

October 16, 2009

VIA FAX AND MAIL

Steve Kearney
Regional Director
Manitoba Conservation
Northeast Region
59 Elizabeth Drive, Box 28
Thompson, MB R8N 1X4

Dear Mr. Kearney:

RE: Keeyask Hydropower Limited Partnership

I am counsel for the Manitoba Métis Federation (MMF) with respect to the Keeyask Hydropower Limited Partnership (the "Project"). I am writing in response to your letter dated October 8, 2009, to Mr. Al Benoit, a Senior Policy Advisor at the MMF, on the Project.

The MMF asserts it represents a rights-bearing Métis community consistent with *R. v. Powley*, [2003] 2 S.C.R. 207, whose members live throughout, use and rely on a traditional territory in and around the proposed Project. Members of this Métis community hunt, fish, trap, gather and pursue traditional pursuits connected to the land throughout the region surrounding the Project. These Métis customs, practices and traditions are constitutionally-protected rights in Canada's Constitution. The Project's potential impacts on these rights trigger the Crown's duty to consult and accommodate the rights-bearing Métis community, consistent with *Haida Nation v. British Columbia* [2004] 3 S.C.R. 511 and *Taku River Tlingit First Nation v. British Columbia* [2004] 3 S.C.R. 550.

Within the MMF's internal governance structure, the northeast region of the Manitoba Métis Community is called the Thompson Region. For your information, a map outlining the MMF's Thompson Region as well as the MMF's other regions is available at the MMF's website at www.mmf.mb.ca. The MMF represents over 3,400 adult Métis individually and collectively in the Thompson Region, as the democratic self-government representative of the Métis people in Manitoba.

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The Métis living in this region are the continuation of the historic rights-bearing Métis collective that lived, used and relied on the lands within the Thompson Region as well as the rest of what is now known as the province of Manitoba and the historic Northwest. The locations and settlements where Métis historically lived in the region were connected to each other as well as other locations, settlements and Métis people throughout Manitoba and the historic Northwest through seasonal rounds, trade, mobility and kinship. These realities fostered a regional cohesion between the Métis living in what is now known as northeastern Manitoba that continues today through ongoing cultural and social activities, harvesting, family connections and mobility. Further, this regional collective was and remains an indivisible part of the Manitoba Métis Community, as represented by the MMF.

Based on the rights claim outlined above, my client is of the position that your request for the MMF to identify discrete, individual “Métis communities” for the purposes of consultation is flawed because it fails to respect the history of the Métis in the Thompson Region, the current state of Métis rights law and the on-the-ground realities of the potentially affected rights-bearing Métis community. It is my client’s position that consultation must take place through the democratically elected representative government of the affected Métis people – the MMF. More specifically, consultation must occur with the MMF and its governance structures at the local, regional and provincial levels, which have the jurisdiction and authority to deal with the collective interests of the potentially affected Métis community. As such, we would request a consultation process be put into place between the MMF and the Crown on the Project, which respects the roles and jurisdictions of the MMF, its Locals and its Regions, consistent with Resolution #8 from the MMF Annual General Assembly. For your convenience, I am attaching a copy of this resolution.

My client would also note that the Manitoba Provincial Court’s decision in *R. v. Goodon*, [2009] M.J. No 3 (M.P.C.), rejected the Manitoba Crown’s narrow approach to the identification of the historic and contemporary rights-bearing Métis communities as discrete, physical settlements in Manitoba. Instead, the court recognized a vibrant, regional rights-bearing Métis community that is represented by the MMF, which encompasses southwestern Manitoba and extends into central and northern Manitoba, the United States and Saskatchewan.

Since the Manitoba Government chose not to appeal this case, the MMF expects that the Manitoba Government and its Ministries will respect the direction of the Manitoba courts on Métis rights issues (i.e., Métis communities are regional in size and scope). My client is of the opinion that similar to how Métis rights were established in the *Goodon* case, Métis rights could be established in the region in and around the Project, as an indivisible part of the Manitoba Métis Community.

My client would stress that the underlying purpose of the Crown’s duty to consult is to avoid forcing Aboriginal groups as well as governments into time consuming and expensive litigation when there are credible Aboriginal rights claims and Crown actions are being taken that have the potential to negatively affect those rights. My client is of the position that this situation is exactly what was contemplated by the Supreme Court of Canada in the *Haida Nation* and *Taku River* cases and requires pro-active consultation and accommodation with the potentially affected Métis community.

In support of this credible rights assertion, the MMF would bring to the Manitoba Government's attention that the Government of Canada has commissioned historic research on this region, which evidences the historic presence of a Métis population throughout the region from the early 1800s. Moreover, the MMF's ongoing research and current Métis membership and registration work evidences the continuation of the historic Métis families who lived, moved and harvested throughout this region in the early 1800s, continuing to live in, move throughout and rely on this region today. In the MMF's opinion, the Manitoba Government not only has constructive knowledge of credible Métis rights claims in this region – it has actual knowledge.

Moreover, the traditional territory of the potentially affected rights-bearing Métis community is shared with First Nations located in the northeast portion of Manitoba. As Manitoba Hydro has already implicitly recognized, through negotiating and reaching accommodation agreements with First Nations in the region, this Project will affect the rights, interests and way of life of the Aboriginal peoples who live near the Project and who rely on the lands in and around the Project for hunting, fishing, trapping, gathering and traditional pursuits.

While the potentially affected rights-bearing First Nations in and around the Project appear to have been intimately involved in the development of the Project's Environmental Assessment ("EA") and some have even reached "adverse effects agreements" with the proponent, the potentially affected rights-bearing Métis community has been largely excluded to date. More specifically, the rights-bearing Métis community that is potentially affected by the Project has not been meaningfully engaged in the development of the Project's EA. Further, the impact of the Project on Métis rights, interests, way of life and traditional uses in the region have not been considered or addressed in the EA or through other processes. Therefore, my client is of the position that the EA, in its current form, is deficient because it fails to even consider the unique rights, interests and perspectives of the Métis community, as a distinct Aboriginal people whose rights are equal to those of First Nations in the region.

You are likely aware that for years now, the MMF has used any forum available to it – political, media, regulatory processes, litigation – in order to bring its rights claims and interest to the Manitoba Government's attention to no avail. For example, these issues were raised in the regulatory hearings on the Wuskwatim Hydropower Project in 2005, but the Crown's constructive knowledge of credible Métis rights claims in the Thompson region resulted in no changes in the Manitoba Government's ongoing wilful blindness to consult with the Métis.

More recently, in 2008, the MMF President wrote to the Manitoba Premier requesting that a process be put in place with a view to arrive at a Métis consultation framework for the province. In July 2009, the MMF President wrote to the Minister for Manitoba Hydro expressing the MMF's concerns about the lack of Métis engagement and consultation on the Keeyask Hydropower Project and other major works being proposed by Manitoba Hydro. To date, neither of these letters or their requests have been responded to by anyone in the Manitoba Government. For your ease of reference, I am attaching the MMF President's recent letter to the Minister of Manitoba Hydro dated July 3, 2009.

In order to discuss the MMF concerns about the Project further, my client is requesting a face-to-face meeting with Manitoba Conservation. You should also be aware that on October 13, 2009, I responded to an email from Elise Dagdick, Manitoba Conservation, Environmental Assessment and Licensing Branch, and requested a face-to-face meeting on the afternoon of October 21, 2009, to discuss my client's concerns with respect to the Project's EA and the Crown's potential approval of the Project based on a deficient EA. I have yet to receive a response to this meeting request. However, my client would be more than willing to have a similar meeting with other officials from Manitoba Conservation on October 21, 2009 in Winnipeg. At this meeting, we would like to outline the MMF's rights assertions in more detail as well as discuss how effective and meaningful Crown consultation can take place with the potentially affected rights-bearing Métis community in relation to the Project.

If such a meeting is possible, please contact Michelle Bahm, MMF's Natural Resources Policy Analyst at (204) 586-8474 or mbahm@mmf.mb.ca in order to coordinate logistics. If this proposed date, time and location is unworkable for you and your colleagues please contact Ms. Bahm so an alternative date and location can be identified.

My client looks forward to hearing from Manitoba Conservation on these issues of important to the Métis community.

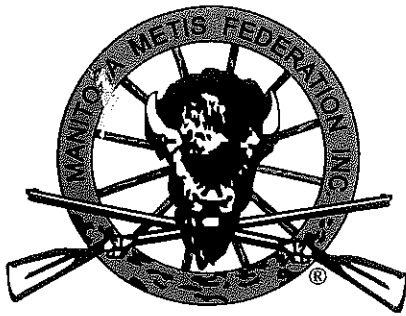
Yours very truly,



Jason Madden

Enc.(2): MMF President Letter to Minister of Hydro dated July 3, 2009
MMF Annual General Assembly – Resolution #8

c.c. David Chartrand, MMF President
Anita Campbell, MMF Minister for Hydro
Julyda Lagimodiere, MMF Vice President, Thompson Regin
Al Benoit, MMF Senior Policy Advisor
Michelle Bahm, MMF Natural Resources Policy Analyst
Elise Dagdick, Manitoba Conservation, Environmental Assessment and Licensing Branch



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David Chartrand
President

July 03, 2009

Honourable Greg Selinger
Minister for Manitoba Hydro
Manitoba Legislature Building
Winnipeg, Manitoba,
R3C 0V8

Dear Mr. Minister Selinger,

**RE: METIS CONSULTATION ON ELECTRICITY GENERATION AND
TRANSMISSION IN MANITOBA**

I am writing to once again register the Manitoba Metis Federation's ("MMF") concerns with respect to the lack of Crown consultation with Métis on electricity generation and transmission planning and projects that have the potential to affect Métis rights, interests and way of life in Manitoba. More specifically, I am specifically writing with respect to Manitoba Hydro's proposed Keeyask Generation Project (the "Keeyask Project"), the recently signed development agreements with several First Nations on the Keeyask Project as well as the second round of public consultations on Bi-Pole III Transmission Line (the "Bipole Project") although similar concerns are with the Conawapa and Point Du Bois Generation Projects..

For years now, the MMF, as the representative government of the Manitoba Metis community, has written to the Manitoba Government on the issue of the Crown's failure to meaningfully consult with Metis on electricity generation and transmission plans and projects that have the potential to affect Metis rights, interests and way of life in the province. In addition to these written objections, the MMF has put its claims and concerns on the public record through its participation in the hearings before the Manitoba Clean Energy Commission on the Wuskwatim Generation and Transmission Projects. Further, the MMF has and is actively pursuing various claims (i.e., *MMF Inc. et al. v. Attorney General of Canada and Attorney General of Manitoba*, 2007 MBQB 293; *R. v. Goodon*, 2008 MBPC 59) before the courts with the hopes that the Manitoba Government will finally recognize and respect Metis rights and take its constitutional duties and obligations owing to the Metis people seriously.

Unfortunately, even after the Supreme Court of Canada's decisions in the *Haida Nation* and *Taku River* cases, the MMF's ongoing efforts to inform the Crown of Metis concerns and the recent pronouncement of the Manitoba Provincial Court with respect to the recognition of Metis

rights in Manitoba, the Manitoba Government, and, by extension, Manitoba Hydro, continue to disregard Canada's Constitution and treat Métis as nothing more than a mere "stakeholder" or afterthought, rather than a full fledged rights-bearing Aboriginal people that the Crown is obligated to consult with in relation to plans, policies, developments and projects that have the potential to affect Metis rights, interests and way of life.

The most recent example of the Manitoba Government's disregard for its constitutional duties to Metis can be seen in Manitoba Hydro signing partnership agreements with several First Nations on the Keeyask Project. Even though the Manitoba Government and Manitoba Hydro are well aware that Metis share a traditional territory with these First Nations, the Metis have been completely excluded from ongoing discussions with respect to strategic planning and partnership opportunities for the Keeyask Project.

Instead of respectfully engaging the Metis as an equal Aboriginal people with rights that must be respected and accommodated in this region, the Manitoba Government has allowed Manitoba Hydro to move forward without any meaningful engagement or involvement of the Métis at the early and strategic planning stage on the Keeyask Project. While discussions have been ongoing with First Nations for years, the MMF has only recently been approached by Manitoba Hydro to provide "stakeholder" input into the environmental assessment for the Keeyask Project. It is the MMF's position that this delayed and circumscribed Métis engagement does not come close to fulfilling the Crown's duty to the Metis.

Another example of the Manitoba Government's ongoing disregard for Metis rights and its consultation obligations owing to Métis can be seen in how Manitoba Hydro continues to proceed on the Bipole Project. For example, the Bipole III Transmission Routing Study prepared for Manitoba Hydro by CMC Consultants Inc. in September 2007 does not even mention Metis rights or interests, even though the rights and interests of First Nations with respect to the Bipole Project proceeding are repeatedly referred to and considered throughout the study. This exclusion of any mention of Metis is particularly disconcerting since *R. v. Goodon* was before the courts in 2007 and the routes being considered in the study pass through the area that was subject to this litigation.

Even more disappointing, as recently as last month, the MMF received invitations to participate in public open houses on the Bipole Project. even through any permutation of the Bipole Project will pass through the traditional territory of the rights-bearing Metis community recognized by the Manitoba Provincial Court in *R. v. Goodon*. Rather than finally recognizing the unique constitutional consultation obligations owed to Métis and working with the MMF to put an appropriate consultation process in place, the Crown and its agent (Manitoba Hydro) continues to disregard the unique consultation obligations owed to Métis people in this province.

I am writing to you as the Minister responsible for Manitoba Hydro in order to put the Manitoba Government on notice that Metis will no longer accept being treated as a mere "stakeholder," an afterthought, or a second-class Aboriginal people when Métis rights, interests and way of life are at stake. Over the last few years, the MMF has used every opportunity available to it in order to outline its claims and register its concerns on behalf of the Manitoba Metis community. Yet, based on the recent situations outlined above with respect to the Keeyask and Bipole Projects,

and other projects), the non-existent or totally inadequate approaches to consultation with the Metis by the Manitoba Government, and, by extension, Manitoba Hydro, have not changed. This is truly unfortunate and unless the current situation is addressed, the Metis will have no choice but to once again look to the courts to force the Manitoba Government to act honourably and respect Canada's Constitution.

I have recently written to Manitoba Hydro's President and CEO requesting a meeting in order to establish a process in order to arrive at a MMF-Manitoba Hydro protocol that will enable the MMF to address its immediate consultation concerns with respect to the abovementioned projects as well as set out a framework for effective Métis consultation and accommodation on Manitoba Hydro's future electricity generation and transmission planning and projects. As a part of these discussions, I also hope we can also explore potential partnership opportunities between the MMF and Manitoba Hydro.

I would ask you, as the Minister responsible, to encourage Manitoba Hydro to fairly review and consider this request, which I believe is in the best interests of the Crown, the Metis people as well as all Manitobans. I would also request that the Manitoba Government outline its position on the role and responsibilities of Manitoba Hydro with respect to the discharge of the Crown's duty to consult and accommodate in order to assist and guide the MMF's discussions with Manitoba Hydro.

I look forward to meeting you to discuss this further. I have directed my assistant to contact your office to make the necessary arrangements for our meeting to discuss this further. If you have any questions or suggestions prior to our meeting, please feel free to contact me at your leisure.

Meeqwetch,



David Chartrand

President

Manitoba Metis Federation

Resolution No. 8

WHEREAS:

Governments and Industry continue to inadequately consult and accommodate the Metis Nation's Manitoba Metis Community interests via its self-government representative, the MMF.

WHEREAS:

There continues to be large developments underway in Manitoba including forestry, mining and hydro-electric developments in which the Metis Nation within Manitoba continues to be left out of development opportunities.

WHEREAS:

Additions to Reserve Lands under Treaty Land Entitlement and Northern Flood Agreement may affect the lands traditionally and currently used and occupied by the Manitoba Metis and that Governments have not consulted and accommodated the Metis Nation's interest.

WHEREAS:

The crown and industry have parts to play in ensuring environmental legislation and constitutional rights are respected and adhered to in consulting with and accommodating the Metis community.

WHEREAS:

With Goodon and other harvesting for food cases will delineate the Metis Right once they have made their way through the courts.

WHEREAS:

Our Metis Rights are at least at parity with First Nations when it comes to consultations and other Aboriginal rights and we may have more Aboriginal rights including un extinguished commercial and Aboriginal Title.

THEREFORE BE IT RESOLVED:

In keeping with prior MMF AGA resolutions, this assembly continue 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 and,

THEREFORE BE IT RESOLVED:

That direction and mandate be given to the MMF Board to pursue legal and other actions as the Board may determine are appropriate against governments and industry in the consultation and accommodation areas to ensure that the Manitoba Metis community is fully consulted and accommodated when a decision or project is contemplated that may affect our collective Metis Rights.

Moved by: Jeannette Garand

Seconded by: Rosemarie Rozyk

Carried Unanimously



David Chartrand
President

MANITOBA METIS FEDERATION INC.

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CONFIDENTIAL

May 30, 2012

Honourable Gord Mackintosh
Minister for Manitoba Conservation
450 Broadway Avenue
Winnipeg, MB R3C 0V8

Honourable Dave Chomiak
Minister of Innovation, Energy and Mines
Minister Responsible for Manitoba Hydro
450 Broadway Avenue
Winnipeg, MB R3C 0V8

Dear Ministers,

RE: Lack of Metis Consultation and Accommodation on Energy Related Planning in Manitoba and Keeyask Project Development in Manitoba

We are the Manitoba Metis Federation (“MMF”) Portfolio Holders for Natural Resources and Manitoba Hydro. We are writing to express the MMF’s deep concerns with respect to the lack of pro-active and meaningful Crown consultation with the Manitoba Metis Community about the plans, projects and activities Manitoba Hydro, as a Crown corporation, is pursuing in the province. Our concerns flow from the reality that, collectively, these plans, projects and activities will indelibly affect the lands, rights, interests and way of life of the Manitoba Metis for generations to come; yet we continue to be treated as an arm-length bystander as Manitoba Hydro, supported by the Manitoba Government, moves forward.

More specifically, we are writing with respect to the lack of overall Crown consultation in relation to the many projects and activities being contemplated, planned and developed (subject to Crown authorizations) by Manitoba Hydro, as a part of its self-described “decade of investment.”¹ In addition, we are writing about the complete lack of meaningful Metis

¹ *Manitoba Hydro-Electric Board v. Consumers Association of Canada*, 2012 MBCA 1, para. 19.

engagement by Manitoba Hydro in relation to the Keeyask Hydropower Project (“Keeyask”), as well as the ever-increasing bias and discrimination the Metis community is facing at the hands of Manitoba Hydro and its Keeyask Partners. Further, the MMF is concerned about the state of affairs with respect to Manitoba Hydro, and the inability of the current Crown-MMF Bipole III consultation process on Bipole III being able to meaningfully address the Manitoba Metis Community’s concerns in relation to planning, impacts and participation related to Bipole III.

We write this letter further to many other MMF letters to the Manitoba Government, wherein the MMF has set out its concerns about the lack of consultation with Metis generally and in relation to Manitoba Hydro’s activities specifically. For example, in 2008, the MMF President wrote to then Premier Doer requesting that a process be put in place with a view to arrive at a Métis consultation framework. In July 2009, the MMF President wrote to the Honourable Greg Selinger, as the then Minister for Manitoba Hydro, and outlined the MMF’s concerns about the lack of Metis engagement and consultation by the Crown in relation to Manitoba Hydro’s overall planning and activities as well as specific projects (i.e., Keeyask, Bipole III, etc.) that will traverse Metis traditional territories.

Similar to other letters sent to the Manitoba Government with respect to recognizing and consulting on Metis rights, interests and way of life,² the MMF received no response from the Manitoba Government on its concerns. In short, it is the MMF’s perspective that the Manitoba Government is not meeting its constitutional obligations owing to the Manitoba Metis Community. Manitoba continues to operate in a manner that is inconsistent with the reality that the Manitoba Metis “are part of the *sui generis* fiduciary relationship between the Crown and the Aboriginal peoples of Canada,”³ and, that Metis rights have now been recognized and affirmed by the Supreme Court of Canada and Manitoba courts.⁴ Manitoba also continues to repeatedly breach the Crown’s duty to consult and accommodate Metis by either completely ignoring Metis communities, or establishing illusory and ultimately ineffective Crown consultation processes that work against Metis governance structures, and ultimately suppress meaningful engagement and input from Metis in relation to their rights, interests and way of life.

We write because it is important that you both understand the distressing state of affairs with respect to Metis consultation in the province. For over 8 years now, the MMF has repeatedly written to the Manitoba Government on these issues --- pressing for meaningful engagement, dialogue, processes and changes on failed government policies and approaches to no avail. In response, Manitoba either completely ignores these interventions or continues to treat Metis as a ‘second class aboriginal people’, in comparison to First Nations.⁵ We have also attempted to

² For example, for years, the MMF has written letters to the Manitoba Premier and the Minister of Manitoba Conservation on the need for the Manitoba Government to recognize and negotiate on Métis harvesting rights in order to respect court decisions that have confirmed Métis harvesting rights. These letters continue to go unanswered, despite the Manitoba courts urging the Crown to negotiate.

³ *MMF v. Canada and Manitoba*, 2010 MBCA 71 at para. 443.

⁴ *R. v. Goodon*, 2008 MBPC 59; *R. v. Beer*, 2011 MBPC 82.

⁵ For example, the Manitoba Government refused to support repeated requests to develop a mutually agreeable Métis consultation process in the province. It has held a Crown-First Nations Consultation Forum, but has refused to support anything equivalent for Métis. It has developed a provincial consultation approach that is mainly designed for an Indian Band model of governance, which does not work for Métis. This approach attempts to undermine Métis governance structures by consulting with individuals, Northern Community Councils or

constructively engage Manitoba Hydro, but the current state of affairs with respect to Keeyask and Bipole III has left our people and communities disillusioned and disappointed.

This has occurred even in the face of successive court decisions (i.e., *Powley* (2003), *Haida/Taku* (2004), *Goodon* (2009), *Cunningham* (2012)) on aboriginal rights generally and Metis rights specifically directing the Manitoba Government to act honourably and finally deal with our rights claims as a part of reconciliation. Unfortunately, unlike other jurisdictions in the Metis Nation Homeland, nothing has substantively changed in the birth place of the Metis Nation. This is a sad commentary on the Manitoba Government's respect for Canada's Constitution. It adds to the long and regrettable history this province has in relation to respecting minority and constitutional rights.

With that said, we want to now set out the MMF's specific claims and concerns with respect to the lack of Crown consultation and Manitoba Hydro's actions. In this letter, we are writing specifically in regards to Manitoba Hydro related consultation issues, but we note that this lack of meaningful consultation with Metis extends into mining and mineral exploration (i.e., Victory Nickel), oil and gas projects, forestry, land use planning, etc. The MMF President, and other MMF Ministers who are responsible for these issues will continue to write to the Manitoba Government on these issues directly.

1. Lack of Consultation – Strategic Planning Decisions

In its 2009 application to the Public Utilities Board, Manitoba Hydro wrote “the 10 year period to 2020 is being referenced as ‘the decade of investment’ in which major investments, totaling \$16.5 billion, are being made to Hydro’s generation, transmission and distribution systems. The decade following 2020 is being referenced as “the decade of returns” in which significant benefits are returned to the energy ratepayers of Manitoba.”⁶

Cumulatively, this ‘decade of investment’ will have a dramatic effect on all Manitobans generally and the Métis in particular. Specifically, for the Métis, the generation, transmission and distribution “investments” in Manitoba Hydro’s “plan” will have a significant impact on Métis hunting, fishing, gathering and traditional pursuits. For example, decisions with respect to what projects to pursue and locating those projects (i.e., the government’s choice of pursuing Bipole III on the east side of the province which poses higher environmental risks for a significant percentage of Manitoba Metis Community) will affect Metis rights and interests. New linear corridors will be introduced, impacting access and placing additional pressures on already stressed wildlife populations. Construction camps will limit the access of our people to places where they practice their rights. Water levels in lakes, rivers and streams will change. Metis spiritual, cultural and archaeological sites will be disturbed.

amorphous “aboriginal communities” that have no mandate to deal with Métis rights or interests. It uses language that there are First Nations and “other aboriginal communities” in Manitoba, rather than clearly recognizing there are Métis communities that are no less important than First Nations.

⁶ *Manitoba Hydro-Electric Board v. Consumers Association of Canada*, 2012 MBCA 1, para. 19.

Despite these realities, the Manitoba Government has not consulted with the Manitoba Métis Community on the ‘decade of investment’ plan its “agent”,⁷ Manitoba Hydro, is pursuing. Nor has it delegated procedural aspects of this consultation responsibility to Manitoba Hydro. Instead, the Manitoba Government has ignored the direction from the Supreme Court of Canada on these types of issues. For example, in *Haida Nation v. British Columbia*, the Supreme Court of Canada held the following:

*I conclude that the Province has a duty to consult and perhaps accommodate on T.F.L. decisions. The T.F.L. decision reflects the strategic planning for utilization of the resource. Decisions made during strategic planning may have potentially serious impacts on Aboriginal right and title.*⁸

In *Rio Tinto v. Alcan*, the Supreme Court of Canada reaffirmed the principle that the Crown’s duty may be triggered well before an environmental assessment is filed:

*Further, government action is not confined to decisions or conduct which have an immediate impact on lands and resources. A potential for adverse impact suffices. Thus, the duty to consult extends to “strategic, higher level decisions” that may have an impact on Aboriginal claims and rights.*⁹

It is the MMF’s position Manitoba Government cannot attempt to hide behind Manitoba Hydro’s arms-length corporate status, as an agent of the Crown, to avoid the duty owing to the Manitoba Metis in relation to Manitoba Hydro’s strategic plan for the ‘decade of investment’. It would be dishonourable to attempt to use the Manitoba Government’s approach to consultation (i.e., the position the Manitoba Government takes the position that it will undertake all aboriginal consultation obligations and does not delegate procedural aspects of consultation to proponents) as a means to avoid consultation on strategic level planning and decisions being undertaken by the Crown or its agents.

However, this is exactly what the Manitoba Government has done. Manitoba Hydro develops and pursues a significant plan, but refuses to consult with aboriginal peoples on the strategic decisions embedded within this plan because it is not the “Crown”. The Manitoba Government, as the “Crown,” ignores the dramatic effects this strategic plan will have on Métis and other aboriginal peoples in the province. Instead, it awaits independent Environmental Impact Statements (“EIS”) to be filed in order to trigger the duty. This approach results in any Crown consultation with aboriginal people being so far downstream from when key decisions have been made that the aboriginal people have no ability to meaningfully understand, influence or change Manitoba Hydro’s course of action. This approach has the potential of turning the ‘decade of investment’ into the ‘decade of destruction’ for aboriginal peoples.

It is the MMF’s position that the Manitoba Government is already in breach of its constitutional duty owing to the Manitoba Metis with respect to its Manitoba Hydro’s ‘decade of investment’ plan. It will be difficult for the government to reconcile this lack of prior consultation with

⁷ *The Manitoba Hydro Act*, C.C.S.M. c. H190, s. 4(2).

⁸ *Haida Nation v. British Columbia*, [2004] 3 S.C.R. 511, para. 76.

⁹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 S.C.R. 650, par. 44.

decisions apparently already made. Either the Manitoba Government needs to begin to fulfill its constitutional obligations on this front, or it must delegate procedural aspects of this obligation to Manitoba Hydro. Continuing to ignore, or, attempting to authorize these projects on a piecemeal basis (after Manitoba Hydro has filed a completed) EIS with the Manitoba Government, is not an option. Such an approach puts the Crown's implementation of its agent's "plan" at risk to aboriginal peoples seeking judicial remedies for lack of consultation.

2. Lack of Consultation – Keeyask Project

The MMF is extremely concerned about the current state of affairs in relation to the Keeyask project. Put simply, the affected rights-bearing Metis community in the Thompson region, which is an interconnected and indivisible part of the larger Manitoba Metis Community, has not been meaningfully consulted or accommodated. On the contrary, the Manitoba Government has once again avoided its constitutional duties owing to Metis in this region by providing no direction to Manitoba Hydro. The result is Manitoba Hydro and its Keeyask Partners have been deliberately excluding the Metis community for the planning and development of Keeyask.

As such, it is the MMF's position that if Manitoba Conservation begins to review a filed Keeyask EIS, which does not include meaningful Metis input, it would constitute a breach of the Crown's duty to consult and accommodate. Manitoba Conservation should reject any such EIS and send it back to Manitoba Hydro to ensure Metis input. Moreover, no further approvals or authorizations of Keeyask should be granted until Manitoba Hydro's complete failure to meaningfully engage the rights-bearing Metis community is resolved. The Manitoba Government should not reward its agent, Manitoba Hydro, and its Keeyask Partners, in avoiding and delaying dealing with the impacted Metis community.

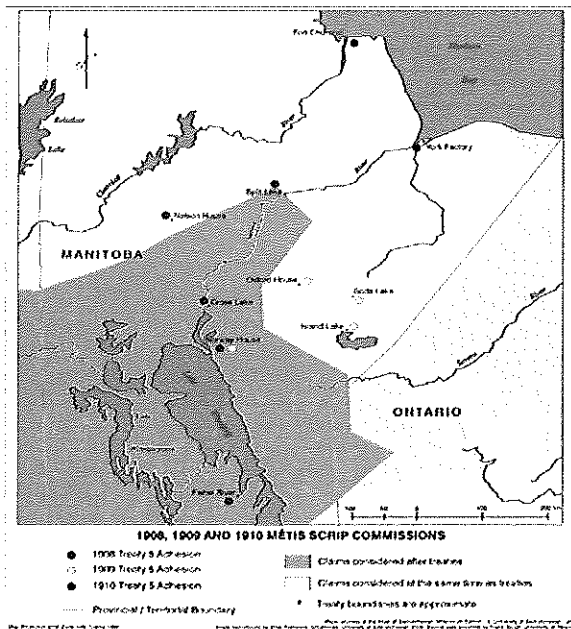
As a starting point with respect to Keeyask, we want to outline the basis for Metis rights claims in area in and around the project.

Historically, the Nelson River was a strategic 'highway' for the Metis, as a part of Canada's fur trade. This water route was essential to the transport of goods and furs to and from York Factory, and became a part of the extended traditional territory of the Manitoba Metis Community.

Moreover, a sustained and identifiable population of Metis families lived, used and moved throughout this region of the province from the early 1800s to today. Without question, the Metis were living in and using this region of the province well before effective control began in the early part of the 20th Century.

Over the generations, the enduring and dispersed Metis population in this region has remained. It has been supplemented by other Metis families from throughout the province moving in and being accepted by the historic families who have always made this region their home. Also, many Metis individuals who may now live in Winnipeg or other parts of Manitoba continue to have historic and contemporary kinship connections to the root Metis families who have remained in this region. Notably, similar to First Nation individuals, many of these Metis

individuals continue to travel 'home' to the region to continue to hunt, fish, trap and gather with Metis family members who still reside there, as evidence in the MMF's Traditional Land Use and Knowledge Study completed for Bipole III.¹⁰



Between 1908 and 1910, Metis Scrip Commissions visited and issued scrip to "Halfbreeds" (i.e., Metis) in the region. As illustrated on the map to the left, York Factory, Split Lake, Nelson House, Oxford House, Cross Lake and Norway House were all visited and had Metis scrip claims. This historic Metis population in the region is well-known and well-documented.¹¹ It played and continues to play an important role within the region's identity and economy. Further, the MMF's centralized membership system as well as successive Censuses document a sustained self-identifying Metis population in this region. Today, these Metis are democratically represented by the MMF through Metis governance structures at the local, regional and provincial levels.

The MMF also wants to make the point that contrary to the self-serving assertions of some, the Metis population has not 'disappeared' in this region or all become 'Indians'. An identifiable and sustained Metis population, connected to the historic families that have been in the region since prior to effective control, continue to live, use and move throughout this region. Further, this region continues to be used as a part of the traditional territory of the Manitoba Metis Community, as it has for generations.

It is the MMF's position that there is a regional rights-bearing Metis community that lives in and uses the area in and around the proposed Keeyask project. This community, which is an interconnected and indivisible part of the Manitoba Metis Community, exercises aboriginal rights throughout its territory, including, among other things, hunting, fishing (food and commercial), trapping (food and commercial), gathering, sugaring, wood harvesting, use of sacred and communal sites (i.e., incidental cabins, family group assembly locations, etc.) and the use of water. These practices are protected as aboriginal rights within the *Constitution Act, 1982*, and have not been extinguished by the Crown by way of treaty or other means.

These constitutional rights trigger the Crown's duty to consult and accommodate with respect to planning, decisions and authorizations that have the potential to impact Metis rights, interest and way of life in this region. However, the Manitoba Government has ignored the MMF's claims and concerns, and failed to ensure the Metis community has been engaged in the planning and development with respect to Keeyask. For example, in October 2009, the MMF's legal counsel,

¹⁰ This TLUKS is available at https://www.hydro.mb.ca/projects/bipoleIII/eis_technical_download.shtml.

¹¹ For example see: Frank Tough, *As Their Natural Resources Fail: Native People and the Economic History of Northern Manitoba, 1870-1930* (UBC Press: 1996).

wrote to officials in Manitoba Conservation setting out the MMF's rights related claims in relation to Keeyask, as well as specific concerns about the lack of Metis consultation on Keeyask generally and proposed Keeyask-related infrastructure Manitoba Hydro was asking Manitoba Conservation to authorize.

Despite the MMF's requests for consultation, Manitoba Conservation proceeded to authorize these components of the Keeyask project without addressing the Metis community's concerns which, amongst other things, included:

1. *that the proponent has extensively engaged with First Nations, but has not engaged with the Métis in a similar manner;*
2. *separating out the Keeyask Infrastructure Project from the overall Keeyask Generating Station project does not allow for the potentially affected rights-bearing Métis community to consider the strategic level implications and/or cumulative effects of the overall Keeyask Generating Station Project prior to the Crown making decisions about the Project;*
3. *MMF's opinion is the Métis are being engaged at a late date on the project and are unable to respond effectively to the potential impacts of the project on Métis rights, interests and way of life.¹²*

Notwithstanding the government's 'acknowledgement' of these Metis concerns, Manitoba Conservation disregarded dealing with the substance of all of them. Essentially, the Manitoba Government validated Manitoba Hydro's complete lack of engagement with Metis in the region in relation to the Keeyask Infrastructure Project, which has resulted in Metis continuing to be excluded from the project's development. We consider this a breach of the Crown's duty, but nevertheless we continued to try to engage Manitoba Hydro and the Manitoba Government on the hope that our issues and interests would be addressed. Clearly, these good faith efforts have been for not.

In relation to Manitoba Conservation's 2009 response, the MMF also wants to note several of the fundamental problems with the government's approach to Metis consultation, which persist today and undermine progress:

1. The Manitoba Crown believes that simply holding a meeting with Metis community members is for the most part sufficient to discharge the duty to consult. In these community meetings, the Manitoba Crown somehow expects that average Metis citizens are to be able to have read, understood and question what is set out in a proponent's EIS. This is simply a ridiculous proposition if the Metis community has not had the ability to retain experts to review the EIS on their behalf, and assess what the project may do in relation to the Metis rights, interests and way of life in the area. With respect to the Keeyask Infrastructure Project, Manitoba Conservation considered the MMF's funding request to enable the Metis community to hire an expert to undertake a technical review of the EIS "unreasonable". This is a deeply flawed and impoverished view of what the duty to consult requires.

¹² Letter from Manitoba Conservation to MMF dated December 7, 2009.

2. The Manitoba Crown requests that the MMF provide it information about the “identities of individuals who may have concerns.”¹³ This approach is inconsistent with the law which recognizes the Crown’s duty to consult is owed to the community that holds the s. 35 right – not the individual rights-holders.¹⁴ In effect, rather than dealing with the Metis, as a collective who hold aboriginal rights, the Crown attempts to circumvent the only democratically elected body that can assist in the discharge of the Crown’s duty to the Metis community --- the MMF. Similar to the Manitoba Land Grants and Metis Scrip processes, the Crown is attempting to avoid dealing with the Manitoba Metis as a collective with rights. This practice is dishonourable and deeply flawed.
3. The Manitoba Government did not require Manitoba Hydro to demonstrate in its EIS that the Metis community was engaged in relation to the Keeyask Infrastructure Project. Due to the Manitoba Crown’s approach that it does not delegate procedural aspect of the Crown’s duty to consult and accommodate to proponents, and that it will conduct its own Crown consultation process (only after an EIS is filed), proponents have no direction, guidance or incentive from the Crown to engage, at the early stage of project development, with potentially impacted aboriginal communities. Essentially, Manitoba Hydro uses this to avoid meaningfully engaging with the Manitoba Metis. Manitoba Hydro says ‘they don’t have the duty’. The Manitoba Government says ‘go talk to Manitoba Hydro’. This is the ‘game’ that continues to be played in Manitoba, while the impacts on Metis communities are ignored. Then when a project EIS is filed by Manitoba Hydro – it is too late in the ‘game’ to meaningfully provide Metis the opportunity to collect baseline data, assess impacts and meaningful mitigate.

Based on the Crown’s breach of its duty to the Metis community in the region with respect to the Keeyask Infrastructure Project, Manitoba Hydro has continued to develop the Keeyask project without any regard to Métis rights, interests and way of life in developing the project. The MMF notes that Manitoba Hydro has clearly acknowledged that this project will have potential adverse impacts on aboriginal and treaty rights as well as traditional practices in the region. This is set out in the Individual Adverse Effects Agreements (“IAEAs”) that have been executed with First Nations in the region. Specifically, these IAEAs state that these First Nations were provided the opportunity over a period of more than eight years to assess the effects from Keeyask based on their experience, understanding, knowledge, wisdom, values, beliefs and priorities of their members.

These IAEAs also state that Keeyask adverse effects have been identified, “many of which were related to potential impacts of the Keeyask Project on the exercise of aboriginal and treaty rights” and that Manitoba Hydro and each First Nation have reached an agreement “designed to address anticipated Keeyask adverse effects including, without limitation, impacts of the Keeyask Project on the exercise of aboriginal and treaty rights.” These agreements go on to provide compensation, offsetting programs and collaborative mitigation measures for the benefit of these First Nations and their respective members.

¹³ Letter from Manitoba Conservation to MMF dated December 7, 2009.

¹⁴ *Little Salmon Carmacks First Nation v. Beckman*, [2010] 3 S.C.R. 103, para. 35.

The MMF submits that it would be absurd to suggest that other rights-bearing aboriginal communities who live, use and rely on this same area for the exercise of their aboriginal rights would not suffer similar adverse effects on their aboriginal rights. Moreover, given the significance of the compensation, offsetting programs and mitigation measures put in place through these agreements with First Nations, no reasonable government could conclude that this project will not affect the exercise of aboriginal and treaty rights in the region. Put another way, if Keeyask was going to have no impact on aboriginal rights, lands and traditional use, why would Manitoba Hydro enter into these substantial agreements with First Nations?

Unfortunately, when it has come to engagement with the Métis community in the region, Manitoba Hydro has not provided the same opportunities. For example, Manitoba Hydro has been unwilling to even fund a TLUKS for the Métis community in order to collect baseline data that could lead to an assessment of impacts on Metis use. Moreover, it refuses to commit to a process that enables the Métis community to assess adverse effects from the project based on their experience, understanding, knowledge, wisdom, values, beliefs and priorities. This is unacceptable.

The MMF would also like to draw the Manitoba Government's attention to various aspects of the Joint Keeyask Development Agreement ("JKDA") that was signed by Manitoba Hydro, as a Crown agent, and various First Nations. Specifically, in Schedule 3-1, section 7.(a) of the JKDA, Manitoba Hydro commits that "information collection for the environmental impact assessment will include both aboriginal traditional knowledge and Western scientific analysis." It is important to highlight that this commitment is made in relation to "aboriginal" traditional knowledge – not just First Nation traditional knowledge.¹⁵

As you are well aware, section 35 of the *Constitution Act, 1982* reads,

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Notably, the JKDA does not attempt to define the term "aboriginal" as solely referring to Indians (i.e., First Nations). Nor could it, given the constitutional definition of aboriginal. While the MMF is not a party to the JKDA, it is the MMF's position that it would be unconscionable for the Manitoba Government to grant authorizations that allow its agent to knowingly breach its contractual commitments made to ensure "aboriginal traditional knowledge", including, Metis traditional knowledge, is included in the Keeyask EIS. What could be less honourable?

¹⁵ The MMF emphasizes that "aboriginal traditional knowledge" collection for the purposes of the Crown's duty to consult and accommodate cannot be undertaken by a proponent hand-picking Métis or First Nation individuals to interview. As outlined above, the consultation obligation is owed to the community which is the s. 35 rights-holder – not specific individuals. An understanding of what is the traditional use of the Métis community is required. This can only be obtained by engaging with the Métis community – as a collective.

Further, Schedule 3-1, section 7.(d) of the JKDA, commits that “all information collection and analysis, including all consultation, will be documented sufficiently to demonstrate compliance with contractual and regulatory requirements”. Without Metis traditional knowledge incorporated into the EIS, Manitoba Hydro and its Keeyask Partners would be in breach of the abovementioned contractual obligations.

Schedule 4-7, section 2(b) of the JKDA also includes commitments to “discuss the environmental, social and economic monitoring activities, including with respect to aboriginal traditional knowledge, planned for or occurring during construction, commissioning, operations and decommissioning of the Keeyask Project.” As well, Schedule 12-3, states that the project “will require, in a project development agreement, require special measures to be implemented during construction to facilitate the employment, training, and retention of First Nation members and other Northern Aboriginals...”. How could these contractual commitments be met when the Metis community, as represented by the MMF, has not even been involved?

Given these contractual commitments as well as the clear recognition in the IAEAs that the project will have impacts on aboriginal and treaty rights in the region, it is the MMF’s position that if either the federal or provincial Crown were to approve this project, without first ensuring that the similarly situated Métis community was engaged and consulted, those approvals would be vulnerable to judicial review because of a failure to adequately consult and accommodate the Métis community. Essentially, in order to approve this project, without ensuring that the Métis community is similarly engaged in consultation, the Crown must effectively deny there is a rights-bearing Metis community in this region. Given the long history and ongoing Metis presence in the region, it would be unreasonable for either level government to reach such a conclusion.

Finally, the MMF wants to raise additional concerns about the Keeyask project in relation to the Northern Flood Agreement (“NFA”) and its implementation, which has resulted in the ongoing exclusion of Metis from the framework originally set out in NFA, which contributed to the Metis ultimately being excluded from participating in the Keeyask project.

As you know, the NFA was signed in 1977. At that time, Metis rights were not recognized and affirmed in Canada’s Constitution, as they now are in s. 35. Both levels of government denied any fiduciary relationship with the Metis, contrary to recent court decisions on this issue. Further, the federal government denied (and continues to deny) its “jurisdiction a responsibility” for Metis under s. 91(24) of the *Constitution Act, 1867*,¹⁶ leading the “special rights” of the Metis to be ignored in Canada’s commitment to the NFA which stated:

Canada, by virtue of its jurisdiction and responsibility Indians and lands reserved for Indians, is committed to playing an active role in providing opportunity for the continued viability of the communities and, in particular but without limitation, in making available resources and expertise to the communities in planning and improving the social and economic conditions of the communities, and in ensuring the special rights of Indians, including those arising from Treaty 5, are adequately protected.

¹⁶ The MMF notes that this legal issue is currently before the Federal Court (Trial Division) and a decision is pending.

As recently acknowledged by the Supreme Court of Canada in *Cunningham v. Alberta*, prior to 1982, there was a “legal lacuna” with respect to the recognition of the Metis as a full fledged rights-bearing aboriginal group.¹⁷ Simply put, governments largely ignored Metis rights and interests, and dealt with Metis as individuals rather than rights-bearing collectives.

This “legal lacuna” is embedded within the NFA and has resulted in Metis communities, that suffered the same flooding damage to their lands, rights and economies, not being compensated. Moreover, even the following explicit commitments in the NFA, which should have resulted in settlements agreements with Metis communities have not been adhered to:

18.2 Canada and Manitoba recognize that the Project is intended to benefit all citizens of Canada, and most particularly of Manitoba, on the one hand, and that the resource users have been and may continue to be adversely affected on the other hand, and that it is in the public interest to ensure that any damage to the interests, opportunities, lifestyles and assets of those adversely affected be compensated appropriately and justly.

18.3 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 MMF recognizes that in order to address past flooding damages to northern Metis communities based on Metis rights there would need a willingness, on the part of government, to begin negotiations with the MMF.¹⁸ Failing that, the MMF would need to commence litigation based on the breach of the Crown’s constitutional obligations, fiduciary and others, and seek damages. However, the MMF wants to put government on notice that the complete exclusion of Metis from the NFA is once again engaged – now in relation to Keeyask. Notably, in *Rio Tinto v. Alcan*, the Supreme Court held,

The question is whether there is a claim or right that potentially may be adversely impacted by the current government conduct or decision in question. Prior and continuing breaches, including prior failures to consult, will only trigger a duty to consult if the present decision has the potential of causing a novel adverse impact on a present claim or existing right. This is not to say that there is no remedy for past and continuing breaches, including previous failures to consult. As noted in Haida Nation, a breach of the duty to consult may be remedied in various ways, including the awarding of damages. To trigger a fresh duty of consultation — the matter which is here at issue — a contemplated Crown action must put current claims and rights in jeopardy.¹⁹

¹⁷ *Cunningham v. Alberta*, [2011] 2 S.C.R. 670, para. 76.

¹⁸ The MMF emphasizes that any compensation or benefits to Metis *qua* Metis cannot be addressed through government-created Northern Community Councils, since these entities have no legal mandate to deal with Metis rights or interests, and no Crown-aboriginal fiduciary duty is owed to them. They are simply creatures of the Manitoba Government with extremely limited and define jurisdictions that flow from the Manitoba Government – not the inherent right of self-government enjoyed by the Metis as an aboriginal people.

¹⁹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 S.C.R. 650, para. 49.

It is the MMF's position that the existing framework of the NFA that excludes Metis, which is being relied upon to guide future engagement on hydro projects in Northern Manitoba, puts the 'current claims and rights of the Metis in jeopardy' because it fails to contemplate that there is another aboriginal people whose rights were impacted by past flooding and will be impacted by future hydro projects in Northern Manitoba. Simply put, this remnant of the "legal lacuna" continues to be relied upon by Manitoba Hydro to exclude Metis communities yet again. This place current Metis claims and rights in jeopardy.

Based on the above, the MMF is asking for the Manitoba Government's immediate intervention with Manitoba Hydro in relation to the Keeyask project. Presently, there has been absolutely no meaningful Métis engagement in relation to this project. Therefore, any Keeyask EIS filed by Manitoba Hydro in the next few months should not be rejected or not reviewed, since there will be a deficiency with respect to understanding the impacts of this project on the Metis community's rights, interests and way of life. Moreover, no further Crown authorizations or approvals should be granted in relation to the Keeyask project until the MMF's abovementioned concerns are addressed. Anything less, would be a breach of the Crown's duty to the impacted Metis community in the region.

3. Lack of Consultation – Bipole III

With respect to Bipole III, we want to begin by outlining the Metis claims, rights and interests in area impacted by this project.

Firstly, the Bipole III west-side route will traverse an area that is subject to ongoing litigation in the MMF case, which was heard by the Supreme Court of Canada in December 2011. As you know, in this litigation the MMF is seeking a series of declarations, including, declarations that the Crown breached of its fiduciary obligations to the Manitoba Metis with respect to section 31 and 32 of the *Manitoba Act, 1870*.

The MMF has made it abundantly clear that the pursuit of this litigation is with a view to ultimately reaching a modern day land claim agreement with the Crown to be protected by s. 35(3) of the *Constitution Act, 1982*. Clearly, lands within the old postage-stamp province of Manitoba, which the proposed Bipole III route passes through, may be relevant to any future negotiations and resolution of court-recognized Metis rights, claims or Crown obligations.

Secondly, Manitoba courts have recognized an extensive regional rights-bearing Metis community through southwestern and western Manitoba,²⁰ which is an indivisible part of the Manitoba Metis Community. The MMF also asserts all of this area is a part of the Manitoba

²⁰ See *R. v. Goodon*, 2008 MBPC 59 and *R. v. Beer*, 2011 MBPC 82. The MMF also notes that the Manitoba Government recognizes that this community extends upwards to The Pas on the west side of Lake Winnipeg based on the government's own research and internal policies. While the MMF asserts that this community, and the Manitoba Metis Community's traditional territory, also extends farther North and into the Interlake Region, the government own acknowledgement of Metis rights in these limited areas speaks to the Crown's actual knowledge of the strength of Metis rights claims outside of the areas recognized in the *Goodon* and *Beer* cases.

Metis Community's traditional territory. Notably, in *R. v. Goodon*, the Manitoba Provincial Court wrote:

[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.*

[47] *This area was one community as the same people and their families used this entire territory as their homes, living off the land, and only periodically settling at a distinct location when it met their purposes.*

[48] *Within the Province of Manitoba this historic rights-bearing community includes all of the area within the present boundaries of southern Manitoba from the present day City of Winnipeg and extending south to the United States and northwest to the Province of Saskatchewan including the area of present day Russell, Manitoba. This community also includes the Turtle Mountain area of southwestern Manitoba even though there is no evidence of permanent settlement prior to 1880. I conclude that Turtle Mountain was, throughout much of the nineteenth century, an important part of the large Metis regional community.*

...

[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.*

...

[58] *I conclude that there remains a contemporary community in southwest Manitoba that continues many of the traditional practices and customs of the Metis people.*

...

[75] *I have determined that the rights-bearing community is an area of southwestern Manitoba that includes the City of Winnipeg south to the U.S. border and west to the Saskatchewan border. This area includes the Turtle Mountains and its environs.*

More specifically, this regional Metis community asserts and exercises aboriginal rights throughout its territory, including, among other things, hunting, fishing (food and commercial), trapping (food and commercial), gathering, sugaring, wood harvesting, use of sacred and communal sites (i.e., incidental cabins, family group assembly locations, etc.) and the use of water. These rights are protected as aboriginal rights within the *Constitution Act, 1982*, and have not been extinguished by the Crown by way of treaty or other means. These rights trigger the Crown's duty to consult and accommodate with respect to planning, decisions and authorizations that have the potential to impact Metis rights, interest and way of life in this region of the province.

As outlined above, the MMF, as the judicially-recognized representative of this Metis community, has not been meaningfully consulted on any of the higher-level strategic planning that took place with respect to the Bipole III project. For example, the MMF was not engaged on, or even made aware of how the decision to pursue Bipole III down the west-side of Manitoba versus the east-side was made, despite the fact that a west-side route passes through significant concentrations of the Manitoba Metis Community's population. Moreover, the decision of pursuing the west-side option will create a new linear corridor through an important Metis traditional territory where constitutionally protected Metis hunting rights are already subject to mutually agreeable closures due to conservation concerns. Such a significant, higher-level decision demanded consultation with the affected aboriginal communities; but, there was none.

Unfortunately, since then, meaningful consultation on Bipole III has not ensued. Similar to other experiences, Manitoba Hydro has not meaningfully engaged with the MMF in the planning or development of the project or its EIS, despite contractual commitments to do so.²¹ Further, the Manitoba Government has not pro-actively engaged with the MMF or delegated any procedural aspects of consultation to Manitoba Hydro. Instead, The Manitoba Government has waited for an EIS to be filed. Naturally, the result of this 'disregard and delay' approach to the Crown's duty has resulted in a significantly deficient Bipole III EIS being filed in relation to Metis rights, use and impacts.

In written submissions to Manitoba Conservation dated March 16, 2012, the MMF outlined just some of the deficiencies with the current EIS based on two limited subject matters: (1) treatment of Manitoba Metis rights and interests, and (2) assessment of impacts on Manitoba Metis use of lands and resources for traditional purposes.²² While the MMF continues to undertake a more detailed review of the EIS on these and other subject matters, the following EIS deficiencies have been identified:

Alternative Routes

- The choice of the west-wide route versus an east-side route poses higher environmental risks to the Manitoba Métis Community.
- Analyses of alternative routes (i.e., east-side route) was inadequate and MMF was not provided information on the feasibility of routes or involved in this assessment in any way.

²¹ The MMF does acknowledge that reasonable funding was provided to the MMF to undertake a TLUKS for the Bipole III Study Area. This TLUKS was to be used base line information to assess impacts on the Métis community and involve the MMF in the development of the project's EIS. These commitments were not completed by Manitoba Hydro, leaving the EIS deficient with respect to understanding and assessing the impacts of the project on the Manitoba Métis.

²² The MMF notes that it has not yet undertaken a community-based impacts assessment based on the EIS and TLUKS. This process is expected to occur over the Summer of 2012. As well, the MMF is current undertaking community consultations on the Bipole III project, which will also likely contribute to further identified Métis community issues, concerns and impacts with respect to the project.

Manitoba Hydro's Definition of "Aboriginal Community"

- Manitoba Hydro has defined an "Aboriginal Community" as "[a] community where most of the residents are Aboriginal (i.e. Indian, Metis or Inuit) and that has a separate form of government, provides some level of service to its residents, and has clear community boundaries."
- This definition of "Aboriginal Community" for the purposes of the EIS is inconsistent with legal and constitutional definitions of Metis communities.
- Manitoba Hydro definition is incorrect in law and results in the arbitrary exclusion of rights-bearing Metis communities throughout the EIS. Unfortunately, this flawed approach permeates the EIS document as a whole because Manitoba Hydro has used an incorrect definition of "Aboriginal Community" throughout. Simply put, an EIS cannot adequately assess or address the impacts of Metis communities with s. 35 rights, if it uses a definition that arbitrarily excludes them. This results in a deficient EIS in relation to Metis.
- The EIS fails to acknowledge and address the fact that many Manitoba Metis who engage in traditional use within the Project Area reside in areas outside the Project Study Area and in locations that would not be considered 'Aboriginal Communities' per MH's chosen definition.

Failure to Address Metis Community's Social, Cultural, Economic Characteristics

- Manitoba Hydro restricted its description of the Project Study Area population to three types of communities: First Nations, Northern Affairs Communities, and Municipal/ Incorporated Communities.
- Despite recognizing Manitoba Metis as a distinct 'Aboriginal group', Manitoba Hydro has not provided information about Metis personal, family and community life as required by the Manitoba Scoping Document.
- The main body of the EIS fails to adequately describe Manitoba Metis current use of lands and resources for traditional purposes in a level of detail that allows the reader to appreciate the nature and extent of Manitoba Metis traditional use, culture and practices, and which forms the foundation for understanding the assessment of project effects and/or the utility of proposed mitigation.

Failure to Address Impacts on Moose Population

- Manitoba Hydro has not considered the recent provincial closure of Game Hunting Areas (GHA's) to moose hunting combined with the potential for the HVdc ROW to increase hunter access in certain remaining GHA's and/or increase opportunities for wolf predation on moose, has the potential to impact Manitoba Metis harvesting opportunities.
- In response to moose conservation concerns, a motion was passed at the 2011 MMF General Assembly, whereby Manitoba Metis harvesters agreed to curtail moose harvesting activity in GHA's where moose populations require time to reestablish.
- Within the central western portion of the province, this leaves only GHA 19A and GHA's north of Red Deer Lake and south of Grass River Provincial Park, where moose populations exist, open to moose hunting. Voluntary cessation of moose hunting in major

portions of western Manitoba for conservation reasons may result in First Nation, Manitoba Metis and non-Aboriginal hunters concentrating in the remaining open GHA areas.

- MMF does not believe that Manitoba Hydro has adequately assessed Project effects on moose populations and Metis rights to harvest moose. Specifically, factors related to: Project-related increased harvester access and wolf predation; closure of GHA's to moose hunting both in the zone of influence of the Project and elsewhere in the Province (i.e. central western and central eastern portions of the Province); and increased reliance by all moose harvesters in the few remaining open GHA's.

Insufficient Details in EIS on Activities to Impact Metis Traditional Use

- Manitoba Hydro does not identify locations and management plans for repeater stations, marshalling yards, borrow pits, worker accommodation areas. The locations of these temporary or permanent Project components have the potential to adversely affect or otherwise interfere with Manitoba Metis traditional use activities. Further, Manitoba Hydro not provided sufficient details concerning access restrictions, harvesting restrictions, or access management plans. The potential impacts on Manitoba Metis traditional use have not been adequately identified in the EIS.

Failure to Consider Effects on Gathering Activities and Impacts of Herbicides

- The MMF TLUKS identified numerous plant harvesting areas which overlap with the HVdc ROW, these areas are predominantly in the central western portion of the route.
- MH acknowledges the potential that Aboriginal harvesters will avoid plant harvesting in the HVdc ROW due to herbicide contaminant concerns but offers no mitigation measure to address this issue.

Failure to Address Cumulative Effects

- The Conawapa hydroelectric project is situated within the BiPole III Project Study Area and has been in MH's long range plans for some time. This project is listed as a future project on MH Website²³ and is identified on many of the maps included in the BP3 EIS document. Within the EIS, MH has included Conawapa in a list of prospective future projects and activities (Table 9.2-3). MH states that the spatial extent of the Conawapa project effects are not well understood at this time and therefore this project was addressed only to a limited extent in the BiPole III cumulative effects assessment.
- Manitoba Hydro's Keeyask hydroelectric project is located within the BiPole III Project Study Area, has been in the planning process for several years, and recently entered the project approval phase. Table 9.2-2 (pg 9-8) indicates this project was included in the cumulative effects assessment because it was considered to have a temporal overlap of socio-economic effects. MMF notes that this project will spatially overlap with the BP3 Project Study Area over the long term.

²³ <http://www.hydro.mb.ca/projects/conawapa.shtml>

- The Victory Nickel open pit mine project received a Manitoba Environment Act license (#2981) on August 23, 2011 and shortly thereafter the company's Board of Directors approved with proceeding with the project.²⁴ The project is situated on the east side of Hwy #6, just south of where the highway crosses the Minago River. The project is located approximately 55 km. from the centre line of the BP3 HVdc and does not lie within the Project Study Area. However, the Victory Nickel mine, once operational, proposes to transport materials and ore along Hwy #6 north to the rail line at Ponton, Manitoba. A segment of the Hwy #6 transportation route falls within the Project Study Area and intersects the HVdc ROW. Manitoba Hydro has not explicitly included the Victory Nickel project in its listing of projects considered in the cumulative effects assessment.
- The EIS does not consider the cumulative effect of other 'activities' such as governmental regulatory closure of GHA's and/or voluntary Manitoba Metis discontinuance of moose harvesting. That is to say, the closure of GHA's/ has the potential to concentrate humans in a local area, in this case GHA's that remain open to hunting. The concentration of First Nation, Manitoba Metis, other Aboriginal and non-Aboriginal harvesters, in combination with identified potential Project effects on moose populations, has the potential to cumulatively impact on Manitoba Metis traditional use and rights (as well as other Aboriginals).
- The cumulative effects assessment in the EIS has not explicitly considered the substantial coal exploration activities west of Red Deer Lake. Although outside the Project Development Area, this activity is occurring in one of the few central western Manitoba areas that remain open to moose hunting (GHA 12). The HVdc ROW runs the length of the eastern side of GHA 12. As well, Manitoba is currently considering creating a Red Deer Wildlife Management area under the *Wildlife Act*, Use of Wildlife Lands Regulation 77/99. These regulations permit restrictions on hunting of certain or all species and/or restrictions on modes of transportation within a specified Wildlife Management Area. Available information on Manitoba's plans for the Red Deer Wildlife Management area does not indicate whether hunting and/or access restrictions will be included under the pending designation.

Failure to Consider Metis Cultural and Heritage Sites

- Neither the main body of the EIS or the Heritage Resource Technical Report presents the cultural resources, heritage concerns, or archaeological sites, specific to Manitoba Metis;
- The triangulation approach noted in the Heritage Resources Technical Report of the EIS, where oral historical, archaeological, and historic/archival information are combined, does not take into account the Metis archival or archaeological records, as no literature on the Metis is cited or included in the working bibliography.
- The EIS Heritage Resources Technical Report in the EIS outlines a predictive model methodology for distinguishing areas of high, medium, and low potential for archaeological sites. The criteria used in the construction of the predictive model fail to account for Metis landscape use and site selection. As constructed, the predictive model

²⁴ <http://www.winnipegfreepress.com/business/victory-nickel-mine-gets-go-ahead-130179238.html>

is biased toward First Nations settlement patterns and land use; therefore, areas with high potential for Metis sites are unlikely to be captured.

Even with the abovementioned EIS deficiencies, and, only as preliminary EIS analysis being undertaken the following impacts have been identified on the Manitoba Métis Community:

- Interruption of traditional use during the project construction phase associated with construction infrastructure, noise and general disturbance. In particular, without an effective communications program, Manitoba Metis harvesters may travel long distances to engage in traditional use only to find the area they wish to utilize is subject to activity and disturbance;
- Interruption of traditional use during the Project construction phase due to access management restrictions. In particular, without an effective communications program, Manitoba Metis harvesters may travel long distances to engage in traditional use only to find the area they wish to utilize is subject to access restrictions;
- Long term avoidance of harvesting plants and medicines within the footprint and adjacent areas of the HVdc right-of-way due to concerns about herbicide contaminants;
- Interruption of traditional use during the Project operational phase associated with Provincial restrictions on hunting in the vicinity of permanent Project-related infrastructure (e.g. repeater stations, converter stations);
- Long term and on-going project-related effects of the HVdc right-of-way on regional moose and elk populations resulting from or associated with;
 - increased predation and/or species avoidance of landscape; well-known and documented impacts of linear features,
 - improved human access (hunting and recreational travel), and
 - changes in harvesting focus from moose to elk due to diminished moose populations and/or harvest success rate, resulting in increase pressure on elk populations;
- Additional closures of GHA's and/or longer term closure of GHA's already closed to moose harvesting for conservation reasons, due to Project-related effects;
- Increased safety risk for harvesters due to concentration of effort in the few remaining areas open to moose hunting in combination with new access created by the HVdc right-of-way.

To date, the MMF has received no response to these concerns from either the Manitoba Government or Manitoba Hydro. Manitoba Hydro has indicated to the MMF that it has no 'responsibility' or 'mandate' to deal with the MMF's concerns in relation to impacts on Metis rights and interests (i.e., through the negotiation of an impacts and benefits agreement or other measures), since it is the Manitoba Government that has sole responsibility for the Crown's duty. Conversely, the MMF-Crown consultation process has proven to be ineffective in addressing the impacts of the project on Metis rights and interests, since Manitoba Hydro is not involved and there is only a one-way dialogue (i.e., MMF simply feeding information into Manitoba Conservation).

Recently, the MMF President has written to the Minister of Manitoba Conservation further detailing the deficiencies with the current MMF-Crown consultation process as well as proposing

options for meaningful engagement. To date, the MMF has received no response to its proposal for a MMF-Crown Working Group. However, the MMF wants to make it very clear that the current “process” is proving unworkable and ineffective, and further illustrates the flaws in the Manitoba Government’s approach (or non-approach) to meaningfully embracing and dealing with the Crown’s duty.

4. Metis Partnership and Participation – Bipole III

Finally, we want to raise the distinct issue of Metis economic participation in the Bipole III project. However, in doing so, we want to make it clear that – Crown consultation and economic participation – are separate issues. While they may be related in the sense that significant or meaningful participation in a project may ultimately act to satisfy some or all aspects of the Crown’s duty to consult and accommodate owing to a First Nation or Metis community, they should not be conflated. Our point of raising this issue is not to suggest aboriginal participation is an answer to the deficient Crown consultation process to date. Our goal is to ensure the Manitoba Government is aware of the MMF’s views on this issue.

Unfortunately, unlike other jurisdictions, the Manitoba Government has not established clear policies or direction to encourage meaningful aboriginal economic participation in transmission projects that are planned or being developed by Manitoba Hydro on the traditional territories of aboriginal peoples. For example, in its recently released Long-Term Energy Plan, the Ontario Government provided the following policy directive to its public utilities, regulators and prospective transmitters:

Where new transmission lines are proposed, Ontario is committed to meeting its duty to consult First Nations and Métis communities in respect of their aboriginal and treaty rights and accommodate where those rights have the potential to be adversely affected. Ontario also recognizes that Aboriginal communities have an interest in economic benefits from future transmission projects crossing through their traditional territories and that the nature of this interest may vary between communities.

There are a number of ways in which First Nation and Métis communities could participate in transmission projects. Where a transmission line crosses the traditional territories of aboriginal communities, Ontario will expect opportunities to be explored:

- *Provide job training and skills upgrading to encourage employment on the transmission project development and construction.*
- *Further Aboriginal employment on the project.*
- *Enable Aboriginal participation in the procurement of supplies and contractor services.*

Ontario will encourage transmission companies to enter into partnerships with aboriginal communities, where commercially feasible and where those communities have expressed interest. The government will also work with the OPA to adjust the Aboriginal Energy Partnerships Program – currently focused on renewable energy projects – to

*provide capacity funding for aboriginal communities that are discussing partnerships on future transmission projects.*²⁵ [*emphasis added*]

We would note that Ontario has also made the clear distinction between its constitutional obligations flowing from the Crown's duty and aboriginal economic participation. On-the-ground, this policy direction has contributed to new partnership models being explored between aboriginal communities, public utilities and proponents. Partnership reflects a forward-thinking approach to energy projects that brings proponents and affected aboriginal communities together in a way that ties their interests and builds projects that are commercially viable, sustainable and respectful with aboriginal and treaty rights and interests. In the MMF's opinion, this new type of model is a welcome and positive step towards reconciliation.

Unfortunately, so far, Manitoba Hydro has refused to entertain partnership discussions with affected aboriginal communities with respect to the Bipole III project. The MMF believes this is a short-sighted and erroneous decision, given Manitoba Hydro's difficult and shameful history with aboriginal peoples in this province generally, and the fact that this new 1,300 km line will unquestionably affect the rights, interests and way of life of both First Nation and Metis communities and their traditional territories for generations to come. Partnership has the potential to align the interests of the Manitoba Government, Manitoba Hydro, the public-at-large and First Nation and Metis communities, rather than putting them at odds. The MMF asks the Manitoba Government to provide direction to Manitoba Hydro to explore partnerships with affected aboriginal communities with respect to Bipole III.²⁶

Even more unfortunate, Manitoba Hydro takes the position that it may "entertain" aboriginal economic participation on the project, but that it is under no obligation to do so. It takes a similar position with respect to the MMF's request that an Impact and Benefit Agreement ("IBA") be negotiated with the MMF, since the Manitoba Government has the duty and it has not delegated any responsibility to Manitoba Hydro to accommodate aboriginal rights or interests. Once again, this situation illustrates the flaws with the Manitoba Government's current approach to aboriginal consultation and accommodation.

Similar to the MMF's previous request regarding aboriginal partnership on Bipole III, the MMF asks the Manitoba Government to provide direction to Manitoba Hydro to attempt to negotiate IBAs with affected aboriginal communities and explore economic partnerships, including, provide job training and skills upgrading to encourage employment on the transmission project development and construction, guaranteeing aboriginal employment on the project, ensuring aboriginal participation in the procurement of supplies and contractor services (i.e., set-asides, facilitating joint ventures, etc.).

The MMF believes that the time has come for the Manitoba Government to take concrete action to ensure Metis communities are active economic participants in Bipole III. This cannot be

²⁵ *Ontario's Long Term Energy Plan*, p. 49. Available at http://www.mei.gov.on.ca/en/pdf/MEI_LTEP_en.pdf.

²⁶ The MMF notes that this could be done through the issuance of regulations pursuant to *The Manitoba Hydro Act*, C.C.S.M. c. H190, sections 15.0.1(1)(h) or 15.0.1(1)(i). It could also be done through the delegation of procedural aspects of the Crown's duty to Manitoba Hydro which encourage it to explore aboriginal economic partnership and participation opportunities.

achieved by hoping Manitoba Hydro will "figure it out" or "do the right thing." It requires strong government leadership and a bold vision for change. I am optimistic that the Manitoba Government will want to see these new relationships develop with respect to Bipole III.

As you can tell by this letter, there are significant issues before us that our two governments must work collaboratively on, or we are likely to find ourselves in the courts yet again. I am committed to working to address these issues and concerns, but the MMF must have a willing and reasonable partner on the other side of the table. I look forward to your responses to the issues raised in this letter and I am more than willing to meet with you or any of your Ministers to further discuss the concerns and proposals set out in this letter.

Yours very truly,



Ken LeForte
MMF Minister
Natural Resources



100/ Anita Campbell
MMF Minister
Manitoba Hydro

- c.c. David Chartrand, MMF President
Hon. Eric Robinson, Minister of Aboriginal Affairs and Northern Development
Hon. Andrew Swan, Minister of Justice and Attorney General
Jean Teillet, Pape Salter Teillet
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July 30, 2012

Matter No.: MMF-510

VIA EMAIL

Wendy Botkin
Canadian Environmental
Assessment Agency - Prairie Region
101 – 167 Lombard Avenue
Winnipeg, MB, R3B 0T6

Rob Matthews
Manitoba Conservation
Water Use Licensing Section
Winnipeg, MB, R3J 2W3

Dear Ms. Botkin and Mr. Matthews:

Re: Keeyask Hydropower Project

I am legal counsel for the Manitoba Métis Federation (“MMF”) with respect to the Keeyask Project (the “Project”).

I am writing to follow up on the MMF’s meeting with Manitoba Conservation (“MC”) and the Canadian Environmental Assessment Agency (“CEAA”) held on June 11th, 2012. At that meeting, the MMF tabled a document entitled “Manitoba Métis Federation Points for Crown Consultation.” This document included a series of questions and requests to MC and CEAA with respect to the Project. It is now over a month from our meeting and the MMF has received no response to these questions or requests.

These questions and requests were further to MMF letters of concern sent to Mr. Matthews dated May 29th, 2012 as well as a letter to Ministers Chomniak and Mackintosh dated May 30th, 2012. Both of which remain unanswered. We would note that at our June 11th meeting, Manitoba’s legal counsel indicated that “Manitoba will provide a written response to that correspondence and it is not anticipated that it will take a long time to prepare the written reply,” yet the MMF has received no response to date.

Despite the fact that the MMF's significant concerns about the Project and its questions about Crown consultation remain unanswered, both MC and CEAA are pushing forward with a regulatory review process with unrealistic and unfair deadlines for the Métis community to meaningfully review and respond to the Project EIS. Further, despite commitments made at the June 10th meeting that reasonable funding to support the MMF's participation within the Crown consultation process would be provided, no funding commitments have been made to the MMF to date, aside from an inadequate amount from CEAA that does not enable the MMF to retain the necessary expertise to review the Project's EIS.

As conveyed at the June 10th meeting, it is the MMF's perspective that the current process has been structured so Manitoba Hydro and its Keeyask Partners essentially benefit from a deliberate strategy of avoiding and delaying meaningful engagement with the impacted Métis community over the last several years. Now, the coordinated regulatory reviews of both the provincial and federal governments are further enabling the proponent's strategy of avoiding pro-active engagement with the MMF by setting unrealistic timeframes for the Métis community to respond to the EIS. This creates an unfair and skewed process where the Métis community is left trying to play "catch up" to other aboriginal groups, while the overwhelming financial resources and capacity of the Manitoba Crown's agent, Manitoba Hydro, have been used to push forward on a project, by solely engaging, consulting and negotiating with First Nations about the Project's impacts. It is the MMF's position that having both Manitoba and Canada essentially sanction and facilitate the proponent's exclusionary process towards the Métis is a breach of the Crown's duty to consult and inconsistent with the honour of the Crown.

Based on the above, the MMF is formally requesting an extension to the September 20th, 2012 deadline for providing comments on the EIS. Initially, the MMF thought that an extension to November 15th, 2012 would be sufficient. However, given the fact that it is almost August 2012 and neither MC nor CEAA have provided adequate capacity for the MMF to participate in Crown consultation related to the Project, the MMF is unable to provide a firm date for when it is requesting an extension until. Once adequate funding for Crown consultation and a review of the EIS is provided, and the MMF is able to formally retain the required expert or experts to review the EIS, the MMF would be able to commit to a firm extension deadline. As previously indicated, if this extension request is refused, the MMF requests that written reasons be provided.

In addition, while the MMF has not had an opportunity to fully review the EIS as of yet, it wants to bring a significant concern to the Crown's immediate attention based on its preliminary scan of the Project's EIS. This concern relates to the apparent approach/strategy of the proponent to ignore and diminish the very existence of the rights-bearing Métis community in the region by failing to acknowledge its unique history, identity and distinctiveness within the EIS, and attempting to relegate the distinct rights-bearing Métis community under Northern Affairs communities, which are provincial government controlled, and non-aboriginal governance structures.

The First Nation centric narrative that permeate EIS, combined with the attempt to subsume the Métis under Northern Affairs communities, results in the Métis community and the impacts of the Project on Métis use, rights and way of life being deliberately ignored in the current EIS, rather than having the Métis be seen and treated as a distinct aboriginal group with constitutionally protected rights that will be impacted by the Project. This self-serving approach on the part of the proponent results in a deficient EIS with respect to understanding the Project’s impacts on the Métis community in the region. As previously indicated, it is the MMF’s position that the Crown must remedy this situation prior to undertaking a review of the EIS or granting any further authorizations in relation to this Project.

In particular, the historic narrative that is put forward by the proponent is misleading and one-sided. With the support and substantial financial resources of the Manitoba Crown’s agent, the dominant aboriginal group – Indians – are attempting to expunge the existence of any other aboriginal people in the region. This “narrative” is self-serving and ignores the facts of history. For example, if there were only Indians in the area in the late 1800s and early 1900s, why was Métis scrip issued in the region?¹ This historic fact isn’t even acknowledged by the proponent. Why has there been a consistent and identifiable Métis population in government records since the late 1800s to the present? Why does the MMF’s current membership in the region ancestrally connect to identifiable “Halfbreed” ancestors in the region from the 1800s? The answer is simple – there is another distinct, rights-bearing aboriginal group in this region – the Métis.

Moreover, given the fact that the proponent recognizes that the Cree “were not part of a community defined strictly by place” and that they did not have communities defined by “rigid geographic boundaries,”² why is the Métis existence in the region not appreciated in the same way? Instead, the proponent uses site-specific, government-created entities to define and subsume the Métis community. In the same vein, why are recent Indian community constructions, such as newly established Bands, given respect and deference even though they were not historically recognized by governments; yet, the fact that governments have and continue to refuse to recognize Métis communities is relied upon to avoid meaningful engagement with Métis? This double standard is unsustainable. It flows from the vested interest of the proponent in ensuring a separate and distinct aboriginal people is not seen or acknowledged in the region. However, this vested interest cannot trump the facts of history or Canada’s Constitution.

As both levels of government have been aware of for generations, the MMF represents Métis citizens within this region through MMF Locals and Regions. The MMF’s governance structure is based on an objectively verifiable registry and democratic principles, which allow Métis to represent Métis at the local, regional and provincial

¹ See attached map at Appendix A.

² Keeyask Generation Project, Socio-Economic Environment, Resource Use and Heritage Resource, Section 2: Historical Context, June 2012, p. 2-3.

levels. Conversely, Northern Affairs communities are essentially extensions of the Manitoba Government itself, and ultimately under the complete control the Manitoba Minister responsible. These entities cannot represent a rights-bearing Métis community on rights related issues, or discharge the Crown's duty owing to the Métis. This would be tantamount to Manitoba consulting itself, rather than the actual rights-holder. Further, these Northern Affairs communities cannot be used as a vehicle to engage the collective interests of the Métis community in the region. That role lies within the sole jurisdiction of the MMF, as the democratically mandated representative of the Métis community.

It has been and remains the MMF's position that it is paternalistic, offensive and unconstitutional for Manitoba to attempt to prop up aboriginal and non-Aboriginal individuals who may act as Mayors and/or Council members on Northern Affairs Communities, and who are beholden to the Manitoba Government for their very existence and mandate, to represent the collective interests of rights-bearing Métis communities. Northern Affairs Communities are creatures of the Manitoba Government. They do not have the right to represent the distinct rights-bearing Métis community in the region, which requires engagement by Manitoba Hydro and consultation by the Crown in relation to the Project. This is particularly the case when the Métis themselves have established their own democratic representative structures to fulfill these constitutional roles.

However, this is exactly how Manitoba Hydro and its Keeyask Partners attempt to address Métis interests in the Project's EIS. Specifically, only "three distinctive groups" are identified in the study area: First Nations, Northern Affairs communities (which Métis communities are apparently represented by and/or under the jurisdiction of) and individual towns and cities.³ This approach to dealing with Métis is unsupportable in law and unacceptable in practice. In effect, it perpetuates the "legal lacuna" recently recognized by the Supreme Court in *Alberta v. Cunningham*.⁴ It also completely ignores the Supreme Court's explanation of the context and change s. 35 of the *Constitution Act, 1982* was meant to achieve for the Métis:

[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.

³ Keeyask Generation Project, Socio-Economic Environment, Resource Use and Heritage Resource, Section 2: Historical Context, June 2012, p. 2-3.

⁴ [2011] 2 S.C.R. 670.

[6] Following the *Royal Proclamation* of 1763 (reproduced in R.S.C. 1985, App. II, No. 1), which organized the territories recently acquired by Great Britain and reserved certain lands for Indians, the Crown adopted a practice of making treaties with Indian bands. Thus, most Indians on the prairies are Treaty Indians. In exchange for surrendering their traditional lands to the Crown, they were granted reservations and other benefits, such as the right to hunt and trap on Crown land. Today, the welfare of Indians is dealt with under the *Indian Act*, R.S.C. 1985, c. I-5, which provides a variety of benefits to status Indians living on and off reserve.

[7] The Crown did not apply to the Métis its policy of treating with the Indians and establishing reservations and other benefits in exchange for lands. In some regions, it adopted a scrip system that accorded allotments of land to individual Métis. However, Métis communities were not given a collective reservation or land base; they did not enjoy the protections of the *Indian Act* or any equivalent. Although widely recognized as a culturally distinct Aboriginal people living in culturally distinct communities, the law remained blind to the unique history of the Métis and their unique needs.

[8] Governments slowly awoke to this legal lacuna.

...

[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.

...

[70] ... The history of the Métis is one of struggle for recognition of their unique identity as the mixed race descendants of Europeans and Indians. Caught between two larger identities and cultures, the Métis have struggled for more than two centuries for recognition of their own unique identity, culture and governance. The constitutional amendments of 1982 and, in their wake, the enactment of the *MSA*, signal that the time has finally come for recognition of the Métis as a unique and distinct people.

...

[75] Since their emergence as a distinct people on the Canadian prairies in the 1700s, the Métis have claimed an identity based on non-Indianness. They have persistently distinguished themselves as a people from the other dominant Aboriginal group in their territory - Indians. The obverse side of the struggle of the Métis to preserve their distinct identity and culture is the fear that overlap and

confusion with the larger Indian cultures would put their identity and culture at risk. The right of the Métis to their own non-Indian culture is confirmed by the *Constitution Act, 1982*, s. 35. [emphasis added]

With respect to this Project, instead of recognizing the “time has finally come” to recognize and respect the Métis as distinct, rights-bearing aboriginal group, the dominant aboriginal group in the region – Indians – with the support of the Manitoba Crown’s agent –Manitoba Hydro – have attempted to ignore and essentially silence the Metis community. Despite s. 35’s promise to the Métis and the state of aboriginal rights law, the Métis are once again left to struggle to have their own unique identity, culture and governance respected. Ironically, the Keeyask Partners are now treating the Métis similar to how Manitoba Hydro historically treated them. Akin to how First Nations would not accept Manitoba Hydro’s indifference to their rights, interests and way of life in this region, the Métis will not accept this indifference from the Keeyask Partners, which appears to be tacitly supported by the Crown.

In order to avoid ongoing delays and avoidance of meaningfully Métis engagement and to address the deficiencies in the EIS, the MMF is requesting the intervention of Manitoba and Canada in the MMF’s engagement with Manitoba Hydro. More specifically, the MMF is requesting a multi-party meeting with the Crown and proponent in attendance in order for the Crown to assess whether Manitoba Hydro and its Keeyask Partners have made “reasonable efforts” to engage the Métis community. It is the MMF’s position that Manitoba Hydro’s attempts to “engage” the MMF to date have been disingenuous and nothing more than delay tactics to avoid meaningful Métis engagement.

In preparation for this meeting, the MMF is attaching a workplan that was tabled with Manitoba Hydro in January 2011. This workplan, which was based on a previously approved workplan that Manitoba Hydro funded with respect to Bipole III, was deemed an “unreasonable” request by Manitoba Hydro. More specifically, this workplan was deemed to be “too expensive”, despite the fact that Manitoba Hydro has spent close to \$144 million on First Nations engagement in relation to the Project to date,⁵ and the fact that a similar amount was made available to the MMF for engagement related to the Wuskwatim hydropower project.

Further, through a series of meetings held with Manitoba Hydro representatives since January 2011, the following reasons for refusing this engagement request were conveyed to MMF representatives:

- Manitoba Hydro has no direction from the Crown to engage Métis in the same way as it does with First Nations in the region;
- Manitoba Hydro was contractually obligated to engage First Nations through the Northern Flood Agreement and it does not have a similar obligation to Métis;

⁵ This number was obtained from Manitoba Hydro’s response to access to information requests in relation to its generation and transmission projects. A copy is attached to this letter.

- Manitoba Hydro is reluctant to fund MMF engagement at a significant level because of the positions Manitoba Hydro's Keeyask First Nation partners have towards Métis and Métis right claims in the region;
- Manitoba Hydro cannot provide the same level of engagement for this project as it did in Wuskwatim because "these are in different economic times" for Manitoba Hydro; and
- Manitoba Hydro only has to "appear" like it is making reasonable efforts to engage the MMF (i.e., Manitoba Hydro does not need really need to achieve anything with the MMF to assess impacts if it can portray that the MMF has been difficult).

The MMF is also attaching the workplan provided to it by Manitoba Hydro, which sets out the expectation that the MMF would produce, in a 12 week period, an Aboriginal Traditional Knowledge Study, a series of community meetings and a report on the Métis population in the region. All of this was to be completed for \$115,773.72. This workplan is unrealistic and unreasonable based on market rates for this type of work. The MMF believes it is an insincere offer given the delays in providing a response to the MMF's workplan tabled in January 2012 as well as the unreasonable timelines for this scope of work to be completed. Quite frankly, if this workplan is so reasonable, the MMF asks why First Nations were not able to complete this work for the same amount, instead of millions of dollars being spent on independent consultants and capacity for First Nations to participate in the EIS?

Most importantly, Manitoba Hydro's workplan does not allow the MMF to undertake an actual impact assessment of the Project based on the Aboriginal Traditional Knowledge gathered. It does not allow the MMF to undertake a meaningful socio-economic study, and related socio-economic impact assessment. It does not allow the MMF to prepare its own historical overview of the Métis in the region to counteract the one-sided historic account in the EIS. All of these opportunities were provided to First Nations in the region, yet similar opportunities are denied to the distinct, rights-bearing Métis community in the region.

The MMF believes the Keeyask Partners' exclusionary approach towards the Métis results in a deficient EIS. It also believes that this approach is discriminatory towards the Métis, and, if the Crown does not require the proponent to remedy the situation, it would constitute a breach of the Crown's duty to consult and accommodate. Moreover, the EIS itself already acknowledges this Project will have significant impacts on aboriginal rights, interests and way of life in the region, which have been mitigated and/or compensated through negotiated agreements and processes. It defies logic that the Project will not have similar impacts on the distinct Métis community in the region, yet the proponent continues to refuse to meaningfully engage the MMF in relation to these impacts. It is the MMF's position that the Crown cannot allow the proponent to continue to maintain this position.



The MMF wants to make it very clear that it recognizes that First Nations and Métis communities do not need to be treated the same (i.e., included as partners in the Project). However, a proponent cannot refuse to provide fair and comparable opportunities for a distinct aboriginal community to identify and assess impacts from a Project because of the biases it may have or its personal opinions with respect to Métis rights. Since this appears to be happening with respect to this Project, the MMF is asking for the Crown's pro-active intervention prior to any Crown authorizations being granted.

Specifically, the MMF would like the Manitoba and Canada to attend a meeting with the MMF and the proponent to see if it considers these MMF requests as unreasonable, and whether the proponent's "rationales" for its ongoing delays and refusal to support the MMF's engagement requests are acceptable. As well, by the time this multi-party meeting is convened, the MMF would expect that it would have a written response in relation to the abovementioned questions and requests. It would hope that at this meeting clear direction would be provided to the proponent, based on an assessment of the Métis community's rights assertions, on the level of engagement required. Clearly, the MMF's efforts to respectfully engage Manitoba Hydro - in good faith - on this Project over the last few years have produced no positive or productive results in relation to this Project.

The MMF looks forward to the responses from Manitoba and Canada on these requests. If you have any questions or require further clarification on issues outlined in this letter please contact me. I am also copying Manitoba Hydro on this letter so it is aware of the MMF's positions and requests.

Sincerely yours,

A handwritten signature in black ink that reads "JMadden". The signature is stylized and includes a small arrow-like flourish at the beginning.

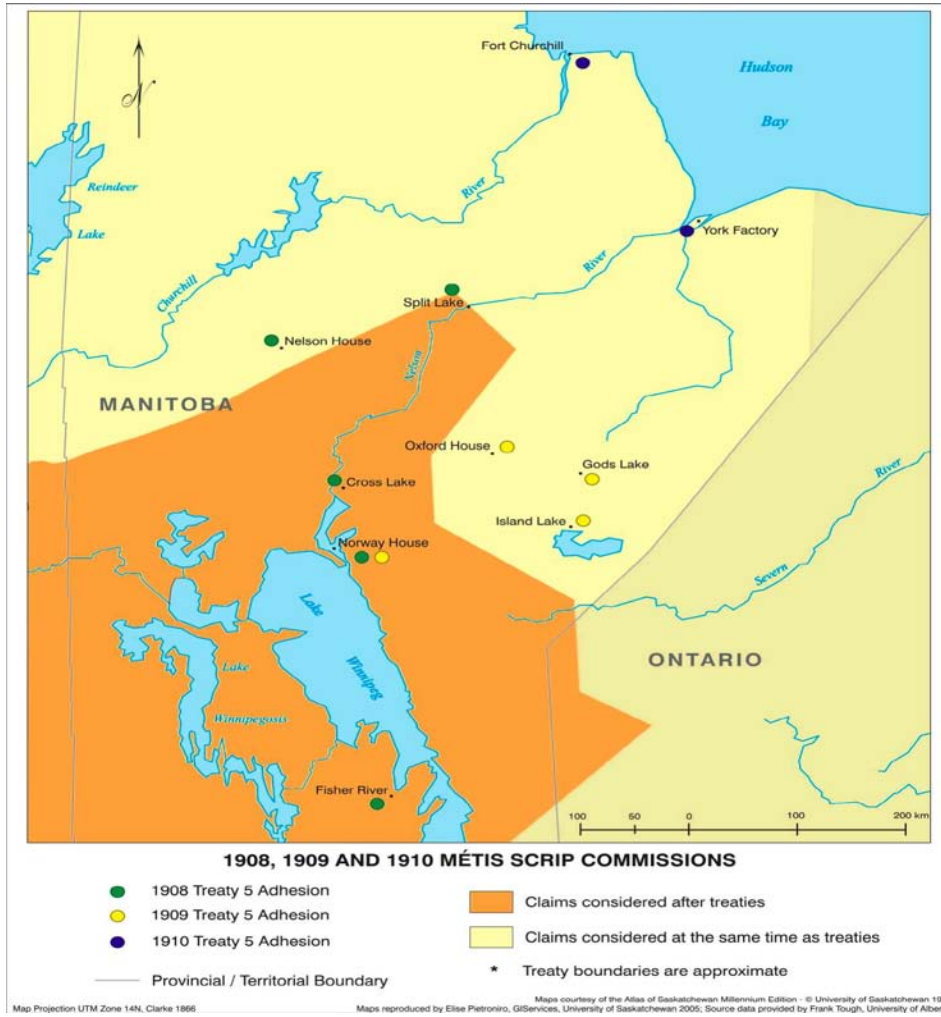
Jason Madden

Enclosures (3)

c.c. David Chartrand, MMF President
Anita Campbell, MMF Minister for Hydro
Julyda Lagimodiere, MMF Vice President, Thompson Region
George Desmarais, MMF Executive Director
Doug Bedford, Manitoba Hydro
Ryan Kustra, Manitoba Hydro

APPENDIX A

MAP OF MÉTIS SCRIP CLAIMS IN REGION CIRCA 1908-1910



Jason Madden

From: Jason Madden
Sent: Monday, January 24, 2011 8:43 PM
To: Neville, Elissa
Cc: Will Goodon; Sasha Marshall; Justin Stapon
Subject: MMF Keeyask Workplan - Jan 24 2011 Draft.doc
Attachments: MMF Keeyask Workplan - Jan 24 2011 Draft.doc

Hi Elissa –

I hope all is well.

Attached please find the MMF's first attempt at a Keeyask Workplan based on previous discussions between the MMF and Manitoba Hydro. I am not sure who leads the Keeyask project within Manitoba Hydro so I am asking that you forward this on to the appropriate individuals.

For convenience and hopefully ease, this document is largely based on the Bipole III Workplan so most of the language has been extensively worked through last time round.


As you know, the MMF is in the process of conducting interviews now so it is hoping this workplan can be finalized soon so Keeyask-specific interviews can be conducted as a part of some of the upcoming trips of the Interview Teams. As you know, since the MMF is only reimbursed for actual costs, if it is able to lock down the Keeyask workplan soon it can piggy back some of the Keeyask interviews on the upcoming Bipole III trips. Thus, saving Manitoba Hydro costs and the MMF duplicate efforts.

If you have any questions about the attached give me call. Hopefully, we can schedule a MMF-Hydro call in the next week or so to go over this draft.

Regards ... Jason


JTM LAW
Barrister & Solicitor

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APPENDIX A

MMF KEYASK GENERATING STATION PROJECT WORKPLAN

A. PURPOSE

Manitoba Hydro wants to engage the Manitoba Métis Federation (“MMF”) in a constructive, meaningful and respectful way with respect to the development of the Keeyask Generating Station Project (the “Project”).

In order to achieve this goal, Manitoba Hydro is interested in developing an ongoing relationship between the MMF and Manitoba Hydro with respect to the Project. This will include Manitoba Hydro supporting the MMF’s participation and input in the development of the Environment Impact Assessment (“EIS”) for the Project.

Specific activities will include the completion of a Métis Traditional Knowledge Study (the “TK Study”) in relation to the Project, participating in an ongoing collaborative process with respect to the EIS process¹ and a technical review of the Project’s EIS.

Given these purposes, this Workplan will be in effect from the date of agreement to approximately December 31st, 2011.

¹ This component will include discussions on: the development of the Project’s EIS, the identification of Metis interests and concerns in relation to the Project, the traditional uses by the Metis in the Project’s Study Area, the potential impacts on the present use of the lands by Métis in the Project’s Study Area, economic opportunities for Metis people in relation to the Project, and, other mutually agreeable topics and activities that arise out of the MMF and Manitoba Hydro’s collaborative work.

B. PERSPECTIVES OF THE PARTIES ON THE WORKPLAN

The Project is located in a region where the MMF asserts that Metis rights and title exist. As such, the MMF asserts that the Crown has a constitutional duty to consult and accommodate the potentially affected rights-bearing Metis community, in relation to the Project.

Manitoba Hydro and the MMF agree that the duty to consult and accommodate rests solely with the Crown, as represented by the Manitoba Government and/or the Government of Canada. The Parties also agree that any required consultation or accommodation of Metis rights, interests or way of life in relation to Project must be determined and/or undertaken by the appropriate Crown actor. Manitoba Hydro asserts it has not been delegated responsibility to undertake procedural aspects of the Crown's duty to consult and accommodate with respect to the Project. Based on this assertion, Manitoba Hydro is of the position that any determinations with respect to Metis consultation and accommodation pursuant to the Crown's obligations are matters to be addressed between the Metis and the appropriate level of government.

The MMF also asserts that it represents individual Metis rights-holders as well as the rights-bearing Metis collective that is potentially affected by the Project. The MMF is participating in this Workplan based on its position that it is representing Metis citizens both individually and collectively, as the democratic and recognized representative body of the Manitoba Métis community.

Manitoba Hydro's position is that issues with respect to the representation of Metis in Manitoba generally and in relation to the Crown's duty specifically are matters to be addressed between the MMF and the appropriate level of government. By supporting the MMF through this Workplan, Manitoba Hydro is taking no position with respect to Métis representation issues. Manitoba Hydro is participating in this Workplan with the MMF based on its desire and interest to engage the MMF and its members in a constructive and collaborative manner on the Project. Also, the use of specific terminology throughout this Workplan (i.e. Métis citizens), does not equate to Manitoba Hydro's agreement with the contextual use of these words for the purposes of this Workplan. Further, nothing in this Workplan precludes Manitoba Hydro from working with a variety of individuals, communities and organizations, as appropriate, on matters related to the Project.

Both Parties agree that their agreement to this Workplan does not equate to acceptance of the other party's position(s) outlined above or prejudice a position either Party may take in the future with respect to the abovementioned issues or the Project.

C. OBJECTIVES

The objectives of this Workplan are to:

- Establish and maintain an ongoing working relationship between the MMF and Manitoba Hydro with respect to the Project;
- Support the MMF in engaging Métis in relation to the Project in order to identify issues, concerns, and opportunities related to the Project;
- Enable the MMF to gather and document Metis Traditional Knowledge within the Project's Study Area for the Project's EIS process;
- Enable the MMF to provide information on the Métis within the Project's Study Area in relation to demographics, workforce participation, etc.
- Provide a collaborative process for MMF and Manitoba Hydro to work together to attempt to identify, share and address issues and concerns related to impacts and opportunities associated with the Project;
- Provide a forum through which the MMF and Manitoba Hydro can discuss progress of activities under the Workplan as well as any other issues arising with respect to the Project;
- Create a process between the MMF and Manitoba Hydro in order to develop an ongoing, respectful and mutually beneficial relationship on the Project.

D. WORKPLAN COMPONENTS

In order to achieve the abovementioned purposes and objectives, this Workplan includes the following components:

1. establish a **MMF-Manitoba Hydro Keeyask Coordinating Committee (the “Committee”)** to engage and maintain a relationship between the MMF and Manitoba Hydro with respect to the Project and to assist in fulfilling the purpose of this Workplan;
2. create a **MMF Keeyask Working Group (the “Working Group”)** to ensure Metis at the local and regional level are engaged in the ongoing work between the MMF and Manitoba Hydro with respect to the Project;
3. develop and facilitate a **MMF Community Engagement Process** through the MMF’s governance structures at the local and regional levels in order to inform and engage Metis;
4. conduct a **Metis Traditional Knowledge Study for the Project (the “TK Study”)** for the Project’s EIS process;
5. provide **Demographic and Socio-Economic Information on the Métis in the Study Area** for the Project’s EIS; and
6. **coordination and reporting** through hiring and/or retaining the required staff and consultants needed to support the execution of the Workplan.

E. WORKPLAN ACTIVITIES, ASSOCIATED COSTS & OUTCOMES

1. MMF-Manitoba Hydro Bipole III Coordinating Committee

A MMF-Manitoba Hydro Keeyask Coordinating Committee (the “Committee”) with 2-3 appointed representatives from each party will be created. The Committee will meet approximately 2-3 times between February 2011 to December 2011), or, in greater frequency, if required, in order to address issues arising from this Workplan as well as to achieve the objectives and specific activities set out in this Workplan.

The Committee will also serve as the forum for achieving the Purpose of this Workplan, discussing Project economic opportunities, any MMF comments and concerns on the EIS process, as well as the integration of the MMF’s work into the Project’s EIS. Through this Committee, the MMF and Manitoba Hydro will also discuss any issues that emerge through the EIS process, the TK Study and the MMF’s Community Engagement Process that are of interest and/or concern to the parties and will jointly consider what, if any, additional measures will be required to address these issues. The Committee will establish its own procedures and protocols.

Associated costs will include: travel and honorarium for MMF Committee representatives, travel and professional fees for legal advisors or consultants to attend Committee meetings, meeting room fee (if meeting held at MMF Home Office).

Outcomes/Deliverables

- Ongoing relationship between MMF and Manitoba Hydro with respect to the Project;
- Ongoing monitoring and reporting on Workplan and Project developments;
- Identification of issues arising from the EIS process, the TK Study and the MMF Community Engagement Process and discussion of measures, if any, required to address these issues;
- Discussion and identification of economic opportunities for Métis arising from the Project.

2. MMF Keeyask Working Group

A MMF Keeyask Working Group (the “Working Group”) will be established, which will include the MMF Portfolio Holder for Hydro, the elected MMF leadership from the Thompson Region and representatives from MMF Locals in the Thompson Region. The Working Group will be chaired by the MMF Minister of Hydro. From time to time, the Working Group may invite additional Métis individuals with special knowledge and interests (i.e., commercial fishermen, trappers, traditional resource users, Elders, etc.) to attend Working Group meetings in order to support the MMF’s work.

The Working Group will assist in the carrying out of the Workplan, including, the development and implementation of the Community Engagement Process, the roll out and review of the findings of the TK Study, identification of Métis interests and concerns from the Métis Community Engagement Process, etc.

The Working Group will meet every 2-3 months (approximately 2-3 meetings between January 2011 to December 2011), or, in greater frequency, if required, in order to address issues arising from this Workplan as well as to achieve the objectives and specific activities set out in this Workplan. The Working Group will establish its own procedures and protocols.

Associated costs will include: travel (i.e., mileage, meals, hotel) and honorarium for MMF Working Group representatives,² travel and professional fees for legal advisors or consultants to attend Working Group meetings, meeting room fee (if meeting held at MMF Home Office), minute taking for meetings (if required).

Outcomes/Deliverables:

- Ongoing engagement and direction from local and regional MMF leadership as well as Elders and Traditional Resources Users on the Project;
- Effective implementation of the Workplan through active local and regional engagement and participation.

² Members of the Coordinating Committee or Working Group who are MMF staff will not be paid an honorarium.

3. Métis Community Engagement Process

The MMF will develop and implement a Métis Community Engagement Process on the Project. This process will be developed in collaboration with the Working Group and will include: the development of communication tools on the Project (i.e., newsletters, website, mailouts, etc.), local and regional community meetings in locations affected by the Project (i.e., 2-3 local and/or regional meetings in the Project's Study Area between February 2011 to December 2011), advertising for local and regional meetings, etc. From time to time, Manitoba Hydro will be invited to attend these meetings in order to provide updates on the Project and hear comments and input from Métis participants. As well, the MMF agrees to work with Manitoba Hydro in the development of the above noted communication tools in order to ensure accuracy and consistency in relation to the Project's specifics.³

Associated costs will include: production and printing of communication tools, creation of Project specific webpage on MMF website, advertising for community meetings, meeting costs (i.e., hall rental, travel for presenters, mileage costs for attendees, meal, etc.) for local and regional meetings.⁴

Outcomes/Deliverables:

- Ongoing engagement of Metis at the local and regional levels with respect to the Project and meeting the Workplan's objectives and goals;
- A Final Report on the Métis Community Engagement Process, which will include a full listing of all local and regional meetings, the number of attendees at all meetings, copies of the meeting presentations and a summary of "what was heard" at these meetings will be provided to Manitoba Hydro;

³ This does not mean that Manitoba Hydro will have editorial control over the communication tools the MMF develops for its citizens. It only commits the parties will work together to ensure information circulated on the Project is accurate (i.e., description of the Project, timelines, Manitoba Hydro's positions, etc.).

⁴ No honourariums will be provided for attendance at community meetings.

- Copies of all Project related communication related tools and materials produced by the MMF will be provided to Manitoba Hydro.

4. Métis Traditional Knowledge Study

The Metis TK Study (the “Study”) will document traditional and contemporary uses of lands and waters, traditional knowledge about plants and animal species of interest focusing additional research on those species, and their traditional Metis uses in the Project’s Study Area. The Study will be used by the MMF to identify potential negative and positive impacts on Metis land use and way of life from the Project. The MMF will undertake GIS mapping as a part of the Study and will create maps that aggregate the Study’s findings. Generally, this work would include:

- Documenting the traditional and contemporary uses of the lands and waters in the Project’s Study Area by Metis people;
- Collecting and documenting traditional knowledge about plants and animal species of interest in the Project’s Study Area, focusing additional research on those species, and their traditional Metis uses; and,
- Identifying potential positive and negative effects by the Project on Metis land use and way of life including Metis spiritual, cultural, socio-economic, harvesting and other traditional and contemporary practices in the Project’s Study Area.

In order to undertake this work the MMF will hire a lead consultant to manage and oversee the Study’s completion. In order to identify interviewees a mail out will be sent to MMF members in order to identify Métis individuals who use or have interests in the Project’s Study Area. Based on the responses to this mail out, the MMF will undertake a total of approximately 30 TK interviews.

In order to undertake these interviews, the lead consultant train an interview team who will conduct the interviews. These interviewers will be supported and assisted in their work by MMF community liaisons who will be paid for their services based on a flat rate. The MMF will also contract a GIS Specialist for the duration of this Workplan who will work with the lead consultant and assist with the interviews as well as be responsible for the creation of the digitized land use and occupancy maps (individual and aggregated) for the Study.

Each interview summary will include reference to the interviewee's historic Métis ancestral connections to the Project's Study Area.

The MMF agrees that it will share ongoing results from the Study with Manitoba Hydro through the Committee.

The MMF will provide a final report from this TK Study to Manitoba Hydro by the end of June 2011 (the "Final TK Study Report"). This Final Report will include aggregated Métis TK and land use and occupancy maps, interview summaries (with any sensitive data removed), the ancestral connection patterns to the Project's Study Area, a report on the overall analysis of the maps by the MMF's consultants and suggestions for future environmental monitoring work and requirements.

After MMF provides a copy of the Study's Final Report to Manitoba Hydro in August 2011, Manitoba Hydro is committed to providing the MMF the opportunity to review how the information that they have shared with Manitoba Hydro has been incorporated into the environmental impact statement for the Project.

It is understood that this Final Report will be provided to Manitoba Hydro for use in the development of the Project's EIS or other reports related to the environmental assessment and operating requirements of the Project. It is also understood that the MMF and Manitoba Hydro will continue to meet after the Final Report is provided in order to address any issues arising out of the Study.

The MMF will also provide the Study's results in a presentation to the Committee in September 2011. Also, the MMF will hold community feasts (costs for these meetings will be covered out of the Métis Community Engagement Process) in the Thompson Region to report on the Final Report's findings in the Fall of 2011.

As set out in Section D1 of the Workplan, through the Keeyask Coordinating Committee, the Parties will also discuss and consider how to address any issues of interest or concern to the MMF that emerge through the MMF's work and the EIS development process. These discussions are included and provided for under this Workplan and budget. Any additional work identified

through these discussions and beyond the scope of this Workplan would require mutual agreement and an amendment to this Workplan or a new Workplan.

Outcomes/Deliverables:

- A lead consultant, interview team, community liaisons and GIS Mapper will be hired by the MMF to undertake this work.
- A series of completed interviews with Métis and digitized land use and occupancy maps based on these interviews;
- Audio and video recordings of the interviews as well as completed interview summaries;
- Aggregated maps documenting Métis land use and occupancy in the Project's Study Area;
- A Final Report from the Métis TK Study will be provided to Manitoba Hydro, which will include:
 - aggregated maps of the Métis TK gathered as well as the Métis land use and occupancy maps completed,
 - interview summaries (with any sensitive data removed),
 - a summary of the interviewee's genealogies and a map outlining the ancestral connection patterns of the interviewees in the Project's Study Area,
 - a report on the overall analysis of the maps by the MMF's consultants based on discussions with Metis and the Working Group
 - suggestions for future environmental monitoring work and requirements.

5. Demographic and Socio-Economic Information on the Métis

Manitoba Hydro will support the MMF in undertaking a demographic and socio-economic profile of the Métis in the Project's Study Area based on the recent Census, the MMF's Registry and the MMF's Métis-specific labour market participation data. A report will be provided to Manitoba Hydro by the end of June 2011, which can be used in the Project's EIS.

Outcomes/Deliverables:

- A demographic and socio-economic profile of Métis in the Project’s Study Area will be commissioned by MMF and provided to Manitoba Hydro.

6. Coordination and Reporting

Manitoba Hydro will support the MMF hiring a full-time Project Coordinator who will act as a liaison between the MMF and Manitoba Hydro and will be responsible for the overseeing and managing the Workplan. This full-time position will be from February 2011 to December 2011.

In order to support the Workplan’s objectives and achieve its outcomes and deliverables, the MMF will retain legal advisors and consultants, as required. Costs will include legal and/or professional fees as well as travel.

Outcomes/Deliverables:

- Ongoing coordination and support to the Committee, Working Group, Métis Community Engagement Process, Study, etc.
- A key contact for Manitoba Hydro within the MMF with respect to the Project and the Workplan.
- Effective oversight and reporting on the Workplan by the MMF.

F. BUDGET

A budget of up to \$300,000 is estimated to undertake this Workplan.

COMPONENT	DESCRIPTION	ASSOCIATED COSTS	BUDGET AMOUNT
Coordinating Committee	2-3 meetings between February 2011 to December 2011	Travel (i.e., mileage, meals, hotel) and honorarium for MMF Committee representatives, travel and professional fees for legal advisors or consultants to attend Committee meetings, meeting room fee (if meeting held at MMF Home Office). Average Committee meeting costs @ \$4,000.00 per meeting.	\$7,500.00
Internal MMF Meetings and Working Group	2-3 meetings between February 2011 to December 2011	Travel (i.e., mileage, meals, hotel) and honorarium for Working Group representatives, travel and professional	\$7,500.00

Meeting		fees for legal advisors or consultants to attend Working Group or internal MMF meetings, meeting room fee (if meeting held at MMF Home Office), minute taking for meetings (if required). Average Working Group meeting cost @ \$5,000.00.	
Métis Community Engagement Process	Activities and initiatives to inform, engage and consult Métis citizens on the Project, including, 2-3 local and/or regional meetings in the Project's Study Area between February 2011 and December 2011	Production and printing of communication tools, creation of Project specific webpage on MMF website, advertising for community meetings, meeting costs (i.e., hall rental, travel for presenters, mileage costs for attendees, meal provided) for local and regional meetings. ⁵ Approximate community meeting costs @ \$2,500.00 per meeting.	\$5,000.00
	Writing and editing of communication materials, facilitators for community meetings, hall rentals, etc.	Legal and professional fees and meeting room costs.	\$5,000.00
Métis Traditional Knowledge Study	Identification of Interviewees	Develop and mail out Screening Letter to MMF Harvesters Card Holders and MMF New Membership in order to identify potential interviewees that use Project's Study Area	\$0 ⁶
	Lead Consultant	Professional fees for qualified expert to oversee Study and write required reports. This includes conducting TLUKS interviews (approx. 30), synthesizing results, preparing status reports, drafting, reviewing and finalizing Final Report, meeting with Committee and Working Group as required, ongoing project management support and communications as required. Approximately 400 hours @ \$125.00/hour	\$50,000.00
	Community Liaisons and Interviewee Honorariums	Professional fees for Community Liaisons and flat rate honorariums for Interviewees	\$12,000.00
	Costs for Lead	Travel costs include mileage, meals,	\$30,000.00

⁵ No honourariums will be provided for attendance at community meetings.

⁶ This has been paid for through MMF Bipole III Workplan.

	Consultant, Interviewers, Community Liaison, Interviewees, MMF Staff	hotel, emergency cell phone for Interview Teams, supplies, etc.	
	GIS Specialist	Profession or salary fees for GIS Specialist to create base maps, assist in conducting interviewees, digitalize interview results, assist Lead Consultant in preparing and finalizing reports, etc. Approximately 350 hours @ \$80.00/hour	\$28,000.00
	Printing	Printing of maps, interview guides, etc. as well as copies of Final Report for Manitoba Hydro, MMF and Métis community.	\$8,000.00
	Analysis, Review and Writing of Reports	Legal and professional fees for review and editing of report by other experts and legal counsel	\$15,000.00
Coordination and Support for Workplan (Staff and Consultants)	Keeyask Coordinator	Salary (range \$50,000 to \$60,000 per annum) and benefits (16% MERC) for .5 FTE starting February 2011 to December 2011	\$33,000.00
Demographic and Socio-Economic Profile of Métis in Study Area	Consultant	Completion of Demographic and Socio-Economic Profile of Métis in Study Area by Expert in Demographics and Statistics. Approximately 15 days @ \$1,500.00/day	\$20,000.00
	Professional, Technical and Legal Support	Ongoing professional, technical and legal support to the Keeyask Workplan	\$20,000.00
	Travel for Professional, Technical and Legal Support	Travel (as required) for professional, technical, legal and MMF staff support to the Keeyask Workplan	\$5,000.00
	Office Rental and Storage	Office rental space for staff and storage of maps and equipment for duration of work. Approximately 11 months @ \$750.00/month.	\$9,000.00
		SUBTOTAL	\$255,000.00
Administration	Administrative Fee @ 15% of Subtotal	Financial management and reporting, bank charges, corporate services, audit, etc.	\$45,000.00
		TOTAL	\$300,000.00

For reimbursement from Manitoba Hydro, all expenses incurred by the MMF pursuant to this work plan must be in accordance with the Contribution Agreement and Manitoba Hydro's Aboriginal Relations Reimbursement Policy.

The MMF is able to re-allocate 15% between each budget category listed above by providing written notice to Manitoba Hydro. This does not apply to the Administration budget category, which cannot exceed 15% of the total Workplan's funding.

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Schedule A

PROPOSAL WORKPLAN/BUDGET for Keeyask Generation Project MMF TLUK Project

1. Description of activities

Activity	Description	Suggested Duration ¹ / Milestones	Deliverable
1. Study Planning; Reviewing and clarifying goals/deliverables of MMF TLUK Study Project; Identification of MMF members who use study area; schedule interviews; advertise/notification of MMF TLUK study	<ul style="list-style-type: none">• Review Study plan/logistics meeting• Discuss with MH re any uncertainties• Review BP3 Contribution Agreement and notify BP3 interview participants information to be used for KGS study• Review the previous TLUK screening survey results• Identify 19 individuals who use the Keeyask Study Area and who indicated a willingness to be interviewed;• Contact prospective interviewees to share information about purpose of MMF study, schedule date, time and location of MMF Resource Use interview	Approx. 2 weeks duration	Clear understanding of study scope; Contribution Agreement signed and returned to MH; Informed consent of BP3 participants; List of potential interviewees; Interviews scheduled

¹ actual time that passes before the task is complete

	<ul style="list-style-type: none"> • Finalize Contribution Agreement 		
2. Information Session (requires coordination with Keeyask Public Involvement Program Team)	<ul style="list-style-type: none"> • Participate in Keeyask Project Overview and inform MMF membership of Study purpose • Includes attending meeting and preparation of MMF material • NOTE: The MMF specific information session on the Keeyask Project can be offered in conjunction with the on-going Keeyask Public Involvement Program (PIP) Round Two process. MH offers to cover costs of room rental in appropriate location (likely Gillam or Thompson), refreshments and travel costs associated with MMF staff (Project Coordinator, External Contractor) attending. The PIP presentation would be the same as used for other FN communities, FN Leadership, Aboriginal/non-Aboriginal Organizations. An additional component re Project description would also be presented. Honourariums and travel costs for MMF member participation are not provided as to be consistent with other PIP presentations/open houses. MH willing to work with MMF to ensure PIP/Project Description agenda reflects MMF needs 	1 day	<ul style="list-style-type: none"> • PPT presentation (MH responsibility ~1.5-2 hrs) providing MMF attendees with an overview of the Project and PIP round two information (MH responsibility ~1-1.5 hrs) and opportunity for input • Opportunity for interested MMF members to become informed of MMF Keeyask TLUK Project (MMF responsibility ~2-4 hrs)
3. Conduct Resource Use TLUK interviews	<ul style="list-style-type: none"> • Review and revise TLUK Interview Guide to meet the specific needs/objectives for the Keeyask EIS² (includes specifically Metis Resource Use information demographic and socio-economic profile information and information re knowledge of important cultural/historic sites) • Conduct 19³ interviews (possible locations Gillam / Thompson) 		<ul style="list-style-type: none"> - Interview guide which satisfies the objectives for the Keeyask EIS; - Spatial and non-spatial data - Information related Metis use of area potentially impacted by the Keeyask Project.
4. MMF Internal Update Meeting	<ul style="list-style-type: none"> • Status meeting following Information sessions and KPI interviews 	2 days	Internal MMF leadership/staff updated

² Study area maps will be provided re Resource Use local/regional areas and Socio-economic local, regional and northern areas

³ NOTE: 11 MMF BP3 study interviews completed previously which have relevance and use for the Keeyask TLUK project

			on the MMF TLUKS progress/status.
5. Synthesize TLUK Interview Results	<ul style="list-style-type: none"> • Review KPI responses and map biography data (consistency between text/map, consistency between maps & coding info) • Synthesis of all spatial and non-spatial data from interviews. (Includes: <ul style="list-style-type: none"> • creating aggregate maps • summarizing non-spatial data 	Approx. 3 weeks Note: this task can start prior to the conclusion of the previous tasks	Amalgamated information
6. Conduct Follow-up workshop (Gillam or Thompson)	<p>Individuals who participated in the Keeyask TLUK interviews invited to a workshop (Gillam or Thompson) to review and comment the aggregated results. Other tasks include:</p> <ul style="list-style-type: none"> • development and review of presentation of aggregated study results to interview participants • logistical planning for workshop including notification to potential participants by phone • recording of comments by Project Team 	1 week Following synthesis of KPI information	Vetting and verification of information heard; additional information gathered as offered through review process
7. Characterization of the MMF population and labour force	<ul style="list-style-type: none"> • desktop characterization of the MMF population and labour force using MMF database information : <ul style="list-style-type: none"> ○ In the Keeyask Study Area ○ In the Churchill-Burntwood-Nelson area ○ In northern Manitoba 	1-2 weeks	Input to the overall MMF report
8. Prepare draft report	<ul style="list-style-type: none"> • Draft report describing the methodology and findings. Report to include: 	Approx. 3 week duration	Penultimate draft

	<ul style="list-style-type: none"> • aggregate maps 		
9. Review, brief MMF and revise (if necessary) re draft report	<ul style="list-style-type: none"> • Presentation of draft report to MMF and • Revise content (if necessary) following meeting 	1 week	
10. Submit draft report to MH	<ul style="list-style-type: none"> • Submit draft report (hardcopy & electronic) to MH along with associated GIS shape files 	1 week	
11. Prepare and submit final report to MH	<ul style="list-style-type: none"> • Based on (possible) discussion and MH comments - revise, finalize and submit final report to MH 	1 week	
12. Update meeting (with MH if required)	<ul style="list-style-type: none"> • A meeting with MH if deemed necessary by both parties 	<ul style="list-style-type: none"> • Not subject to any specific time of workplan 	
13. Administration Costs (15%) <ul style="list-style-type: none"> • These costs, defined in a general sense, include financial management and reporting, bank charges, corporate services, audit, etc. ; general office costs (phone, computer technology costs (not capital purchases), rent, etc • This amount is a maximum and this line item cannot exceed 15% of the budget 	<ul style="list-style-type: none"> • Develop monthly financial invoices for submission monthly to MH <ul style="list-style-type: none"> ○ Any reimbursement amounts must be accompanied by the appropriate financial documentation; all reimbursement under this category must be as per the 2012 MH Reimbursement Policy 		

2. Budget estimate broken down by activity, as follows:

Activity #1 – Study planning; Identification of and scheduling of MMF members for TKUK interview

Name	Suggested Effort ⁴ Hours	Rate	Total
Project Coordinator	80	\$35 ⁵	\$2,800
Regional Office Coordinator	20	\$20 ⁶	\$700
External Contractor	16	\$125 ⁷	\$560
Subtotal			\$4,060

Disbursement	Travel	Accom	Meals	Misc	Total
Advertising ⁸				\$1000	
Subtotal					\$1,000
Total					\$5,060

Activity #2 – Information Session

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	24	\$35	\$840
Regional Office Coordinator	8	\$20	\$160
External Contractor	12	\$125	\$1,500
subtotal			\$2,500

Disbursement	Travel	Accom	Meals	Misc	Total
Project Coordinator travel ⁹					
External Contractor travel ¹⁰					
Meeting Room ¹¹					

⁴ length of time a task will take

⁵ Rate = \$30 hourly salary + \$5 benefits= \$35 (=~\$60K/yr)

⁶ As per MMF

⁷ Rate provided by MMF

⁸ Ads for the North (Thompson Citizen & Nickel Belt) range ~\$250-\$300 plus GST/run date; NCI radio: \$37 per spot

⁹ Coordinated through PIP

¹⁰ Coordinated through PIP

Lunch/Refreshments ¹²					
subtotal					\$0
Total					\$2,500

Activity #3 – Develop Interview Guide & Conduct¹³ TLUK Interviews

Name	Suggested Effort Hours	Rate	Total
External Contractor	4	\$125	\$500
Project Coordinator	95	\$35	\$3,325
External Contractor	95 ¹⁴	\$125	\$11,875
Mapping Technician	95	\$75 ¹⁵	\$7,125
Total			\$22,825

Disbursement	Travel	Accom	Meals	Misc	Total
External Contractor	\$1100 ¹⁶ x3 ¹⁷ = \$3300	15 ¹⁸ x \$140 ¹⁹ = \$2100	10 x \$51.35 ²⁰ = \$513.50		\$5,913.50
Mapping Technician	\$3300	\$2100	\$513.50		\$5,913.50
Project Coordinator	\$3300	\$2100	\$513.50		\$5,913.50
Interview Room				\$150/d x 10 days = \$1500	\$1,500
Honoraria				19 x \$100= \$1900	\$1,900

¹¹ Coordinated through PIP

¹² Coordinated through PIP

¹³ Interview costs (i.e. paper, ink) incorporated in MMF Consultant billing Rate

¹⁴ 19 interviews @ 5/hrs/interview=95 hours

¹⁵ Reasonable rate for technical function

¹⁶ Return trip to Gillam (Calm Air)

¹⁷ Provides for three separate trips for interviews with knowledge holders

¹⁸ allows for interviews to take place over 15 days

¹⁹ As per MH Reimbursement Policy

²⁰ As per MH Reimbursement Policy total covers breakfast, lunch, dinner & incidentals

subtotal					\$21,140.50
Total					\$43,965.50

Activity #4 - MMF Internal Update Meeting

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	8	\$35	\$280
External Contractor	8	\$125	\$1,000
Mapping technician	4	\$75	\$300
subtotal			\$1,580

Disbursement	Travel	Accom	Meals	Misc	Total
n/a					
subtotal					0
Total					\$1,580

Activity #5 - Synthesize Results from TLUK

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	25	\$35.00	\$875
External Contractor	40	\$125.00	\$5,000
Mapping Technician	24	\$75.00	\$1,800
subtotal			\$7,675

Disbursement	Travel	Accom	Meals	Misc	Total
N/A					
subtotal					\$0
Total					\$7,675

Activity #6 – Follow-up Workshop (1 day; Gillam or Thompson)

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	24	\$35	\$840
External Contractor	16	\$125	\$2,000
Mapping Technician	12	\$75	\$900
Facilitator ²¹	8	\$125	\$1,000
Regional Office Coordinator	8	\$20	\$160
subtotal			\$4,900

Disbursement	Travel	Accom	Meals	Misc	Total
Meeting room				\$500	\$500
Refreshments/Lunch ²²			\$750		\$750
Honoraria ²³				19 x \$150= \$2850	\$2,850
mileage	19 x \$0.50/km x 100km= \$950				\$1,500
Airfare – Project Coordinator	\$1100				\$1,100
Airfare - External Contractor	\$1100				\$1,100
Airfare – Mapping Technician	\$1100				\$1,100
Airfare - Facilitator	\$1100				\$1,100
subtotal					\$9,200
Total					\$14,100

²¹ In order for MH to reimburse the person cannot be a salaried MMF employee (as per Reimbursement Policy)

²² If lunch provided participants cannot submit meal per diem

²³ Signed list of participants receiving honoraria required

Activity #7 – Characterization of MMF population and labour force information

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	16	\$35	\$560
External Contractor	24	\$125	\$3,000
subtotal			\$3,560

Disbursement	Travel	Accom	Meals	Misc	Total
n/a					
subtotal					0
Total					\$3,560

Activity #8 – Prepare Draft report

Name	Suggested Effort Hours	Rate	Total
External Contractor	60	\$125.00	\$7,500
Mapping Technician	20	\$75.00	\$1,500
Project Coordinator	15	\$35.00	525
subtotal			\$9,525

Disbursement	Travel	Accom	Meals	Misc	Total
Courier				\$10	\$10
subtotal					\$10
Total					\$9,535

Activity # 9– Review, brief MMF and revise (if necessary) re draft report

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	32	\$35	\$1,120
External Contractor	25	\$125	\$3,125
Mapping Technician	15	\$75	\$1,125
Special Advisor to MMF President	5	\$0	\$0
MHLO	5	\$0	\$0
Minister of Hydro	5	\$0	\$0
subtotal			\$5,370

Disbursement	Travel	Accom	Meals	Misc	Total
Courier charge				\$25.00	\$25
Meeting room rental		\$500.00			\$500
Refreshments				\$100.00	\$100
Special Advisor to MMF President	240km x 2 x \$0.50/km= \$240.00	\$140	\$51.35		\$431.35
Minister of Hydro	\$536.90	\$140 x 2= \$280.00	\$51.35x 2= \$102.70		\$919.60
subtotal					\$1,975.95
Total					\$7,345.95

Activity #10 - Submission of draft report to MH

Name	Suggested Effort Hours	Rate	Total
MHLO	1	\$0.00	\$0
subtotal			\$0

Disbursement	Travel	Accom	Meals	Misc	Total
Courier				\$10	\$10
subtotal					\$10
Total					\$10

Activity #11 – Prepare and submit final report to MH

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	12	\$35	\$420
External Contractor	16	\$125	\$2,000
Mapping Technician	12	\$75	\$900
Special Advisor to MMF President	8	\$0	\$0
MHLO	8	\$0	\$0
subtotal			\$3,320

Disbursement	Travel	Accom	Meals	Misc	Total
Special Advisor to MMF President	240km x 2 x \$0.50/km= \$240	\$140	\$51.35		\$431.35
Courier charges				\$10	\$10
subtotal					\$441.35
Total					\$3,761.35

Activity #12 – Update meeting with MH (if required)

Name	Suggested Effort Hours	Rate	Total
Project Coordinator	8	\$35	\$280
External Consultant	8	\$125	\$1,000
Mapping Technician	4	\$75	\$300
subtotal			\$1,580

Disbursement	Travel	Accom	Meals	Misc	Total
n/a					
subtotal					\$0
Total					\$1,580

Activity #13 - Administration (15%)

	Total	15%	Total
Activities 1-12	\$100,672.60	15%	\$15,100.92
subtotal			\$15,100.92

Total Project Budget: \$115,773.72

3. Graphic schedule of activities to show timing and relationships of activities including dependencies between activities.

Task	Week																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1) Study Planning, Identification of MMF members for KPI and schedule interviews	█	█																
2) Participate in Keeyask Information Workshop (PIP rd 2) and inform MMF members of TLUK study and objectives			█															
3) Develop/Revise interview guide & Conduct TLUK interviews			█	█	█													
4) MMF internal update meeting					█	█												
5) Synthesize TLUK Interview Results					█	█	█											
6) Conduct Follow-up workshop (e.g. Gillam)								█										
7) Characterization of MMF population and labour force								█										
8) Prepare draft report									█	█	█							
9) Review draft report with MMF and revise (if necessary)												█	█					
10) Submit report to MH for comment																		
11) Revise, prepare and submit final report to MH																	█	█
12) Update meeting (with MH as required)																		
13) Undertake Financial reporting and submission to MH																		

█	Activity
█	Deliverable
█	Financial Accounting

Note 1: This format is designed to ensure that cost estimates are carefully considered for the purposes of budget projections. During operation, reasonable variation in the distribution of approved funds is acceptable, subject to applicable approval processes.

Note 2: Invoices associated with the approved workplan are to be formatted to show linkage with the activities such that reviewers will be able to quickly discern actual costs associated with each completed activity. With respect to travel costs, please include the following information:

- Dates of travel
- Location of meeting/event
- Description of meeting/event
- If shared travel, name/association of fellow traveller(s)

Note 3: Estimated and Invoiced costs are to be consistent with the Manitoba Hydro Reimbursement Policy (attached).



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rdbettner@hydro.mb.ca

2012 06 01

Canadian Taxpayer's Federation - Manitoba Division
1881 Portage Avenue
P.O. Box 42123
Winnipeg, MB R3J 3X7

Attention: Colin Craig

Dear Sir:

**RE: APPLICATION FOR ACCESS
OUR FILE FOI 2012-25**

We are in reply to your request as follows:

Please provide documentation on community costs, legal and consulting costs, process costs, mitigation costs and any other negotiation-related costs for the Keeyask Dam, Conawapa Dam, Wuskwatim Dam and Bipole III project. Please break out the information by year, community and project.

Your request is granted. Attached, please find a table setting out an annual basis the totals paid to communities in respect of Keeyask Dam, Conawapa Dam, Wuskwatim Dam and Bipole III. In reviewing the tables, it should be noted that these amounts include community costs, legal and consulting costs, process costs, mitigation costs and negotiation-related costs. With respect to legal and consulting costs, the amounts included will be reimbursement of third party costs incurred by the various First Nations or communities. Mitigation costs will include monies paid in compensation and adverse effects and offsetting programming costs. The balance of the community costs will be community staff costs, overhead costs, and all of the costs and disbursements associated with community meetings and negotiating meetings. Finally, it should be noted that these numbers do not include any fee for service contracts issued to any First Nation or community to engage in research and provide information and reports for inclusion in any environmental impact statement.

Yours truly,


R.D. Bettner
Access & Privacy Officer

RDB/az

Project	Community	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Grand Total
Bipole III	Fox Lake Cree Nation													183,399.42	615,197.53	798,596.95
	Manitoba Metis Federation												50,000.00	225,000.00	166,250.00	441,250.00
	Swampy Cree Tribal Council														14,560.00	14,560.00
	Swan Lake First Nation														5,271.75	5,271.75
	Southern Chiefs Organization Cree Nation Partners (TCN/WLFN)												32,000.00	1,635,655.28	684,365.76	32,000.00
Bipole III Total													122,000.00	2,044,054.70	1,485,645.04	23,535,170.20
Keeyask	Fox Lake Cree Nation		175,783.34	1,718,130.08	1,805,421.61	2,030,911.01	1,981,511.29	2,035,339.16	2,161,857.22	2,137,914.55	2,132,868.79	4,229,745.45	1,413,722.08	1,711,965.62	1,485,645.04	3,651,699.74
	Manitoba Metis Federation															
	Nisichawayasihk Cree Nation															
	York Factory First Nation															
	Cree Nation Partners (TCN/WLFN)	949,535.68	3,454,196.17	6,723,078.34	10,017,900.05	7,438,822.80	7,322,980.03	7,287,160.81	7,293,603.07	7,016,272.66	7,617,494.56	13,979,801.44	9,576,602.09	5,300,505.84	6,255,212.05	100,233,165.59
Keeyask Total	949,535.68	3,454,196.17	7,081,054.46	13,137,419.11	10,662,317.61	10,835,456.64	10,773,268.87	11,070,197.39	10,975,487.47	11,769,811.93	18,352,107.63	16,247,123.26	9,020,167.26	10,204,590.58	144,532,734.06	
Wuskwatim	Opaskwayak Cree Nation															190,599.94
	Nisichawayasihk Cree Nation															49,386,346.67
	Nelson House Community Council															25,413.53
	Cormorant															190,599.94
	Snow Lake															254,133.27
	Thicket Portage															25,413.53
	Herb Lake Landing															25,413.53
	Cree Nation Partners (TCN/WLFN)															2,164,740.34
	Wuskwatim Total															52,262,660.75
	Conawapa	Fox Lake Cree Nation		24,771.36	776,865.87	2,683,645.74	2,023,038.28	5,688,019.98	5,246,996.62	7,876,508.80	9,706,147.11	6,678,684.70	5,732,171.24	1,779,181.55	1,945,362.92	2,101,266.58
Manitoba Metis Federation																11,943,912.87
York Factory First Nation																16,250.00
Shamattawa First Nation																41,250.00
Cree Nation Partners (TCN/WLFN)		949,535.68	3,478,967.53	7,857,920.33	15,821,064.85	12,685,355.89	16,523,476.62	16,311,255.09	19,680,258.32	22,078,566.27	22,194,739.40	27,868,978.75	26,485,608.46	15,423,504.29	16,172,591.23	223,531,822.71
Conawapa Total	949,535.68	3,478,967.53	7,857,920.33	15,821,064.85	12,685,355.89	16,523,476.62	16,311,255.09	19,680,258.32	22,078,566.27	22,194,739.40	27,868,978.75	26,485,608.46	15,423,504.29	16,172,591.23	223,531,822.71	
Grand Total																223,531,822.71

* includes community process, mitigation & process implementation costs