



**TATASKWEYAK CREE NATION**

Submission by Tataskweyak Cree Nation (TCN) to the  
Manitoba Clean Environment Commission Public Hearing on the  
Bipole III Transmission Project

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Submission  
November 13, 2012

## 1. Introduction

Tataskweyak Cree Nation comprises more than 3500 Cree people who are the original inhabitants of a territory in north-central Manitoba. We have lived in our ancestral homeland since time immemorial sustaining ourselves from the bounty of the boreal forest fed by the mighty Churchill and Nelson rivers.

We lived in harmony with nature, respecting the natural rhythm of the seasons and the habits of wildlife.

Our spirituality is founded on our relationships with our ancestral homeland, where all that exists is interrelated: land, culture, and spirituality.

### A. TCN's Expression of the Cree Worldview and Hydro Development

#### The Cree Worldview

The Cree worldview reflects core beliefs that have arisen through countless generations of living in harmony and balance with Mother Earth.

TCN undertook to articulate its worldview following the signing of the 1992 Northern Flood Implementation Agreement (the 1992 Agreement), which recognized the Split Lake (Tataskweyak) Resource Area and established a large portion of it as the Split Lake Resource Management Area, as shown on the next page. The formal articulation of our worldview was necessary in order for outside parties to understand the effects of hydroelectric development on our way of life.



**Split Lake Resource Management Area/Tataskweyak Resource Area**

Our core beliefs are expressed in relationships which we have developed with Mother Earth, relationships that have developed over thousands of years. The relationships center on spiritual, physical, and emotional relationships with the land and water and are the essence of our culture. If these relationships are destroyed, then we are destroyed.

Our relationships include:

- Spiritual Relationships with Mother Earth;
- Historical Relationships with the Land;
- Life Sustaining Relationships with Mother Earth;
- Caregiver Relationships and the Duty of Respect;
- Hunting, Fishing, Gathering, and Trapping Relationships;
- Educational Relationships;
- Physical Relationships: Travel, Camping, Meetings, and Burials;
- Emotional Relationships;
- Social Relationships within the Community;
- Socio-Political Relationships with Other First Nations;
- Socio-Political Relationships with Outsiders; and
- Knowledge of Ecological Relationships among Non-Human Beings

See Appendix 1, from our Overview Summary – Keeyask Generating Station – Tataskweyak Cree Nation – Overview of Water and Land, June 2002, which describes these relationships in more detail.

The customs, practices, and traditions that are integral to our cultural identity are reflected in these relationships.

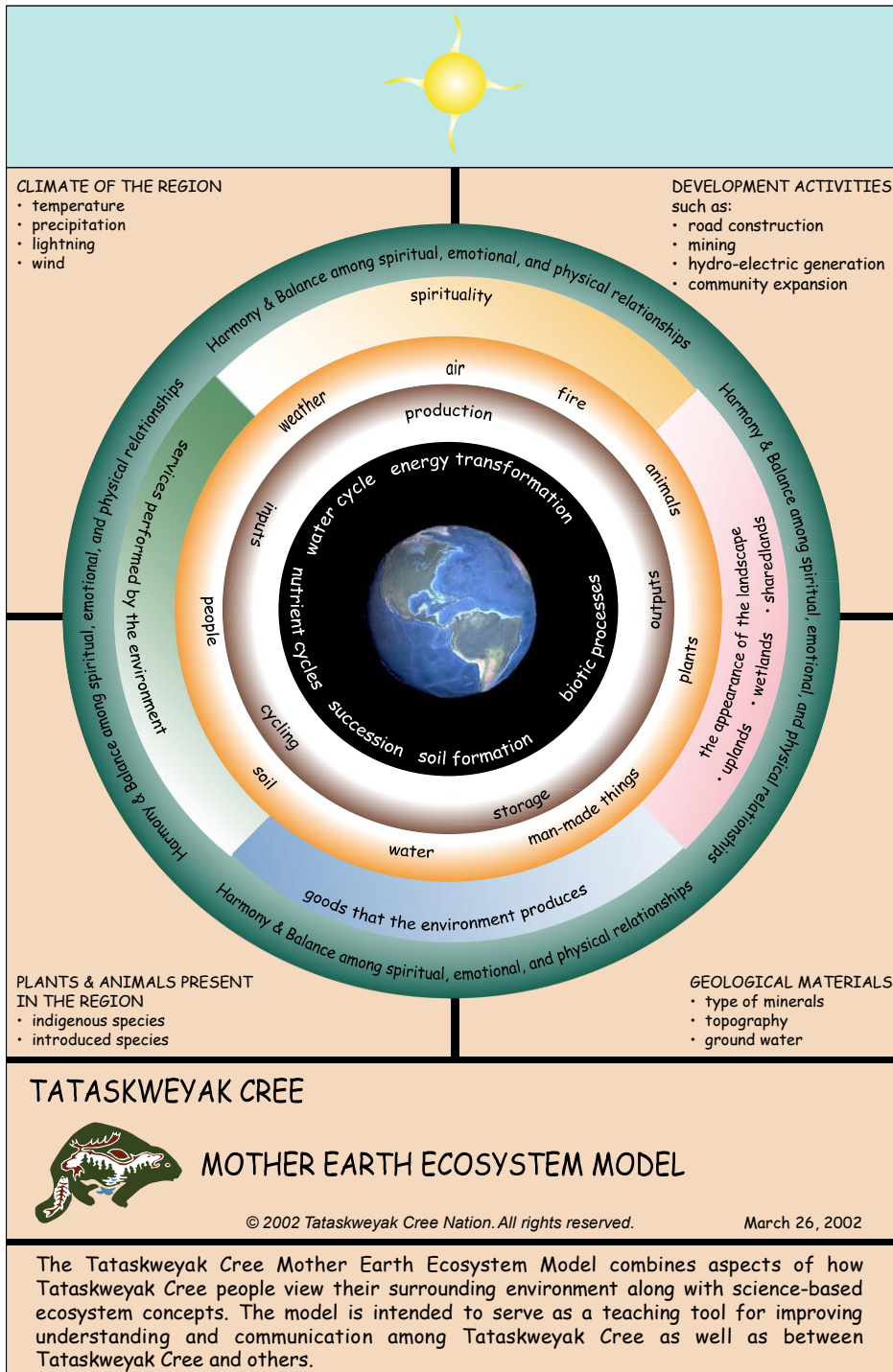
For TCN, the environment cannot be divided into component parts and assessed. It is not divisible and separate from our cultural identity.

In the words of Joseph Keeper, A Cree from Norway House, who has worked for Cree communities much of his life, and was involved in the Community Development movement of the 1960s:

*“Inherent in the Cree culture is how we placed ourselves in our relationship to the land and all of nature. it was a reciprocal relationship – nature contributed by caring for the Cree and the Cree contributed by caring for nature.*

*Within our culture, spiritual life, family life, and livelihood activities are not separated. These values and beliefs become an integral part of an individual’s personality.”*

The Mother Earth Ecosystem Model, shown following, expresses our worldview by demonstrating the interrelatedness of all things and the ecological processes that link them. It depicts the harmony and balance that can be achieved among spiritual, physical, and emotional relationships in a sustainably developed ecosystem.



## Mother Earth Ecosystem Model

## The OWL Process

We established our Overview of Water and Land (OWL) process in 2001, as a way of assessing future, significant resource development projects in our ancestral homeland, judging potential adverse effects through the prism of the Mother Earth Ecosystem Model and assessing impacts on our relationships with Mother Earth, including the tolerability of such impacts.

In particular, the OWL process was developed to assess the potential impacts of the proposed Keeyask Generating Station.

The OWL process is the basis of TCN's environmental impact statement on any particular substantial development project.

The OWL process comprises extensive consultation with our Members, Elders, and resource harvesters and their knowledge, values, and wisdom about potential impacts of resource developments, particularly hydro projects.

We also used this process to assess the potential impacts of Bipole III.

### Ancestral Homeland Ecosystem Model

The Ancestral Homeland Ecosystem Model, as shown below, is a simplified version of the Mother Earth Ecosystem Model which was developed to apply our worldview to interpret events which have impacted upon our ancestral homeland ecosystem.



### Ancestral Homeland Ecosystem Model

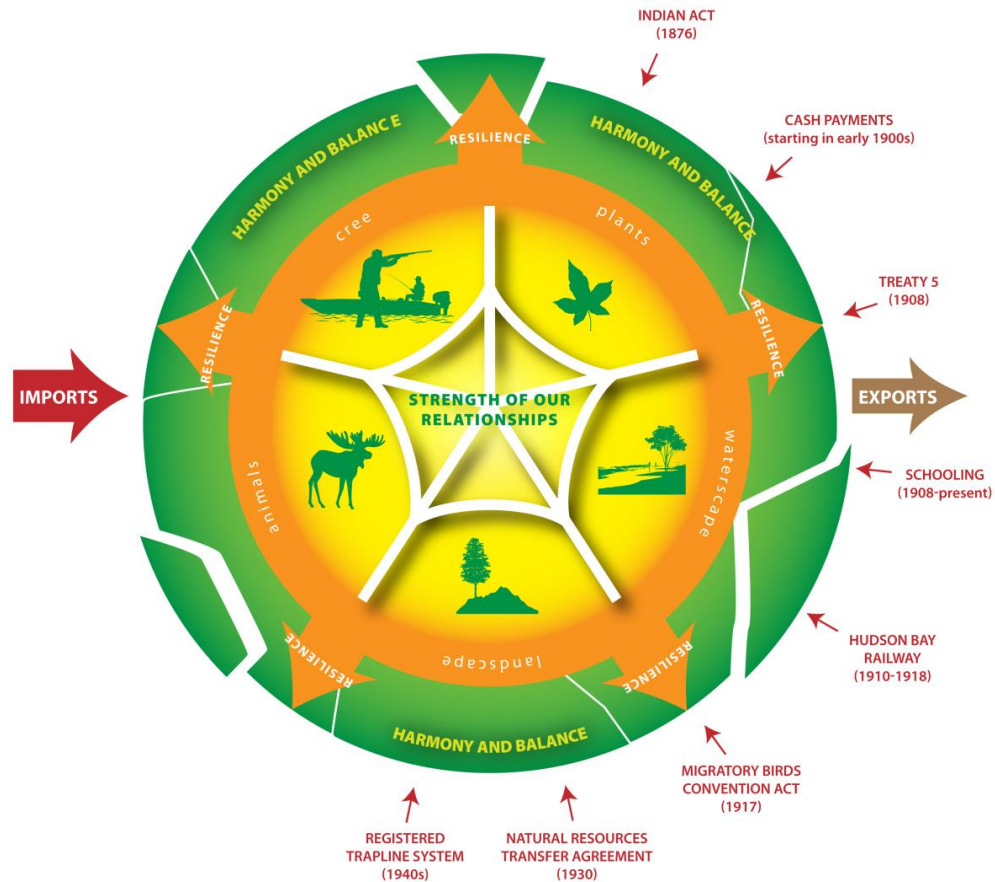
Our homeland ecosystem is depicted by a series of circular bands, the innermost of which contains plants, animals, the landscape, the waterscape, and TCN. They are connected by the relationships identified above. The cumulative strength of the relationships is represented by the web.

The red arrow on the left represents outside influences, or historical events and agreements which have impacted our homeland ecosystem. The brown arrow on the right represents demand for resources. The orange arrows pointing towards the outer green band represent the resilience of our homeland ecosystem.

Most significantly, the outer green band represents harmony and balance within our homeland ecosystem.

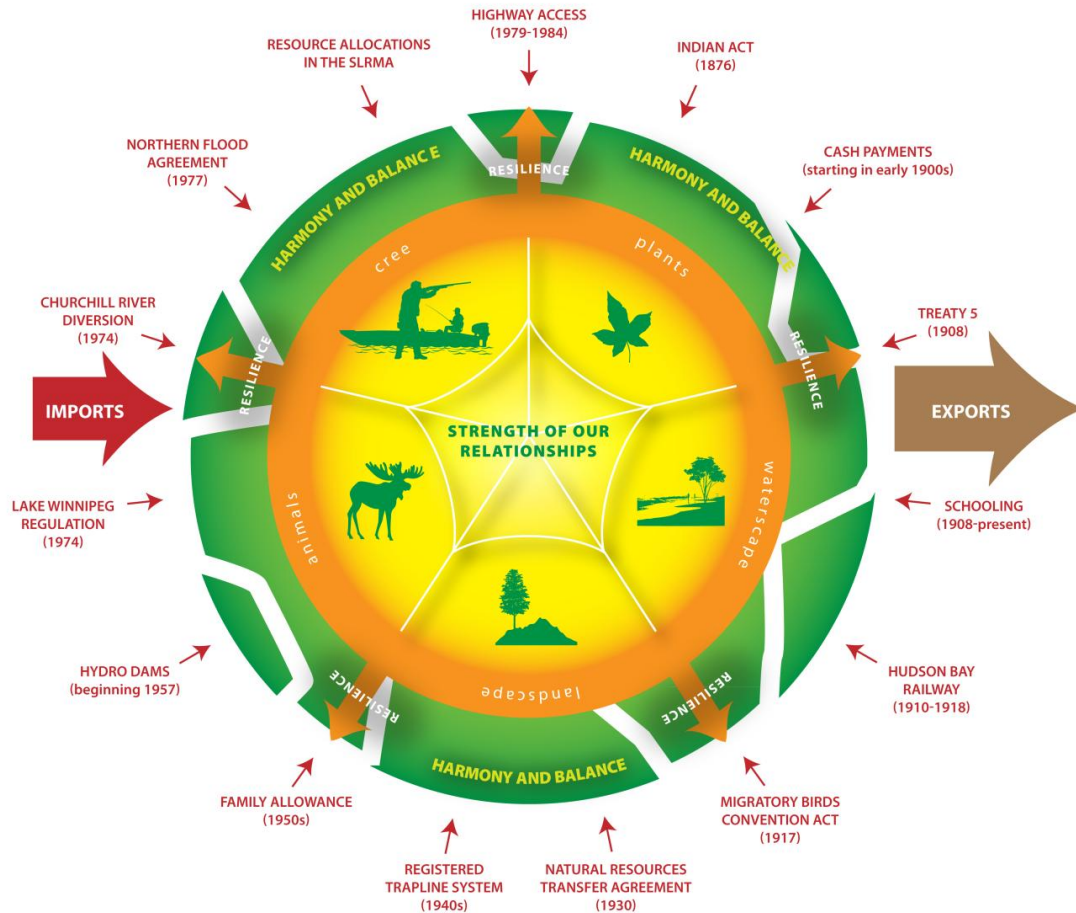


The following two (2) figures, using the Ancestral Homeland Ecosystem Model, depict the historical events which have impacted upon our homeland ecosystem, and the resulting disturbance to harmony and balance, before and after Hydro development.



### Homeland Ecosystem Model Before Hydro Development (c. 1957)

It is evident that even before Hydro development a number of outside influences had disturbed the harmony and balance within our homeland ecosystem. However, our lands and waterways were largely unchanged and, as indicated by the unchanged size of the orange arrows, we were able to be resilient and maintain our cultural identity.



### Homeland Ecosystem Model at Present (Before Keeyask)

As indicated by the cracks in the outer green band, events of the last 50 plus years substantially disrupted the harmony and balance in our homeland ecosystem, the most profound of these being Hydro development, which changed the physical structure of the lands and waters. Note the weakened web and the smaller orange arrows.

As indicated by the size of the Exports arrow, our homeland ecosystem was providing valuable resources for outsiders, but its resilience was greatly limited.

## **B. The History and Extent of Hydro Development in the TCN Resource Area**

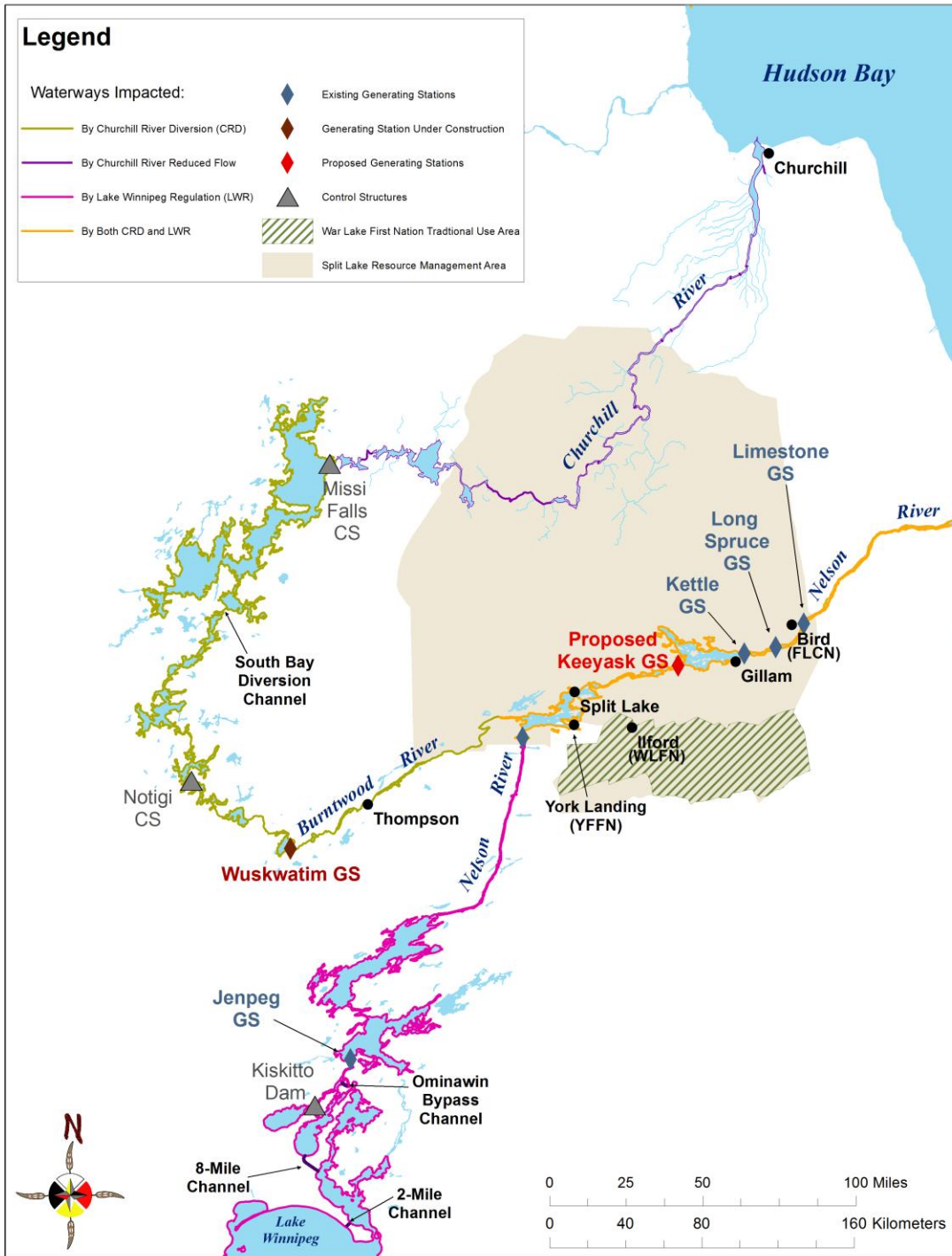
Split Lake is a widening of the Nelson River where it is joined by the Burntwood River. It receives all the water from the Winnipeg, Saskatchewan, Red, Assiniboine, and other smaller rivers which empty into Lake Winnipeg

As indicated by the following excerpt from Volume II of the Split Lake Cree Post Project Environmental Review – History and First Order Effects, August 1996, almost 124, 000 acres of land in our Resource Area have been affected by 35 Hydro projects, including Generating Stations, Converter Stations, Transmission Lines – including Bipoles I and II – power lines, roads and rail spurs, and other related infrastructure.

**LANDS AFFECTED BY MANITOBA HYDRO PROJECTS AND RELATED ACTIVITIES  
IN SPLIT LAKE CREE STUDY AREA BY PROJECT**

Project	Flooding / Dewatering		Surface Land Use		Total	
	(hectares)	(acres)	(hectares)	(acres)	(hectares)	(acres)
<b>1955-59</b>						
Kelsey Rail Spur			184	455	184	455
<b>1960-69</b>						
Kelsey Generating Station	5767	14250	47	117	5814	14367
Kelsey Airstrip			121	300	121	300
Kelsey to Thompson 138 kV Transmission Line			559	1382	559	1382
Kelsey to Radisson 138 kV Transmission Line			594	1469	594	1469
Tap to Gillam, Kettle 138 kV Transmission Line			61	152	61	152
Gillam Townsite Expansion			148	365	148	365
Split Lake Diesel Generating Station			2	5	2	5
<b>1970-79</b>						
Kettle Generating Station (incl. Butnau Diversion)	22066	54526	408	1007	22474	55533
Long Spruce Rail Spur			103	255	103	255
Long Spruce to Gillam Road (1971)			157	388	157	388
Radisson Converter Station			18	45	18	45
Kettle to Radisson 138 kV Transmission Lines (7 lines)			159	394	159	394
HVDC #1&2 +/-500 kV Transmission Line			4079	10080	4079	10080
Kelsey to Mystery Lake 230 kV Transmission Line			37	91	37	91
Ilford to Split Lake Transmission Line			162	400	162	400
Kelsey to Radisson 230 kV Transmission Line			594	1469	594	1469
Sundance Townsite			83	204	83	204
Long Spruce to Sundance Road (1976)			157	388	157	388
Limestone Rail Spur			15	36	15	36
Henday Converter Station			16	39	16	39
Long Spruce to Henday 230 kV T.L. (3 lines)			206	509	206	509
Long Spruce to Radisson 230 kV T.L. (3 lines)			177	436	177	436
Lake Winnipeg Regulation (NFA Easement Land)			790	1952	790	1952
Churchill River Diversion (dewatering)	6904	17060			6904	17060
Long Spruce Generating Station	1376	3401	352	868	1728	4269
Henday to Radisson HVDC #2 +/-500 kV			1594	3939	1594	3939
Thompson to Split Lake Road			608	1503	608	1503
<b>1980-89</b>						
Split Lake to Long Spruce Road			667	1648	667	1648
Radisson to Churchill 138 kV Transmission Line			712	1760	712	1760
Radisson to Limestone 138 kV Transmission Line			366	904	366	904
Henday Collector Lines			60	149	60	149
<b>1990-94</b>						
Limestone Generating Station	209	516	277	684	486	1200
HVDC #2 HVDC backup +/-500 kV Transmission Line			69	170	69	170
Kelsey to Split Lake 138 kV Transmission Line			235	582	235	582
<b>Total</b>	<b>36322</b>	<b>89754</b>	<b>13817</b>	<b>34145</b>	<b>50139</b>	<b>123899</b>

The following map, from our January 2012 Keeyask Environmental Consultation Report, depicts key impacted waterways and Generating Stations within our Resource Management Area.



**Key Impacted Waterways and Generating Stations Within Our Resource Management Area**

The key Hydro Projects included Churchill River Diversion (CRD) and Lake Winnipeg Regulation (LWR) in 1977, and the Kelsey (1960), Kettle (1970), Long Spruce (1977), and Limestone Generating Stations (1990). The CRD dewatered over 17,000 acres of the Churchill River and increased flows down the Burntwood River eightfold. LWR reversed seasonal levels and flows on the Nelson River. The Generating Stations flooded over 72,000 acres of land – not including the waterways – with Stephens Lake tripled in size.

In effect, TCN was transported to a different physical landscape without being physically relocated.

The completely changed waterways eroded shorelines, filled the waterways, including Split Lake, with debris and silt, contaminated fish with mercury, completely disrupted commercial and domestic resource harvesting, and disturbed or destroyed recreational, cultural, and sacred sites.

These adverse effects occurred in the past, but we continue to live with the accumulated effects every day.

The four (4) Generating Stations are responsible for approximately 75% of hydro generated electricity in Manitoba. However, it was not until the 1992 Agreement that it was formally recognized that TCN could also receive benefits from the products of its ancestral homeland.

The 1977 Northern Flood Agreement and the 1992 Agreement were the culmination of years of persistence by the TCN leadership to have the effects of existing Hydro development adequately addressed. The NFA represented a first step towards reclaiming the power and authority we once held.

The 1992 Agreement was a larger step forward, giving substance to the promises under the NFA and for the first time, giving our ancestral homeland a formal recognition through the establishment of the joint Tataskweyak-Manitoba Split

Lake Cree Resource Management Board which has the mandate to advise the Tataskweyak and Manitoba governments on land and resource allocations.

The 1992 Agreement gave TCN the power and authority to meaningfully engage Hydro in the planning and development of the proposed Keeyask Generating Station.

### **C. The Disturbance Within the TCN Resource Area Caused by the Bipole III Transmission Project**

The 500 kV HV dc Transmission Line (Transmission Line) will fragment 215 kilometers of the Split Lake Resource Management Area, and a further 16.6 kilometers of the broader Resource Area, for a total of 236.6 kilometers. While a portion of the Preliminary Preferred Route was adjusted by Hydro to parallel PR 280, in response to TCN concerns expressed in its 2010 Report, most of the route proceeds through relatively pristine territory, including the Stephens Lake Area of Special Interest.

The five (5) ac Collector Lines, and the Construction Power Line, cumulatively proceed for 84.5 kilometers through our RMA, and a further 105.5 kilometers through our Resource Area, for a total of 190 kilometers.

The Keewatinoow Converter Station Site and Ground Electrode Site will require about 440 hectares of our Resource Area, and the Ground Electrode Line will traverse 10.5 kilometers of our Resource Area.

The Transmission Line, Collector Lines, Construction Power Line and the Ground Electrode Line are about 437 kilometers in length across our Resource Area, out of a total length of 1,584.5 kilometers.

In these terms, TCN will be the community most impacted by Bipole III.

Our March 2011 *Report on Bipole III Right-of-Way and Expected Impacts*, which forms part of the Bipole III EIS, focused on the Transmission Line and provided several maps depicting physical interferences with TCN commercial and domestic harvesting activities from the Line.

The Transmission Line proceeds just north of TCN Reserve #171 and at one point gets very close to the Reserve.

The Transmission Line corridor will traverse eleven (11) TCN Registered Traplines.

It is apparent from our March 2011 *Report* that a high level of activity occurs within the Local Study Area of the Transmission Line. Many traditional cultural sites and cabins are within, or close to, the Local Study Area, numerous access trails are intersected by the Line, and the Line proceeds through areas of hunting, trapping, and fishing activity.

It is also apparent that the likely impacts of the Transmission Line will comprise at least nine (9) interferences with relationships reflecting the exercise of the customs, practices, and traditions, which comprise our cultural identity.

See Appendix 2 comprising an excerpt from our March 2011 *Report* providing an analysis of impact issues and interferences.

#### **D. Negotiations with Manitoba Hydro to Address Attendant Impacts of the Bipole III Transmission Project on TCN**

Consultation with our Members over 2010 and 2011 included 160 interviews. There was overwhelming opposition to the Bipole III Transmission Project (Bipole III) being built in our Resource Management Area.

However, TCN could support Bipole III if four (4) conditions were met.



Two (2) of TCN's four (4) conditions of support for Bipole III included reaching agreement with Hydro regarding:

- compensation for the impacts on the collective rights and interests arising from the construction and operation of Bipole III within our Resource Area; and
- business, training, and employment opportunities associated with the construction, operation, and maintenance of Bipole III.

TCN's view is that our 1992 Agreement sets out processes to address anticipated adverse impacts of Hydro development, including required "second order" components of hydroelectric generation like transmission lines, specifically Bipole III. However, TCN and Hydro have not reached accord on the specific applicability of the 1992 Agreement provisions.

Initial negotiations commenced and drafting of an AIP began. However, there have been no meetings since July 2012 and many issues are unresolved.

Nonetheless, TCN and Hydro have made some progress towards fulfilling the above noted conditions, particularly in the area of business opportunities for TCN companies. However, further negotiations are needed to satisfy Hydro obligations to TCN to fully address potential adverse impacts of Bipole III.

See Appendix 3 comprising a legal memo by TCN's legal counsel, which analyzes the relationship of the TCN-Hydro negotiating process to the Crown's s. 35 duties and to past Agreements between TCN and Hydro.

TCN's two (2) other conditions for supporting the Bipole III Transmission Project, as identified in the March 2011 *Report*, included:

- Participating in and contributing to the Bipole III EIS; and
- Conducting a consultation process regarding the Keewatinoow Converter Station, and Ground Electrode Site.

We acknowledge the fulfillment of the first condition. TCN 's two (2) self directed studies, funded by Hydro – the 2010 Report entitled *Bipole III – Preferred Route Selection* which provided comments on the alternative Bipole III routes – and the aforementioned March 2011 *Report On Expected Impacts* form part of the EIS. Although, as will be subsequently noted, it's not clear to what extent the 2011 *Report* was used to determine potential residual effects.

Section 35 consultation with respect to the Keewatinoow Converter Station and Ground Electrode Site is anticipated to soon commence.

#### **E. TCN's Perspectives on the Bipole III Transmission Project EIS**

TCN has identified a number of issues in the EIS pertaining essentially to the identification and assessment of potential adverse effects from Bipole III, mitigation and monitoring of such effects, and compensation and benefits.

##### Baseline Data and TCN ATK Incorporation

It is unclear to what extent the ATK contained in the TCN March 2011 *Report on Bipole III Expected Impacts* informed the EIS assessment of impacts on domestic harvesting. Although it is described at some length in the EIS Chapter on Consultation and in *ATK Technical Report #2*, there is no reference in the EIS assessment of impacts to the 2011 *Report*. The maps produced with the 2011 *Report* were the product of interviews with 60 TCN resource users, indicating TCN's domestic resource harvesting activity within the Local Study Area of the Transmission Line. The EIS assessment appears somewhat generic in approach.

## Fragmentation

As noted above, the 500 kV HV dc Transmission Line proceeds 236 kilometers across our Resource Area, while the ac Collector lines, Construction Power Line, and the Ground Electrode Line intersect a further 190 kilometers. Much of the Transmission Line proceeds through forested areas.

The *Habitat Fragmentation Technical Report* states that:

*“Given that many wildlife species, including woodland caribou, are sensitive to habitat fragmentation and the associated effects of habitat fragmentation (including increased grey wolf...presence, edge effects, and increased public access to forested areas), habitat fragmentation is considered a strong negative effect.” (p. 9)*

The *Report* further states:

*“Mitigation measures for the effects of fragmentation are limited, with the majority of mitigation measures existing at the planning and routing stage of the project.” (p. 10)*

The EIS acknowledges fragmentation from the Transmission Line is non-mitigable (p.8-65), and effects may be long-term and uncertain with particular respect to woodland caribou (p. 8-85).

TCN acknowledges the two (2) route adjustments bring the Transmission Line closer to PR 280, but substantial portions of the Line still proceed through undeveloped lands.

### Significance of Bipole III Residual Effects

TCN Members find the EIS determination that Bipole III will not cause any significant residual effects very difficult to understand or accept.

We do not understand the incorporation of the federal guidance where, initially, a residual effect is only significant if effects are long term (greater than 50 years), have a large magnitude ((easily observed, measured, and described), and have a high geographic extent (extend into the (Project Study Area).

For TCN, the fragmentation, and the resulting cascading range of impacts, caused by 437 kilometers of transmission lines through our ancestral homeland, will cause, in any ordinary sense of the word, significant impacts.

### Determination of Cumulative Effects

We do not agree with the federal guidance that there will be only be cumulative effects from Bipole III if its effects overlap temporally and spatially with past projects. The 35 Hydro projects in our RMA have been determined to have no temporal effect and are largely included in the environmental baseline. To TCN, these projects may have occurred in the past, but their effects are felt every day. To us, they are cumulative in the understood sense of the word: each project has caused additional effects which have accumulated over the last 50 plus years. Bipole III will cause additional impacts.

We are concerned about hundreds of outside workers simultaneously constructing Bipole III, the Keeyask Generation/Transmission Project, and the Conawapa Generating Station and the potential impacts upon our community and members.

### Environmental Protection Plan

TCN acknowledges that the mitigation, monitoring, and management measures in the Draft Environmental Protection Plan (EPP) go some way towards redressing the potential impacts of Bipole III upon relationships with Mother Earth, thereby helping to maintain harmony and balance in our ancestral homeland.

We understand that Hydro has been consulting with communities in the North to get feedback on the Draft EPP. We also understand that there is reasonable flexibility in finalizing the Draft EPP to ensure the nature and scope of monitoring and management (particularly access) reflects community concerns and provides for meaningful participation in monitoring activities.

We understand that biophysical monitoring will likely be expanded to include moose and furbearers. We agree with this.

TCN also believes that socio-economic monitoring should be expanded to include domestic harvesting.

## Project Benefits and Compensation

TCN believes that adverse effects of Bipole III, which cannot be mitigated must be offset by replacements, substitutions, or opportunities, and to the extent that adverse effects remain, addressed by compensation.

The Community Development Initiative (CDI), identified as a Project benefit in the EIS, is a potential source for identifying and implementing community measures to offset the damage to TCN relationships with Mother Earth. However, \$50 million divided among 60 communities over 10 years with no indication as to how the criteria will be weighted, does not allow for TCN to develop meaningful measures to address adverse effects. Moreover, TCN has consistently held that the impacts from Bipole III will last as long as it is in place. Compensation will need to be provided for much more than ten years.

We understand the northern Aboriginal hiring preferences in a Transmission Line Agreement to be developed, that will be used to implement training, employment, and business opportunities. As noted above, we will be negotiating contracts with Hydro with respect to certain Bipole III components and are hopeful that satisfactory arrangements can be concluded.

It would appear that, as the EIS has determined there will be no significant residual adverse effects from Bipole III, then no compensation is identified. As we have already pointed out, this is not a defensible position.

### **F. TCN Requirement of Harmony and Balance in Respect of the Bipole III Transmission Project**

It is apparent to TCN that there will be significant negative residual impacts from Bipole III on ecological processes, which will necessarily cause negative impacts on our relationships with Mother Earth, upsetting harmony and balance in our ancestral homeland.

A range of measures, comprising mitigation, offsetting measures, and compensation, is required to redress these negative impacts, to make any damages tolerable, to sustain our relationships, and to improve overall harmony and balance in our ancestral homeland.

## Appendix 1



## Appendix 1

### From Overview Summary – Keeyask Generating Station – Tataskweyak Cree Nation – Overview of Water and Land, June 2002

#### Relationships

##### **Relationships as the Basis of Tataskweyak Cree Existence**

We, the Tataskweyak Cree, flourished as a people in our ancestral homeland for countless generations because we maintained sustainable relationships with Mother Earth, not because consumable ‘resources’ were abundant as a white man might have thought, based upon his own worldview.

Tataskweyak Cree did not simply ‘use’ Mother Earth’s bounty. We had a two-way relationship where she provided for us and in return we practised stewardship and showed respect. Our relationships with Mother Earth were, and are, the basis of our economy, our language, our spiritual existence and our history. Many of these relationships have been destroyed through attempted domination by the larger Canadian society, not just over Cree people, but over Mother Earth as well.

Our holistic worldview requires that all of our relationships with Mother Earth be considered in attempting to sustain harmony and balance. Individual relationships cannot be singled out from the remainder when assessing the impact of any new development, such as Keeyask, on overall harmony and balance. The effect on *all* relationships must be considered.

Tataskweyak Cree, and our culture, are part of and inseparable from the relationships developed over the millennia with Mother Earth. This is the cornerstone of our worldview and, like the life force itself, is integral to our survival.

Our relationships with Mother Earth can be loosely described in English as being spiritual, emotional and physical, but there are many types of relationships that fall within these broad categorizations. Some of these are briefly described below.

## **Spiritual Relationships**

Foremost among our relationships with Mother Earth, and most difficult for others to understand, are spiritual relationships. These are not limited to what might be called religious relationships between a person and the Creator in the conventional sense. Rather, spiritual relationships include our relationships with the spirits or life forces of all physical organisms, as well as relationships between people and the Creator. Together these spiritual relationships are the core of our connection with, and respect for, Mother Earth. They are truly sacred relationships.

In the Tataskweyak Cree worldview, there is no separation between living and non-living beings, and all beings, including inanimate ones such as rocks and trees, have spirits that give them life. Maintaining proper relationships between people and the spirits of all other beings is an essential part of our way of living that was so successful prior to the coming of the white man.

These spiritual relationships are of vital concern to us. The larger Canadian society not only pays no attention to relationships with the spirits of other beings but does not understand or respect the essential need for Tataskweyak Cree to maintain proper relationships as an imperative of maintaining our way of life.

## **Historical Relationships**

Historical relationships with the land are immensely important to Tataskweyak Cree. These relationships provide a powerful connection to the land that speaks to the reality of events long past.

Our brother, a Cree hunter in his family's traditional territory, knows that he is walking the same paths, seeing the same sky and water and land that his forefathers saw generations before. He will stop at many sites associated with personal family history: here a grandparent was born; there an uncle camped during a great storm many years ago; here a moose was killed when the family was starving; this is the place where many generations have set traps for otter; this is where a great grandmother is buried; here is where families met each summer. Such a hunter is part of the land; he belongs to the land, it does not belong to him. But if he is deprived of access to the land, his history is denied and a vital part of him is lost.

When land is flooded, roads built, power line Rights of Way cleared, and dikes built upon the land, then peoples' histories are destroyed and the hurt to their lives lasts forever.

## **Life Sustaining Relationships**

Prior to first contact with the white man, Mother Earth provided the food, shelter, clothing and medicines necessary to sustain our ancestors. After contact, there was a shift in this relationship as Tataskweyak Cree met some of our needs by providing labour to the traders. As well, we sold fur and meat to the traders but these products too were provided by Mother Earth.

For over 200 years after contact, Tataskweyak Cree continued to enjoy life-sustaining relationships with Mother Earth as she provided our basic needs, directly or indirectly.

Over the last 50 years, this relationship has weakened as fewer and fewer of our basic necessities have been provided by Mother Earth. Not only has this been experienced as a decline in country foods, medicines and income from trapping, but it has been profoundly felt by individuals and families because people, primarily men, could no longer pursue traditional activities and fulfill their role as providers. These forced changes upon our way of life have had a profound and negative impact upon the vitality and strength of our culture. At the same time, we have not been able to fulfill the relationship that helped to sustain other beings of Mother Earth.

## **Caregiver Relationships and the Duty of Respect**

Tataskweyak Cree people have a responsibility to care for the land in return for the land providing for us. This involves honouring relationships in a manner that the wisdom and experience of generations has shown to be proper and advantageous.

The essence of caring for the land is to observe proper relationships based on respect. The white man generally does not share our values and does not show the care and respect for Mother Earth in a way that our people would find satisfactory. This is the same as having someone show disrespect for one's family members. To see such disrespect shown for one's family, and be powerless to intervene, is a frustrating

experience for anyone, especially when the disrespect extends to violence in any of its many forms.

Tataskweyak Cree people feel this frustration when others behave badly or improperly towards our land. This might involve such things as: putting poison in the water; speaking disrespectfully of birds or animals; killing animals for mere enjoyment; changing Mother Earth in ways never intended by the Creator such as damming and diverting rivers; defacing sacred sites; killing more animals than needed; or harvesting something without offering proper thanks to its spirit.

We take pride in living our relationships with Mother Earth in a way that does not permanently alter the landscape. This is part of caring for the land. The white man takes pride in altering the landscape in monumental ways. Such an attitude conflicts with our values and obligations.

## **Hunting, Fishing and Gathering Relationships**

Hunting, fishing and gathering were always integral to the Tataskweyak Cree way of life. These activities themselves were life-sustaining relationships; when they broke down, people died. Yet, despite the critical necessity of actually obtaining food, shelter and medicine, it was the *act* of hunting, the *act* of fishing, and the *act* of gathering that perpetuated our way of life and gave meaning to our language, our beliefs and our values.

The products of hunting, fishing and gathering are valuable but to a lesser degree than the hunting, fishing and gathering activities themselves. The greatest value of animals killed, fish caught or berries and medicines gathered is, and always has been, the affirmation they provide to the activity. Hunting is not hunting if there is never any prospect of killing something, yet the value of hunting as a cultural activity does not depend upon the quantity of animals taken. Learning and cultural perpetuation will not take place if there is nothing to hunt or gather.

The food and medicinal values derived from traditional pursuits are important to our people, but food and medicine can be replaced. We can still be Tataskweyak Cree if most of our food and medicines are non-traditional, but a fundamental part of what it is to be Tataskweyak Cree will die if the activities of hunting, fishing and gathering can no

longer be practised in ways that respect tradition, or to the extent necessary to perpetuate cultural underpinnings such as values, language, understanding and skills.

The wisdom of the Elders cannot be perpetuated if it does not live through its application in relation to activities associated with hunting, fishing and gathering.

## **Trapping**

Before the coming of white traders, trapping as it is understood today did not exist. The taking of animals such as muskrats, marten and lynx was just part of hunting. It wasn't until a market for fur was introduced that trapping became identified as an economic activity separate from hunting.

For a time, trapping was both an essential economic activity and a hunting activity for Tataskweyak Cree people.

People in the larger Canadian society apparently saw, and still see, trapping as only an economic activity. Now that its value in this regard has greatly diminished, they tend to consider it as a minor or even inconsequential activity. In our experience, however, trapping is reverting to its original status as part of hunting. Its cultural value is becoming pre-eminent again as opposed to its economic value.

## **Educational Relationships**

Every society must have a system for passing knowledge from one generation to the next or the society does not survive. The traditional Tataskweyak Cree system was an oral system that drew heavily upon Mother Earth for its lessons. We not only learned about Mother Earth, but we learned from her.

Education traditionally began when expectant women went into the forests and to the shores to talk to their unborn child about Mother Earth, and to point out such things as the sounds of birds, running water and rolling thunder, and to talk about the lessons to be learned from creatures as diverse as ants and bears. These lessons continued from birth through adolescence. Children learned from Mother Earth and from their family members how to live an honourable life and fulfill their destinies as men or women.

This interactive system produced people perfectly suited for living as an integral part of Mother Earth. People who had learned her lessons well could travel safely and live with

complete confidence in their traditional homeland because the water, weather, land and animals spoke to them and told them what they needed to know. Such people were at complete peace with themselves and with Mother Earth. They needed only to be respectful of all they had learned about maintaining proper relationships with all Mother Earth's beings in order to fulfill their destiny.

This educational system was replaced decades ago by a system detached from Mother Earth where outsiders tried to teach our children that the white man's way of life was superior to the Cree way of life. The effect of this was to teach the Cree child that it was better to be white than to be Cree. This created an inferiority complex and low self-esteem.

Such blatantly racist policies and practices have been removed from our educational system. Nevertheless the Tataskweyak Cree, today, are taught by outsiders in a curriculum shaped towards the needs of competing in the larger Canadian society. The teaching of our own history, traditions, and beliefs have a much lower priority. While there is no going back to the pre-contact era, retaining our culture requires our children to learn more about, and to take pride in, our history, our beliefs and our traditions.

### **Physical Relationships – Travel, Camping, Meetings and Burials**

Another set of relationships that Tataskweyak Cree had with the land might be characterized as physical relationships. These were relationships where people travelled on water and land, camped, buried their dead and held ceremonies.

The worldview of the larger Canadian society tends to look at activities such as these as 'land uses' rather than as relationships. To us, they are relationships because of the interaction between people and the land, and because of the spiritual and respectful way that we look upon the land that provides for our needs, even in death.

It was not part of our experience to change the land in ways that only the Creator had previously done. When this happens it often results in dangerous situations because lessons learned no longer apply and it always results in damage to our emotional connection to the land.

## **Emotional Relationships**

Emotional relationships are state-of-the-mind situations with regard to physical objects or physical activities. For example, one might have a certain state of mind regarding a particular place, depending upon that place's history and its' current use or abuse. One might also have a certain state of mind regarding an activity such as hunting, depending upon one's opportunity or lack thereof to pursue that activity. The two situations could clearly be related.

These emotional relationships are in contrast to spiritual relationships, that have no physical aspect, and in contrast to economic relationships where an object is valued for its physical worth as an object for consumption or as a unit of wealth to be saved, traded or given away. Despite the distinction, emotional and spiritual relationships can and do overlap. This blurring of boundaries simply demonstrates the difficulty of attempting to break a holistic worldview into separate parts.

An example of spiritual and emotional relationships overlapping is with regard to relationships that are described as being sacred. Our relationships with certain sites or objects might be considered sacred for spiritual reasons of a religious nature; some might be considered sacred for spiritual reasons having to do with the need to observe a particular sort of relationship because of the spirits of certain objects; and others might be considered sacred because of their fundamental importance to continued existence as Tataskweyak Cree. For example, Treaty 5 is regarded as a sacred obligation for purely emotional reasons.

There are good examples of emotional relationships with objects that are understandable to members of the larger Canadian society as well as to Tataskweyak Cree. One is the state of mind that people experience when their home is broken into and a family heirloom is stolen or destroyed.

The physical damage can be repaired and the heirloom can be replaced by an item of equal market value. Yet when such an event happens, the victim's state of mind may be permanently damaged through fear of a further invasion and through loss of a personal connection to the past. People so affected often cannot continue to live in a home that has been so violated. Furthermore, relationships damaged in this manner cannot be

restored through financial compensation. Neither is the victim likely to ever be trusting of the intruder.

Emotional relationships play a very important part in our culture, especially in our individual and collective decision-making processes.

### **Social Relationships Within the Community**

Social relationships, relationships amongst people, are of course important within any community or culture but they were, and are, especially important when people live in isolated communities. When people live in such circumstances it is imperative that social relationships be carefully nurtured and maintained.

In traditional Tataskweyak Cree society, social relationships were built around hunting, fishing and gathering activities in family groups. In the summer, many of our families would gather in traditional meeting places to fish, socialize, barter, perform spiritual ceremonies, find marriage partners and prepare for the coming winter.

In our society, there was no complicated system of government. People lived and governed themselves by custom and tradition.

Perhaps the most fundamental attribute of traditional social relationships amongst Tataskweyak Cree was the imperative of sharing. One did not acquire possessions beyond personal requirements except for the purpose of sharing with others. White people were beneficiaries of this attribute when they arrived in our land. Our willingness to share what we possessed and the relative unwillingness of the white man to share his possessions is a cultural contrast that remains of great importance to this day.

### **Socio-Political Relationships With Other First Nations**

Relationships between Tataskweyak Cree and other First Nations were conducted as extensions of our internal social and political structures and values. These relationships were of course conducted without the involvement of the white man.



## **Socio-Political Relationships with Outsiders**

The first contacts our people had with outsiders were with white fur traders intruding into our homeland. These traders were interested in establishing and maintaining good relations with us as fur producers. They had no interest in interfering with our system of governance. For the most part we dealt with traders as individuals conducting business, but as necessary, representatives would be selected to speak for our Nation and put forward consensus positions of our people. Our traditional way of conducting ourselves was respected by the traders and consequently this relationship, which was perhaps more an economic than political relationship, lasted for many generations and was successful for both parties.

Treaty 5 and the Indian Act imposed a particular administrative and bureaucratic structure upon us. We were required to appoint a Chief and Councillors to deal with the dictatorial Indian agent structure imposed by Indian Affairs Branch. The resulting disaster for our people, especially during the past 50 years, demonstrates the consequences of this approach. Yet despite this imposition, the relationship of our Members to our leaders is relatively unchanged from the traditional consultation and consensus model. All matters that have implications for our Members are discussed at length in general meetings and decisions are not made without the concurrence of our membership. The internal structure has not been destroyed.

Self-government is an inherent component of our Aboriginal rights. In part this means being able to deal with outsiders using the traditional structures and values familiar to our Members. It also means not having decisions imposed upon us. The OWL process is contributing positively to our desire to re-assert our inherent right to self-government.

From the earliest contacts with white traders there arose a practice among the traders of taking a Cree wife for personal and economic reasons and subsequently abandoning her and their children when the trader returned home. Abuse of Cree women by outsiders has been an ongoing part of our experience. It has been especially serious during times when hydro construction has been underway.

## **Relationships Among Mother Earth's Non-Human Beings – Ecological Relationships**

A culture built around hunting, fishing and gathering possesses knowledge, accumulated over generations, about how the non-human beings of Mother Earth interrelate with each other. In Western science this could be described as having knowledge about the structure and function of ecosystems. When such knowledge is possessed by Aboriginal People, the larger Canadian society refers to it as Traditional Ecological Knowledge, or TEK for short.

This knowledge explains where, when and why specific relationships between or among non-human beings take place. For example, where fish spawn, when they spawn and why a certain spawning place is selected. Or, when caribou migrate, where they travel and why they select that particular route. The extent of such knowledge among the Tataskweyak Cree was once all encompassing but is now less so because of the forced disconnection with Mother Earth that has come about through actions of the larger Canadian society and, to a lesser extent, through individual life-style choices.

This sort of knowledge is of course vital to practitioners of hunting, fishing and gathering as it relates to the specific area where these activities take place. It is therefore not something that its possessors want to share too widely. Nevertheless, non-site specific ecological knowledge can be very helpful in developing a holistic understanding of an ecosystem.

The experience of countless generations of Tataskweyak Cree, gained while developing, confirming and perpetuating TEK, was at the core of our cultural development. This knowledge is therefore an important part of our continued existence. Any loss of such knowledge will have an adverse effect on our way of life in that it detracts from our inherent Aboriginal right to perpetuate our identity as Cree people.

## **Personal Property and Community Infrastructure Relationships**

All the relationships discussed to this point are rooted in the experience of countless generations and as such, are the foundation of our culture. If these relationships are destroyed, our culture is destroyed and we cease to exist as Tataskweyak Cree. In contrast, there are now many contemporary relationships with which we have but one

or two generations of experience. While these new relationships may be critical to our day-to-day living and survival as individuals, they are not essential to our cultural survival.

This latter group of relationships consists principally of the relationships between people and objects of personal property, community infrastructure and services. These are largely attributes of the culture of the larger Canadian society that are becoming critical to our survival within the larger culture.

Tataskweyak Cree face two fundamental challenges in this regard. One is to acquire a level of community infrastructure and services comparable to that enjoyed by members of the larger Canadian society; we are well below average in this regard. Another challenge is to develop ways of relating to these things that are effective in contemporary society and at the same time honour our Cree traditions and values thus allowing us to retain our cultural identity.

Because personal property, infrastructure and services are not part of our cultural experience, any losses suffered as a consequence of development can be replaced through financial compensation in a way that it is not possible to replace or repair damaged relationships with Mother Earth. Money can buy expanded services and infrastructure in a way that it cannot buy cultural relationships.

## Appendix 2

## Appendix 2

### Excerpt From March 2011 *Report Providing An Analysis of Issues*

#### 4.4.1 Identified Issues

Following an analysis of the responses, the most common issues identified by Members are as follows:

- The construction of Bipole III is akin to emotional pain;
- Traditional hunting and trapping grounds used for subsistence over countless generations will be altered or destroyed;
- Our trapping trails will be permanently altered, forcing us to change how and where we trap;
- Our camping sites and cabins will never be the same and, as a result, we will have to find new ones;
- Areas containing medicinal plants and berries will be lost due to clearing of the right-of-way;
- Opportunities to live a traditional lifestyle will be diminished;
- Our fishing areas will be negatively affected;
- Our emotional well-being will be harmed as a result of the construction and operation of Bipole III because it is disrespectful to the land and we are failing to care for it properly;
- The SLRMA will be permanently altered which will result in Members losing their connection to the land;
- Our trapping will be adversely affected by Wildlife leaving our traditional areas because we will have to travel further away to trap, which will be more costly (i.e. Gas, time, food).

- It will become more difficult to teach our traditional way of life to future generations because of the changes to the land;
- There will be increased instances of outsiders hunting in our traditional territories;
- Traditionally used creeks and streams will be affected by the presence of transmission lines;
- Our traditional gathering sites will now have visible transmission lines;
- The transmission lines will disturb cultural, sacred and burial sites;
- Wildlife birthing and spawning sites will be permanently altered;
- Wildlife migration routes will be changed;
- The quality of the water we drink from the creeks will be affected as a result of construction;
- Construction and heavy equipment operations will scatter debris and cause pollution;
- We will not enjoy life in the same way, such as the time spent relaxing and enjoying the wilderness surrounding our RTLs;
- Noise from construction will scare animals away from the construction area;
- The construction of the transmission line will result in increased highway activity, making travel by car more dangerous; and
- Dog team trails will be negatively affected.

#### **4.4.2 Analysis of Issues**

Having developed a list of issues anticipated to arise from the construction and operation of Bipole III and considering the identified issues relative to our worldview, we conclude that the impacts of Bipole III are likely to be interferences with the exercise of the customs, practices and traditions which define our cultural identity.

For example, Members voiced concerns about traditional hunting, trapping and fishing areas being negatively affected or destroyed. The concerns were restated as identified issues (traditional hunting and trapping grounds used for subsistence over countless generations will be altered or destroyed.)

This concern was expressed in different ways, many of which are presented in the following statements:

- My family has hunted and trapped in the area for several generations;
- Pollution, debris and noise will ruin the animals' natural habitat and drive them away;
- The project will negatively affect the way we travel hunting routes during our traditional hunts;
- Devastation to the land – animals will leave when construction begins; and
- The machines, people and pollution associated with construction and operation will drive animals away, ultimately damaging our wilderness.

In the paragraphs that follow, we describe these possible interferences which we expect will arise from the construction and operation of the Bipole III project.

- **Interference with the Right to Hunt and Trap for Food** - The Aboriginal right to hunt and trap for food has been integral to our people from before first contact with Europeans through to the present time. This right was specifically included in Treaty 5. These rights were given constitutional protection through the Natural Resources Transfer Agreement (the Constitution Act, 1930) and further recognized and affirmed in s.35 (1) of the Constitution Act, 1982. The right to hunt and trap for food is a right that is only meaningful if there is a land base on which to exercise it, as affirmed by the Supreme Court of Canada. Thus, not only do we have the right to hunt and trap for food, but we have a right to be sustained through those activities from the lands in our homeland ecosystem which we have traditionally relied on for centuries.

- **Loss of Historical Connection to the Land that will be Affected** - We have close relationships with the landscapes of the SLRMA, which have been developed over generations and that are deeper and more meaningful than the necessity of being familiar with the landscape for the purpose of survival. The landscape provides direct connection to past events and ancestors, much as books and maps do for societies with a written record. This is an integral feature of our distinctive culture. When the land is lost, so is much of the history of the people who have lived on that land for thousands of years.
- **Loss of Traditional Food Previously Harvested in the Area of Impact** - Although everyone requires food, certain kinds of food are characteristic of distinctive cultures, and can be integral to those cultures. We have traditionally eaten food such as moose, caribou, beaver, ruffed grouse, wild raspberries and many more elements of Mother Earth. This relationship is an integral part of our culture.
- **Disrespect and Lack of Care for Mother Earth** - We live in a world where all things are both related and interrelated and can exist in a state of harmony and balance if proper care is given and respect is shown for Mother Earth and all her beings. In return for respecting and caring for Mother Earth, she will provide all that is required for our well-being. The converse is that if proper care and respect is not shown there will be serious consequences for us. This relationship is an integral part of our culture.
- **Disruption of Spiritual Relationships with the Land** - We believe that there is no separation between living and non-living beings and all, including inanimate ones, have spirits that give them life. Maintaining proper relationships between people and the spirits of all other beings is a vital part of our distinct cultural identity.
- **Disruption of Emotional Relationships with the Land** - Sites that will be lost due to the construction of Bipole III are worthy of respect and reverence. The customary use of these sites is an integral part of our culture.
- **Reduced Opportunities for Traditional Learning** - Our youth were traditionally taught respect for Mother Earth and learned values to live by through lessons



demonstrated on the land. Such teaching and learning practices are integral components of our distinctive culture. Most of this learning took place on the lands and waters that sustained us both physically and culturally for centuries, some of which will be lost because of the Bipole III Project.

- **Reduced Opportunities to Experience Traditional Living** - The practices, customs and traditions that mark our culture as being distinctive are all based upon our relationships with the land as they existed prior to the coming of Europeans and as they continued to exist by and large up until the first hydroelectric development. Although these opportunities were concentrated on the river systems that have been permanently altered by hydroelectric development, they can be found throughout our traditional territories.
- **Reduced Opportunities for Sharing** - Perhaps the most fundamental attribute of our traditional social relationships is sharing. For us, sharing is not merely a survival strategy, but a moral imperative; we share what we have with others in need because one day we may be in need. In our view, sharing is not like charity. Rather, it is giving as the natural action of an individual under circumstances that require sharing. It is also a way of showing respect for animals and hence ensuring that they will make themselves available when needed by people.

“Our Elders describe traditional pursuits like hunting, trapping, fishing, and gathering, all of which will change from Bipole III.”

– Member

“The Bipole III project will affect and change our connections and relationships with our environment forever.”

– Other

## Appendix 3

November 13, 2012

Clean Environment Commission  
305-155 Carlton Street  
Winnipeg, Manitoba  
R3C 3H8

Dear Sir/Madam:

**Re: Support of Tataskweyak Cree Nation Submission  
On Bipole III Transmission Project**

Tataskweyak Cree Nation (TCN) rights that are protected under the 1982 Constitution Act are related to the TCN – Hydro Bipole III negotiating process and to past agreements made between TCN and Hydro in respect of other past and future developments.

The 1982 Constitution Act provides that “existing aboriginal and treaty rights of the aboriginal peoples of Canada are recognized and affirmed”.

In the last three decades, the Supreme Court of Canada has clarified these rights, and the meaning of this constitutional protection.

Many of the relationships that are articulated in the Cree world view, as represented by the TCN Mother Earth Ecosystem Model, and as identified by TCN through its OWL process, have at their core the exercise of aboriginal and treaty rights that are constitutionally protected.

The Supreme Court has articulated that the test for identifying those constitutionally protected aboriginal rights must “aim at identifying the practices, traditions and customs central to the aboriginal societies that existed in North America prior to contact with Europeans”.<sup>1</sup> The OWL process identifies these practices, traditions and customs of TCN.

Aboriginal rights are *sui generis*. In other words, such rights are unique, of their own kind or class, and cannot easily be categorized with other constitutional or common law rights.

<sup>1</sup> R v. Van Der Peet, [1996] 2 S.C.R. 507; R v. N.T.C. Smokehouse Ltd. [1996] 2 S.C.R. 672; and R v. Gladstone [1996] 2 S.C.R. 723

Aboriginal rights are not absolute, and may be extinguished or infringed upon. The extinguishment of rights is not at issue in respect of Bipole III.

However, TCN states that without doubt, Bipole III will infringe upon the exercise of aboriginal rights by TCN members. One example should suffice. There can be no question that the collective rights of TCN members to harvest in their Resource Area for domestic consumption will be interfered with by the construction and operation of Bipole III. This and other infringements must be addressed.

The Crown – Her Majesty the Queen in Right of the Province of Manitoba – has been asked to grant a licence for Bipole III. When the Crown is asked to licence a project that may result in the infringement of constitutionally protected aboriginal rights, the Crown owes a duty to aboriginal people.

Once a prima facie interference with an aboriginal right is determined, the Supreme Court has stated that analysis must then move to the issue of justification of that infringement. In other words, the question that must be addressed is whether there can be a justifiable infringement of those aboriginal rights<sup>2</sup>. The concept of reasonableness forms an integral part of the test for justification and colours all aspects of the test<sup>3</sup>. In addition, the onus of proving the justification of an infringement is on the Crown.<sup>4</sup>

The first stage of the justification test requires finding a valid and compelling objective for the infringement. By way of example, in the context of an aboriginal right to fish for substance, the objectives of conservation and resource management answer the test.

But it should be noted that the standards of the justification test are set very high. It is up to those who claim the infringement is justified to demonstrate that the standards set out in the justification test have been met.<sup>5</sup>

In determining whether the burden of justification has been met - in order to allow an infringement of aboriginal rights – there are three main but not exhaustive tests that the Supreme Court has enunciated:<sup>6</sup>

1. There must be as little infringement as possible of the concerned right or rights.
2. The affected aboriginal peoples must be consulted.
3. The issue of compensation must be addressed.

<sup>2</sup> R v. Sparrow [1990] S.C.R. 1075

<sup>3</sup> R v. Nikal [1996] 1 S.C.R. 1013 at 1065 (paragraph 110)

<sup>4</sup> Ibid. at 1065-1066 (paragraph 111) see also R v. Badger [1996] 1 S.C.R. 771 at 822 (paragraph 98).

<sup>5</sup> R v. Badger at 822 (paragraph 98)

<sup>6</sup> see R v. Sparrow at 1119, R v. Badger at 821-22, R v. Nikal at 1064-65, R v. Cote [1996] 3 S.C.R. 139 at 189 and Delgamuukw v. BC [1977] 3 S.C.R. 1010 at 1111-14

In respect of Bipole III, not only is the Crown – Her Majesty in Right of the Province of Manitoba – asked to grant a licence for Bipole III, but the Crown has taken an active role in determining the overall routing of the Bipole III DC Transmission Line to the west side of Lake Winnipeg, necessitating the traversing of well over 200 kilometers of the Split Lake Resource Management Area. The Crown will benefit both directly and indirectly by the construction and operation of the Bipole III Transmission Line and related works. It will generate significant revenue from taxes related to construction activities. Greater reliability of the Hydro system will ensure better domestic reliability and protect revenues, and facilitate firm exports at higher prices for the financial benefit of the Crown’s agent, Manitoba Hydro. The Crown charges water rentals to its agent, Hydro, and, as owner, has drawn other funds over time from its agent, Hydro, such that the Crown benefits from and has a direct interest in the economic stability of Hydro, and therefore, Bipole III development. In all of those circumstances, the duty owed by the Crown to TCN is of the highest standard. The Crown has fiduciary obligations, and its actions must be in keeping with the integrity and honour of the Crown. The Crown therefore has a significant burden to overcome in addressing and justifying the infringement of TCN rights.

The Crown’s duty and obligations in this regard could be more readily addressed if the developer itself, Hydro, an agent of the Crown, consulted with TCN to:

1. Understand the aboriginal rights that will be infringed.
2. Ensure as little infringement as possible.
3. Address compensation in a mutually agreeable manner.

In fact, some, but not all of these measures have been or are being addressed. If consultations and negotiations between TCN and Hydro are successful, then when the issue of infringement of aboriginal rights is addressed by the Crown, TCN would be able to say that TCN’s constitutionally protected rights have been addressed to its satisfaction by virtue of the actions of the Crown’s agent, Hydro, and TCN’s agreement with Hydro.

Consistent with this suggested approach, past agreements made between TCN and Hydro have recognized TCN’s rights, and some agreements have gone so far as to specifically recognize and address infringements on TCN’s constitutionally protected aboriginal rights. Those TCN/Hydro agreements contain measures to address such rights and infringements in a manner that, in TCN’s view, adheres to the principles that have been enunciated by the Supreme Court.

The 1977 Northern Flood Agreement (NFA) was entered into prior to the 1982 Constitution Act of Canada. Nonetheless, it recognized and addressed numerous rights and interests that are constitutionally protected. The 1977 NFA was implemented by way of TCN’s 1992 Implementation Agreement with few exceptions. One exception is the employment and business opportunities available to TCN under Article 18.4 and 18.5 of the 1977 NFA which remain in

force and effect. These provisions work in support of the requirements necessary to justify infringements of aboriginal rights – the provision of employment and business opportunities to offset adverse effects. The 1992 Agreement also contains processes for addressing future development. TCN and Hydro have not reached accord on the specific applicability of the 1992 Agreement provisions, but it is TCN’s view that the approaches described in the 1992 Agreement are consistent with the consultation and compensation requirements that are necessary in order for there to be justification for any infringement of aboriginal and treaty rights.

In terms of addressing TCN’s constitutionally protected rights, in May of 2009, Hydro, TCN and three other First Nations signed the Joint Keeyask Development Agreement, contemplating the future construction of the Keeyask Generating Station. Concurrently, an Adverse Effects Agreement between TCN and Hydro addressed Keeyask adverse effects upon TCN and its members.

Under the Adverse Effects Agreement, Hydro and TCN agreed that to the extent reasonably practical, their priorities in addressing Keeyask adverse effects were:

1. To prevent or avoid works or measures which would cause such adverse effects;
2. To lessen or reduce unavoidable adverse effects;
3. To provide appropriate replacements, substitutions or opportunities to offset any adverse effects; and
4. To pay fair compensation for the loss or damage suffered as a consequence of such adverse effects, to the extent such effects were not fully addressed by the measures undertaken to accomplish the above priorities.

The Adverse Effects Agreement also reflected the fact that the representatives of TCN and Hydro had identified foreseeable Keeyask Adverse Effects, many of which the parties agreed were related to potential impacts of the Keeyask Project on the exercise of aboriginal and treaty rights by TCN and its members.

The Adverse Effects Agreement also stated that offsetting programs were designed to address anticipated Keeyask Adverse Effects including, without limitation, impacts of the Keeyask Project on the exercising of aboriginal and treaty rights by TCN and its members.

The OWL process was used to identify TCN aboriginal and treaty rights that would be infringed by the Keeyask Project, and negotiations between Hydro and TCN were based on this foundation, allowing the parties to address adverse effects in a manner consistent with principles enunciated by the Supreme Court.

In the result, in respect of the Keeyask Project, TCN and Hydro will be able to say, when the Crown is asked to license that project, that they have addressed the Keeyask development in a manner that recognizes and affirms the aboriginal rights of TCN. They will have addressed and dealt with the infringement of rights by Hydro. As stated by author Robert Mainville: "It would be contrary to the nature of aboriginal rights to ignore or tolerate third party interferences with them or not to hold third parties accountable for infringing on these rights."<sup>7</sup>

It is TCN's position that a similar process is required with Hydro in respect of Bipole III. This has been unfolding with Hydro. More needs to be done.

Yours truly,

**CAMPBELL, MARR LLP**

Per:



**Douglas J. Mackenzie**

DJM/lks

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<sup>7</sup> "An Overview of Aboriginal and Treaty Rights and Compensation for their Breach", Purich Publishing Ltd., Saskatoon, Saskatchewan, 2001, at page 119.