of the Manitoba Métis Community*

15. While the MMF was initially formed in 1967, its origins lie in the 18th century with the birth of the Manitoba Metis Community and in the legal and political structures that developed with it as detailed and explained above.
16. In contemporary times, the MMF has evolved as the official democratic and self-governing representative for the Métis Nation’s Manitoba Metis Community. It is mandated to promote the political, social, cultural and economic interests and rights of the Métis in Manitoba.
17. The objectives of the MMF, as set out in the MMF Constitution, a copy of which is attached to these submissions at **Tab 9**, are as follows:
  - (a) To promote and instill pride in the history and culture of the Métis people.
  - (b) To educate members with respect to their legal, political, social and other rights.
  - (c) To promote the participation and representation of the Métis people in key political and economic bodies and organizations.

- (d) To promote the political, legal, social and economic interests and rights of its members.
  - (e) To provide responsible and accountable governance on behalf of the Manitoba Métis community using the constitutional authorities delegated by its members.
18. In fulfillment of these objectives, the MMF maintains a centralized registry of its members (i.e., citizens), which is the only Métis registration system in Manitoba financially supported by the federal government. To date, the MMF has over 52,000 registered citizens with thousands of additional citizens registering each year.
  19. Based on the Métis Nation's inherent right of self-government and self-determination as well as the democratic mandate it receives from its citizens, the MMF represents the Manitoba Metis Community through democratically elected governance structures at the local, regional and provincial levels and is authorized to deal with the collective rights, interests and claims of the Manitoba Metis Community.
  20. In fulfillment of its representative role on behalf of the Manitoba Metis Community, the MMF has developed a unique province-wide governance structure. Central to this structure is the MMF President, as the Chief Executive Officer of the MMF as well as the leader and spokesperson for the Manitoba Metis Community. The MMF President is elected in a province-wide election every four years and is responsible for overseeing the MMF's day-to-day operations. In addition, the MMF has a Board of Directors (i.e., the MMF Cabinet) that leads, manages and guides the policies, objectives and strategic direction of the MMF and its subsidiaries. All 23 members of the Board of Directors are democratically elected by the MMF's citizenship.
  21. The MMF is also organized into seven regional associations, or "MMF Regions," throughout the province. Each Region is administered by a vice-president and two executive officers, all of whom sit on the MMF's Board of Directors. These independent officers deliver programs and services to their specific geographic area. The seven Regions of the MMF are depicted in the map attached to these submissions at **Tab 10**.
  22. Within each Region are various settlements, villages or area-specific "Locals," which are administered by a chairperson, a vice-chairperson and a secretary-treasurer. A Local must have a minimum of nine members and meet at least four times a year. Every member of the MMF belongs to a Local. The purpose of a Local is for citizens to have local-based representation through local governance and communication channels and to exchange information upward to higher levels of MMF governance concerning local issues, values and interests. This structure allows the MMF to centralize and use resources efficiently, while at the same time remaining in tune with and responsive to regional and local needs and concerns while representing the Manitoba Metis Community as a whole.
  23. In keeping with the authorizations from citizens set out in the MMF Constitution and the respective roles of the provincial, regional, and local component parts of the MMF, the

MMF Annual General Assembly has authorized the MMF Home Office as its authorized representative for the purposes of Crown consultation and accommodation. This is spelled out explicitly in Resolution 8, a copy of which is attached to these submissions at **Tab 11**. More specifically, the MMF Annual General Assembly unanimously adopted Resolution 8 in 2007, which reads in part as follows:

...this assembly continue[s] to give the direction to the Provincial Home Office to take the lead and be the main contact on all consultations affecting the Metis community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Metis...

### ***The Recognition of the MMF's Representative Role by the Courts and Other Governments***

24. The MMF's representativeness flows from the Métis Nation's inherent right of self-government, its democratic institutions, and its legitimacy in the eyes of its own people. This representativeness has been recognized by the Supreme Court of Canada, in the MMF Case, where it acknowledged and granted the MMF standing as the representative of the collective interest of the Manitoba Metis Community in relation to the outstanding claim against the Crown flowing from s. 31 of the *Manitoba Act, 1870* (para. 44). Further, the Provincial Court of Manitoba, in *R. v. Goodon*, recognized that the MMF is the governing body of Métis people in Manitoba (para. 52).
25. The MMF is also recognized by other orders of government as the representative body of the Manitoba Metis Community. For example, it receives limited annual funding from the federal government and the Manitoba government to represent the Manitoba Métis Community. It has also negotiated many agreements and arrangements on behalf of the Manitoba Metis Community with other levels of government. The most recent of these being a MMF-Canada Framework Agreement for Advancing Reconciliation ("MMF-Canada Framework Agreement") executed on November 15, 2016, a copy of which is attached to these submissions at **Tab 12**, which states:

Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF, in order to advance reconciliation and renew the relationship through cooperation, respect for Métis rights, and ending the status quo.

26. In addition, the MMF and its related institutions administer over \$50 million in federal and provincial funding annually for the delivery of programs and services to the Manitoba Metis Community. These programs and services relate to Métis employment, training, education, housing, economic development, and health, amongst other sectors. As well, the MMF is responsible for the delivery of Métis child and family services in Manitoba under *The Child and Family Services Authorities Act*, CCSM c C90.

27. On April 13, 2017, the Canada-Métis Nation Accord was signed. This Accord recognizes that the Métis Nation is represented by the Métis National Council and its five Governing Members: the MMF, the Métis Nation of Ontario, the Metis Nation of Alberta, the Saskatchewan Metis Nation, and the Metis Nation of British Columbia. It explicitly acknowledges that the Governing Members are “mandated and authorized to represent the citizens of the Métis Nation, including dealing with collectively held Métis rights, interests and outstanding claims against the Crown.” The Accord is attached to these submissions as **Tab 13**.

### **Understanding Métis Rights, Interests and Claims in Relation to the Project**

28. The Project is proposed within the MMF’s Southeast Region. As appears from the map attached to these submissions at **Tab 14**, there are 15 MMF Locals in the vicinity of the Project: St. Marks; St. Eustache; Stonewall; Selkirk; St. Adolphe; Lorette; Ste. Rita; Richer; La Broquerie; Marchand; St. Malo; Woodridge; St. Labre; Vassar; and, South Junction. In addition, Métis citizens who may now live in other parts of Manitoba ancestrally connect and maintain connections to the Project’s proposed area—as the heart of the Manitoba Métis Community’s Homeland.
29. The Manitoba Metis Community recognizes its has a shared traditional territory with First Nations throughout much of the province. First Nations are our family, relations, neighbours and friends. In Manitoba, however, most First Nations in the province have had their pre-existing Aboriginal rights exchanged or modified based on their treaties as well as the *Natural Resources Transfer Agreement, 1930*.
30. In contrast, our constitutionally-protected rights in Manitoba—as Métis—have their roots in the pre-existing practices, customs and traditions of our distinctive culture and, as such, are constitutionally protected by s. 35 of the *Constitution Act, 1982* as Aboriginal rights. While we consider s. 31 and the *Manitoba Act, 1870* as a part of our treaty relationship with the Crown, these provisions did not have the same legal effect on our pre-existing Métis rights as First Nation treaties and the *Natural Resources Transfer Agreement, 1930* did on other Indigenous peoples.
31. It is important to note that Métis rights are not derivative of the rights of First Nations, nor are they subordinate to First Nations’ rights. The s. 35 rights of the Métis are of equal standing and have the same constitutional protection as the rights of other Aboriginal peoples. The recent independent report of the Ministerial Special Representative of Métis Section 35 Rights and Reconciliation provides some helpful context and analysis on understanding the nature and scope of Métis rights. A copy of this report is attached to these submissions at **Tab 15**.
32. In addition, as the Supreme Court explained in *Cunningham v. Alberta*, the recognition of our collective rights—as Métis—has often been ignored or denied by governments. In

*Cunningham*, the Supreme Court acknowledged that s. 35 of the *Constitution Act, 1982* was designed to reverse that trend:

[13] The landscape shifted dramatically in 1982, with the passage of the *Constitution Act, 1982*. In the period leading up to the amendment of the Constitution, Indian, Inuit and Métis groups fought for constitutional recognition of their status and rights. Section 35 of the *Constitution Act, 1982* entrenched existing Aboriginal and treaty rights and recognized three Aboriginal groups - Indians, Inuit, and Métis. For the first time, the Métis were acknowledged as a distinct rights-holding group. ...

33. Unfortunately, even after the inclusion of Métis in s. 35, governments continued to deny the existence of Métis rights. Finally, in 2003, the Supreme Court of Canada, in *R. v. Powley*, [2003] 2 SCR 207, had its first opportunity to consider the nature and scope of Métis right protected by s. 35. The Court held the following:

[13] The inclusion of the Métis in s. 35 is based on a commitment to recognizing the Métis and enhancing their survival as distinctive communities. The purpose and the promise of s. 35 is to protect practices that were historically important features of these distinctive communities and that persist in the present day as integral elements of their Métis culture. ...

[17] The inclusion of the Métis in s. 35 represents Canada's commitment to recognize and value the distinctive Métis cultures, which grew up in areas not yet open to colonization, and which the framers of the *Constitution Act, 1982* recognized can only survive if the Métis are protected along with other Aboriginal communities.

34. In the *Powley* decision, a copy of which is attached to these submissions at **Tab 16**, the Supreme Court also recognized the following:
- (a) Métis are a distinct Aboriginal people whose rights flow from their distinct identity—not those of their Indian forbearers;
  - (b) Métis rights are collectively held by Métis communities/collectives—not individuals;
  - (c) There is no hierarchy of rights between Indians, Inuit and Métis;
  - (d) Similar to other Aboriginal peoples, Métis rights flow from their historic and special relation to the land;
  - (e) Métis rights-holders must: (1) self-identify as Métis, (2) be ancestrally connected to the historic rights-bearing community, and (3) be accepted by the contemporary Métis community that is the continuation of historic community.

## Established Manitoba Métis Harvesting Rights

35. Based on *Powley*, governments were supposed to negotiate with Métis in order to recognize Métis rights, similar to what has been done with First Nations and Inuit peoples. This was not the case in Manitoba. We had to turn to the courts for justice. In 2009, in *R. v. Goodon*, the Manitoba courts affirmed what we had always known:

[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. ...

[52] The Metis community today in Manitoba is a well organized and vibrant community. Evidence was presented that the governing body of Metis people in Manitoba, the Manitoba Metis Federation, has a membership of approximately 40,000, most of which reside in southwestern Manitoba.

36. Based on the *Goodon* case, it is recognized that the Manitoba Métis Community has harvesting rights (i.e., hunting, fishing, gathering of plants, medicines, berries, etc.), including the use of timber for domestic purposes. More specifically, this case recognizes the Manitoba Métis Community's harvesting rights in relation to the area where the Project is proposed.
37. In addition, the MMF, as the representative of the Manitoba Métis Community, asserts the right to use, control and access Métis cultural, heritage sites throughout our territory. These rights are grounded on our existence as an Aboriginal people in this territory prior to effective control, our special relationship to the land, the continuation of our historic practices and traditions in this territory over the generations as well as our pre-existing Métis laws. Accordingly, these rights are protected as "aboriginal rights" within the meaning of s. 35 of the *Constitution Act, 1982*.

## Recognized Manitoba Métis Harvesting Rights

38. Following *Goodon*, the Crown, as represented by the Manitoba government, recognized some aspects of the Manitoba Métis Community's rights through a negotiated agreement, the MMF-Manitoba Government Points of Agreement on Métis Harvesting, a copy of which is attached to these submissions at **Tab 17**.
39. In particular, this Agreement recognizes Métis rights to "hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, the ability to harvest timber for domestic purposes" throughout the area as shown on the Map of Recognized Métis Natural Resource Harvesting Areas attached

to these submissions at **Tab 18**. The Project falls entirely inside the Métis Recognized Harvesting Area

40. Manitoba Conservation's policy regarding Domestic Timber Harvest for Aboriginal/Treaty Rights Holders, a copy of which is attached to these submissions at **Tab 19**, also recognizes some aspects of the Manitoba Métis' rights in relation to timber harvesting.

### **The MMF Laws of the Harvest**

41. As noted above, the Manitoba Metis Community continues to govern and regulate its own hunting activity. Today, this is done using the Métis Laws of the Harvest, which are developed and published by the MMF, a copy of the current edition of which is attached to these submissions at **Tab 8**.
42. The MMF-Manitoba Government Points of Agreement on Métis Harvesting recognizes the Métis Laws of the Harvest, providing that the Points of Agreement applies to Métis Rights-Holders as those who hold valid MMF harvesters issued under the Métis Laws of the Harvest (para. 3).
43. The Métis Laws of the Harvest also have management tag requirements for designated big game animals and bag limits for the harvesting of certain species. The management tag requirements and bag limits were instituted after thorough consultation with the Manitoba Metis Community about the needs of Métis harvesters.

### **Asserted Manitoba Métis Community Commercial Rights**

44. Beyond those rights already established through litigation and recognized by agreements, the Manitoba Metis Community claims commercial and trade related rights in the area of Manitoba through which the Project passes. These are strong, well-founded assertions, and it is incumbent on the Crown to take them seriously.
45. The Manitoba Metis Community has its roots in the western fur trade. The Métis in Manitoba are descendants of early unions between Aboriginal women and European traders. As a distinct Métis culture developed, the Métis took up trade as a key aspect of their way of life. Many Métis became independent traders, acting as middlemen between First Nations and Europeans. Others ensured their subsistence and prosperity by trading resources they themselves hunted and gathered. As indicated in the *Goodon* decision (para. 69(f)), by the mid 19<sup>th</sup> century, the Métis in Manitoba had developed the collective feeling that "the soil, the trade and the Government of the country [were] their birth rights."
46. Trade is and always has been integral to the distinctive culture of the Manitoba Metis Community. Today, the Manitoba Métis have an Aboriginal, constitutionally protected right to continue this trading tradition in modern ways to ensure that their distinct

community will not only survive but also flourish. As a result, the Manitoba Métis are entitled to a fair share of the wealth generated by the resources in our Homeland.

47. As noted above, unlike First Nations in Manitoba, whose historic practices, customs and traditions—including their commercial rights—have been addressed in their treaty relationships with the Crown and the *Natural Resources Transfer Agreement, 1930*, the Manitoba Metis Community’s pre-existing customs, practices and traditions are not tempered by the “taking up” clauses or modified by the *Natural Resources Transfer Agreement, 1930*.
48. All of the rights described above, both established and asserted, are grounded in the Manitoba Metis Community’s distinct existence as an Aboriginal people in this territory—the Métis Homeland—prior to effective control and continuing over generations to the present day. Based on this, these rights are protected as Aboriginal rights within the meaning of s. 35 of the *Constitution Act, 1982*.

#### **The Manitoba Métis Land Claim: Section 31 of the *Manitoba Act***

49. In addition to the Manitoba Metis Community’s Aboriginal rights, which are grounded on our recognized peoplehood and pre-existence in Manitoba, the MMF has an outstanding legal claim within what was the ‘old postage stamp province’ relating to the 1.4 million acres of land promised to the children of the Métis living in the Red River Valley, as enshrined in s. 31 of the *Manitoba Act, 1870*, which is attached to these submissions at **Tab 20**. A map showing the ‘old postage stamp province’ is attached to these submissions at **Tab 21**.
50. This chapter in our history is succinctly summarized in the Ministerial Special Representative Report by Mr. Thomas Isaac, a copy of which is attached to these submissions at **Tab 15**:

A key and central event in Métis and Canadian history was the Red River Resistance of 1869-70 resulting from Métis resistance to the fur trade policies of the Hudson’s Bay Company and the land settlement policies of Canada. Together, these policies were seen as a threat to the Métis and their way of life. Following the Red River Resistance, the Métis, led by Louis Riel, participated in the negotiation of the Manitoba Act, 1870, which brought Manitoba into Confederation as a province of Canada (p. 8).

51. Section 31 of the *Manitoba Act, 1870* was a constitutional compact negotiated between the Manitoba Métis Community and the Dominion Government in an act of nation building. In the MMF Case, the Supreme Court of Canada acknowledged that the land promised in s. 31 was meant to secure a “lasting place in the new province [of Manitoba]” (para. 5) for future generations of the Métis people.

52. The Métis’ “lasting place” in Manitoba was to have been achieved by providing them a “head start” in securing lands in the heart of the ‘old postage stamp province.’ Instead, the federal Crown was not diligent in its implementation of s. 31, which effectively defeated the purpose of the constitutional compact.
53. The Supreme Court of Canada found that the federal Crown failed to act with diligence and purpose to implement the Métis land grant provision set out in s. 31 of the *Manitoba Act, 1870*. This constituted a breach of the honour of the Crown. In arriving at this legal conclusion, the Court wrote:
- [140] What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Charter* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import.
54. This breach is an outstanding Métis claim flowing from a judicially recognized constitutional obligation, which burdens the federal Crown. It can only be resolved through good faith negotiations and a just settlement with the MMF. Lands in the Project area in Manitoba may need to be considered as a part of any future negotiations and settlement in fulfillment of the promise of 1.4 million acres.
55. The MSR Report of Mr. Thomas Isaac also states that:
- The MMF Declaration is directly tied to the “unfinished business of reconciliation” with the Métis and this is more than simply a political or constitutional imperative. It is ultimately founded in legal principles and the rule of law. This is the fundamental basis for Canada implementing the MMF Declaration and engage with the MMF on this matter (p.36).
56. Clearly, the federal Crown’s failure to make good on the promise enshrined in s. 31 of the *Manitoba Act* gives rise to grievances and an outstanding claim in the areas of the ‘old postage stamp province’ of Manitoba through which the Project passes. Mr. Isaac further recommended that Manitoba be involved in the process of resolving these outstanding claims and fulfilling the MMF Declaration, writing that “Manitoba could play a positive role in a historically significant process” (p.40).
57. As set out in the MMF-Canada Framework Agreement, the MMF and Canada are currently engaged in government to government, nation to nation negotiations, spurred by the Supreme Court of Canada’s declaration in the MMF Case. Through these negotiations, the MMF seeks to advance reconciliation with the Crown and secure recognition and respect for the rights of the Manitoba Metis Community in our Homeland by way of a modern-day treaty, or “land claims agreement,” within the meaning of s. 35(3) of the *Constitution Act, 1982*.

58. Land claims agreements have been concluded with Aboriginal groups from across the country. Invariably, these constitutionally protected agreements include provisions to ensure that the Aboriginal party benefits appropriately from economic development in their territory. This can be achieved through a number of different mechanisms: requirements that proponents negotiate impact benefit agreements with Aboriginal parties (see, for example, the *Inuit of Nunavut Land Claim Agreement*, Article 26.2.1 attached to these submissions at **Tab 22**; the *Labrador Inuit Land Claim Agreement*, Articles 6.7.1 and 7.7.2 attached to these submissions at **Tab 23**; the *Tlicho Land Claims and Self-Government Agreement*, Article 23.4.1, attached to these submissions at **Tab 24**); guarantees of resource revenue sharing through royalty payments to Aboriginal parties (see, for example, the *Gwich'in Land Claim Agreement*, Chapter 9 attached to these submissions at **Tab 25**; the *Maa-Nulth First Nations Final Agreement*, Chapter 17 attached to these submissions at **Tab 26**; the *Sahtu Dene and Metis Land Claim Agreement*, and Chapter 10 attached to these submissions at **Tab 27**); or, detailed provisions regarding economic measures designed to benefit Aboriginal parties (see, for example, the *Tlicho Land Claims and Self-Government Agreement*, Chapter 26, attached to these submissions at **Tab 28**; *Sahtu Dene and Metis Land Claim Agreement*, and Chapter 12, attached to these submissions at **Tab 29**; see, for example, the *Gwich'in Land Claim Agreement*, Chapter 10 attached to these submissions at **Tab 30**).
59. Outside of land claims, other provinces have implemented meaningful mechanisms related to resource revenue sharing and ensuring that Aboriginal communities derive economic benefits from project in their traditional territories. The following are just some examples of policies, directives, and agreements in these other provincial jurisdictions:
- (a) The First Nations Clean Energy Business Fund Revenue Sharing Agreements are negotiated between British Columbia and First Nations (treaty and non-treaty) to provide revenue sharing opportunities for clean energy projects. A list of current agreements is attached to these submissions at **Tab 31**, and an example of one of these agreements, made with the Kwantlen First Nation (a non-treaty First Nation) is attached to these submissions at **Tab 32**.
  - (b) The Forest Consultation and Revenue Sharing Agreements in British Columbia provide both treaty and non-treaty communities with direct economic benefits based on harvesting activities taking place in their traditional territories. A list of the current agreements is attached to these submissions at **Tab 33**, and an example of one of these agreements, made with the Adams Lake Indian Band (a non-treaty First Nation), is attached to these submissions at **Tab 34**.
  - (c) In British Columbia, Natural Gas Pipeline Benefits Agreements are agreements that provide economic benefits to treaty and non-treaty First Nations potentially affected by liquid natural gas pipeline development; linear corridor infrastructure similar to transmission lines. A list of current agreements is attached to these submissions at **Tab 35**, and an example agreement, made with Gitanyow First

Nation (a non-treaty First Nation; currently negotiating an Agreement in Principle), is attached to these submissions at **Tab 36**.

- (d) Ontario's Long-Term Energy Plan ("LTEP") provides that Ontario "expects to see Aboriginal involvement become the standard for the future of major, planning transmission lines in Ontario. First Nation and Métis communities are interested in a wide range of opportunities—from procurement to skills training to commercial partnerships. When new, major transmission line needs are identified, the companies looking to develop the proposed lines will, in addition to fulfilling consultation obligations, work to involve potentially affected First Nations and Métis communities, where commercial feasible and where there is an interest" (pp 69-70). Ontario's LTEP Plan additionally provides that "the government will continue to review participation programs to ensure they provide opportunities for First Nation and Métis communities" (p. 7). Ontario's LTEP is attached to these submissions at **Tab 37**.
  - (e) Ontario has a wide suite of tools that are designed to encourage Aboriginal participation in renewable and other energy projects through, for instance, price adders and contract set-asides for Aboriginal-led or partnered renewable energy projects, and has the Aboriginal Loan Guarantee Program, which helps Aboriginal communities secure financing for their equity participation in clean energy and transmission projects (LTEP, p. 69). Another key program in Ontario is the Aboriginal Energy Partnership Program ("EPP"). A backgrounder on the EPP is attached to these submissions at **Tab 38**, and the *Independent Electricity System Operator's Energy Partnerships Program Partnership Rules* is attached to these submissions at **Tab 39**. A letter directing that capacity funding be provided to Aboriginal communities who are exploring equity positions in major transmission projects in Ontario is attached to these submissions at **Tab 40**. A flowchart demonstrating the evolution of Ontario's energy support programs is attached to these submission at **Tab 41**.
60. The MMF-Canada Framework Agreement provides Canada with a formal mandate to negotiate with the MMF on a variety of subject matters, including self-government, settlement lands, water and subsurface rights, forestry, environmental assessment, and land management. Reconciliation requires that these negotiations lead to meaningful measures to ensure that Manitoba Metis Community receives an equitable share of the benefits that result from the development of our Homeland. As these negotiations progress, the Manitoba Metis Community is entitled to expect that the Crown will consult with and accommodate the MMF it a way that protects our economic interests in our territory as they may be articulated in our eventual land claims agreement.
61. Beyond the context of the ongoing negotiations between Canada and the MMF, the Crown—including the provincial Crown—has an obligation to pursue reconciliation with the Manitoba Metis Community. The Province of Manitoba's commitment to

reconciliation has been stated clearly in the *Path to Reconciliation Act* (SM 2016, c 5), a copy of which is attached to these submissions at **Tab 42**. Reconciliation, however, must include ensuring that Aboriginal groups have access to a fair share of the economic benefits of industrial development in their territory. As it stands, Manitoba's regulatory processes and policies fail to encourage this sufficiently. As the province develops, Aboriginal people continue to be left behind. Manitoba should look to other jurisdictions that have adopted approaches to ensure that reconciliation is backed not only by words, but by much needed economic opportunities.

### **Engagement with Manitoba Hydro**

62. Manitoba Hydro and the MMF negotiated "Engagement on Manitoba Hydro's Manitoba-Minnesota Transmission Project: Work Plan & Budget" in November of 2015 (the "Engagement Workplan". The Study Objectives set out in the Engagement Workplan include the identification of Métis Specific Interests along or in the proximity of the proposed route for the Project, including, for example "Lands Available for Métis Use" and "Métis Harvesting." Another objective was to work collaborative to identify potential impacts to Métis specific interests. The Engagement Workplan further contemplates discussion of specific mitigation measures for potential impacts to Métis specific interests. A redacted copy of the Engagement Workplan is attached to these submissions at **Tab 43**.

All of which is respectfully submitted this 23rd day of May 2017.