



# Metis Land Use and Occupancy Study

## Assessment of Potential Effects Prior to Mitigation

### Manitoba-Minnesota Transmission Project

Prepared For: Manitoba Hydro  
Winnipeg, MB

Manitoba Conservation and Water Stewardship  
Winnipeg, MB

Dec 2016



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ON BEHALF OF:  
MANITOBA METIS  
FEDERATION

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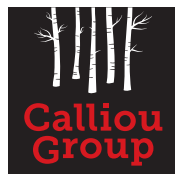
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# Key Findings

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The Manitoba Metis Federation commissioned this report to understand the Metis Specific Interests in the vicinity of the *Manitoba-Minnesota Transmission Project* and to understand how the approval of the Manitoba-Minnesota Transmission Project by the Government of Manitoba may result in a positive or negative effect to the selected Metis Specific Interests.

This report identifies the potential effects to two Metis Specific Interests: 'Lands Available for Metis Use' and 'Harvesting'. This was accomplished by using information shared during 47 in-person surveys with Manitoba Metis Federation Participants and 121 paper surveys completed with Manitoba Metis Federation Respondents.

This Report characterizes effects to two Metis Specific Interests at three different geographic scales: the Project Development area which is the area that will be physically disturbed by the Project; the Local Assessment Area which is the area where Project related environmental effects can be predicted and there is a reasonable expectation that these effects will be of concern, and; the Regional Assessment Area is the area that establishes context for determining significance as well as the area within which cumulative effects are assessed<sup>1</sup>.

Based on the results of this report, the Study Team concluded there will be effects to Lands Available for Metis Use and Harvesting, which without mitigation, will result a significant residual effect to Metis rights and interests.

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<sup>1</sup> Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-16; 7-17

## Key Findings: Lands Available for Metis Use

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The area where the MMTP Project is proposed is important to the Manitoba Metis Federation. This was highlighted in the Goodon<sup>2</sup> decision where the court found a historic, rights-bearing Metis community to have existed in “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” (para. 48), through Manitoba Metis Federations’ ongoing claim<sup>3</sup> with the Crown, and through Manitoba Metis Federation’s rich history<sup>4</sup>.

**This makes the presence of Unoccupied Crown Land important.** Unoccupied Crown Land represents areas where the Metis of Manitoba have access to exercise their Metis rights that does not require permission. On all other land types, the exercise of Metis rights can be restricted from time to time under certain circumstances.

The Manitoba Minnesota Transmission Project will result in a reduction of Unoccupied Crown Land through construction and at select times, at Manitoba Hydro’s discretion, for operations and maintenance activities.

Currently, there are 715.87 ha hectares of Crown land in the Project Development Area. Of this 715.87 hectares – 422.63 hectares is *Occupied Crown Land* prior to the Project and 293.28 hectares is *Unoccupied Crown Land*.

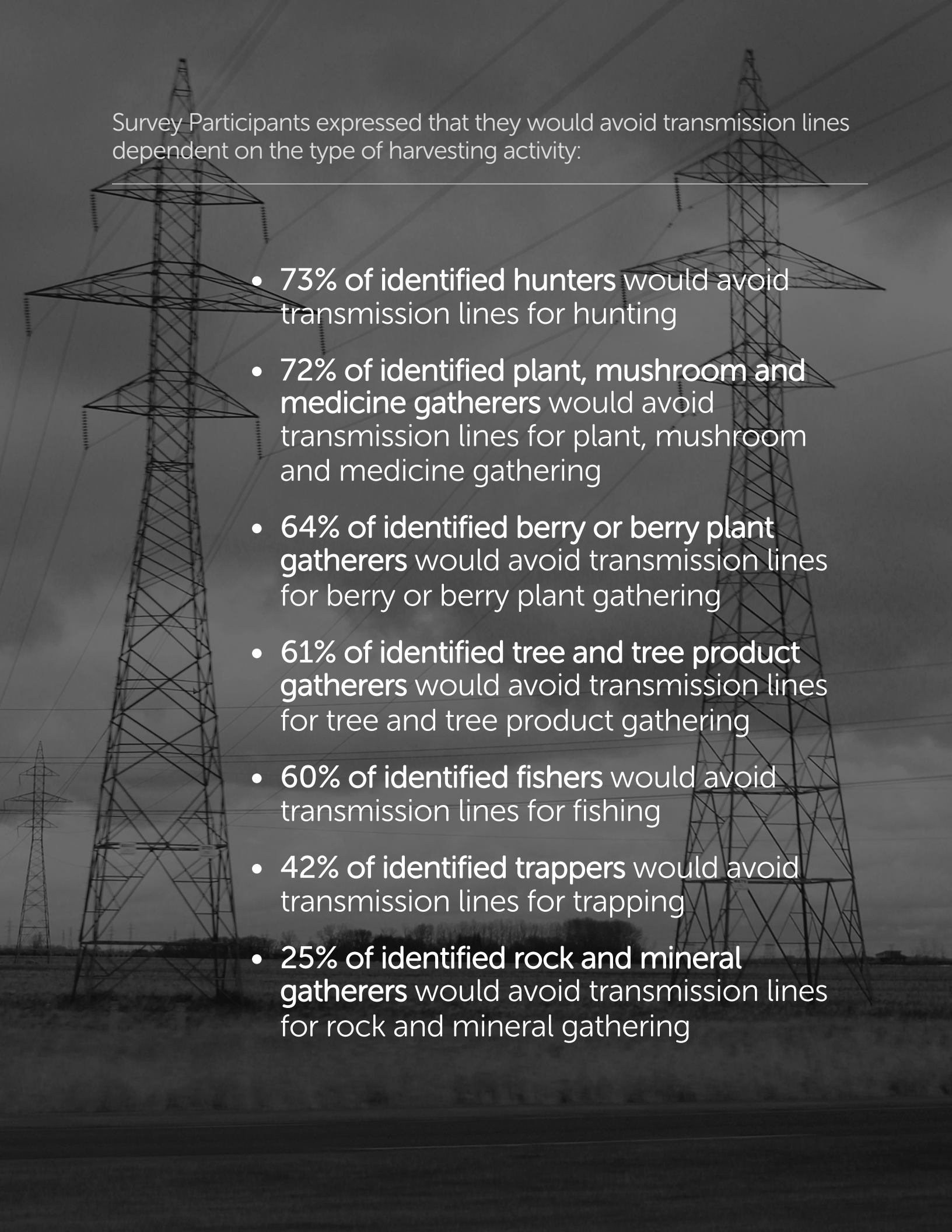
- With the addition of the Project, **98% of the Unoccupied Crown Land within the Project Development Area** will be converted to Occupied Land.
- The remaining Unoccupied Crown Land, following Project approval, in the LAA and RAA is not contiguous; it lacks connectivity and is broadly spaced.

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2 *R. v. Goodon*, 2008 MBPC 58 [Goodon].

3 See Section 3.7 for additional details related to the Claim

4 See Section 3.1 through 3.6 for a description of the Manitoba Metis Federation’s history.



Survey Participants expressed that they would avoid transmission lines dependent on the type of harvesting activity:

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- **73% of identified hunters** would avoid transmission lines for hunting
- **72% of identified plant, mushroom and medicine gatherers** would avoid transmission lines for plant, mushroom and medicine gathering
- **64% of identified berry or berry plant gatherers** would avoid transmission lines for berry or berry plant gathering
- **61% of identified tree and tree product gatherers** would avoid transmission lines for tree and tree product gathering
- **60% of identified fishers** would avoid transmission lines for fishing
- **42% of identified trappers** would avoid transmission lines for trapping
- **25% of identified rock and mineral gatherers** would avoid transmission lines for rock and mineral gathering

Survey Participants that conducted particular activities felt that the Manitoba Minnesota Transmission Project, specifically, would change access to harvesting areas:

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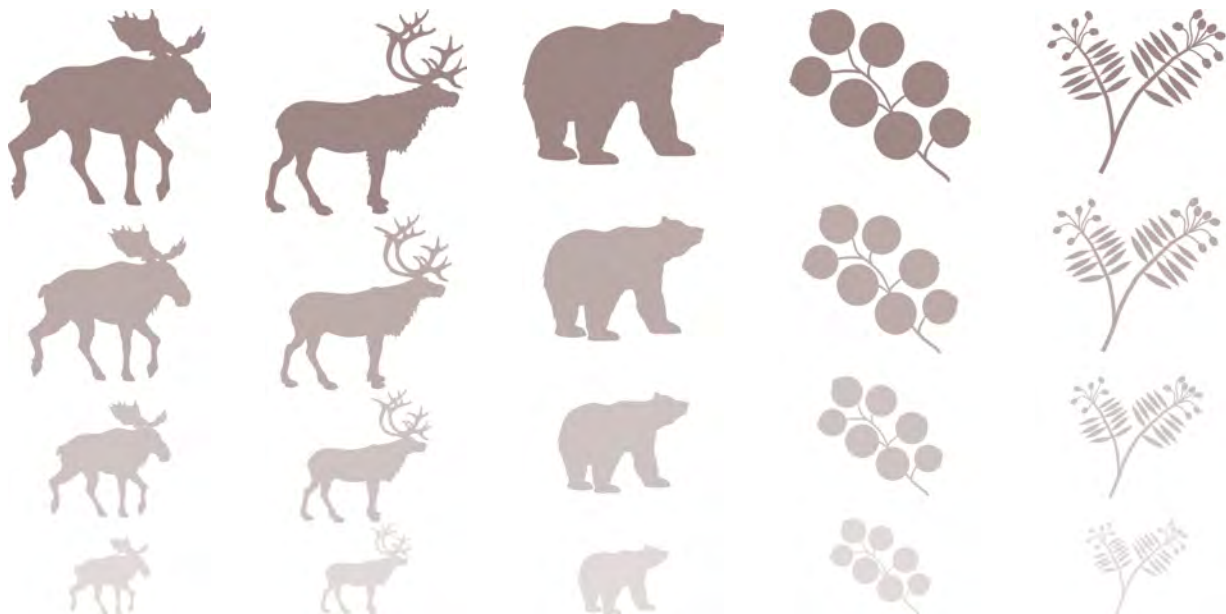
- **100% of identified rock and mineral gatherers** felt access would change for rock and mineral gathering
- **95% of identified plant, mushroom and medicine gatherers** felt access would change for plant, mushroom and medicine gathering
- **87% of identified trappers** felt access would change for trapping
- **84% of identified berry and berry plant gatherers** felt access would change for berry and berry plant gathering
- **79% of identified tree and tree product gatherers** felt access would change for tree and tree product gathering
- **79% of identified hunters** felt access would change for hunting
- **36% of identified fishers** felt access would change for fishing

As per the agreed to workplan for this Project, MMF and Manitoba Hydro will engage in meetings to discuss mitigation options for items identified as requiring possible mitigation measures. However, without identified mitigation, developed in partnership with Manitoba Hydro, the Manitoba Minnesota Transmission Project will result in significant adverse effects to 'Lands Available for Metis Use'

## Key Findings: Harvesting

### MMF Participants Shared Information about their Preferred Conditions for Exercising their Metis Rights and Interests.

- **Deer**, ruffed grouse, Canada geese, mallard duck, moose and sharp-tailed grouse are the most commonly hunted species.
- **Coyote**, mink, red fox, long & short tailed weasel and muskrat are the most commonly trapped species.
- **Walleye/pickereel**, perch, northern pike/jackfish, sauger and channel catfish are the most commonly fished species.
- **Raspberry**, Saskatoon berry, blueberry, strawberry and chokecherry are the most common species gathered when collecting berries and berry plants.
- **Plum**, morels, asparagus, hazelnuts, golden chanterelle, dandelion and bracken (fiddleheads)
- **Jack pine**, white (paper) birch, balsam poplar, Manitoba maple, tamarack (larch) and bur oak are the most common species gathered when collecting trees and tree products.
- **General rocks**, river rocks and minerals are the most common type of rock or mineral gathered.





**While harvesting, Participants avoid:**

- Places where you can see industrial development
- Places where you can smell industrial development
- Places where you can hear industrial development
- Areas that have industrial workers
- Areas that have vehicles and all-terrain vehicles
- Areas with 'no trespassing' signs

**While harvesting, Participants prefer:**

- Where it is quiet
- Where there is no development
- Where there are no people
- Where they have had past success

Throughout the Survey, over 3,134 use sites were gathered by the Study Team, of which **281 intersect the PDA**. As a result of the construction and periodic maintenance of the Project, many of the MMF's representative's preferred areas will no longer be easily accessible or will be less accessible, and this constitutes a loss of preferred areas for harvest. Many Participants noted diminished preference for large portions of the LAA and RAA. This means lands in the LAA and RAA cannot be expected to replace the land lost for harvesting purposes in the PDA. Further, as stated in Key Findings: Lands Available for Metis Use, many Participants indicated they would avoid transmission lines by at least 100m/100yards. This exacerbates the diminished preference around the PDA.

As per the agreed to workplan for this Project, MMF and Manitoba Hydro will engage in meetings to discuss mitigation options for items identified as requiring possible mitigation measures. However, without identified mitigation, in partnership with Manitoba Hydro, the Manitoba Minnesota Transmission Project will result in significant adverse effects to 'Harvesting'.

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## Definitions

<b>Diminished Preference Zone</b>	Area avoided by Survey Participants for hunting, trapping, fishing, berry or berry plant gathering, plant, mushroom or medicine gathering, tree or tree product gathering and rock or mineral gathering. Diminished Preference Zone values are based on the maximum observable value identified in Survey results.
<b>Local Assessment Area</b>	The Local Assessment Area (“LAA”) which is the area where Project related environmental effects can be predicted and there is a reasonable expectation that these effects will be of concern.
<b>Metis Specific Interests</b>	Components of Metis rights and interests which may be impacted <sup>5</sup> by the Manitoba Minnesota Transmission Project, including Lands Available for Metis Use and Metis Harvesting.
<b>MMF Declaration</b>	The declaration issued by the Supreme Court of Canada in the <i>Manitoba Metis Federation</i> case that “the federal Crown failed to implement the land grant provision set out in s.. 31 of the <i>Manitoba Act, 1870</i> in accordance with the honour of the Crown.” <sup>6</sup>
<b>Private and Occupied Crown Land</b>	Crown lands that are subject to a regulatory restriction(s) related to at least one kind of harvesting activities (i.e., hunting, gathering, trapping, etc.) and lands that are privately owned (and therefore cannot generally be accessed for harvesting purposes without permission of the landowner)
<b>Project Development Area Questionnaires</b>	The Project Development Area (“PDA”) which is the area that will be physically disturbed by the Project;
<b>Regional Assessment Area</b>	The Regional Assessment Area (“RAA”) which is the area that establishes context for determining significance as well as the area within which cumulative effects are assessed <sup>7</sup> .
<b>Study Participants</b>	Manitoba Metis Federation Citizens who completed the In-Person Survey
<b>Study Respondents</b>	Manitoba Metis Federation Citizens who completed the Paper Survey

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5 As per Clause 2 of the Objectives of MMF Study on Manitoba-Minnesota Transmission Line Project

6 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 at para. 154.

7 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-16; 7-17

<b>Study Team</b>	Calliou Group
<b>Surveys</b>	The In-Person Surveys used to collect baseline information for this Report
<b>The Project or MMTP</b>	Manitoba-Minnesota Transmission Project
<b>Unoccupied Crown Land</b>	Crown lands to which Metis have a right of access and no permission has to be sought from a third party.
<b>Workshop Contributors</b>	Manitoba Metis Federation Citizens who participated in the Workshops

## **Abbreviations and Acronyms**

<b>AC</b>	Alternating Current
<b>AN</b>	Audible Noise
<b>CEAA</b>	Canadian Environmental Assessment Agency
<b>CEAA 2012</b>	Canadian Environmental Assessment Act, 2012
<b>dBA</b>	Decibel – A-weighted
<b>EMF</b>	Electro-magnetic Fields
<b>EIS</b>	Environmental Impact Statement
<b>IPL</b>	International Power Line
<b>km</b>	Kilometer
<b>kV</b>	Kilovolt
<b>LAA</b>	Local Assessment Area
<b>MMF</b>	Manitoba Metis Federation
<b>MOU</b>	Memorandum of Understanding
<b>MSIs</b>	Metis Specific Interests
<b>NEB</b>	National Energy Board
<b>PDA</b>	Project Development Area
<b>RAA</b>	Regional Assessment Area
<b>ROW</b>	Right-of-Way
<b>VCs</b>	Valued Components
<b>VECs</b>	Valued Ecosystem Components





# 1.0 Introduction

Existing Right-of-Way (Photo: Olivia Mancuso)

The proposed *Manitoba-Minnesota Transmission Project* is located in the heart of the Manitoba Metis's homeland, bisecting what was formally the 'postage stamp province' of Manitoba, and where the Metis currently have an outstanding claim flowing from the federal Crown's failure "to implement the land grant provision set out in s. 31 of the Manitoba Act, 1870 in accordance with the honour of the Crown"<sup>8</sup>. Additionally, the proposed *Manitoba-Minnesota Transmission Project* intersects an area where the Manitoba Metis hold Aboriginal rights protected by s. 35 of the *Constitution Act, 1982* that have been recognized by the Crown through the Manitoba Metis Federation-Manitoba Harvesting Agreement (2012)<sup>9</sup>. These recognized rights include "hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, Metis harvesting includes the harvest of timber for domestic purposes"<sup>10</sup>. These collectively held rights have also been recognized by the Manitoba courts in *R. v. Goodon*, 2008 MBPC 58<sup>11</sup>, where the court

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8 Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, [2013] 1 SCR 623

9 Manitoba Metis Federation-Manitoba Harvesting Agreement, 2012, Section A. Recognition of Metis Harvesting Rights, Subsection 2.

10 Ibid.

11 R. v. Goodon, 2008 MBPC 59 (CanLII)

found a historic, rights-bearing Metis community to have existed in “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” (para. 48). Throughout the proposed Manitoba-Minnesota Transmission Project area and throughout the Province of Manitoba, the Manitoba Metis Community also has strong, credible assertions to commercial and trade related rights.

Following review of the *Manitoba Hydro Manitoba-Minnesota Transmission Project* (“the Project”) Environmental Impact Statement, 2015 (“EIS”) it was noted by the Manitoba Metis Federation (“MMF”) that there was an incomplete identification of effects Metis Specific Interests. Therefore, this Report was commissioned to identify those interests and identify any potential effects to those interests, prior to the identification of mitigation measures.

## 1.1 Project Description

The Project is a 500 kilovolt (“kV”) alternating current (“AC”) international power line (“IPL”) located in southeastern Manitoba. The Project will include upgrades or changes to some existing transmission stations at Dorsey, Riel and Glenboro South. The proposed in-service date for the project is 2020 and from end to end the Project spans 213 km<sup>12</sup>.

The Project will originate at the Dorsey Converter Station, located near Rosser, northwest of Winnipeg. It will head east along an existing transmission corridor to just south of Anola. From south of Anola, the line will continue southeast along a new right-of-way (“ROW”), crossing the international border near Piney<sup>13</sup>.

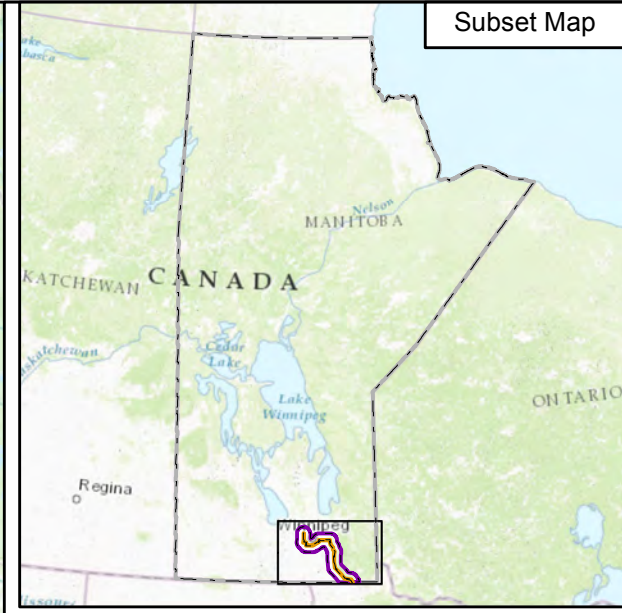
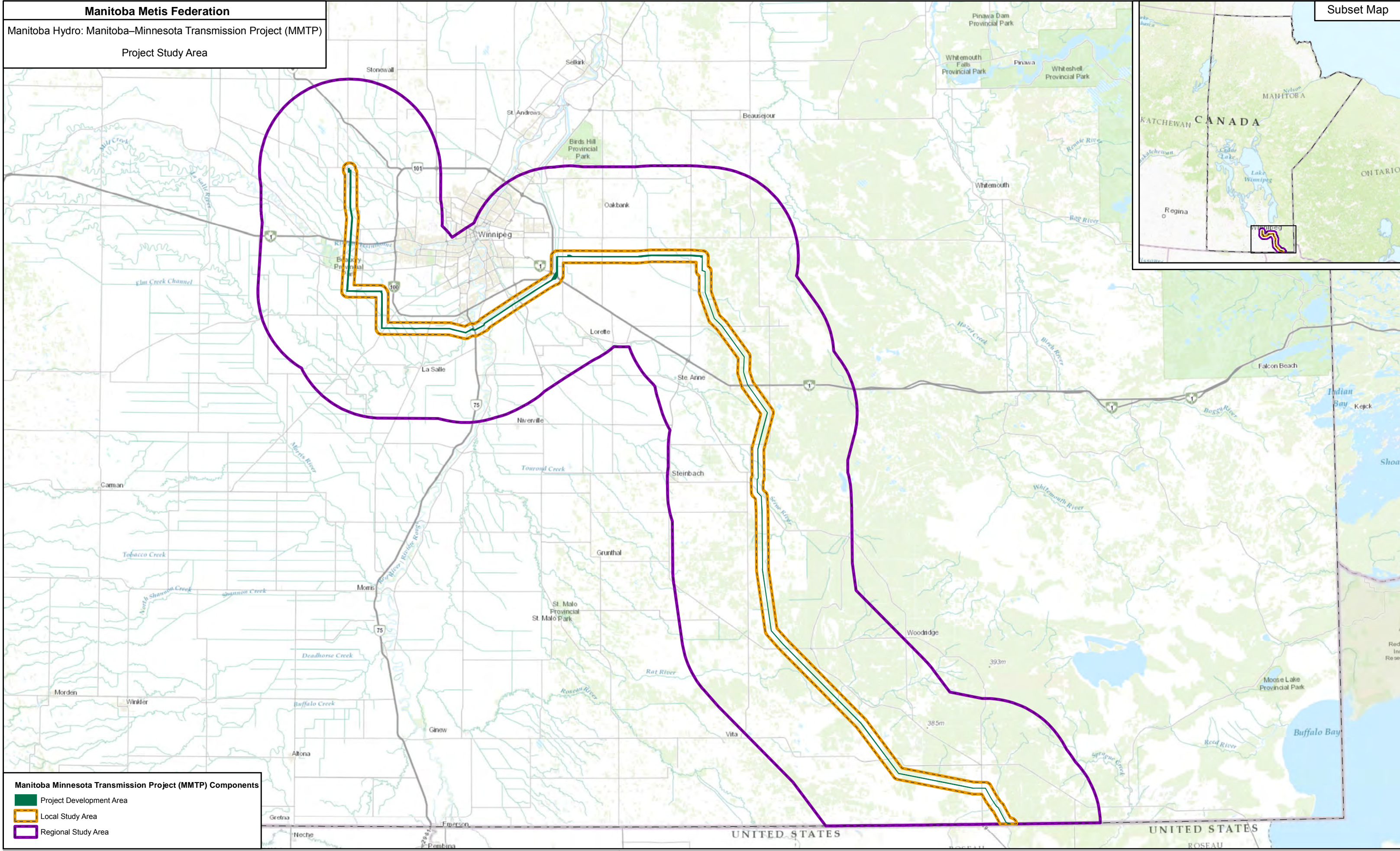
The portion of the line from the Dorsey Converter Station to just south of Anola is located on the ROW for existing transmission lines. The tower spacing for this portion will be approximately 400 meters to 500 meters, but has the potential to extend farther. Self-supporting lattice steel structures were selected for the towers along this portion of the corridor. The portion of the line from Anola, southeast to the border is approximately 121 km and runs through agricultural, rural residential, and Crown land. The ROW width will be 80 meters for self-supporting towers and 100 meters for guyed towers. In agricultural areas, the transmission line will be constructed primarily of self-supporting lattice steel structures to mitigate effects on both agricultural and rural residential land uses. In non-agricultural areas, the transmission line will be constructed primarily of guyed lattice steel structures to mitigate effects of tower stability due to saturated soils<sup>14</sup>.

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12 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 2-1 to 2-15

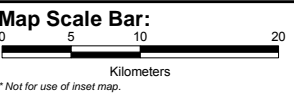
13 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 2-1 to 2-15

14 Ibid.



**Manitoba Minnesota Transmission Project (MMTP) Components**

- Project Development Area
- Local Study Area
- Regional Study Area



**Map Scale:** 1:1,600,000  
**Inset Map Scale:** 1:17,000,000  
**Date:** June 13, 2016

**Custom Transverse Mercator Projection:**  
 False Easting: 5      Scale Factor: 0.996  
 Central Meridian: -97      Linear Unit: Meter (1.0)

**Data Sources:** Manitoba Hydro, Government of Manitoba, GeoGratis (Natural Resources Canada)  
**Base Map Sources:** Esri

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 1-1-1

## 1.2 Purpose of the Report

The following *Metis Specific Interests Report – Assessment of Potential Effects Prior to Mitigation* (“the Report”) was prepared to provide Manitoba Hydro with information necessary to supplement their environmental assessment on the Project. This Report includes information on Metis Specific Interests (“MSIs”), including baseline information and an assessment of potential adverse effects to those MSIs, prior to the application of mitigation. This Report is intended to facilitate Manitoba Hydro’s and MMF’s collaborative identification of positive and negative effects to Metis rights and interests that may result from the approval of the Project.

## 1.3 Environmental Assessments and Metis Consultation

There is a natural convergence between the conduct of an environmental assessment process and the Crown’s duty to consult and if necessary, accommodate Indigenous<sup>15</sup> peoples for adverse effects to their rights. Broadly, the environmental review process is often the only vehicle used by the Crown to identify and predict whether or not a proposed natural resources development project should proceed. Metis consultation, interwoven into the regulatory review process, can assist in the identification of impacts to Metis rights and assist the Crown in that decision making process.

The Crown’s duty to consult is triggered when the Crown, as represented by Canada and/or a Province, “has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect”<sup>16</sup> that right. Consultation must always be conducted “through a meaningful process” and with “the intention of substantially addressing [Aboriginal] concerns”<sup>17</sup>. “Consultation that excludes from the outset any form of accommodation would be meaningless”<sup>18</sup>. The ‘conduct’ of the Crown that may result in a negative effect to a Metis right includes decisions to approve the construction and operation of natural resource development projects, such as a transmission line and associated station upgrades or modifications.

The conduct of environmental assessment processes are underpinned by the notion that a rational scientific method provides the basis for their execution and that “in order to be credible, the [EA] process must be based on scientific objectives, modeling and experimentation, quantified impact predictions and hypothesis-testing”<sup>19</sup>.

In Canada, the requirement for the conduct of an environmental assessment is codified within legislation, both federal and provincial across the country. However, legislation setting out the Crown’s expectations on the requirements of the environmental assessment process, including scope, procedures and methods, are not explicit with respect to the identification of adverse effects to Metis rights. Despite this lack of explicit guidelines, both federal and provincial regulatory authorities often rely on the results of the environmental assessment process as a resource to assist in predicting and managing adverse effects to Metis rights.

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15 Bankes, Nigel 2009 The Intersection between the law of Environmental Impact Assessment and the Crown’s Duty to Consult and Accommodate Aboriginal Peoples. Paper prepared for Continuing Education Conference on the Law of Environmental Impact Assessment, Faculty of Law, The University of Calgary.

16 Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 SCR 511, para. 35

17 Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 SCR 511, para. 42

18 Mikisew Cree First Nation v. Canada 2005, para. 54

19 Noble, Bram F 2010 Introduction to Environmental Impact Assessment: A Guide to Principles and Practice. Don Mills: Oxford University Press., p. 4

In the Study Team’s opinion, environmental assessment methodology is appropriate for the identification of direct and cumulative effects to Metis rights and interests and is therefore used in this Report.

## 1.4 Regulatory Framework for the Project

This Project is subject to review under *The Environment Act (Manitoba)*<sup>20</sup> as the Project is considered a “development” pursuant to the Classes of Development Regulation (M.R. 164/88). Transmission lines greater than 230 kV are considered a “Class 3 Development” consistent with the Classes of Development Regulation and are subject to licensing under section 12 of the Act. In June 2015, Manitoba Conservation and Water Stewardship issued a Project Final Scoping Document which identified a requirement for the completion of an Environmental Impact Statement<sup>10</sup>.

The Project is also considered a reviewable project under the *Canadian Environmental Assessment Act, 2012 (“CEAA”)*<sup>21</sup> and meets the criteria of a “designated project” pursuant to the Regulations Designating Physical Activities (SOR/2012-147) under CEAA 2012 (S.C. 2012, c. 19, s. 52)<sup>22</sup>. According to subsection 15(b) of CEAA 2012, the National Energy Board (“NEB”) is a Responsible Authority for Projects regulated under the NEB Act (R.S.C., 1985, c. N-7)<sup>23</sup> and is the responsible authority for the federal review under CEAA 2012. In October 2015, Manitoba Hydro filed a Project Description with the NEB<sup>24</sup>.

The draft Scoping Document was posted for review on January 8, 2015. MMF reviewed the document and provided comments to Manitoba Conservation and Water Stewardship on February 25, 2015; the MMF’s comments were compiled with other public comments on the Scoping Document and posted to the Public Registry (5750.00) on April 24, 2015. Manitoba Hydro provided a response to MMF’s comments and the Final Scoping Document was approved on June 24, 2015. MMF prepared a response to Manitoba Hydro’s posted letter on August 21, 2015.

As stated, in June 2015, Manitoba Conservation and Water Stewardship issued a Project Final Scoping Document which identified a requirement for an EIS<sup>25</sup>. A Scoping Document is meant to provide direction to the proponent on the scope of information and analysis required in preparing an EIS. The government decision on whether to approve a project focuses on how effectively the application has conformed to the information outlined in the Final Scoping Document. The EIS should include a concordance table that cross-references the approved Scoping Document with relevant sections of the EIS<sup>26</sup>.

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20 *The Environment Act* C.C.S.M. c. E125

21 *Canadian Environmental Assessment Act, 2012* S.C. 2012, c. 19, s. 52

22 *Canadian Environmental Assessment Act, 2012* S.C. 2012, c. 19, s. 52

23 1985 National Energy Board Act Last Modified June 2015 <http://laws-lois.justice.gc.ca/PDF/N-7.pdf>

24 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 2-8

25 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Final Scoping Document

26 *Canadian Environmental Assessment Act, 2012* S.C. 2012, c. 19, s. 52



2.0

*Spruce Tree (Photo: Adena Vanderjagt)*

# Scope of Report and Methods

The following sections outline the methods used to prepare this Report. They are derived from a variety of previously completed environmental assessments as well as the Study Team’s professional judgment. Each method described has been designed to meet both *CEAA 2012* and *The Environment Act* requirements, where appropriate, as well as allow for full assessment of the selected Metis Specific Interests.

## 2.1 Selection of Valued Components

An environmental assessment process necessitates the compartmentalization of the human and biophysical environments into manageable units appropriate for scientific study; often referred to as valued components (“VCs”) or valued ecosystem components (“VECs”)<sup>27</sup>.

The methodology for the selection of VCs varies across Canada. Their identification and selection is dependent upon specific regulatory requirements, as well as the influence afforded by professional judgment on behalf of the practitioner conducting the assessment.

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<sup>27</sup> Noble, Bram F 2010 Introduction to Environmental Impact Assessment: A Guide to Principles and Practice. Don Mills: Oxford University Press., p. 89

A fundamental principle for the conduct of an environment assessment process is that not all aspects of the biophysical and human environments can or should be examined in the context of a single application. It is important to ensure all potentially affected components of the environment (including human and biophysical components) are considered for inclusion; however, only those components likely to change through interaction with the project at hand should be ultimately included<sup>28</sup>.

As valued components provide the 'building blocks' or the foundation for the entire assessment, appropriate VC selection is an important step in ensuring a complete assessment is conducted. As stated, an environmental assessment process is often the primary vehicle for gathering information about matters of importance to Aboriginal peoples, their rights and interests, and the prediction of changes resulting from a proposed project. Therefore, ensuring that the valued components selected allow for the identification of predicted effects to the exercise of Aboriginal rights and interests are critical.



Survey Location at Selkirk Friendship Centre (Photo: Adena Vanderjagt)

### 2.1.1 Valued Component Guidelines and Regulations

The Manitoba-Minnesota Transmission Project (the Project) is subject to the *Manitoba Conservation and Water Stewardship Environmental Act Proposal Guidelines* under *The Environment Act*. *The Environment Act* does not include specific definitions for the selection or assessment of valued components; however, there are some definitions of terms commonly used and specific to Manitoba that allow for the identification of overall meaning of that process.

*The Environment Act* defines environment to mean:

- a) Air, land and water, or
- b) Plant and animal life including humans.

<sup>28</sup> Ibid.

Adverse effect is further defined in *The Environment Act* as the "...impairment of or damage to the environment, including a negative effect on human health or safety."

Manitoba Conservation and Water Stewardship ("MCWS") does not have specific regulations or guidelines which necessitate the inclusion of valued components in the identification of potential effects to the environment. However, the Manitoba's *Information Bulletin – Environmental Act Proposal Report Guidelines* (Accessed December 2015) requires a description of the environmental and human health effects of the proposed development, but leaves the methodology by which the proponent arrives at these effects at the discretion and professional judgment of the proponent and their consultants.

The National Energy Board (NEB) *Electricity Filing Manual 2015* refers to Valued Ecosystem Components (VEC) and Valued Socio-Cultural Components (VSC). The manual states that it "...assumes a valued component based approach to effects assessment where the application focuses on those biophysical or socio-economic elements ... that may be affected by a project and are of concern or value to the public and Aboriginal groups."

### **2.1.2 Project Scoping Document**

The Project's Scoping Document and EIS define valued components as "...biophysical and socio-economic elements of particular value or interest to regulators and other interested parties"<sup>29</sup>. Specifically, the Project EIS indicates that "VCs are elements that have the potential to interact with the Project and that met one or more of the following criteria:

- represent a broad environmental, ecological or human environment component that might be affected by the Project,
- are part of the heritage of First Nations and Metis or a part of their current use of lands for traditional purposes,
- are of scientific, historical, archaeological importance,
- have been identified as important issues or concerns by stakeholders or by other effects assessments in the region"<sup>30</sup>.

## **2.2 Metis Specific Valued Components**

Following the issuance of the draft Project Scoping Document, it was noted by MMF that the document did not adequately describe the valued components necessary to fully identify potential environmental effects to Metis rights and interests. The lack of Metis specific valued components, as well as a lack of outlined methodology raised concern on the adequacy of the proposed assessment to address matters of concern to the MMF.

In order to ensure a fulsome assessment of Metis rights and interests, the Manitoba Metis Federation worked with political representatives, Metis harvesters/traditional knowledge holders, and MMF staff and technical support in order to identify Metis Specific Interests appropriate for inclusion in this Project. This included valued components related to Metis rights and Metis interests, which would facilitate Manitoba

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29 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-6

30 Ibid.



Hydro's assessment and application development.

### 2.2.1 MSI Selection Rationale

The identification of valued components suitable for the identification of impacts to Metis rights and interests started with an identification of generalized components that may be suitable for inclusion for the Project and provide a basis for discussion. Therefore a preliminary list of components was developed by the Study Team; while this preliminary list of was broad, the MMF held workshops with MMF harvesters to narrow the MSIs to those that:

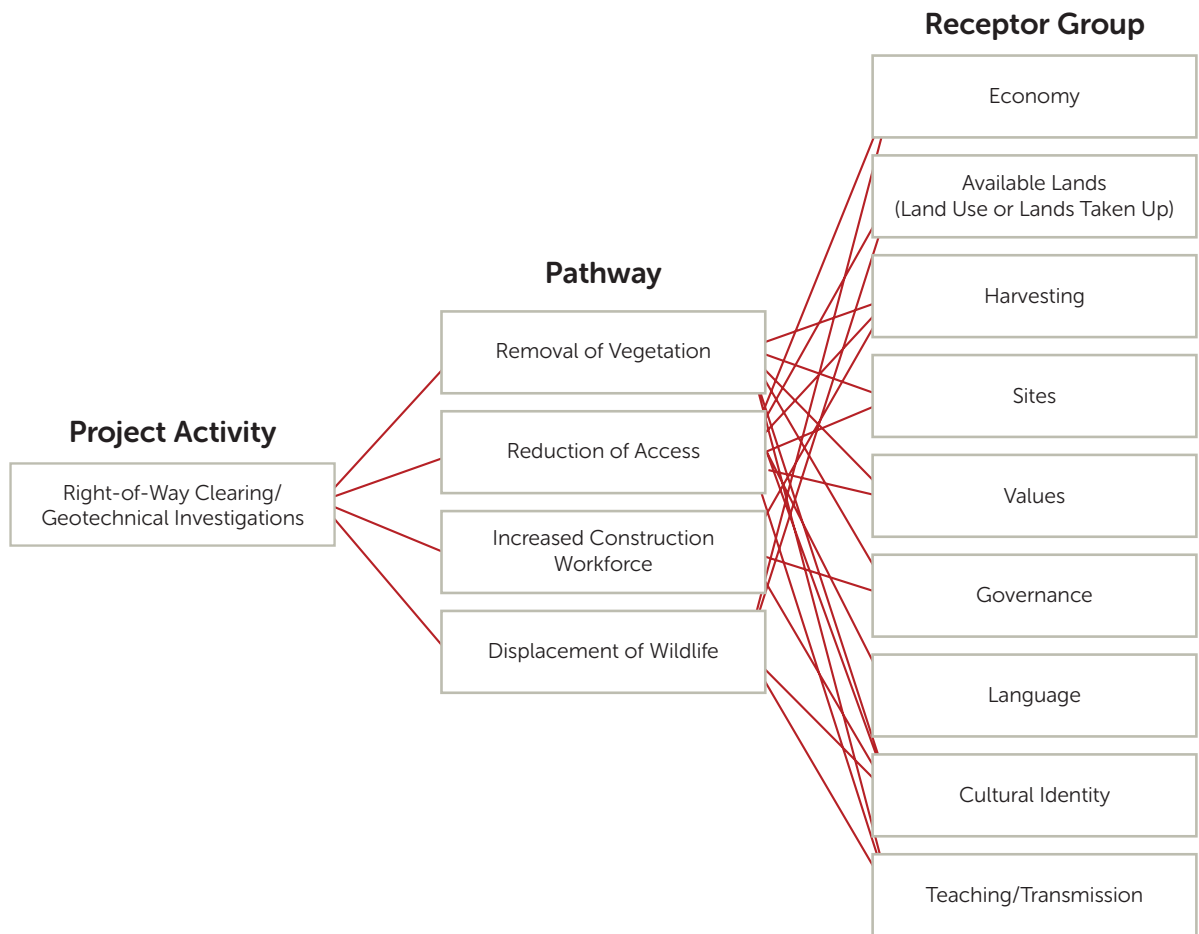
- Were present along or in the proximity of the proposed preferred route for the MMTP;
- Had data being collected as part of the Environmental Impact Statement; and
- Had information available for collection from Metis citizens which could be synthesized into the Report.

Initially, the Manitoba-Minnesota Transmission Project activities were listed and potential effects pathways were generated. This then lead to an identification of draft Metis Specific Interests suitable for inclusion.



Tree Stump (Photo: Adena Vanderjagt)

Figure 2-2-1-1: Example of Potential Interaction between Project Activity and MSIs



Following this interaction assessment, if there were no anticipated interactions the MSI could be excluded from further consideration at subsequent steps.

The MMF, their legal counsel and consultants engaged with Manitoba Hydro on the definition of Metis Specific Interests through the development of the Study Objectives (May 2015) document<sup>31</sup>. This document outlined potential Metis Specific Interests which included:

- a) Available Lands (formally Lands Available for Metis Use)
- b) Metis Harvesting
- c) Metis Sites, including:
  - i. Historic, Sacred or Cultural Metis Sites
  - ii. Cabins, Camps, and other Metis Sites
  - iii. Teaching/Transmission Sites
- d) Metis Values, including:
  - i. Historical Connection
  - ii. Intergenerational Connection
  - iii. Economics

31 Manitoba Metis Federation/Manitoba Hydro 2015 Study Objectives

As part of the workplan and budget development, the MMF elaborated on the Metis Specific Interests and included the following rationale:

Table 2-2-1-2: MMF MSIs Selection Rationale

<b>Metis Interest</b>	<b>Associated Environmental Assessment Information Sheet</b>	<b>Rationale for Inclusion/Exclusion in the Metis Specific Interests Assessment</b>
<b>Economy</b>	Employment, Business Opportunities and the Economy; Property and Residential Development	<ul style="list-style-type: none"> <li>• A strong economy that is autonomous from the provincial and federal government is a key aspect of the MMF;</li> <li>• The Project has the potential to positively and negatively affect the Metis economy through changes in Metis labour demand, changes in cost of living, and changes in Metis government finances;</li> <li>• The Valued Components for the EIS will undertake an assessment of total employment impacts and potential spinoff effects of the project which can be applied to the Metis economy;</li> <li>• The Valued Components for the EIS will undertake an assessment of property and residential developments which can be applied to the Metis economy.</li> </ul>
<b>Available Lands (formally Land Use or Lands Taken Up)</b>	Land and Resource Use; Property and Residential Development; Infrastructure and Services	<ul style="list-style-type: none"> <li>• Available land for Metis use is a critical component for the ongoing Metis Harvest;</li> <li>• The Project has the potential to remove parcels of available land from Metis use;</li> <li>• The Valued Components for the EIS will undertake an assessment of lands such as protected areas, ecological reserves, special interest areas, wildlife management areas, recreational lands, tourism areas, provincial forests, conservation lands and other Crown lands which can be applied to Metis Land Use;</li> <li>• The Valued Components for the EIS will undertake an assessment of Property and Residential Development which can be applied to Metis Land Use;</li> <li>• The Valued Components for the EIS will undertake an assessment of the current status of infrastructure and services in the vicinity of the Project which can be applied to Metis Land Use.</li> </ul>

Metis Interest	Associated Environmental Assessment Information Sheet	Rationale for Inclusion/Exclusion in the Metis Specific Interests Assessment
<p><b>Harvesting</b></p>	<p>Traditional Land and Resource Use; Vegetation and Wetlands; Wildlife – Mammals; Fish and Fish Habitat; Community</p>	<ul style="list-style-type: none"> <li>• On September 29, 2012, the province of Manitoba and the MMF agreed to legally recognize Metis Natural Resource Harvesting rights in part of Manitoba;</li> <li>• The MMF has strict Laws of the Harvest which must be adhered to at all times;</li> <li>• The Metis Harvest is not subject to a provincial government draw system;</li> <li>• The Project has the potential to positively and negatively affect Metis Harvesting through changes to harvesting efficacy, permanent alteration to culturally critical species, reduction in trade or trade network or a permanent alteration of the cultural components of harvesting;</li> <li>• The Valued Components for the EIS will undertake an assessment of Traditional Land and Resource Use which can be applied to Metis Harvesting;</li> <li>• The Valued Components for the EIS will undertake an assessment of vegetation and wetlands which can be applied to Metis Harvesting;</li> <li>• The Valued Components for the EIS will undertake and assessment of mammals which can be applied to Metis Harvesting;</li> <li>• The Valued Components for the EIS will undertake an assessment of Fish and Fish Habitat which can be applied to Metis Harvesting;</li> <li>• The Valued Components for the EIS will undertake an assessment of Human Health, including physical, emotional and mental health which can be applied to Metis Harvesting.</li> </ul>
<p><b>Sites</b></p>	<p>Land and Resource Use; Traditional Land and Resource Use; Vegetation and Wetlands; Infrastructure and Services; Heritage Resources</p>	<ul style="list-style-type: none"> <li>• Historic, Sacred or Cultural Metis sites may be located in the vicinity of Project components;</li> <li>• Cabins, Camps or other Metis Sites may be located in the vicinity of Project Components;</li> <li>• The Project has the potential to positively and negatively affect Metis Sites through changes to access of Metis Sites, inappropriate behavior/practices and disruption/disturbance or qualitative disconnect from Metis Sites;</li> <li>• The Valued Components for the EIS will undertake an assessment of lands such as protected areas, ecological reserves, special interest areas, wildlife management areas, recreational lands, tourism areas, provincial forests, conservation lands and other Crown lands which can be applied to Metis Sites;</li> <li>• The Valued Components for the EIS will undertake an assessment of Traditional Land and Resource Use which can be applied to Metis Sites;</li> <li>• The Valued Components for the EIS will undertake an assessment of vegetation and wetlands which can be applied to Metis Sites;</li> <li>• The Valued Components for the EIS will undertake an assessment of the current status of infrastructure and services in the vicinity of the Project which can be applied to Metis Sites;</li> <li>• The Valued Components for the EIS will undertake an assessment of heritage resources which can be applied to Metis Sites.</li> </ul>

Metis Interest	Associated Environmental Assessment Information Sheet	Rationale for Inclusion/Exclusion in the Metis Specific Interests Assessment
<b>Values</b>	Land and Resource Use; Traditional Land and Resource Use; Heritage Resources; Community	<ul style="list-style-type: none"> <li>• Historical Connection, and Intergenerational Connection have the potential of being positively or negatively affected by the Project;</li> <li>• Conservation has a top priority in Metis Laws of the Harvest;</li> <li>• Sharing the Metis Harvest, through traditional means is a Metis right;</li> <li>• The Valued Components for the EIS will undertake an assessment of lands such as protected areas, ecological reserves, special interest areas, wildlife management areas, recreational lands, tourism areas, provincial forests, conservation lands and other Crown lands which can be applied to Metis Values;</li> <li>• The Valued Components for the EIS will undertake an assessment of Traditional Land and Resource Use which can be applied to Metis Values;</li> <li>• The Valued Components for the EIS will undertake an assessment of heritage resources which can be applied to Metis Values;</li> <li>• The Valued Components for the EIS will undertake an assessment of Human Health, including physical, emotional and mental health which can be applied to Metis Values.</li> </ul>
<b>Governance</b>	Land and Resource Use; Traditional Land and Resource Use; Infrastructure and Services	<ul style="list-style-type: none"> <li>• The Project Components are located within the Manitoba Metis Federation's Regional Territory, including the 'postage stamp' denoting Manitoba's original boundary;</li> <li>• Regional Territories cannot be relocated;</li> <li>• The Project has the potential to affect Metis governance through changes to access of Regional Territory, or interference with governance structures;</li> <li>• The Valued Components for the EIS will undertake an assessment of lands such as protected areas, ecological reserves, special interest areas, wildlife management areas, recreational lands, tourism areas, provincial forests, conservation lands and other Crown lands which can be applied to Metis Governance;</li> <li>• The Valued Components for the EIS will undertake an assessment of Traditional Land and Resource Use which can be applied to Metis Governance;</li> <li>• The Valued Components for the EIS will undertake an assessment of the current status of infrastructure and services in the vicinity of the Project which can be applied to Metis Governance.</li> </ul>
<b>Language</b>	Traditional Land and Resource Use	<ul style="list-style-type: none"> <li>• The Michif language is considered endangered as fewer than 100 people speak it;</li> <li>• The project has the potential to effect Metis language through cultural interference through secondary effects;</li> <li>• The Valued Components for the EIS will undertake an assessment of Traditional Land and Resource Use which can be applied to Metis Language.</li> </ul>

Metis Interest	Associated Environmental Assessment Information Sheet	Rationale for Inclusion/Exclusion in the Metis Specific Interests Assessment
<p><b>Cultural Identity</b></p>	<p>Land and Resource Use; Traditional Land and Resource Use; Vegetation and Wetlands; Wildlife – Mammals; Infrastructure and Services; Heritage Resources; Fish and Fish Habitat; Community</p>	<ul style="list-style-type: none"> <li>• The Metis are a nation that have rich language, culture and history;</li> <li>• The Metis have four objectives to guide the implementation of Metis rights which are integral to the Cultural Identity of the Metis;</li> <li>• The Metis are a distinct people who have resisted cultural assimilation; Symbols of Metis culture are critical (e.g. the Metis flag, the sash);</li> <li>• The project has the potential to affect Metis Cultural Identity through disruption of sense of place, reduction in cultural practices tied to identity, reduction in community status, disruption of Metis objectives which guide the implementation of Metis rights;</li> <li>• The Valued Components for the EIS will undertake an assessment of lands such as protected areas, ecological reserves, special interest areas, wildlife management areas, recreational lands, tourism areas, provincial forests, conservation lands and other Crown lands which can be applied to Metis Cultural Identity;</li> <li>• The Valued Components for the EIS will undertake an assessment of Traditional Land and Resource Use which can be applied to Metis Cultural Identity;</li> <li>• The Valued Components for the EIS will undertake an assessment of vegetation and wetlands which can be applied to Metis Cultural Identity;</li> <li>• The Valued Components for the EIS will undertake an assessment of mammals which can be applied to Metis Cultural Identity;</li> <li>• The Valued Components for the EIS will undertake an assessment of Fish and Fish Habitat which can be applied to Metis Cultural Identity;</li> <li>• The Valued Components for the EIS will undertake an assessment of Human Health, including physical, emotional and mental health which can be applied to Metis Cultural Identity;</li> <li>• The Valued Components for the EIS will undertake an assessment of the current status of infrastructure and services in the vicinity of the Project which can be applied to Metis Cultural Identity.</li> </ul>

Metis Interest	Associated Environmental Assessment Information Sheet	Rationale for Inclusion/Exclusion in the Metis Specific Interests Assessment
Teaching/Transmission	Land and Resource Use; Traditional Land and Resource Use; Vegetation and Wetlands; Wildlife – Mammals; Infrastructure and Services; Heritage Resources; Fish and Fish Habitat; Community	<ul style="list-style-type: none"> <li>• The Project has the potential to affect Metis Teaching and Transmission through removal of teaching resources necessary for the passing on of necessary information;</li> <li>• The Valued Components for the EIS will undertake an assessment of lands such as protected areas, ecological reserves, special interest areas, wildlife management areas, recreational lands, tourism areas, provincial forests, conservation lands and other Crown lands which can be applied to Metis Teaching/Transmission;</li> <li>• The Valued Components for the EIS will undertake an assessment of Traditional Land and Resource Use which can be applied to Metis Teaching/Transmission;</li> <li>• The Valued Components for the EIS will undertake an assessment of vegetation and wetlands which can be applied to Metis Teaching/Transmission;</li> <li>• The Valued Components for the EIS will undertake an assessment of mammals which can be applied to Metis Teaching/Transmission</li> <li>• The Valued Components for the EIS will undertake an assessment of Fish and Fish Habitat which can be applied to Metis Teaching/Transmission;</li> <li>• The Valued Components for the EIS will undertake an assessment of Human Health, including physical, emotional and mental health which can be applied to Metis Teaching/Transmission;</li> <li>• The Valued Components for the EIS will undertake an assessment of the current status of infrastructure and services in the vicinity of the Project which can be applied to Metis Teaching/Transmission.</li> </ul>

MMF and their consultants met on January 12, 2015 to strategize the refinement of the list of Metis Specific Interests to those with available information, ability for additional information to be collected, or a potential project interaction. There was significant discussion about the criteria and which ones would be measurable, and most importantly, whether each Metis Specific Interest had the potential to be affected by the Project.

Based on those discussions it was noted that the MSIs of ‘Harvesting’ and ‘Available Lands’ would be measurable, have available information, and be potentially affected by the Project. However, it was decided that all the MSIs would be presented to Metis harvesters during a workshop to ensure the same conclusion was reached independently and allow opportunity for discussion of all the MSIs.

The examples of the draft MSIs were then presented to MMF citizens<sup>32</sup> at a series of workshops on January 25-28, 2016. Contributors to the workshops were the MMF Project advisors, MMF political representatives, MMF citizens and Calliou Group. Workshop Contributors were asked through discussion to refine the list.

The workshops began with an introduction from MMF Minister Jack Park who provided

<sup>32</sup> Winnipeg (14 participants), Lorette (34 participants) Portage la Prairie (24 participants), Selkirk (14 participants)

an overview of the Project and introduced MMF representatives and Calliou Group (the Study Team). The meeting then proceeded with a PowerPoint presentation on related topics including: What is an Environmental Impact Statement, MMF Input into the Project and Metis Specific Interests.

Discussions were guided by general questions that asked participants for concerns about transmission projects, concerns about harvesting in southern Manitoba and what makes Manitoba Metis unique.

Following the workshops and based on Workshop Contributors input, it was noted by the Study Team that 'Lands Available for Metis Use', 'Sites' and 'Harvesting' were MSIs which were susceptible to an effect from project interactions, were clearly understood and were meaningful and measurable. However, insufficient baseline data was collected for 'Sites' and is therefore excluded from further assessment in this Report.

## 2.3 Methodology for Assessment Used in this Report

Once Metis Specific Interests were selected baseline information was collected. For details on how baseline data collection was completed, please see Appendix A and for information on how Traditional Land Use information was collected, please see Appendix B.

Following data collection, the process for identification of positive and negative changes to those components was initiated.

### 2.3.1 Precautionary Principle

The scope of this Report and methods for its execution adhered to a principle of environmental assessment methodology referred to as the Precautionary Principle. The Precautionary Principle ensures that potential effects to the MSIs are considered in a careful and precautionary manner. The Precautionary Principle requires the assessor to take a cautionary approach, or to err on the side of caution, especially where there is a large degree of uncertainty or high risk<sup>33</sup>. Essentially, "...when considerable uncertainty exists as to whether a proposed activity is likely to cause adverse environmental effects, the lack of certainty should not be..."<sup>34</sup> "...used as a reason to preclude or to postpone actions to prevent harm."<sup>35</sup>

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33 Joint Review Panel Environmental Assessment Report, Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project, CEAA Reference No. 17520, p. 46

34 Noble, Bram F 2010 Introduction to Environmental Impact Assessment: A Guide to Principles and Practice. Don Mills: Oxford University Press., p. 80

35 Ibid.





Berries (Photo: Adena Vanderjagt)

Generally, sound scientific information and its evaluation must be the basis for applying the precautionary approach<sup>36</sup>. This Report relied heavily on Survey and Questionnaire information to ensure this sound information was considered. Further, assessment methodology was based on approved and peer reviewed social scientific papers, reports and books as relevant sources. Additionally, the Report relies heavily on the conclusions of the EIS to support or refute information, where relevant.

There are two ways that this Report ensured the Precautionary Principle was used, including:

- Ensuring any predicted measurable change from existing conditions, no matter how small, was considered to be adverse
- Conservative assumptions were used to ensure that effects were not underestimated<sup>37</sup>
- Additionally, two additional methods can be applied as the Project progresses through mitigation discussions between Manitoba Hydro and the MMF, including:

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36 Joint Review Panel Environmental Assessment Report, Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project, CEAA Reference No. 17520, p. 46

37 Ibid.

- The evaluation of significance of effect will be based on maximum predicted effects, no matter how infrequent or over how small an area
- The magnitude criterion used within the process to determine significance will be based on criteria that are protective of Metis rights and interests and include a level of conservatism<sup>38</sup>.

### 2.3.2 Assessment Methodology

Manitoba Hydro completed and released their Environmental Impact Statement on September 25, 2015 which used the following methodology as the basis of their assessment:

- Identification of potential positive and adverse Project effects;
- Development of mitigation measures (including design changes) to avoid or reduce adverse effects or enhance positive effects;
- Characterization of any remaining (residual) adverse effects;
- Determination of whether these adverse residual effects are significant; and
- Development of a follow-up and monitoring programs to verify both the accuracy of the environmental assessment and the effectiveness of mitigation measures<sup>39</sup>.

The development of the Metis Specific Interests and the methodology used in this Report kept this methodology in mind and strove to meet the same objectives. To accomplish this, once Metis Specific Interests were identified, the following methodology was used:

- Description of the Scope, including:
  - Description of potential effects,
  - Identification of measurable parameters,
  - Identification of spatial and temporal boundaries;
- Description of Existing Conditions;
- Identification of Potential Project Interactions;
- Description of Potential Effects;
- Description of Proposed Mitigation; and
- Characterization of Residual Effects.

### 2.3.3 Measurable Parameters

Following the selection of valued components, the process and criteria by which change (or effect) to those valued components can then be identified and described. The criteria used to identify and describe change are known as measurable parameters. The measurable parameters used to describe change to the selected MSIs are outlined below. These have been refined based on the results of the baseline information collection and modified from the measurable parameters proposed in the

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38 Joint Review Panel Environmental Assessment Report, Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project, CEA Reference No. 17520, p. 46

39 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-1

Preliminary Metis Specific Interests Document (2015)<sup>40</sup>.

Table 2-3-2-1: Identified Potential Effects and Associated Measurable Parameters

Effect	Measurable Parameter(s) and Units of Measurement	Notes or Rationale for Selection of the Measurable Parameter
<b>Lands Available for Metis Use</b>		
Changes in Amount of Land Available for Metis Use	Legal Restriction	Phases of the Project could change the ability of Metis to use the land based on legal restriction. This will result a change in the total amount of lands available for the exercise of Metis rights.
	Change in Physical Attributes	Phases of the Project could result in a change in the physical attributes on the land available for the exercise of Metis rights. This would result in the areas being less preferred and result in a reduction of the total amount of lands available for the exercise of Metis rights.
	Change in Metis Perception of Land	Phases of the Project could result in a change of perception by MMF in the lands available for use in the exercise of Metis rights. This would result in the areas being less preferred and result in a reduction of the total amount of lands available for the exercise of Metis rights.
Changes in Access	Increased Access for Metis	The Project could result in increased MMF access routes to the Project Area which were previously inaccessible.
	Increased Access for Non-Metis	The Project could result in increased non-Metis access routes to the Project area for which were previously inaccessible.
<b>Harvesting</b>		
Changes in Harvest Activities and Experience	Change in Type of Harvesting Activity Undertaken	Project could result in alteration of harvesting activities in terms of harvesting locations, species harvested, etc.
	Change or Perception of Change in Quality of Harvesting Experience	Project could result in a change in the overall experience of harvesting in terms of solitude, quietude, perception of safety, perception of solitude, contamination.
	Change in Harvesting Success	Project could result in a change to the success of Metis harvesting in harvesting particular species in the exercise of their Metis rights due to displacement, ineffective timing windows, etc.

40 Manitoba Metis Federation 2015 Preliminary Metis Specific Interests Document

Effect	Measurable Parameter(s) and Units of Measurement	Notes or Rationale for Selection of the Measurable Parameter
Alteration of Culturally Critical Species	Change in availability of Culturally Critical Species	The Project could result in a change of available critical species due to either construction or operation activities of the MMTP. This could either be due to movement of species to other areas, or removal of species from traditional use.
	Change in Perception of Culturally Critical Species	The Project could result in a change in perception related to Culturally Critical Species which could include a perception of contamination.

**2.3.4 Temporal Boundaries**

The temporal parameters are defined by the timing and duration of the project being assessed<sup>41</sup>. They are used to distinguish how different phases of a project may result in different size and scope of effect. The temporal boundaries defined for this Project are:

- **Construction:** Activity period during which there are physical disturbances in the Project Development Area. Subject to regulatory approval, construction of the transmission lines will span from Q3 2017 to Q1 2020; modifications to the Dorsey and Riel converter stations and Glenboro South will span from Q3 2017 to Q4 2019<sup>42</sup>; and
- **Operation and maintenance:** The in-service date is expected to be in 2020; the Project is expected to have a service life of at least 100 years.
- **Decommissioning:** As the Project has a service life of at least 100 years, decommissioning was not considered as part of this Report<sup>43</sup>.

For the purposes of this Report, the temporal boundaries will be the same for all MSIs and will not be repeated in each section.

**2.3.5 Spatial Boundaries**

Standard environmental assessment methodology dictates consideration of effects at three geographic scales. Typically these scales include the Project Development (“PDA”) which is the area that will be physically disturbed by the Project<sup>44</sup>. The Local Assessment Area (“LAA”) is the area where Project related environmental effects can be predicted and there is a reasonable expectation that these effects will be of concern<sup>45</sup>. The Regional Assessment Area (“RAA”) is the area that establishes context for determining significance as well as the area within which cumulative effects are assessed<sup>46</sup>.

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41 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-16 and 7-17

42 Ibid.

43 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-16 and 7-17

44 Ibid.

45 Ibid.

46 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-16 and 7-17

For this Project, the Project Development Area encompasses the Project footprint and is the anticipated area of physical disturbance associated with the construction, operation and maintenance of the Project<sup>47</sup>. The Local Assessment Area adheres to the LAA described for the wildlife and wildlife habitat assessments because it is the most inclusive biophysical LAA. It includes all components of the PDA plus a 1 kilometer ("km") buffer surrounding each component. The Regional Assessment Area also follows the RAA for wildlife and wildlife habitat. This area includes all components of the LAA and PDA and a 15 km buffer around all components of the PDA<sup>48</sup> (see Figure 1-1-1).

### **2.3.6 Existing Conditions**

For each of the MSIs, the Report contains a description of the existing conditions based on information collected specifically for this Project as well as supplementary information gleaned from the EIS.

The Study Team for this Report also reviewed various published material for relevant information to assist in the development of this document including 'Manitoba Metis: A review of Available Information on the Use of Lands and Resources for Traditional Purposes in the MMTP Study Area with Gap Analysis' from Manitoba Hydro.

### **2.3.7 Identification of Potential Project Interactions**

The identification of a Project effect begins with a project activity or physical work that could result in some form of negative or positive effect. These are referred to as Project interactions<sup>49</sup>. A listing of these interactions is included in Table 2-3-7-1 and outlines where there is a potential for a Project interaction with each MSI.

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47 Ibid.

48 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 9-11 and 9-12

49 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 9-11 and 9-12

Table 2-3-7-1: Potential Project Interactions with MMF Selected Metis Specific Interests

Project Components and Physical Activities <sup>40</sup>	Harvesting	Lands Available for Metis Use
<b>Transmission Line Construction Activities</b>		
Mobilizing (staff and equipment)	✓	✓
Access Route and Bypass Trail Development	✓	✓
Right-of-way Clearing/Geotechnical Investigations	✓	✓
Marshalling Yards, Borrow Sites, Temporary Camp Setup	✓	✓
Transmission Tower Construction and Conductor Stringing	✓	✓
Demobilization	✓	✓
<b>Transmission Line Operations/Maintenance</b>		
Transmission Line Operations/Presence	✓	✓
Inspection Patrols	✓	✓
Vegetation Management (tree control)	✓	✓
<b>Station Construction</b>		
Station Site Preparation	✓	✓
Electrical Equipment Installation	✓	✓
<b>Station Operations/Maintenance</b>		
Station Operation/Presence	✓	✓
Vegetation Management (weed control)	✓	✓

✓ = An interaction occurs between the Project and the MSI

### 2.3.8 Description of Potential Effects

Where sufficient information is available to the Study Team, the Report will include a description of how project activities or actions will result in a potential effect to the MSIs. This was accomplished through engagement between Manitoba Hydro and MMF and is based on information within the Manitoba Hydro EIS.

<sup>50</sup> All project activities are compiled from the EIS

### 2.3.9 Description of Proposed Mitigation

Within the EIS, mitigation is defined as something that works to "...eliminate, reduce or control adverse effects so that they are not significant, and therefore address most of the criteria used to characterize significance."<sup>51</sup> Standard environmental assessment methodology dictates that mitigation be applied prior to the identification of residual effect and determination of significance.

Independent mitigation measures for potential effects to MSIs have not been identified. Mitigation measures will be collaboratively developed between Manitoba Hydro and the MMF following delivery and receipt of this Report as per the Contribution Agreement<sup>52</sup>.

### 2.3.10 Characterization of Residual Effects

Following the application of mitigation measures after completion of this Report, residual effects must be calculated for each MSI. In order to accomplish this MMF has developed evaluation criteria based on the criteria listed in the EIS, including:

- **Direction:** the ultimate trend of the environmental effect (i.e. positive, neutral, or adverse);
- **Magnitude:** the amount of change in a measurable parameter relative to existing conditions (i.e., negligible, low, moderate or high);
- **Geographical Extent:** the geographic area within which an environmental effect of a defined magnitude occurs (i.e., PDA, LAA, RAA);
- **Frequency:** the number of times during the Project or a specific project phase that an environmental effect may occur (i.e., once, sporadically, regular or continuous);
- **Duration:** the period of time that is required until the VC returns to its existing condition or the environmental effect can no longer be measured or otherwise perceived (i.e., short term, medium term or permanent);
- **Reversibility:** the likelihood that a measurable parameter will recover from an environmental effect (i.e., reversible or irreversible); and
- **Ecological or Socio-Economic Context:** the general characteristics of the area in which the project is located or resilience of the area to change (i.e., undisturbed or disturbed; low, medium or high resilience)<sup>53</sup>.

The Study Team will apply these residual effects criteria as part of this Report to identify what potential residual effects could occur should no additional mitigation be undertaken by the proponent. However, any characterization of residual effects is considered draft pending mitigation discussions between Manitoba Hydro and the MMF.

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51 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-18

52 Contribution Agreement for Manitoba Metis Federation Engagement on the Manitoba-Minnesota Transmission Project, January 2016

53 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-22 to 7-23



3.0

Metis sash

# Manitoba Metis Federation<sup>54</sup>

## 3.1 Origins

The Metis Nation in general, and in southern Manitoba in particular, finds its earliest roots in the fur trade<sup>55</sup>. In the eighteenth century, both the Hudson Bay Company and the Northwest Company created a series of trading posts that stretched across the upper Great Lakes, through the western plains, and into the northern boreal forest. Inevitably, unions between European men – explorers, fur traders, and pioneers – and indigenous women were consummated. More remarkably, however, was that “[w]ithin a few generations the descendants of these unions developed a culture distinct from their European and Indian forebears<sup>56</sup> and the Metis Nation was born – a new people, indigenous to the western territories<sup>57</sup>.

54 The following section was developed by Pape, Salter, Teillet LLP Barristers and Solicitors to provide historical and modern context for the Report.

55 *R. v. Goodon*, 2008 MBPC 59 at para. 25; *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 5; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 2.

56 *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 5; *R. v. Goodon*, 2008 MBPC 59 at para. 25.

57 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 2.



The Metis led a mixed way of life. “In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture.”<sup>58</sup> The Metis were employed by both of the fur trades major players, the Hudson’s Bay and Northwest companies. By the early 19th century, they had become a major component of both firms’ workforces. At the same time, however, the Metis became extensively involved in the buffalo hunt. As a people, their economy was diverse; combining as it did, living of the land in the Aboriginal fashion with wage labour.<sup>59</sup>

Some of the earliest Metis settlements were found on the Red River, beginning perhaps in 1810 with the establishment of Fort Gibraltar, a Northwest Company Post<sup>60</sup>. In these years, the Metis developed both a sense of pride in their origins and proprietorship in the lands that would become southern Manitoba. William McGillvray, a Northwest Company Partner, described the Metis it in 1815:

...the Half Breed Indians, a daring and now numerous race sprung from the intercourse of the Canadian Voyageurs who consider themselves the Possessors or the Country and Lords of the soil.<sup>61</sup>

## 3.2 The Birth of a Nation

It was on the Red River, in reaction to a new wave of European immigration, that the Metis Nation first came into its own. In 1811, hoping to establish a Scottish settlement, Lord Selkirk purchased 116,000 acres of territory from Hudson Bay Company in the Red and Assiniboine River basins. They arrived at the Forks—the junction of the Red and Assiniboine Rivers — in 1813. River lots were surveyed, and a fort was constructed.<sup>62</sup>

To wrest control of land and resources from the Metis, the new settlement tried to restrict the hunting of buffalo on horseback. But, with the support of the North West Company and under the leadership of Cuthbert Grant, the Metis resisted the imposition of any control by the new settlement. In 1816, the Metis captured Fort Brandon, a Hudson Bay Company post, and then in what became known as the Battle of Seven Oaks drove the settlers from the Forks<sup>63</sup>.

The Battle of Seven Oaks victory had a catalyzing effect and was a pivotal event in the history of the Metis Nation:

It was the largest and most significant military encounter in which they had ever participated and their overwhelming victory sent a clear message to outsiders that they were a force to be reckoned with. In addition to boosting their confidence and assertiveness, the battle also provided mixed European-Indian ancestry people with some of the trappings or symbols of nationalism. The flag presented to them by the North West Company was apparently unfurled during the encounter. Moreover, the exploits of mixed European-Indian ancestry warriors at Seven Oaks were later immortalized in song composed in 1817 by

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58 *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 5.

59 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 29.

60 *R. v. Goodon*, 2008 MBPC 59 at para. 68.

61 As cited in *R. v. Goodon*, 2008 MBPC 59 at para. 25.

62 *R. v. Goodon*, 2008 MBPC 59 at para. 69 a).

63 *R. v. Goodon*, 2008 MBPC 59 at para. 69 b).

Pierre Falcon, Cuthbert Grant's brother-in-law and comrade in arms<sup>64</sup>.



Figure: The Battle of Seven Oaks, 1816 (Charles William Jefferys)

Lord Selkirk and his settlers returned to the Forks in 1817, peace was made with the Metis, and no further evacuations were necessary. The Metis, for their part, appeared to be glad for the market the settlement provided for their goods – so long as their practices and customs were not interfered with<sup>65</sup>.



Figure: The Métis Flag

In 1821, The Hudson Bay and North West Companies merged. This had a significant effect

64 Donna Cona, Historical Profile of the Cumberland Lake Area Mixed European-Indian or Mixed European-Inuit Ancestry Community (29 March 2005), prepared for Justice Canada, at pp. 27-28.

65 *R. v. Goodon*, 2008 MBPC 59 at para. 69 c).

on the Metis of the Northwest. A number of trading posts were closed, and many Metis lost their jobs. There was a flood of Metis settlers to lands around the confluence of the Red and Assiniboine Rivers. Cuthbert Grant himself settled at St. Francois Xavier, just west of the Forks on the Assiniboine River<sup>66</sup>. Indeed, in the years that followed, generations of Metis employed in the fur trade would follow this example and settle in region<sup>67</sup>.

In this burgeoning settlement, the Metis Nation took root and flourished.

The Metis abided by their own rules and continued to resist the imposition of European control through the mid-19th century. In 1834, for example, when Antoine Laroque — a Metis tripman — was assaulted by Thomas Simpson — an English born Hudson's Bay Company clerk — the Métis community demanded justice on their own terms. "[T]he entire Métis community in the settlement took up arms in Laroque's defence" and surrounded the seat of the Council of Assiniboia at Upper Fort Garry<sup>68</sup>. An agreement was brokered between the Company and the Metis community in which restitution was paid not only to Mr. Laroque, but also to the Metis assembled in his defense. From this incident was born the collective realization of the Metis that "if they stood united, the company would have to gain at least their tacit assent to govern the colony."<sup>69</sup>



Figure: Half-breed Traders (Provincial Archives of Manitoba)

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66 *R. v. Goodon*, 2008 MBPC 59 at para. 69 d).

67 Letter from Archibald to Secretary of State (27 December 1870), as cited in Manitoba Métis Federation et. al. v. Canada (No. C. 81-01-01010), Plaintiffs' Written Argument, para. 329, Document 122.

68 Gerhard J. Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996) at p. 54; see also Adam James Patrick Gaudry, *Kaa-tipeyimishoyaahk – 'We are those who own ourselves': A Political History of Métis Self-Determination in the North-West, 1830-1870* (PhD Thesis, University of Victoria Department of Indigenous Governance, 2014) [unpublished] at 176.

69 Gerhard J. Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996) at p. 55; see also Adam James Patrick Gaudry, *Kaa-tipeyimishoyaahk – 'We are those who own ourselves': A Political History of Métis Self-Determination in the North-West, 1830-1870* (PhD Thesis, University of Victoria Department of Indigenous Governance, 2014) [unpublished] at 180.

Never was the Metis Nation's independence more apparent than during the trial of William Sayer, a Metis man who, in 1849, was charged with illegally trading furs in Rupert's Land. As the proceedings were held, a large group of Metis surrounded the courthouse. Though Sayer was convicted, he was not punished. The assembled crowd celebrated, chanting as a rallying cry, "le commerce est libre!" The Hudson Bay Company could no longer use the courts to enforce its supposed trade monopoly. "The Métis treated this as a victory and continued to trade freely, ignoring any law prohibiting such action."<sup>70</sup>

In the mid-1800s, Hudson Bay Company employee Alexander Ross articulated the Metis' commitment to freedom, which was put on such public display as a result of events such as the Sayer trial:

"[The Métis believed] all men were born to be free ... they [were] marvelously tenacious of their own original habits. They cherished freedom as they cherish life."<sup>71</sup>

It was perhaps during the waning days of the Hudson Bay Company's administration in Rupert's Land that the Metis Nation was most powerful and influential. George Simpson, governor of the Hudson Bay Company, stated in 1846 that "the half-breeds ... believe ... that the fact of their being natives of the soil gives them the unquestionable right of trading [and] hunting within the H.B. Territory which cannot be affected by the Company's Charter."<sup>72</sup>

A decade later, in 1856, the situation was much the same. Simpson observed that:

To a man the rising generation of Half-breeds may be set down as opposed to the Company's rule, which they consider adverse to their best interests... feeling that the soil, the trade and the Government of the country are their birth rights.<sup>73</sup>

This proud independent Metis population constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed "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."<sup>74</sup> This is the area through which the proposed transmission line would pass.

The heart of the historic rights-bearing Metis community in southern Manitoba was the Red River Settlement, which the Supreme Court of Canada described in *Manitoba Metis Federation*:

In 1869, the Red River Settlement was a vibrant community, with a free enterprise system and established judicial and civic institutions, centred on the retail stores, hotels, trading undertakings and saloons of what is now downtown Winnipeg. The Métis were the dominant demographic group in the Settlement, comprising around 85 percent of the population, and held leadership positions in business, church and government.<sup>75</sup>

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70 *R. v. Goodon*, 2008 MBPC 59 at para. 69 f).

71 Report of Gwynneth C.D. Jones, *The Métis of Southern Manitoba in the Nineteenth Century: A Historical Report*, (1 Sept 2005) prepared for *R. v. Goodon* at p. 47.

72 Report of Gwynneth C.D. Jones, *The Métis of Southern Manitoba in the Nineteenth Century: A Historical Report*, (1 Sept 2005) prepared for *R. v. Goodon* at p. 50.

73 Simpson to Committee of Hudson's Bay Company (1856) as cited in *R. v. Goodon*, 2008 MBPC 59 at para. 69 f).

74 *R. v. Goodon*, 2008 MBPC 59 at para. 48.

75 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 23.

### 3.3 The Promise of Confederation

In 1867, Canada was created. “The historical and legislative evidence shows that expanding the country across the West was one of the primary goals of Confederation.”<sup>76</sup> Indeed, one of the first priorities of Canada’s first Prime Minister — Sir John A. Macdonald — was to secure the transfer of Rupert’s Land from the Hudson’s Bay Company to the new Dominion.

In the Red River Settlement, the rumor that Canada would annex Rupert’s Land was confirmed by the arrival of a surveying party in 1869. The surveyors were met with armed resistance and, at a location now part of the City of Winnipeg, were enjoined not to survey land that was “the property of French half-breeds.”<sup>77</sup> Shortly thereafter, on November 2, 1869, William McDougall — Canada’s proposed Lieutenant Governor of the new territory — was turned back at the border by a mounted Metis patrol. The same day, a group of Metis led by Louis Riel seized Upper Fort Garry, now downtown Winnipeg. In the weeks that followed, the Métis formed a provisional government and drew up a list of demands for Canada to satisfy before the Red River Metis would accept Canadian control.<sup>78</sup> Riel issued a Declaration of the People of Rupert’s Land, which proclaimed the provisional government and stated that:

... a people which has no government is free to adopt one form of government rather than another ... the sole legitimate authority today in Rupert’s Land and the North-West is the authority accorded provisionally by the people to us their representatives ... we refuse to recognize the authority of Canada which comes to impose on us a form of government still more contrary to our rights and our interests...<sup>79</sup>

Canada had little choice but to negotiate. It had neither the legal authority nor the military capacity to send in troops to quell the uprising<sup>80</sup>. Macdonald, however, found some of the demands of “the insurgent Half-breeds” to be “altogether inadmissible.”<sup>81</sup> To settle the dispute, he invited a delegation to visit Ottawa for the purpose of representing the claims and interests of Rupert’s Land, and he offered his assurances that the Metis’ claims would “be equitably settled.”<sup>82</sup>

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76 *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para. 4.

77 *R. v. Goodon*, 2008 MBPC 59 at para. 69 g); *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 26.

78 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at paras. 26-27; *Caron v. Alberta* 2015 SCC 56 at para. 19; *R. v. Goodon*, 2008 MBPC 59 at para. 69 g).

79 Report of Gwynneth C.D. Jones, *The Métis of Southern Manitoba in the Nineteenth Century: A Historical Report*, (1 Sept 2005) prepared for *R. v. Goodon* at p. 54.

80 *Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al.*, 2007 MBQB 293 at para. 78, cited in *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623.

81 Letter from John A. Macdonald to Donald A. Smith (3 January 1870), as cited in *Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al.*, 2007 MBQB 293 at para. 87.

82 Letter from John A. Macdonald to Donald A. Smith (3 January 1870), as cited in *Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al.*, 2007 MBQB 293 at para. 87.



Figure: The Métis provisional government, December 31, 1869 (Library and Archives Canada)

Riel nominated a delegation of three — a priest, Father Ritchot, a judge, Judge Black, and a local businessman named Alfred Scott — which arrived in Ottawa on April 11, 1870.<sup>83</sup> They met with Prime Minister Macdonald and the Minister of Militia and Defence, George-Étienne Cartier. These men negotiated what would become the key provisions of *Manitoba Act, 1870*, including a grant to Metis children of 1.4 million acres of land (s. 31)<sup>84</sup>, a guarantee of legislative and judicial bilingualism (s. 23)<sup>85</sup>, and protection for catholic schools (s. 22).

The delegation returned home and, on June 24, 1870, proposed the arrangement to the Legislative Assembly of Assiniboia — the legislature for the provisional government:

The Assembly was read a letter from Minister Cartier which promised that any existing land interest contemplated in s. 32 of the *Manitoba Act* could be converted to title without payment. Minister Cartier guaranteed that the s. 31 children's grants would "be of a nature to meet the wishes of the half-breed residents" and the division of grant land would be done "in the most effectual and equitable manner."<sup>86</sup>

The agreement was accepted on the basis of these promises. Finally, Metis land tenure appeared to be secure. Given the importance that the Metis placed on their lands, it is hard to overestimate what this must have meant to the Metis. As Louis Riel would explain later in his life:

The lands that they owned...belonged to them once by the Indian title, twice for having defended them with their blood, and thrice for having built and lived on them...<sup>87</sup>

83 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at paras. 28, 30.

84 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 30.

85 *Re Manitoba Language Rights*, [1985] 1 SCR 721 at para. 7.

86 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 31.

87 Louis Riel, "Last Memoir" in A-H de Trémaudan, *Hold High Your Heads: History of the Métis Nation in Western Canada*, translated by Elizabeth Maguet (Winnipeg: Pemmican Publications, 1982) at pp. 207-208.

On July 15, 1870, Manitoba became a province, with the name “Manitoba” having been suggested by Riel himself.<sup>88</sup>

### 3.4 Terror and Dishonor

It is worth asking whether Canada’s promises were ever meant to be kept. Historian Douglas Sprague explains:

In the midst of the negotiations with Ritchot, Macdonald made plain to Sir Clinton Murdoch and the Governor General that local control of land was as “inadmissible” as the amnesty [for Riel and his followers]. At the same time, “for the sake of peace,” the delegates were led to believe that their accord with Canada included a pattern of self-government extending to the administration of the Métis homeland in the District of Assiniboia.<sup>89</sup>

Indeed, Macdonald made little secret of his disdain for the Metis and of his prescription for dealing with them. In February, 1870 he had written that “these impulsive half breeds have got spoilt by their emeute [riot], and must be kept down by a strong hand until they are swamped by the influx of settlers.”<sup>90</sup> That, in so many words, is more or less what happened.



Figure: John A MacDonalld, December 31, 1871 (Library and Archives Canada)

Canada’s efforts to set aside the 1.4 million acres and divide the land among eligible recipients were plagued errors and delays,<sup>91</sup> which the Supreme Court of Canada summarized in *Manitoba Metis Federation*:

88 Report of Gwynneth C.D. Jones, *The Métis of Southern Manitoba in the Nineteenth Century: A Historical Report*, (1 Sept 2005) prepared for *R. v. Goodon* at p. 56.

89 Douglas N. Sprague, *Canada and the Métis, 1869-1885*, (Waterloo: Wilfred Laurier University Press, 1988) at p. 89.

90 PAC, Macdonald Papers, Letter Books, vol. 14, pp. 24-28, Macdonald to Rose, 23 February 1870, as cited in Douglas N. Sprague, *Canada and the Métis, 1869-1885*, (Waterloo: Wilfred Laurier University Press, 1988) at p. 89

91 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 32.

The first problem was the erroneous inclusion of all Métis, including heads of families, in the allotment, contrary to the terms of s. 31, which clearly provided the lands were to be divided among the children of the Métis heads of families. On March 1, 1871, Parliament passed an Order in Council declaring that all Métis had a right to a share in the 1.4 million acres promised in s. 31 of the *Manitoba Act*. This order, which would have created more grants of smaller acreage, was made over the objections raised by McDougall, then the former Lieutenant Governor of Rupert's Land, in the House of Commons. Nevertheless, the federal government began planning townships based on 140-acre lots, dividing the 1.4 million acres among approximately 10,000 recipients. This was the first allotment.

In 1873, the federal government changed its position, and decided that only Métis children would be entitled to s. 31 grants. The government also decided that lands traditionally used for haying by the Red River settlers could not be used to satisfy the children's land grant, as was originally planned, requiring additional land to be set aside to constitute the 1.4 million acres. The 1873 decision was clearly the correct decision. The problem is that it took the government over three years to arrive at that position. This gave rise to the second allotment.

In November 1873, the government of Sir John A. Macdonald was defeated and a new Liberal government formed in early 1874. The new government, without explanation, did not move forward on the allotments until early 1875. The Liberal government finally, after questions in Parliament about the delay and petitions from several parishes, appointed John Machar and Matthew Ryan to verify claimants entitled to the s. 31 grants. The process of verifying those entitled to grants commenced five years after the *Manitoba Act* was passed.

The next set of problems concerned the Machar/Ryan Commission's estimate of the number of eligible Métis children. Though a census taken in 1870 estimated 7,000 Métis children, Machar and Ryan concluded the number was lower, at 5,088, which was eventually rounded up to 5,833 to allow for even 240-acre plots. This necessitated a third and final allotment, which began in 1876, but was not completed until 1880.

...

Eventually, it became apparent that the Acting Agent of Dominion Lands, Donald Codd had underestimated the number of eligible Métis children — 993 more Métis children were entitled to land than Codd had counted on. In 1885, rather than start the allotment yet a fourth time, the Canadian government provided by Order in Council that the children for whom there was no land would be issued with \$240 worth of scrip redeemable for land. Fifteen years after the passage of the *Manitoba Act*, the process was finally complete.<sup>92</sup>

Had circumstances allowed the Metis to benefit from the grants made to them, they would have enjoyed a privileged place in the heart of the new province, as is apparent from the map of the lands these grants covered. While waiting for the land grants to be executed in an "equitable manner," however, the Metis had the control and governance of their homeland torn from their grasp.

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92 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at paras. 33-36, 38.



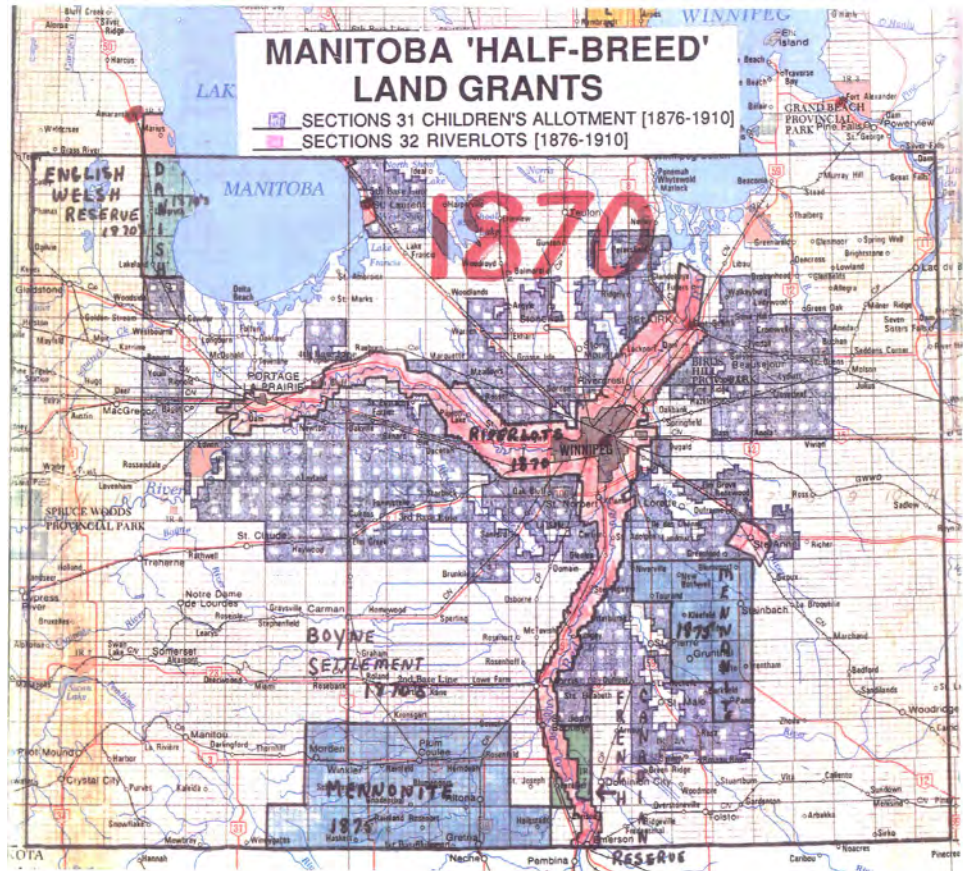


Figure: Map of Land Grants made under ss. 31 & 32 of the *Manitoba Act*

As soon possible after Manitoba joined confederation, 1,200 soldiers — the Red River Expeditionary Force — were sent from Ontario to assert Ottawa’s control over the fledgling province. When the soldiers entered Fort Garry on August 24, 1870, Riel watched on anxiously from the steps of Bishop Taché’s cathedral on the river’s far bank:

He stood there with the Bishop watching the troops race into the empty fort, whooping for blood and finding no one to hang or to shoot. Feeling disappointment and anger of his own, Riel turned to Taché and said, “It appears that we have been deceived.”<sup>93</sup>

This was the beginning of what the *New York Times* would later label Manitoba’s “reign of terror.”<sup>94</sup> Historian Fred Shore elaborates:

Since the militia was stationed in Fort Garry along with the Dominion Lands Office, the first Provincial Legislature and other government offices, Métis attempts at being part of the new power system were fraught with danger. Assaults, ‘outrages,’ [rapes] murder, arson and assorted acts of mayhem were practiced on the Métis anytime they came near Fort Garry, while the situation in the rest of the Settlement Belt was not much better.<sup>95</sup>

93 Douglas N. Sprague, *Canada and the Métis, 1869-1885*, (Waterloo: Wilfred Laurier University Press, 1988) at p. 69.

94 “A Military Reign of Terror in Manitoba – Assault on the American Consul” *The New York Times* (12 June 1871).

95 Fred J. Shore, *The Métis: Losing the Land—Aboriginal Information Series*, Office of University Accessibility (University of Manitoba, August 2006).

There is no room here for a full account of the violence that the Metis of southern Manitoba were made to suffer. Some of the most outrageous examples, however, cannot be ignored.

On September 6, 1870, John Christian Shultz — who would go on to become Manitoba's fifth Lieutenant Governor — and a number of other men invaded the home of Thomas Spence, editor of the *New Nation*.<sup>96</sup> At gunpoint, they horsewhipped him. They then moved on to his office, disabled his printing press, and trashed his supplies.<sup>97</sup>

On September 13, 1870, Elzéar Goulet — a Metis leader and supporter of Riel and the provisional government — was murdered. Soldiers with the Red River Expeditionary Force chased Mr. Goulet out of a saloon and into the river. While Mr. Goulet tried to swim to the opposite shore, the soldiers stoned him. He drowned.<sup>98</sup> No charges are laid against the soldiers.

On October 6, 1870, the St. Paul *Daily Pioneer* reported on the reign of terror:

Its purpose was to drive out by threats or actual violence all the French Half-Breed population, all American citizens, the Hudson's Bay Company, and [Lt.] Governor Archibald.<sup>99</sup>

On December 16, 1870, a Metis man — David Tait — and two of his companions were beaten and left for dead. A soldier's kepi with a regimental number was recovered at the scene of the assault.<sup>100</sup>

In February 1871, André Nault — a prominent Metis leader — was attacked by volunteers for the Red River Expeditionary Force while visiting a hotel in Pembina. He fled across the border, but was caught, bayoneted, and left for dead. He carried a scar from the assault until his death.<sup>101</sup>

On April 19, 1871, Fredrick Bird, a Metis man and the MLA for Portage la Prairie, was kicked and thrown into the mud by John Christian Shultz's supporters, who did not like the way he voted in the legislature.<sup>102</sup>

On December 8, 1871, soldiers attacked Louis Riel's home. Pierre Parenteau described the incident in a letter written the following day:

December 8, 1871, when a party of armed men, led by William Buchanan, raided Riel's house in St. Vital, claiming to hold warrants for his arrest. Riel was away, and the raiders could only threaten the women of the household to vow bitterly that the Metis leader would be killed before the night had ended.<sup>103</sup>

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96 The *New Nation* was published weekly from January 7, 1870 to September 3, 1870. Formed by the merger of the Red River Pioneer with the Nor'Wester, it was friendly to the provisional government headed by Louis Riel, the debates and discussions of which it reported in great detail.

97 Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 4.

98 Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 4.

99 As cited in Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 5.

100 Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 6.

101 Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 7; Ruth Swan and Janelle Reynolds, *Dictionary Canadian Biography, s.v.*, André Nault.

102 Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 7.

103 Public Archives of Manitoba *Lieutenant Governor's Papers*, Letter Parenteau et al., December 9, 1871, as cited in Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 5.

The violence was stifling, as Lieutenant Governor Archibald explained in a letter to John A. Macdonald:

Many of them [the French half-breeds] actually have been so beaten and outraged that they feel as if they were living in a state of slavery.<sup>104</sup>

In the decades that followed, the animosity suffered by the Metis in southern Manitoba remained intense. There is little doubt that it eroded their foothold in the province:

The future of the Metis in the new province was, to a large extent, decided in the two decades following the creation of Manitoba. These were hard years for the Red River Metis. Not only were the hunting and trading economies in rapid decline, but commercial grain farming was not viable before the 1880s. This produced subsistence crises that led to significantly higher Metis mortality rates in the province. Delays in gaining possession of the land grants promised in the Manitoba Act led to further insecurity as immigrants from Ontario sometimes squatted on land the Metis claimed as their own. Adaptation to the new political and social climate of Manitoba was further complicated by the introduction of a representative government unfamiliar to the Metis. Given these factors, it should not be surprising that many Metis ceased to see Red River as a Metis homeland, sold their lands, and left the province for lands further west, south, and north.<sup>105</sup>

Faced with unrelenting social pressures, on the one hand, and the glacial pace of the land grant process, on the other, many Metis felt that their only choice was to sell their claims — often at unconscionably low prices — and leave the province:

While the allotment process lagged, speculators began acquiring the Métis children's yet-to-be granted interests in the s. 31 lands, aided by a range of legal devices. Initially, the Manitoba legislature moved to block sales of the children's interests to speculators, but, in 1877, it passed legislation authorizing sales of s. 31 interests once the child obtained the age of majority, whether or not the child had received his or her allotment, or even knew of its location. In 1878, Manitoba adopted further legislation which allowed children between 18 and 21 to sell their interests, so long as the transaction was approved by a judicial officer and the child's parents. Dr. Thomas Flanagan, an expert who testified at trial, found returns on judicial sales were the poorest of any type of s. 31 sale.<sup>106</sup>

The central purpose of the land promised in s. 31 of the Manitoba Act was to give "families of the Métis through their children a head start in the new country in anticipation of the probable and expected influx of immigrants."<sup>107</sup> Through its inaction and delay, the government failed to give effect to this purpose:

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104 Letter from Archibald to Macdonald (9 October 1871) as cited in as cited in *Manitoba Métis Federation et. al. v. Canada* (No. C. 81-01-01010), Plaintiffs' Written Argument, para. 362, Document 122.

105 Gerhard J. Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996) at p. 139.

106 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 37 (internal citations omitted).

107 *Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al.*, 2007 MBQB 293 at para. 655 as cited in *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 102.

The honour of the Crown required the Crown to interpret s. 31 in a purposive manner and to diligently pursue fulfillment of the purposes of the obligation. This was not done. The Métis were promised implementation of the s. 31 land grants in “the most effectual and equitable manner”. Instead, the implementation was ineffectual and inequitable. This was not a matter of occasional negligence, but of repeated mistakes and inaction that persisted for more than a decade. A government sincerely intent on fulfilling the duty that its honour demanded could and should have done better.<sup>108</sup>

### 3.5 Aftermath and Resurgence

Of course, some Metis stayed in southern Manitoba. The 1901 census, for example, shows that parishes such as St. Francois Xavier and St. Norbert still had substantial Métis populations composed of many old Red River families<sup>109</sup> – but their survival demanded that they remain all but invisible. In the years following confederation the dangers of publicly identifying as Metis were made obvious. This established a pattern of behavior that would last almost a century:

Another element that contributes to the invisibility of the Métis is that following the Métis uprisings at Red River in 1870 and in Saskatchewan in 1885 it became impolitic and sometimes dangerous for Métis to self-identify publicly. In 1872, the Ontario legislature passed a \$5,000 bounty on the head of Louis Riel [and others involved in the execution of Thomas Scott]. The atmosphere in Winnipeg after 1870 has been called a “reign of terror” which was designed to discourage public identification as Métis. This disinclination to publicly identify as Métis only increased following the events of 1885. Many Métis grew ashamed to identify in public. In this way, the Métis survived [...] by being invisible. This survival mechanism served the Métis until the 1960s, when the Métis, along with other aboriginal peoples in North America began to reclaim their identity and rights in an increasingly public manner.<sup>110</sup>

A small number of the Metis people who stayed in the region in which the Manitoba-Minnesota Transmission Line is now proposed throughout this period remained willing to identify themselves publicly as Metis. Information gathered by Manitoba’s Department of Immigration and Agriculture in 1959, for example, indicates 80 Metis living in Marchand, 422 in Richer, 10 in Badger, and 115 in Woodridge.<sup>111</sup>

In the past decades, however, the Metis have been resurgent. In 1967, the Manitoba Metis Federation was founded to promote and advocate for the rights and interests of Metis in the province. The constitutional amendments of 1982 – which recognized the Metis as one of the “aboriginal people of Canada” – signaled that the time had “finally come for recognition of the Métis as a unique and distinct people.”<sup>112</sup>

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108 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 128.

109 Report of Gwynneth C.D. Jones, *The Métis of Southern Manitoba in the Nineteenth Century: A Historical Report*, (1 Sept 2005) prepared for *R. v. Goodon* at p. 57.

110 Jean Teillet, *Métis Law in Canada*, looseleaf (Vancouver: Pape Salter Teillet LLP, 2015) at p. 1-9.

111 Jean H. Lagasse, *The People of Indian Ancestry in Manitoba: a social and economic study, volume I* (Winnipeg: The Department of Agriculture and Immigration, 1959) at pp. 58-64. In contrast, the Manitoba Metis Federation presently has 3873 citizens, including 2381 registered harvesters, living in the Southeast region of Manitoba and 7852 citizens, including 575 registered harvesters, living in Winnipeg.

112 *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 70.



Figure: David Chartrand, President of the MMF (right), and Will Goodon, MMF Southwest Director and defendant in *R. v. Goodon* (left), before the announcement of the Métis victory in *R v Daniels*

More recently, the Metis cause has been buoyed by a series of major legal victories.<sup>113</sup> In 2008, in *R. v. Goodon*, the Provincial Court of Manitoba affirmed the existence of constitutionally protected Metis harvesting rights in the province. In 2013, in *Manitoba Metis Federation Inc. v. Canada*, the Supreme Court of Canada held that the federal government had “failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.”<sup>114</sup> In that decision, the Court took pains to highlight that “[t]he unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import.” The Manitoba Metis are ready to do their part in resolving this unfinished business. They are prepared to reclaim their rightful place in the heart of the province and their fair share of the wealth generated by their homeland. Just as the Manitoba Metis were willing partners in confederation, they will be willing partners in reconciliation.

### 3.6 The Manitoba Metis Federation

While the MMF was initially formed in 1967, its origins lie in the 18th century with the birth of the Manitoba Metis Community and in the legal and political structures that developed with it.

The MMF is the official democratic and self-governing political representative for the Metis Nation’s Manitoba Metis community. The MMF promotes the political, social, cultural and economic interests and rights of the Metis in Manitoba.

The Supreme Court of Canada, in *Manitoba Metis Federation Inc. v. Canada*, recognized that the MMF as the only body in the litigation to have standing to represent the collective interests of the Manitoba Metis in relation to the outstanding claim against the Crown flowing from s. 31 of the *Manitoba Act, 1870* (para. 44). Further, the Provincial Court of Manitoba, in *R. v. Goodon*, recognized that the MMF is the governing body of Metis people in Manitoba (para. 52).

<sup>113</sup> *R. v. Powley*, [2003] 2 SCR 207; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12.

<sup>114</sup> *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 154.

The MMF is also recognized by other levels of government as the representative body of the Manitoba Metis Community. It receives limited annual funding from the federal government and the Manitoba government to represent Manitoba Metis. It has also negotiated many agreements and arrangements on behalf of the Manitoba Metis Community with other levels of government.

The objectives of the MMF, as set out in the MMF Constitution, are as follows:

- i. To promote and instill pride in the history and culture of the Metis people.
- ii. To educate members with respect to their legal, political, social and other rights.
- iii. To promote the participation and representation of the Metis people in key political and economic bodies and organizations.
- iv. To promote the political, legal, social and economic interests and rights of its members.
- v. To provide responsible and accountable governance on behalf of the Manitoba Metis community using the constitutional authorities delegated by its members.

In fulfillment of these objectives, the MMF delivers programs and services to the Manitoba Metis Community, including services relating to children and families, justice, housing, youth, education, human resources, economic development, and natural resources.

Most importantly, and based on the mandate derived from the MMF citizenship registry, the MMF's province-wide ballot box election, the MMF Constitution and the collective will of the Manitoba Metis, the MMF is authorized to deal with the collective rights, interests and claims of the Manitoba Metis Community.

In order to discharge its representative role on behalf of the Manitoba Metis Community, the MMF is organized and operated based on democratic principles. The MMF's President is its Chief Executive Officer, leader and spokesperson. The President is elected in a province-wide election every four years and is responsible for overseeing the MMF's day-to-day operations. In addition, the MMF has a Board of Directors that leads, manages and guides the policies, objectives and strategic direction of the MMF and its subsidiaries. All 23 members of the Board of Directors are democratically elected by the membership.

The MMF is also organized into seven regional associations, or "MMF Regions", throughout the province. Each Region is administered by a vice-president and two executive officers, all of whom sit on the MMF's Board of Directors. These independent officers deliver programs and services to their specific geographic area.

Within each Region are various settlements, village or area-specific "Locals," which are administered by a chairperson, a vice-chairperson and a secretary-treasurer. A Local must have a minimum of nine members and meet at least four times a year. Every member of the MMF belongs to a Local. The purpose of a Local is for members to have local-based representation through local governance and communication channels and to exchange information upward to higher levels of MMF governance concerning local issues, values and interests. This structure allows the MMF to centralize and use resources efficiently, while at the same time remaining in tune with and responsive

to regional and local needs and concerns while representing the Manitoba Metis Community as a whole.

1. There are 18 Locals across the Southwest Region.
2. In keeping with the respective roles of the central, regional, and local branches of the MMF, the Manitoba Metis Community has appointed the MMF Home Office as its authorized representative for the purposes of Crown consultation and accommodation. The MMF Annual General Assembly unanimously adopted Resolution 8 in 2007, which reads in part as follows:

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

### 3.7 Claims

The MMF's first unresolved claim related to land flows from the 1.4 million acres of land promised to the children of the Metis living in the Red River Valley, a promise enshrined in s. 31 of the *Manitoba Act, 1870*.<sup>115</sup> This promise was a key element of a nation-building, constitutional compact that was meant to secure a "lasting place in the new province [of Manitoba]"<sup>116</sup> for future generations of the Metis people. This "lasting place" was to have been achieved by providing the Manitoba Metis Community a "head start"<sup>117</sup> in securing lands in the heart of the new province. Instead, the federal Crown was not diligent in its implementation of s. 31, which effectively defeated the purpose of the constitutional compact.

In March 2013, the Supreme Court of Canada found that the federal Crown failed to implement diligently and purposefully the Metis land grant provision set out in s. 31 of the *Manitoba Act, 1870*.<sup>118</sup> This constituted a breach of the honour of the Crown. In arriving at this legal conclusion, the Court wrote:

What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Charter* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import.<sup>119</sup>

The Supreme Court of Canada granted the MMF the following declaratory relief (the "MMF Declaration"):

That the federal Crown failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.<sup>120</sup>

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<sup>115</sup> *MMF*, supra, para. 154.

<sup>116</sup> *MMF*, supra, , para. 5.

<sup>117</sup> *MMF*, supra, paras. 5-6.

<sup>118</sup> *MMF*, supra, para. 154.

<sup>119</sup> *MMF*, supra, para. 140.

<sup>120</sup> *MMF*, supra, para. 154.

This constitutional breach — this unfinished business of nation building and reconciliation — constitutes an unresolved Metis claim flowing from a judicially recognized constitutional obligation, which burdens the federal Crown.<sup>121</sup> It can only be resolved through good faith negotiations and a just settlement with the MMF.<sup>122</sup> Lands in old ‘postage stamp province’ — including in the area through which the Project would pass — may need to be considered as a part of any future negotiations and settlement in fulfillment of the promise of 1.4 million acres.

On May 27, 2016, the Government of Canada, represented by Carolyn Bennett, the Minister of Indian Affairs and Northern Development, and the MMF, represented by David Chartrand, the MMF’s President, executed a Memorandum of Understanding (“MOU”) that established an exploratory discussion process aimed at developing a framework agreement based on which negotiations for the resolution of the MMF’s claim could proceed. These exploratory discussions are now underway. The MOU acknowledges the importance of the Province of Manitoba’s eventual participation in this reconciliatory process and includes an agreement that the Canada and the MMF will “when and where appropriate, encourage the Province of Manitoba to contribute to the exploratory discussion table’s discussions as an active participant.”<sup>123</sup> Eileen Clarke, Manitoba’s Minister of Indigenous and Municipal Relations, signed the MOU as a witness.

The Supreme Court of Canada has made clear that “as the claim strength increases, the required level of consultation and accommodation correspondingly increases.”<sup>124</sup> That is to say that as the assertion of an Aboriginal right or interest advances through the stages of claim, proof, and negotiation the Crown’s duty to consult and accommodate the Aboriginal group in question with respect to their assertion increases. Tom Isaac, in a recent report he wrote in his capacity as the Minister’s Special Representative on Reconciliation with Metis, emphasized just how far advanced the MMF is in this process:

The MMF Declaration is not a claim. The MMF Declaration is also not a settlement of litigation. The litigation is complete. The MMF Declaration is about the implementation of declaratory relief from the highest court in Canada, and more broadly about implementing in practical terms the honour of the Crown and achieving reconciliation with the Métis of Manitoba. **This is an important step in the overall objective of reconciliation and one upon which Canada should act immediately without any further delay.**<sup>125</sup>

Given this context, there is no doubt that Crown decisions that might adversely affect the ongoing reconciliatory process being undertaken by Canada and the MMF with respect to the MMF Declaration would attract a deep duty to consult and require meaningful, appropriate accommodation.

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121 *MMF*, supra, paras. 156, 212.

122 *R. v. Sparrow*, [1990] 1 S.C.R. 1075, pp. 1105-6 [Sparrow]; *R. v. Van der Peet*, [1996] 2 S.C.R. 507, para. 253; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 186; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511 para. 20 [Haida]; *Tsilhqot’in Nation v. British Columbia*, [2014] 2 S.C.R. 256, para 17 [Tsilhqot’in].

123 Memorandum of Understanding on Advancing Reconciliation between Manitoba Metis Federation Inc. and Her Majesty the Queen in Right of Canada (May 27, 2016). Online: <https://www.aadnc-aandc.gc.ca/eng/1467055681745/1467055869159>

124 *Tsilhqot’in Nation v. British Columbia*, [2014] 2 SCR 257 at para. 91.

125 Thomas Isaac, *A Matter of National and Constitutional Import: Report of the Minister’s Special Representative on Reconciliation with Métis: Section 35 Métis Rights and the Manitoba Metis Federation Decision* (August 21, 2016) at p. 39.



### 3.8 Rights & Interests

The Manitoba Metis Community possesses Aboriginal rights, including, pre-existing Aboriginal collective interests in lands protected by section 35 of the *Constitution Act, 1982*, throughout the territory where the MMTP is proposed. Indeed, Manitoba courts recognized these pre-existing, collectively-held Metis rights in *R. v. Goodon*.<sup>126</sup>

[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.

As affirmed by the Supreme Court of Canada, such rights are “recognize[d] as part of the special aboriginal relationship to the land”<sup>127</sup> and are grounded on a “communal Aboriginal interest in the land that is integral to the nature of the Metis distinctive community and their relationship to the land.”<sup>128</sup> Importantly, courts have also recognized that Metis harvesting rights may not be limited to Unoccupied Crown Lands.<sup>129</sup>

The Crown, as represented by the Manitoba government, has recognized some aspects of the Manitoba Metis Community’s rights through a negotiated agreement. In particular, the MMF-Manitoba Harvesting Agreement recognizes Metis rights to “hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, the ability to harvest timber for domestic purposes” throughout an area spanning approximately 800,000 km<sup>2</sup> (the “Metis Recognized Harvesting Area”). The proposed MMTP is entirely within the Metis Recognized Harvesting Area.

Beyond those rights already established through litigation and recognized by agreements, the Manitoba Metis Community claims commercial and trade related rights in the area of Manitoba through which the Project would pass. Courts have noted that Metis claims to commercial rights remain outstanding.<sup>130</sup> These claims are strong and well-founded, and it is incumbent on the Crown and Manitoba Hydro to take them seriously.

The Manitoba Metis Community has its roots in the western fur trade.<sup>131</sup> The Metis in Manitoba are descendants of early unions between Aboriginal women and European traders.<sup>132</sup> As a distinct Metis culture developed, the Metis took up trade as a key aspect of their way of life.<sup>133</sup> Many Metis became independent traders, acting as middlemen between First Nations and Europeans.<sup>134</sup> Others ensured their subsistence and

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126 *R. v. Goodon*, 2008 MBPC 58 [*Goodon*].

127 *R. v. Powley*, [2003] 2 S.C.R. 207, para. 50.

128 *Manitoba Metis Federation Inc. v. Canada* (Attorney General), [2013] 1 SCR 623, para. 5 [*MMF*].

129 *R. v. Kelley*, 2007 ABQB 41, para. 65.

130 *Ibid.*

131 *R. v. Blais*, 2003 SCC 44 at para. 9 [*Blais*]; *Goodon*, *supra* at para. 25.

132 *MMF*, *supra*, para. 21.

133 *Powley*, *supra* at para. 10.

134 *Goodon*, *supra* at para. 30.

prosperity by trading resources they themselves hunted and gathered.<sup>135</sup> By the mid-19th century, the Metis in Manitoba had developed the collective feeling that “the soil, the trade and the Government of the country [were] their birth rights.”<sup>136</sup>

Commerce and trade is and always has been integral to the distinctive culture of the Manitoba Metis Community. Today, the Manitoba Metis have an Aboriginal, constitutionally protected right to continue this trading tradition in modern ways to ensure that their distinct community will not only survive but also flourish.

Unlike First Nations in Manitoba, whose commercial rights were converted and modified by treaties and the *NRTA*,<sup>137</sup> the Metis’ pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the *NRTA*<sup>138</sup> and continue to exist and be protected as Aboriginal rights.

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135 *Goodon*, supra at para. 31, 33, & 71.

136 *Goodon*, supra at para. 69(f).

137 *R. v. Horseman*, [1990] 1 SCR 901

138 *R. v. Blais*, 2003 SCC 44



4.0

Upper Fort Garry (Photo: Olivia Mancuso)

## Assessment of Effects on Metis Specific Interest - Land

During the selection process for MSIs, there was a consistent concern expressed by Workshop Contributors of having 'enough' land available for the Metis to exercise their rights. During the workshops, it was noted by Workshop Contributors that the Project may change the availability or conditions of Crown land, and make it so the ROW could not be used by Metis in the same way.

The first step in understanding what land is available to Metis for the exercise of their rights and what effect the Project may have on those lands is to identify how Metis rights may be restricted on different types of land in Manitoba through, for example, private ownership or government regulation of Crown lands.

For the purpose of this Report, there are two types of land within Manitoba for consideration in the assessment of direct and cumulative effects resulting from the Project: "Private or Occupied Crown Lands" and "Unoccupied Crown Lands."

## 4.1 Existing Conditions

### 4.1.1 Private or Occupied Crown Lands

In this Report, the term Private or Occupied Crown Lands refers to a general category of lands that includes both: Crown lands that are subject to a regulatory restriction(s) related to at least one kind of harvesting activities (i.e., hunting, gathering, trapping, etc.) and lands that are privately owned (and therefore cannot generally be accessed for harvesting purposes without permission of the landowner).

Where only privately owned land is being referred to, the term Private Land is used. Where only Crown lands subject to regulatory restriction(s) on at least one kind of harvesting activity are being referred to, the term Occupied Crown Lands is used rather than the general term of Private or Occupied Crown Lands.

In making determinations regarding which Crown lands in the RAA were subject to regulatory restriction(s) the following legislation, regulations, and Manitoba Government-produced guides were consulted:

- Declaration of Provincial Roads (Access Roads) Regulation, Man Reg 414/88 R
- Forest Use and Management Regulation, Man Reg 227/88
- *Highways and Transportation Act*, CCSM c H40
- General Hunting Regulations, Man Reg 351/87
- Manitoba Hunting Guide, 2016
- Trapping of Wild Animals Regulation, Man Reg 245/90
- Use of Wildlife Lands Regulation, Man Reg 77/99
- *Ecological Reserves Act*, CCSM, c E5
- Ecological Reserves Regulation, Man Reg 245/2014

Given the nature of the aforementioned statutes and regulations, the Study Team assumed that the restrictions they impose on harvesting activities are for conservation and safety purposes. According to Manitoba's 2016 Hunting Guide (the most recent version available), such restrictions have the potential to be applied to Metis harvesters to restrict harvesting activities. The 2016 Hunting Guide states that "[n]o person (status or non-status) may hunt within ... areas closed to all persons for specific conservation purposes. Restrictions that are intended for conservation and safety purposes apply to both First Nation [presumably also Metis] and licensed hunters."

On the basis of the foregoing methodology, the Study Team identified the following Private or Occupied Crown Lands within the RAA:

- Beaudry Provincial Park
- Grant's Lake Wildlife Management Area
- Grant's Lake Game Bird Refuge
- Birds Hill Wildlife Refuge
- Red Pine Furbearing Animal Refuge

- Wampum Ecological Reserve
- Jennifer and Tom Shay Ecological Reserve
- Pocock Lake Ecological Reserve
- Piney Ecological Reserve
- Game Hunting Area 38
- Provincial forests
- Provincial roads, provincial trunk highways, or access roads, and public roads within a municipality
- Municipal lands
- All privately owned lands

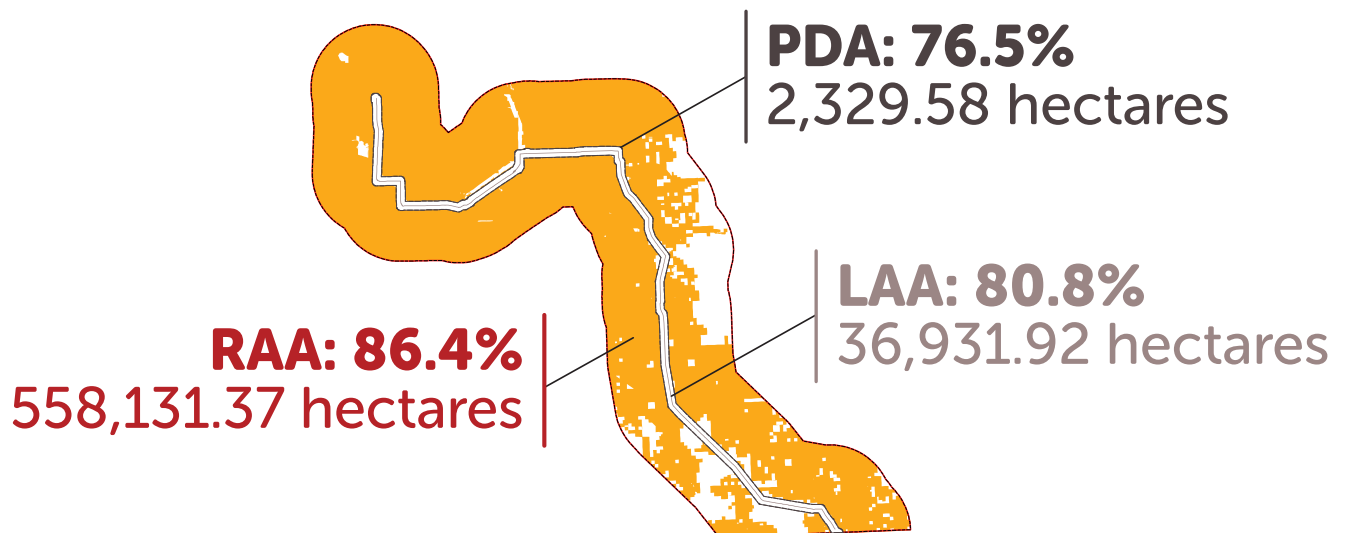
The relevant sections of the legislation, regulations, and guides as they relate to each of the above listed areas can be found in Appendix J.

The reader should note that this Report is not meant to, and does not express, the legal position, argument, or opinion of the MMF. The Study Team’s assessment of Occupied Crown Lands is not a legal analysis and is not meant as an assessment of the Aboriginal rights, claims, or interests of the Manitoba Metis Community, or of the locations and conditions in which they can be exercised. Rather, this Report relies on what the legislation and regulations provide for on a plain reading, when read in conjunction with the interpretation offered by the Province of Manitoba in the 2016 Hunting Guide. The Report assumes, based on a lack of certainty regarding Manitoba’s interpretation of these laws and regulations and their application to Metis harvesters, that they do, or at least can, apply to Metis harvesters.

#### 4.1.1.1 Private Lands

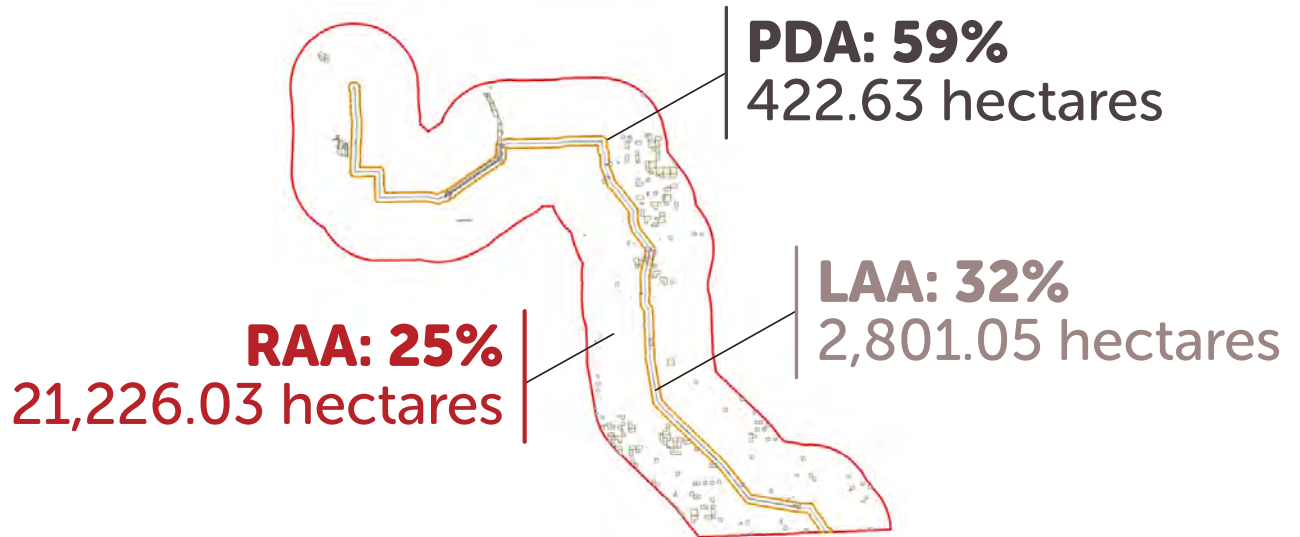
Within the Study Area there is 3045.45 ha of total land within the PDA, 45,716.76 ha of total land within the LAA and 645,785.64 ha of total land within the RAA.

The amount of Private Land is:



#### 4.1.1.2 Occupied Crown Lands

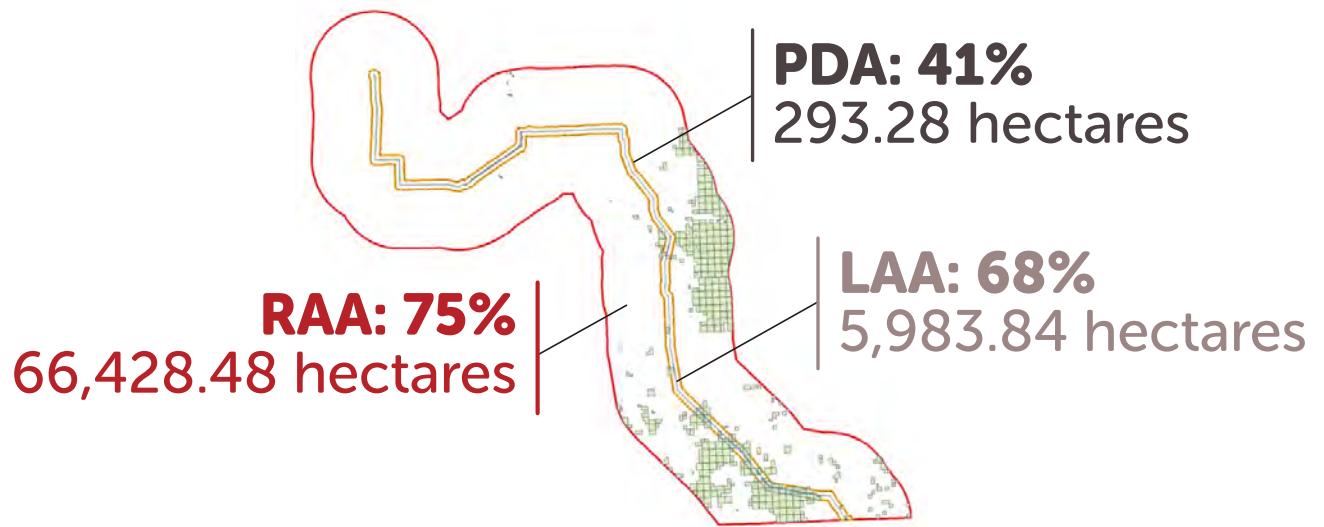
The total amount of Crown land is 715.87 (ha (23.5%) within the PDA, 8,784.84 ha (19.2%) within the LAA and 87,654.27 ha (13.6%) within the RAA. Prior to the development of the Project, the amount of Occupied Crown Land within this existing Crown land is:



#### 4.1.2 Unoccupied Crown Land

Unoccupied Crown Land is Crown land that is not currently subject to a regulatory restriction(s) on any kind of harvesting activity.

The total amount of Crown land is 715.87 (ha (23.5%) within the PDA, 8,784.84 ha (19.2%) within the LAA and 87,654.27 ha (13.6%). Prior to the development of the Project, the amount of Unoccupied Crown Land within existing Crown Land in the PDA, LAA and RAA is:



### 4.1.3 Diminished Preference Zone

Section 4.1.1 describes Private and Occupied Crown Land. However, there must also be a consideration of internal constraints amongst MMF citizens that may further deter Metis use of lands.

The Study Team interviewed 47 MMF Participants between February 23, 2016 and April 15, 2016. These Participants were asked how close to industrial developments (e.g. pipelines, transmission lines, and power lines), forestry activity (e.g. active logging activity), and infrastructure (e.g. primary roads or secondary roads), parks and protected areas (e.g. wildlife management areas, provincial forests), community pastures and private or agricultural land that they exercised their Metis rights and interests. The Diminished Preference Zone was identified for each right -based activity on the largest (i.e., maximum observable value) number of Survey Participants that identified they would stay a particular distance from a development or land type, while excluding 'Not Applicable' responses. In some cases, no Diminished Preference Zone was identified as the largest number of Survey Participants stated that they would harvest directly on that particular development (with or without permission).

Prior to the development of the Project, the amount of lands within the Project area comprised of Diminished Preference Zones is:

Spatial Boundary	Hunting	Trapping	Fishing	Berry and Berry Plant Gathering	Plant, Mushroom and Medicine Gathering	Tree and Tree Product Gathering	Rock and Mineral Gathering
LAA	92%	68%	47%	66%	67%	68%	67%
RAA	90%	66%	53%	65%	65%	66%	65%

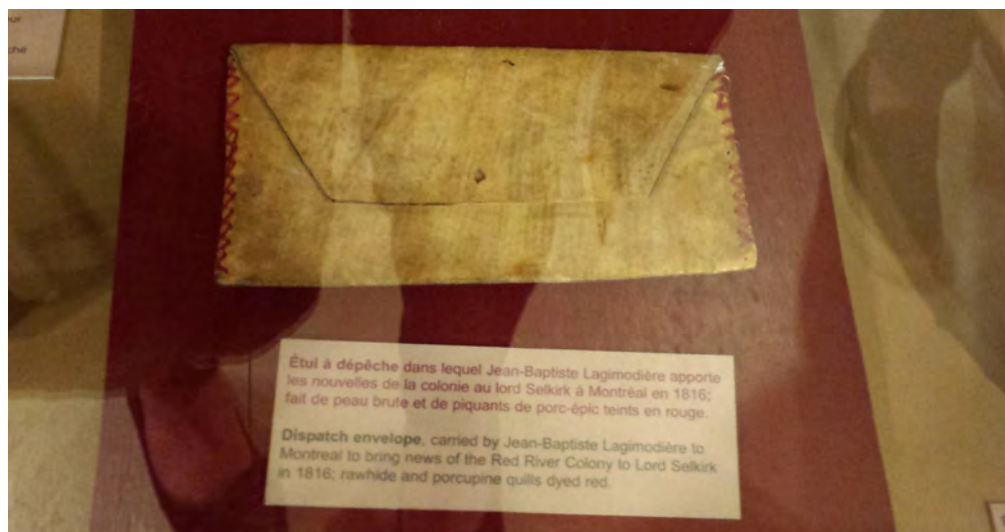


## 4.2 Scope of the Assessment – Lands Available for Metis Use

### 4.2.1 Selection of Potential Effects

Potential effects on 'Lands Available for Metis Use' were identified through internal discussions between the MMF, the Study Team and MMF Workshop Contributors. The following potential effects on 'Lands Available for Metis Use' were identified:

- Changes in Amount of Land Available for Metis Use
- Changes in Access



*Dispatch Envelope (Photo: Peggy Donnelly)*

#### 4.2.1.1 Rationale for Inclusion – Amount of Land Available for Metis Use

The construction and operation the Project may cause a change in the legal restriction specific to Project temporal parameters, the physical attributes of land specific to Project temporal parameters and a change in the perception of MMF citizens towards the land affected by the Project.



Statue of Louis Riel (Photo: Olivia Mancuso)

#### **4.2.1.2 Rationale for Inclusion - Access**

The construction and operation of the Project may cause a change whereby physical access to the ROW may be impaired for MMF citizens or increased access by non-Metis specific to Project temporal parameters. The construction and operation of the Project may also result in perceived barriers as understood by MMF citizens.

#### **4.2.2 Selection of Measurable Parameters**

The measurable parameters used in the assessment of potential effects to 'Lands Available for Metis Use' are listed in Table 4-2-2-1.

Table 4-2-2-1: Measurable Parameters for 'Lands Available for Metis Use'

Effect	Measurable Parameter(s) and Units of Measurement	Notes or Rationale for Selection of the Measurable Parameter
Changes in Amount of Land Available for Metis Use	Legal Restriction	Phases of the Project could change the ability of Metis to use the land based on legal restriction. This will result a change in the total amount of lands available for the exercise of Metis rights.
	Change in Physical Attributes	Phases of the Project could result in a change in the physical attributes on the land available for the exercise of Metis rights. This would result in the areas being less preferred and result in a reduction of the total amount of lands available for the exercise of Metis rights.
	Change in Metis Perception of Land	Phases of the Project could result in a change of perception by MMF in the lands available for use in the exercise of Metis rights. This would result in the areas being less preferred and result in a reduction of the total amount of lands available for the exercise of Metis rights.
Changes in Access	Increased Access for Metis	The Project could result in increased MMF access routes to the Project Area which were previously inaccessible.
	Increased Access for Non-Metis	The Project could result in increased non-Metis access routes to the Project area for which were previously inaccessible.



Statue of Louis Riel

### 4.2.3 Residual Effect Description Criteria

Residual effects are the effects that remain following the application of mitigation measures<sup>139</sup>. The criteria used to describe these effects include:

Table 4-2-3-1: Residual Effect Description Criteria

Residual Effects Criteria for 'Lands Available for Metis Use'		
Characterization	Description	Quantitative Measure or Definition of Qualitative Categories
Changes in Land Available for Metis Use	Legal Restriction	Phases of the Project could change the ability of Metis to use the land based on legal restriction. This will result a change in the total amount of lands available for the exercise of Metis rights.
	Change in Physical Attributes	Phases of the Project could result in a change in the physical attributes on the land available for the exercise of Metis rights. This would result in the areas being less preferred and result in a reduction of the total amount of lands available for the exercise of Metis rights.
Direction	The trend of the residual effect	<p><b>Positive</b> – measurable effect that increases the opportunities for the exercise of Metis rights.</p> <p><b>Adverse</b> – measurable effect that reduces the opportunities for the exercise of Metis rights.</p> <p><b>Neutral</b> – no change to the opportunities necessary for the exercise of Metis rights.</p>
Magnitude	The amount of change in measurable parameters relative to existing conditions	<p><b>Negligible</b> – no measurable change in from baseline</p> <p><b>Low</b> – effect will result in the exercise of Metis Aboriginal right or Metis Aboriginal rights being subject to increased encumbrances, restrictions, or limitation in up to, but not more than, 33% of the land in the study area.</p> <p><b>Moderate</b> – effect will result in the exercise of a Metis Aboriginal rights or Metis Aboriginal rights being subject to increased encumbrances, restrictions, or limitations in up to, but not more than, 66% of the land in the study area</p> <p><b>High</b> – effect will result in the exercise of a Metis Aboriginal rights or Metis Aboriginal rights being subject to increased encumbrances, restrictions, or limitations in more than 66% of the study area.</p>
Geographic Extent	The geographic area in which an environmental effect occurs	<p><b>PDA</b> – effects are restricted to the PDA</p> <p><b>LAA</b> – effects extend into the LAA</p> <p><b>RAA</b> – effects extend into the RAA</p>

139 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 7-22

**Residual Effects Criteria for 'Lands Available for Metis Use'**

<b>Characterization</b>	<b>Description</b>	<b>Quantitative Measure or Definition of Qualitative Categories</b>
Frequency	Identifies when the residual effect occurs and how often during the Project or in a specific phase	<p><b>Single event effect</b> – occurs once.</p> <p><b>Multiple irregular event</b> (no set schedule) – effect occurs at irregular intervals throughout the Project.</p> <p><b>Multiple regular event</b> – effect occurs on a regular basis and at regular intervals throughout the Project.</p> <p><b>Continuous</b> – effect occurs continuously throughout the life of the Project</p>
Duration	The period of time required until the measurable parameter returns to its existing condition, or the effect can no longer be measured or otherwise perceived	<p><b>Short-term</b> – residual effect restricted to construction phase</p> <p><b>Medium-term</b> – residual effect extends more than the construction phase but less than the life of the Project.</p> <p><b>Permanent</b> – residual effect extends for the lifetime of the Project or more.</p>
Reversibility	Pertains to whether a measurable parameter can return to its existing condition after the Project activity ceases	<p><b>Reversible</b> – the effect is likely to be reversed after activity completion.</p> <p><b>Irreversible</b> – the effect is unlikely to be reversed.</p>
Ecological Context	Existing condition and trends in the area where the effect occurs	<p><b>Undisturbed</b> – area has no or negligible disturbance or not adversely affected by human development.</p> <p><b>Disturbed</b> - area has been previously disturbed over large portions by human development or human development is present.</p>

### 4.3 Project Interactions with 'Lands Available for Metis Use'



Anola Metis Local Jacket

The specific Project activities for each Project phase that have the potential to interact with 'Lands Available for Metis Use' are listed in Table 4-3-1.

Table 4-3-1: Project Interactions with 'Lands Available for Metis Use'

Project Components and Physical Activities <sup>140</sup>	Changes in Amount of Land Available for Metis Use	Changes in Access
<b>Transmission Line Construction Activities</b>		
Mobilizing (staff and equipment)	✓	✓
Access Route and Bypass Trail Development	✓	✓
Right-of-way Clearing/Geotechnical Investigations	✓	✓
Marshalling Yards, Borrow Sites, Temporary Camp Setup	✓	✓
Transmission Tower Construction and Conductor Stringing	✓	✓
Demobilization	✓	✓
<b>Transmission Line Operations/Maintenance</b>		
Transmission Line Operations/Presence	✓	✓
Inspection Patrols	✓	✓

140 All project activities are compiled from the EIS

Project Components and Physical Activities	Changes in Amount of Land Available for Metis Use	Changes in Access
Vegetation Management (tree control)	✓	✓
<b>Station Construction</b>		
Station Site Preparation	✓	✓
Electrical Equipment Installation	✓	✓
<b>Station Operations/Maintenance</b>		
Station Operation/Presence	✓	✓
Vegetation Management (weed control)	✓	✓

## 4.4 Effects Assessment

To determine changes to 'Lands Available for Metis Use' the Study Team relied on information collected from MMF Survey Participants and Questionnaire Respondents.

### 4.4.1 Changes in Amount of Land Available for Metis Use

#### 4.4.1.1 Legal Restriction

The amount of Unoccupied Crown Land will be changed by the Project to Occupied Crown Land resulting in increased legal restriction:

Table 4-4-1-1-1: Percentage of Change in PDA, LAA and RAA

Study Area	Number of Hectares of Unoccupied Crown Land Prior to Project	Number of Hectares of Unoccupied Crown Land Post Project Approval	% of Change
Project Development Area	293.28 hectares	3.15 hectares	98%
Local Assessment Area	5,983.84 hectares	5693.71 hectares	5%
Regional Assessment Area	66,428.48 hectares	66,138.35 hectares	0.04%

It is important to note the PDA will be fully changed from Unoccupied Crown Lands to Occupied Crown Lands as a result of the Project. This is because the PDA of the Project, if approved would include an easement agreement which conveys priority rights to Manitoba Hydro. These priority rights could grant Manitoba Hydro the right to "...enter upon the right-of-way and use, construct, place, operate, maintain, repair, alter, add to and remove, on, under, across, along, over, through, or from the right-of-way overhead and/or underground..." and "...the right of free and unimpeded ingress and egress to and from the right-of-way..."<sup>141</sup>

141 Statutory Easement for Bipole I, Bipole II and Bipole III



The easement is defined as giving “Manitoba Hydro the right of access to the right-of-way to construct, operate and maintain the transmission line”<sup>142</sup>. Additionally, the right to exclude access was highlighted in the EIS:

- Page 11-4, which states “[t]here will be a short period where access to active construction zones will be restricted based on safety concerns to Project staff and the public.”
- Table 11-3, Page 11-5 which states “[c]onstruction and operation of the Project may result in temporary or permanent change in access to traditional lands used by First Nations and Metis by limiting access during construction, restricting traditional activities at or near constructed Project facilities and reducing lands available for First Nation and Metis use.”<sup>143</sup>.



Residential Area Sign (Photo: Olivia Mancuso)

Manitoba Hydro will be authorized to prohibit Metis access to the PDA during the construction of the Project. Additionally, Metis access to the PDA, for the purpose of exercising their rights, could be substantially disrupted as a result of operation and maintenance activities. The *Wildlife Act*, for example, prohibits hunting “in a manner

142 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 2-xiv

143 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 11-4, 11-3

that is dangerous to other persons” or “without due regard for the safety of other persons.”<sup>144</sup> The exercise of Aboriginal rights can be restricted to protect public safety<sup>145</sup> and the general prohibition on unsafe or dangerous hunting has been found to be an expression of such a restriction.<sup>146</sup> In a variety of circumstances, it could be unsafe or dangerous to hunt in portions of the PDA where operation and maintenance activities are underway. As a result, Metis harvesters could lose the guarantee of consistently available Unoccupied Crown Land that they currently have. The MMF can be prohibited from accessing the area of the PDA through construction of the Project and, at select times at Manitoba Hydro’s discretion, for operations and maintenance activities.

Participant M316 stated that “we have to ask permission to the Hydro to go on this line, if we do go hunting on it; that’s one big concern”. Many Participants noted that available Unoccupied Crown Land is limited. Participant M303 noted “[i]t’s tougher. You need permission on a lot of places.” Many Participants noted that getting permission to use private land is difficult. For example, M309 noted that they “...don’t know a

lot of farmers so I can’t ask farmers to go on their land and hunt; so, I have to go on Crown land and rely on that as my main source...” Participant M345 noted that “...[i]t’s hard enough to get permission from landowners...” and Participant M310 explained “...it is almost impossible to find a landowner to get permission ... it usually takes me, in that area, two to three weeks to get one ‘maybe you can hunt here this year’ permission, so that is a lot of driving around, wasting time...”

*“we have to ask permission to the Hydro to go on this line, if we do go hunting on it; that’s one big concern.”*

— M316

Survey results show that the majority of Participants would avoid transmission lines for harvesting activities<sup>147</sup> by at least 100m/100 yards and

Questionnaire Respondents indicated that 55% (n=110) would avoid transmission lines while harvesting. Additionally, Survey Participants indicated that they would avoid any signs restricting access to the area such as ‘No Hunting’<sup>148</sup>/Fishing<sup>149</sup> or ‘No Trespassing’<sup>150</sup> signs. While ‘No Trespassing’ signs are not explicitly referenced in the EIS, it does state

144 *Wildlife Act*, CCSM c W130 at s. 10.

145 *R. v. Marshall*, [1999] 3 SCR 533 at para. 41.

146 *R. v. Myran* [1975] S.C.J. No. 69.

147 73% would avoid transmission lines for hunting, 72% would avoid transmission lines for plant, mushroom and medicine gathering, 64% would avoid transmission lines for berry or berry plant gathering, 61% would avoid transmission lines for tree and tree product gathering, 60% would avoid transmission lines for fishing, 42% would avoid transmission lines for fishing, 25% would avoid transmission lines for rock and mineral gathering.

148 88% (n=42) would not hunt if there were ‘no hunting’ signs, 77% (n=14) would not trap if there were ‘no hunting’ signs, 67% (n=45) would not fish if there were ‘no hunting’ signs, 62% (n=38) would not gather berries or berry plants if there were ‘no hunting’ signs, 50% (n=23) would not gather plants, mushroom or medicine if there were ‘no hunting’ signs, 61% (n=30) would not gather trees or tree products if there were ‘no hunting’ signs, 50% (n=6) would not gather rocks and minerals if there were ‘no hunting’ signs.

149 95% (N=45) would not fish if there were ‘no fishing’ signs

150 83% (n=42) would not hunt if there were ‘no trespassing’ signs, 79% (n=14) would not trap if there were ‘no trespassing’ signs, 83% (n=45) would not fish if there were ‘no trespassing’ signs, 89% (n=38) would not gather berries or berry plants if there were ‘no trespassing’ signs, 82% (n=23) would not gather plants, mushroom or medicines if there were ‘no trespassing’ signs, 82% (n=30) would not gather trees or tree products if there were ‘no trespassing’ signs, 75% (n=6) would not gather rocks and minerals if there were ‘no trespassing’ signs.

that vehicle barriers will be present at the Riel Converter Station and vehicle gates will be installed at the Dorsey Converter Station<sup>151</sup>. Participant M300 stated that “[a]s projects move in, then we have to move. We don’t have a choice we have to keep looking for other places”.

#### 4.4.1.2 Physical Attributes

‘Lands Available for Metis Use’ has distinct physical attributes that make the experience of land use for MMF citizens unique. However, with the approval of the Project, there is the potential for a change to these physical attributes.

The physical attributes of the land may be affected through air, noise and visual quality by the Project. The Study Team notes that MMF Participants have a different threshold for sensory disturbance than those listed for the EIS receptors generally considered by proponents in assessing the biophysical valued components<sup>152</sup>. The EIS does not contain specific detail on Metis citizen’s unique sensory disturbance thresholds.

Survey Participants indicated they would not harvest<sup>153</sup> where they could smell industrial development. Odor will be present during construction in the PDA as diesel (or equivalent) engines and the products of combustion exhausts will be used by the proponent to construct<sup>154</sup>. Additionally, the perceived risk of an industrial odor must

also be considered as Participants may avoid the PDA throughout construction activities due to a perceived increase in industrial odor. Participant M322 related this to deforestation and indicated that “[i]f they do the deforestation, what effect is that going to have on air quality?”

MMF Participants also noted they would not harvest<sup>155</sup> where they could hear industrial development. Noise will be present during construction from the operation of “...machinery (i.e. bulldozers, transportation vehicles, clearing equipment, and cranes), and periodic explosive discharges by implosive sleeves during conductor stringing<sup>156</sup> as

well as during operation of the transmission line from general line hum, or “...corona discharges that result in audible noise typically heard as a hissing or crackling sound<sup>157</sup>. Participant M334 noted that the Project would “...make a lot of noise going through with their track vehicles and cutting all the trees...” Noise can also be an effective

[the Project would] “...make a lot of noise going through with their track vehicles and cutting all the trees...”

— M334

151 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 2-81

152 Canadian Environmental Assessment Agency 2016 Sisson Project Comprehensive Study Report Last modified April 2016 <http://www.ceaa.gc.ca/050/documents/p63169/113759E.pdf>

153 hunt (86%, n=37), trap (83%, n=12), fish (81%, n=43), gather berries or berry plants (81%, n=36), gather plants, mushrooms or medicines (90%, n=20), gather trees or tree products (63%, n=27), or rocks and minerals (80%, n=5)

154 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, Technical Data Report – Air, Sec. 2.2

155 gather plants (41%), trap (77%), medicine (52%, n=243), gather berries and tree products (53%, n=328) and gather rock and minerals (40%, n=5)

156 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, Technical Data Report – Noise, Sec. 1.2

157 Ibid.

deterrent during maintenance activities which can include the "...infrequent use of helicopters"<sup>158</sup>. Participants related their existing experience with transmission line noise and indicated that it results in displacement of wildlife as well as MMF citizens. Participant M305 noted that they live near existing transmission towers and that "[a] t night, you hear the snap of the wire..." Participant M320 also related noise in terms of potential displacement of wildlife, stating "I'm concerned a bit about noise; it might keep some of the animals away..."

Survey Participants indicated that they would not harvest<sup>159</sup> where they could see industrial development. The Project has the potential to change the "...visual quality of the landscape from viewpoints important to ... Metis ... An adverse change in visual landscape can contribute to stress and annoyance"<sup>160</sup>. Participant M300 related the change in visual quality, in that they have experienced it before "...on other trails where they put up these powerlines in something that was relatively secluded, pristine, I guess; and it just changes..."

*"...on other trails where they put up these powerlines in something that was relatively secluded, pristine, I guess; and it just changes..."*

— M300

Survey Participants also expressed fear over Electro Magnetic Fields ("EMF") and potential health effects of EMF. Survey Participants are distrustful of current studies completed for this and related it to other things like chemical agents which were thought to be safe and, with further study, turned out to be harmful; Survey Participants equated this with EMF. Participant M305 stated that "...electric magnetic fields affect us in ways that we probably don't even know about. Not to mention plants and animals."

Participant M340 stated: "[w]ithout knowing what negative health effects could result from these lines and I think ... like a lot of other things, it's been said that it's not dangerous ... my concern is that it might be discovered that it was a bad idea and the people around it and the farms and animals that are affected by it ... I'd hate to find out that this goes into major areas of population density and of cultural harvesting and ... then find out that this is a bad idea further down the road."

#### 4.4.1.3 Perception of Land

As there are no established perceptive thresholds for changes to 'Lands Available for Metis Use', the assessment of change in perception is qualitative in nature. There is a difference between real and perceived effects which can be substantial<sup>161</sup> and in a study completed in the Netherlands and referenced in the EIS, it is noted that "the relatively high perceived risks of power lines may adversely affect well-being and health of residents living near a power line through a psychosocial pathway linking exposure to a potential environmental hazard to symptom reporting"<sup>162</sup>.

158 Ibid.

159 hunt (88%, n=41), trap (69%, n=13), fish (53%, n=43), gather berry or berry plants (58%, n=36), gather plants, mushroom and medicines (67%, n=21), gather tree and tree products (52%, n=27) and gather rock and minerals (40%, n=5)

160 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, 17-1

161 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 19-48

162 Porsius et al. 2015 within Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement

This change in perception was represented in the Survey by the development of Diminished Preference Zones (see Appendix A for details). Survey Participants were asked which distance they would avoid development and land types. Based on the data collected, Diminished Preference Zones were compiled for the LAA and RAA where Survey Participants may choose to avoid due to perceived environmental, aesthetic or safety concerns<sup>163</sup>. See Section 5.5.2 for details on how Diminished Preference Zones may affect the exercise of Metis rights.



Existing Right-of-Way

#### **4.4.2 Changes to Access**

##### **4.4.2.1 Increased Access for Metis**

89% (n=42) responded to the question

***'Do you believe the Project will change the access to harvesting areas'.***

Of those Participants:

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163 Sisson Project Comprehensive Study Report, Canadian Environmental Assessment Agency, 2016, p. 75

- 100% (n=5) believed it would change for rock/mineral gathering areas
- 95% (n=21) believed it would change for plants/mushrooms/medicine gathering areas
- 87% (n=15) believed it would change for trapping
- 84% (n=31) believed it would change for berry/berry plant gathering areas
- 79% (n=38) believed access for hunting would change
- 79% (n=29) believed it would change for tree/tree product gathering areas
- 36% (n=28) believed it would change for fishing

The EIS confirmed an increase in accessibility via the transmission corridor and more intensive public use would result. It was noted that removal of certain harvestable resources along the line would increase the pressure on harvesting nearby<sup>164</sup>. It was also noted that Participants may instead access areas located adjacent to the Project, instead of directly on the PDA<sup>165</sup>. This lack of access to the PDA was highlighted by Participant M338 who stated that “you want to harvest but you don’t have access to it”.

[the government] “...gives Hydro the right to say you cannot go in those areas at certain times. Long story short, they’re the boss.”

— M338

It was stated in the EIS that there would be no restrictions placed on access for Metis use, with the exception of active construction<sup>166</sup>. However, Participants felt that this would not be the case as Metis citizens would be excluded any time there were Manitoba Hydro workers present. Participant M338 explained that by approving the Project, the government “...gives Hydro the right to say you cannot go in those areas at certain times. Long story short, they’re the boss. They say, like, you have to get

out of here. Like, say if you are a trapper for instance – it’s not bad for a hunter because a hunter can ... go in another area – but a trapper, if he’s trapping in that area, they say you have to go today and come back tomorrow; you can’t pull your traps out and stuff like that. You can’t. It’s not that easy”.

#### 4.4.2.2 Increased Access for Non-Metis Users

Currently, 61% (n=41) of Participants indicated that the experience of traffic in the existing ROW (from Dorsey to Anola) was ‘high’. This was contrasted with the new Project ROW (from Anola to the U.S.A border), which 46% of Participants noted typically had moderate traffic (n=39).

Similar to access, the influx of traffic was complex. It was noted that external traffic would increase as a secondary effect to access and this increase was not viewed favorably by Participants. Participant M329 noted that “[t]here is a lot of pressure here and basically anything that has close road access gets hunted pretty hard by lots of different people”.

Many felt that the increase of traffic, particularly ATV and snow mobile traffic would

164 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 11-63

p. 11-65

165 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement,

166 Ibid.

*"[s]ometimes you get people that go in there with off-road vehicles, like big trucks ... and that just ruins it."*

— M345

result in increased competition for Metis citizens. The majority of Participants indicated that the Project would increase access to the area. This was looked at as a positive for external users but a negative for Metis citizens. Participant M345 indicated that "[s]ometimes you get people that go in there with off-road vehicles, like big trucks ... and that just ruins it." Overall, Participants felt that "more access means more use" (M303) by non-Metis harvesters. Participant M345 noted that "it's gonna [sic] bring more snowmobile trails, more ATV and that's just going to be, like, where you have all this prestige land, you know? Its gonna [sic] create all that much more traffic." Participant

M345 further stated that when there are power or transmission lines "...you get more traffic ... then the snowmobiles start ... there's the, like, snowmobile association and then they'll have groomers and they're gonna [sic] go down the power lines ... then there's more traffic. So then, you know, the secluded areas, to me, are not as secluded. So that's why I try to hunt away from the powerlines..."

Participants indicated that they would encounter more than 10 people (35%, n=29) people while harvesting in the vicinity of the existing Project ROW and that they would typically encounter 2 – 4 people (17%, n=35) people in the vicinity of the new Project ROW.

This indicates that the construction and operation of a transmission line may increase the external traffic which Metis Participants may encounter. This was emphasized by Participant M303 who stated that "People will gain access. There'll be more people travelling that area. If I saw what happened in the Whiteshell [area] with the Nutimik [Pointe de Bois] line, there's more people [that] drive up there with all-terrain vehicles that never hunted there before." Participant M329 indicated that "...there's so much pressure locally near anything with roads for hunting; when you have the transmission lines it makes more access and more potential for conflict".

Further, access to 'Lands Available for Metis Use' could be negatively affected by Metis citizens avoiding specific areas to reduce their interaction with Project staff. This anxiety or fear associated with encountering Project staff could lead citizens to avoid certain areas along the transmission line route and create a disconnection with that geographic area, in turn, creating disconnect with the 'Lands Available for Metis Use' in that particular area. Participant M319 explained that "...if they are working in the area, you can't be so many metres from them. Well, how do you know they are going to be there until you get there?" Avoidance will potentially occur through construction and persist into Project operation. It also has the potential to persist for multiple generations of Metis citizens as the cultural disconnect to specific locales may be exacerbated over time.

## 4.5 Issues and Concerns

During the Survey, Participants expressed a variety of concerns related to the Project specific to 'Lands Available for Metis Use', Participants indicated they were concerned with there being less Unoccupied Crown Land accessible for use, the potential requirement for permission from Manitoba Hydro and increased access to the Project area.

### 4.5.1 Accessible Crown Land

Many Participants expressed concern over the reduction in accessible Unoccupied

Crown Land for use in exercising their Metis rights and interests. Participant M309 indicated that they were concerned with “[t]he less accessible ... Crown land ... because those are where most of the open fields come from ... losing those access points makes it more challenging to walk through the bush and find a clearing. More new spots, you know? Getting used to new spots; retraining your brain for maps and stuff, that’s concerning.” They felt that the Project would exist in perpetuity. Participant M331 stated that they “...worked up in the Renee area ... one time and there was a decommissioned hydro line and then that [the Project] will probably be there forever, eh?” The Study Team notes that there is no plans for decommissioning of the Project.

Participants also expressed frustration over the Manitoba Hydro only providing compensation to the farmers. Participant M326 indicated that “[a]lready they [farmers] own half the land here; so, they only have to buy so many meters from the farmers and when they are buying it, it doesn’t really affect the farmers. Most of the farmers around here should be happy...”

*“[m]y biggest bug about all this is the amount of good quality forested and agricultural land that’s going to be wasted.”*

— M306

Overall, the loss of usable land due to the Project was a consistent concern. Participant M306 noted that “[m]y biggest bug about all this is the amount of good quality forested and agricultural land that’s going to be wasted.”

#### 4.5.2 Permission

Participants were concerned with the intermittent nature of operational maintenance and felt that, without notifications for MMF citizens, they would avoid the area to ensure they would not be going to the area only to be turned away by Manitoba Hydro

staff. Participant M321 indicated that “I’m going to drive all the way over here on a ‘what if?’ I get there and find out I can’t?” Participant 319 stated that “[i]t was explained to us that if they are working in the area, you can’t be so many meters from them. Well, how do you know they’re gonna [sic] be there until you get there?”

This was expanded on by Participant M338 who indicated that Project approval “...give Hydro the right to say you cannot go in those areas at certain times...” and noted that this would negatively affect harvesting, particularly trapping.

That concern was described by Participant M316 who was worried that they would have to ask for permission from Hydro to go harvesting on the line. While this was explained to not be the case, the Participants pointed back to the maintenance and unknown schedule of that activity as a major concern.

#### 4.5.3 Access

Access was noted as a consistent issue by Participants, not in terms of restrictions but in terms of the Project opening up the area to increased non-Metis access. Participants M314 indicated that “...the transmission line offers an additional access to wildlife areas where, traditionally, they haven’t been hunted in – or at least as intensely.” Some participants felt this increase in access would lead to reductions in habitat available for species. Participant M306 stated that “[i]t allows access into areas that shouldn’t be; so you’re going to lose habitat.”





Deer Track

This concern was explained by Participant M310 who stated that “[i]t’s opening up the area to more easily accessible hunting ... what will be happening is that a lot of the items, I, myself and other people do gather, are going to get destroyed; stomped on, driven over, shot, polluted, burnt. It just opens up the area and that will take species of both plants and animals and reduce them quite a bit.” Participant M329 indicated that “[t]he only concern that I have with transmission lines is that it give access to remote areas.”

The conflict between non-Metis harvesters and Metis citizens was explored by Participant M329, who stated “[t]hat’s the problem with the area is people come from other areas and don’t respect property signs, signage and stuff.” They felt that

their respectful behavior would be undermined by disrespectful outsiders and that their own property rights may be compromised. This was elaborated on by Participant M329 who indicated that “...with the transmission lines is people think that they have full access and what they don’t realize is that some of these transmission lines cross private land and what they’re doing is they are actually trespassing ... there’s been conflict [due to this] in the past...” Participant M322 states that the ROW would add “[a]ccessibility for anyone who wants to use the area.”

This potential conflict was highlighted by past experience with non-Metis harvesters. Participant M304 described “...the transmission line north ... they [Manitoba Government] introduced buffalo in there. There were 11 buffalo and somebody stopped on the side of the road, this is in a transmission line, and shot every damn one of them and left them there.” Participant M325 noted that if the transmission line

*“...the transmission line north ... they [Manitoba Government] introduced buffalo in there. There were 11 buffalo and somebody stopped on the side of the road, this is in a transmission line, and shot every damn one of them and left them there.”*

*— M304*

was close to their property and "...guys go in there with rifles, high powered rifles and they're bordering on your ground, your property, mishaps could happen. I mean, where hunters might think because a power line generally is ... you can blast [your gun]..."

## 4.6 Description of Mitigation

There was no mitigation proposed specific to legal restrictions, physical attributes, perception or access specifically related to the MSI of 'Land Available for Metis Use' outlined in the EIS. However, there was some related mitigation proposed which could potentially apply to the selected MSIs, with further discussion.

### 4.6.1 Legal Restriction

It was noted in the EIS that Project routing resulted in a Final Preferred Route that occurs "...primarily on developed lands, with less than 25%<sup>167</sup> of the PDA occurring on Crown lands"<sup>168</sup>; however, there were no specific mitigations proposed related to the reduction of Unoccupied Crown Land for use in the Project, specifically beyond this statement.

### 4.6.2 Physical Attributes

It was noted that Manitoba Hydro will work with local residents to reduce perceived risks related to EMF exposure and **other environmental exposures such as industrial odors, noise and air pollution**<sup>169</sup>. However, there were no specific mitigations related to MMF's avoidance behaviors based on Project activities.

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<sup>167</sup> For the purposes of this Report, the calculated value of Crown Land in the PDA is 23.5%

<sup>168</sup> Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 11-47 p. 19-63

<sup>169</sup> Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement,



Tamarack Cone

#### **4.6.3 Perception of Land**

It was noted that Manitoba Hydro will work with local residents to reduce perceived risks related to EMF exposure and other environmental exposures such as industrial odors, noise and air pollution<sup>170</sup>.

#### **4.6.4 Access (Increased Access for Metis and Increased Access for Non-Metis)**

It was identified in the EIS that the PDA is located in an area where fewer access routes "...will need to be constructed due to the availability of existing infrastructure." And existing access roads, trails or cut lines will be used, where possible<sup>171</sup>; however, there were no specific mitigations proposed related to increased Metis and non-Metis access for the Project, specifically.

### **4.7 Characterization of Residual Effects**

There is potential for 'Lands Available for Metis Use' to be affected by the construction and operation of the Project through changes in the legal restrictions the land is subject to, changes in the physical attributes of the available land, a change in perception related to the land, and changes in access for Metis and Non-Metis land users. While many of the direct effects of the Project will be site specific and localized, the lasting impression of these effects may be felt by the Manitoba Metis Community.

The direction or trend of the residual effects for 'Lands Available for Metis Use' is considered adverse. If Unoccupied Crown Land is subject to increased legal restriction, Metis rights cannot be exercised on it; if the land is available, but perceived as not,

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170 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 11-52

171 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 11-47

Metis rights will not be exercised on it and if access changes lead to an increase in non-Metis harvesters, Metis may not prefer to exercise their rights in that locale. All these factors contribute to the direction of the effect being adverse.

The Land Available for Metis Use will change in the PDA with a total removal of 293.28 hectares of Unoccupied Crown Land, effectively placing increased legal restriction on 98%. This increase of legal restriction is high in magnitude within the PDA, low in magnitude within the LAA and low in magnitude within the RAA. Additionally, the physical attributes of the land will also be reduced by the implementation of the Project. This will occur in terms of odour from construction vehicles, disruption in visual quality and an increase in noise during construction and operational maintenance.

The frequency of the effect will be continuous as the increased legal restriction, the change in physical attributes, the perception of the land and access changes to the land will occur continuously throughout the life of the Project on the PDA. The frequency is deemed 'Multiple Irregular Events' for the LAA and RAA due to ongoing maintenance activities; including periodic herbicide application<sup>172</sup> and as there are no plans for decommissioning. This also results in a duration criteria of permanent.

The effect is also considered to be irreversible as the act of constructing and operating the Project results in the effects. Without removal of the Project, the effects cannot be reversed.

Table 4-7-1: Characterization of Residual Effects

Project Phase	Mitigation Measure	Residual Effects Characterization						
		Direction	Magnitude	Geographic Extent	Frequency <sup>173</sup>	Duration	Reversibility	Ecological Context
<b>Changes in Amount of Land Available for Metis UseMetis Use'</b>								
<b>Construction</b>								
PDA	Pending	Adverse	High	PDA	C	Perm.	Irrevers	Dist.
LAA	Pending	Adverse	Low	LAA	MIE	Perm.	Irrevers	Dist.
RAA	Pending	Adverse	Low	RAA	MIE	Perm.	Irrevers	Dist.
<b>Operations</b>								
PDA	Pending	Adverse	High	PDA	C	Perm.	Irrevers	Dist.

172 Manitoba Hydro 2015 Manitoba-Minnesota Transmission Project Environmental Impact Statement, p. 11-44

173 SEE = Single Event Effect, MIE = Multiple Irregular Event, MRE = Multiple Regular Event, C = Continuous

Project Phase	Mitigation Measure	Residual Effects Characterization						
		Direction	Magnitude	Geographic Extent	Frequency <sup>180</sup>	Duration	Reversibility	Ecological Context
<b>Changes in Amount of Land Available for Metis Use<sup>180</sup></b>								
<b>Construction</b>								
LAA	Pending	Adverse	Low	LAA	MIE	Perm.	Irrevers	Dist.
RAA	Pending	Adverse	Low	RAA	MIE	Perm.	Irrevers	Dist.
<b>Changes in Access</b>								
<b>Construction</b>								
PDA	Pending	Adverse	High	PDA	C	Perm.	Irrevers	Dist.
LAA	Pending	Adverse	Low	LAA	MIE	Perm.	Irrevers	Dist.
RAA	Pending	Adverse	Low	RAA	MIE	Perm.	Irrevers	Dist.
<b>Operations</b>								
PDA	Pending	Adverse	High	PDA	C	Perm.	Irrevers	Dist.
LAA	Pending	Adverse	Low	LAA	MIE	Perm.	Irrevers	Dist.
RAA	Pending	Adverse	Low	RAA	MIE	Perm.	Irrevers	Dist.

### 4.8 Conclusion

The assessment of 'Lands Available for Metis Use' considered changes in the land available for Metis use as well as changes in access. The effects identified through this assessment can be used by the MMF and Manitoba Hydro to inform their mitigation discussions and ensure sufficient measures are developed to ensure residual effects do not occur.

Without specific and detailed mitigation measures applied to these effects, the remaining residual effects will be significant. The results of the Survey identify that the Participants consistently report that significant effects are probable.



Guyed Lattice Steel Structure (Photo: Olivia Mancuso)