

Limitations and Terms of Use

This report is submitted to the Clean Environment Commission by the Manitoba Metis Federation as part of its participation in the public outreach for the Regional Cumulative Effects Assessment. The objectives of the report are to (1) assess whether the Regional Cumulative Effects Assessment documentation prepared by Manitoba Hydro accurately and adequately addresses the cumulative effects of more than five decades of hydroelectric development on the Aboriginal rights, claims, and interests of the Manitoba Metis Community and its citizens; and (2) provide recommendations for future action. The information provided in this report does not represent a complete inventory of the effects of hydroelectric development on the Manitoba Metis Community. Its purpose is to illustrate the deficiencies of the RCEA reports and as provide evidence of the need for a more robust and comprehensive assessment of the cumulative effects of hydroelectric development on the Manitoba Metis Community.

This report is the exclusive property of Manitoba Metis Federation. Nothing in this report should be construed so as to define, limit, or otherwise constrain the constitutional, legislative, or Aboriginal rights, claims, or interests of the Manitoba Metis Community.



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Acronyms and Abbreviations

AEA Adverse Effects Agreement

CEA Cumulative Effects Assessment

CEC Clean Environment Commission

CIA Comprehensive Implementation Agreement

CRD Churchill River Diversion

EIA Environmental Impact Assessment

HBC Hudson's Bay Company

LWCNRSB Lake Winnipeg, Churchill and Nelson Rivers Study Board

LWR Lake Winnipeg Regulation

MMF Manitoba Metis Federation

NAC Northern Affairs Community

NFA Northern Flood Agreement

RCEA Regional Cumulative Effects Assessment

RMA Resource Management Area

ROI Region of Interest

SCC Supreme Court of Canada

TLE Treaty Land Entitlement

ToR Terms of Reference

TLU Traditional Land Use

TTP Kwaysh-kin-na-minhk la paazh ("Turning the Page") Agreement



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1.0 Introduction

In its 2013 report on the hearing for the Bipole III transmission project, the Clean Environment Commission (CEC) observed how the hearing process made clear that past hydroelectric development in northern Manitoba had profoundly impacted the communities of the region. In response to the concerns voiced regarding the past and cumulative effects of hydroelectric development, the CEC recommended that that Manitoba Hydro and the Government of Manitoba carry out a Regional Cumulative Effects Assessment (RCEA) prior to the licencing of any new projects in the Nelson River sub-watershed. The CEC expressed that an RCEA would support a greater understanding of the cumulative and incremental effects of hydroelectric projects and could lead to the application of current mitigation measures to past projects, alter the structure and operations of existing projects, and offset the impacts from new projects:

In order to fully understand the impact of proposed future projects, it will be necessary to understand the impact of past and current projects in addition to new impacts. A regional cumulative effects assessment is needed for all Manitoba Hydro projects and associated infrastructure in the Nelson River sub-watershed. The result of such an assessment would be a greater understanding of the impacts of the individual projects, as well as the cumulative impacts of all projects together. Understanding these impacts may lead to the use of current mitigation measures being applied to past impacts, resulting in some remediation. Greater understanding may also lead to alterations in the structure or operation of existing projects, and may offset impacts from new projects.¹

In May of 2014, the Government of Manitoba and Manitoba Hydro agreed to the Terms of Reference (ToR), which set out the parameters and responsibilities for an RCEA of hydroelectric development in the Nelson, Burntwood, and Churchill River systems. The primary hydroelectric projects considered in the review were:

¹ Clean Environment Commission, Report on Public Hearing: Bipole III Transmission Project, 2013.



- Generation and Water Regulation: Kelsey, Kettle, Churchill River Diversion (CRD), Lake Winnipeg Regulation (LWR), Jenpeg, Long Spruce, Limestone, Manasan Falls, Wuskwatim, the Cross Lake and Churchill Weirs
- Transmission: Kelsey-Thompson, Kelsey-Thompson Upgrade, Kelsey Radisson I and II, Radisson-Limestone, Bipole I and II, Long Spruce-Radisson, Long Spruce-Henday, Bipole II Back-Up, Wuskwatim, Thompson-Ponton, Herblet Lake-Ponton, Ponton-Grand Rapids, Kelsey-Oxford House, Kelsey-Split Lake, Thompson-Laurie River, Radisson-Churchill, Herblet Lake-Laurie River, and Herblet Lake-Laurie River Line Tap
- Converter Stations: Radisson and Henday
- Under Development/Regulatory Review: Bipole III, Keewatinoow Converter Station, Keeyask Infrastructure Project, Keeyask Generation Project, and Keeyask Transmission Project

In May of 2014, Manitoba Hydro submitted its Phase I Report, which presented the scope and methodology for the proposed study, as well as summarizing the available information. Manitoba Hydro submitted its Phase II Report in December of 2015. This report described the cumulative effects of hydroelectric development in the Region of Interest (ROI), existing mitigation and compensation measures, and the current state of the environment. Manitoba subsequently released an Integrated Summary Report that synthesized the findings of the Phase II report. In March of 2017, the Minister of Sustainable Development amended the ToR to focus the public outreach component and produce a report on the findings of the public outreach program.² At the conclusion of the

² Minister of Sustainable Development, Terms of Reference – Clean Environment Commission Regional Cumulative Effects Assessment of the Nelson, Burntwood and Churchill Rivers System (the project), February 15, 2017.



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public outreach, the Government of Manitoba and Manitoba Hydro will outline next steps in a comprehensive Next Steps document.

1.1 Rationale and Objectives

In March of 2017, the Minister of Sustainable Development set the ToR for the public outreach component of the RCEA. In the amended ToR, the Minister instructed the CEC to invite the Manitoba Metis Federation (MMF) "to provide written input on the regional cumulative effects assessment and its accuracy in presenting past effects and community perspectives and concerns, and to provide any additional information relevant to the assessment."³

As part of this process, the MMF received participant funding from the CEC to carry out three tasks: (1) print and review the RCEA documentation; (2) prepare a written submission that addresses whether the cumulative effects of more than 50 years of hydro development is accurately reflected in the RCEA documentation as it relates to the Metis; and (3) provide suggestions for future action.⁴ The MMF contracted with Willow Springs Strategic Solutions to assist in the preparation of its written submission in response to the RCEA documents produced by Manitoba Hydro.

In the preparation of this written submission, the following documents have been reviewed:

Manitoba Conservation and Water Stewardship and Manitoba Hydro, Terms
of Reference – Joint Approach to Undertaking a Regional Cumulative
Effects Assessment for Hydro Development as per Section 13.2 of the Clean
Environment Commission (CEC) Bipole III Report, May 27, 2014;

⁴ Clean Environment Commission, Re: Participant Funding – Regional Cumulative Effects Assessment, April 25, 2017.



³ Minister of Sustainable Development, Terms of Reference – Clean Environment Commission Regional Cumulative Effects Assessment of the Nelson, Burntwood and Churchill Rivers System (the project), February 15, 2017.

- Minister of Sustainable Development, Terms of Reference Clean Environment Commission Regional Cumulative Effects Assessment of the Nelson, Burntwood and Churchill Rivers System (the project), March 2, 2017;
- Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase I Report, Parts I-III, 2014;
- Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, Parts I-III, 2015;
- Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Integrated Summary Report, 2017.

This report will address the topics identified by the CEC in its review directive for the RCEA public outreach and in its letter to the MMF re: participant funding: (1) the accuracy of the RCEA in presenting past and current effects and community perspectives and concerns; and (2) the identification of what is missing, what needs to be changed, and what information should be added; and (3) suggestions for future action.⁵

1.2 Structure of the Review

The review of the RCEA documentation submitted by Manitoba Hydro is organized into three main sections. The first section examines methodological deficiencies and information gaps in the information submitted by Manitoba Hydro to the CEC. The

⁵ Manitoba Clean Environment Commission, Review Directive for the Public Outreach on the Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems, March 2017, p. 4.



review identifies four major methodological deficiencies in the reports that result in significant inadequacies and gaps in the information provided on the cumulative impacts of hydroelectric development on the Metis. These four methodological deficiencies are:

- Cumulative Effects Assessment (CEA) Methodology
- Rights and Representation of the Manitoba Metis Community
- The Assumption of Adequate Existing Information
- Lack of Metis-Specific Sources

These methodological deficiencies in turn manifest themselves in a series of inadequacies and gaps in the information provided by Manitoba Hydro, which are organized into four main categories: (1) Historical Metis Presence in the ROI; and (2) Specific Impacts to the Metis Community: (3) Mitigation Compensation; Manitoba and Interconnectedness of Effects. The second and third sections summarize these methodological deficiencies and information gaps and make a final determination on the adequacy of the RCEA as an assessment of the cumulative effects of hydroelectric development on the Manitoba Metis Community. The fourth and final section outlines a series of recommendations for future action in support of reconciliation between the MMF and the Manitoba Metis Community, Manitoba Hydro, and the Government of Manitoba.

1.3 Manitoba Metis Community Rights and Interests

The MMF is the democratically elected government of the Metis Nation's Manitoba Metis Community (MMC) and is duly authorized by the citizens of the Manitoba Metis Community for the purposes of dealing with Manitoba Metis Community rights, claims, and interests, including conducting consultations and negotiating accommodations. The MMF represents a rights-bearing Metis Community consistent with *R. v. Powley*, [2003] 2



S.C.R 207. In addition, the Manitoba Provincial Court's decision in *R. v. Goodon* [2009] M.J. No 3 (M.P.C.) recognized the Manitoba Metis Community's right to hunt, as well as the existence of a vibrant, regional rights-bearing Metis Community that is represented by the MMF, which encompasses southwestern Manitoba and extends to central and northern Manitoba, the United States, and Saskatchewan. As the Supreme Court of Canada articulated in *Powley*, the Metis right to hunt is "recognized as part of the special aboriginal relationship to the land" (para. 50).

The 2012 *Points of Agreement on Metis Harvesting in Manitoba*, an agreement between the MMF and the Province of Manitoba, was signed at the MMF's 44th Annual General Assembly and commits to the "recognition of Metis harvesting (including fishing) rights in mutually agreed [upon] regions of the province and relies on the MMF's Metis Laws of the [Harvest] as the basis for the development of new provincial regulations governing Metis harvesting" (Manitoba Metis Federation 2012).

In 2013, the Supreme Court of Canada rule in *Manitoba Metis Federation Inc. v. Canada* 2013 SCC 14 "[t]hat the federal Crown failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* [which promised 1.4 million acres of land to Metis children] in accordance with the honour of the Crown." This victory was the culmination of a long legal battle led by the MMF and an important step in the advancement of the MMF land claim in Manitoba.

On April 14, 2016, the Supreme Court of Canada ruled in the *Daniels v. Canada* case that the Metis are recognized as "Indians" under Section 91(24) of the Constitution Act of 1867. The Metis are now included as one of the Indigenous groups recognized as "Indians" under the Constitution Act of 1867. As a result of the ruling, there remains no doubt that the federal government has jurisdiction over Metis issues and that "it is the federal government to whom [Metis] can turn" (para. 50). As a result, the federal government has a duty to negotiate with Metis communities when their Aboriginal rights are engaged (para. 56).

• On November 15, 2016, Canada and the MMF executed a Framework Agreement that establishes a negotiation process the purposes of which are



to: jointly develop a renewed nation-to-nation, government-to-government relationship between the Crown and the Manitoba Metis Community that advances reconciliation between the Parties consistent with the purpose of section 35 of the *Constitution Act*, 1982;

• Arrive at a shared solution that advances reconciliation between the Parties consistent with the purpose of section 35 of the *Constitution Act, 1982* and the Supreme Court of Canada's decision in *Manitoba Metis Federation Inc.* v. Canada (AG).

This was an historic step for the Manitoba Metis Community and a milestone in its relationship with Canada.

The Metis Laws of the Harvest combined with decisions such as the *Powley* case, the *Goodon* case, the 2012 *Points of Agreement on Metis Harvesting in Manitoba*, the *Manitoba Metis Federation* case, the *Daniels* case, and the Canada-MMF Framework Agreement all work together to ensure that the Manitoba Metis Community's rights are upheld, enabling the Metis to maintain an important aspect of their cultural identity and connection to the land while ensuring the natural environment is protected and species are conserved.

The MMF adopted Resolution 8 in order to set out a working framework for engagement, consultation and accommodation to be followed by federal and provincial governments and industry when making decisions and developing plans and projects that may impact the Manitoba Metis Community. Under Resolution 8, direction has been provided by the Manitoba Metis Community for the Provincial Home Office of the MMF to take the lead and be the main contact on all consultations affecting the community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Metis.

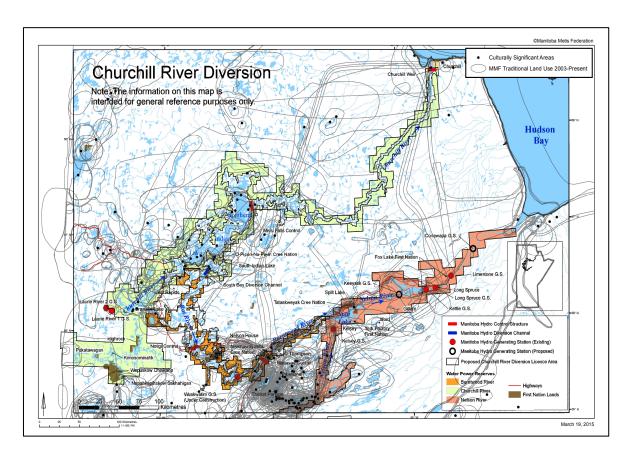
The MMF is made up of seven Regions including the Southeast Region, the Winnipeg Region, the Southwest Region, the Interlake Region, the Northwest Region, the Pas Region, and the Thompson Region. Each Region is comprised of Locals, which are local



governments that must have at least nine members to remain active. The ROI used for the RCEA overlaps primarily with the MMF's Thompson Region and with western portions of the MMF's The Pas Region. The Locals within the RCEA ROI are:

 Churchill, Cross Lake, Leaf Rapids, Gillam, Nelson House, Norway House, Pikwitonei, South Indian Lake, Snow Lake, Thicket Portage, Thompson, and Wabowden.

The following figure presents Metis Traditional Land Use (TLU) in the area of the CRD project. This map is not a complete representation of Manitoba Metis TLU in the RCEA ROI. Rather, its purpose is to establish that important parts of the RCEA ROI have and continue to be utilized by Manitoba Metis harvesters for TLU purposes and for the exercise of their constitutionally protected Aboriginal rights.



Based on the constitutionally protected Aboriginal rights of the Manitoba Metis Community, this report has considered the following in the defence of the rights, claims,



MMF Review of the RCEA of Hydroelectric Development in Manitoba

and interests of the Manitoba Metis Community:

- The methodology utilized for the RCEA, which the MMF considers inadequate to assess the cumulative effects of hydroelectric development on the rights, claims, and interests of the Manitoba Metis Community;
- The characterization and consideration of the Aboriginal rights of the Manitoba Metis Community and the MMF as the sole representative of these Aboriginal rights, claims, and interests;
- The sufficiency of the informational sources utilized to assess the cumulative effects of hydroelectric development on the Aboriginal rights, claims, and interest of the Manitoba Metis Community;
- The adequacy the recognition of the historical presence of the Metis in northern Manitoba and of the specific impacts to the Metis from hydroelectric development;
- The adequacy of mitigation and compensation measures, in terms of their distribution and recognition of impacts to the Aboriginal rights of the Manitoba Metis Community;
- The indirect or cascading effects of the mitigation and compensation regime put in place from the 1970s, including on employment opportunities and livelihoods, TLU, family bonds, inter-community conflict, and Metis identity and identification.

2.0 Deficiency and Gap Analysis

Methodology is an oft-neglected component of impact assessment and mitigation. In practice, the term 'methodology' is often confused with 'methods', with the former



generally used and the latter generally meant. But the terms are not synonymous. Methodology means, literally, the theory and study of methods. 'Methodology' refers to the analysis of the assumptions and logic that underpin and frame the methods employed in consultation, whereas 'methods' refers more narrowly to the techniques and tools of engagement, inquiry, and assessment. Methodology is central to impact assessment and mitigation because methodology strikes at the nexus of knowledge and power: what questions are asked, how valued components and concepts are selected and defined, and what knowledge and information is considered, can powerfully shape and effect the conclusions that impact assessments reach.⁶

This review identifies four major methodological flaws that undermine the adequacy and accuracy with which the RCEA documentation assesses the cumulative effects of hydroelectric development on the Manitoba Metis Community: (1) CEA Methodology; (2) Rights and Representation of the Manitoba Metis Community; (3) Assumption of Adequate Existing Information; and (4) Lack of Metis-Specific Sources.

2.1 CEA Methodology

The ToR established by the Government of Manitoba and Manitoba Hydro states that the RCEA Phase II Report should provide "[a]n assessment (to the extent possible) of the environmental and socio-economic effects to identified regional study components of previous Hydro development" and "a determination of the current quality of the environment in areas affected by Hydro development based on more current monitoring and assessment data and in consideration of available thresholds and benchmarks"; and that this impact assessment report should "use and incorporate, to the extent possible, attributes of contemporary environmental effects assessment and post-project assessment

⁶ See Howitt, Richard, 2011, "Theoretical Foundations," in Frank Vanclay and Ana Maria Esteves (eds.), *New Directions in Social Impact Assessment*, Northampton: Edward Elgar, pp. 78-95.



MMF Review of the RCEA of Hydroelectric Development in Manitoba methodology."⁷

With respect to the human environment (or "people" in the language of the report), the RCEA neither provides an assessment of environmental and socio-economic effects and a determination of the quality of the environment, nor uses and incorporates attributes of contemporary environmental effects assessments. Indeed, if one follows state-of-the-art regulatory guidance and scholarship on the assessment of cumulative effects, to label the sections on the human environment a 'cumulative effects assessment' is a clear misnomer. Instead of a cumulative effects assessment, the sections on the human environment provide little more than a description of past effects and mitigation and compensation measures, a narrow set of current socio-economic conditions, and a summary of community-specific information and concerns.

An immediate methodological deficiency can be found in the scoping process. Scoping generally consists of identifying and defining the key issues, valued components, and spatio-temporal boundaries. While seemingly innocuous, the decisions made in this phase shape what questions are asked, what information is considered relevant, how information gathered is interpreted, and what conclusions are reached. Put simply, Environmental Impact Assessment (EIA) findings are profoundly influenced by the work done at the scoping phase. A high level of effort and public participation at the scoping phase is particularly critical when the environment in question has been significantly disturbed by numerous projects over multiple decades, as is the case of the ROI. Unfortunately, the Government of Manitoba and Manitoba Hydro seem to have scoped the RCEA without the direct participation of the Manitoba Metis Federation. While one could respond that scoping was based on a review of the extensive literature on hydroelectric development in

⁷ Manitoba Conservation and Water Stewardship and Manitoba Hydro, Terms of Reference – Joint Approach to Undertaking a Regional Cumulative Effects Assessment for Hydro Development as per Section 13.2 of the Clean Environment Commission (CEC) Bipole III Report, May 27, 2014.

⁹ Mulvihill, Peter R. and Peter Jacobs, "Using Scoping as a Design Process," *Environmental Impact Assessment Review* 18 (1998), pp. 351-369.



⁸ See, for instance, Canadian Council of Ministers of the Environment, *Regional Strategic Environmental Assessment in Canada: Principles and Guidance*, Winnipeg: CCMOE, 2009; Canadian Environmental Assessment Agency, *Technical Guidance: Assessing Cumulative Environmental Effects Under the Canadian Environmental Assessment Act, 2012*, Ottawa: CEAA, 2017; Noble, Bram, "Strategic Approaches to Regional Cumulative Effects Assessment: A Case Study of the Great Sand Hills, Canada," *Impact Assessment and Project Appraisal* 26, no. 2 (2013): 78-90.

northern Manitoba and the experience of Manitoba Hydro, this assumes the existing literature and approaches are adequate. In the case of the Manitoba Metis Community, as will be demonstrated below, the existing information is grossly inadequate and that by scoping the RCEA on the basis of existing information and approaches, the Government of Manitoba and Manitoba Hydro condemned the review to repeat the errors of the past.

In addition to scoping deficiencies, the human environment sections of the RCEA lack clear indicators, benchmarks/thresholds, and significance determinations. Clear indicators are required to measure baseline conditions and track changes in the state of a valued component over time. Indicators can be quantitative or qualitative, but should be as consistent as possible. Beyond a handful of socio-economic indicators presented from census data from 2001 and 2011, the human environment sections provide few clear and well-defined indicators with which to measure effects and track change over time.

The use of benchmarks/thresholds in CEAs is necessary to determine the present state of a valued component in relation to acceptable or sustainable benchmark or threshold. The absence of benchmarks and thresholds in turn relates to the determination of significance. CEAs are commonly required to determine the magnitude and significance of past, present, and potential-future effects. Significance determinations are central to the CEA process because they help to determine the extent, degree, and meaning of impacts and the appropriate level of mitigation and compensation; benchmarks/thresholds and significance determinations in CEAs likewise help to provide context to future project-specific assessments.

In the absence of clear indicators, benchmarks/thresholds, and magnitude and significance determinations, it is difficult to understand how the RCEA reports submitted by Manitoba Hydro can be meaningfully considered 'cumulative effects assessments'. Rather, with the respect to the human environment, the RCEA is more a description or summary of past actions and effects than an assessment. As a result, the RCEA runs the risk of being a 'one-off' that does not feed into regional planning and future-project assessment processes, because it lacks so many of the fundamental characteristics of an impact assessment and



identifies few mechanisms to track and measure effects to the human environment over time. Left as such, the RCEA represents less "a resource for government and all Manitobans on the state of the environment", ¹⁰ a more an enormous missed opportunity. Unfortunately, this is the fate of too many regional cumulative effects assessments. ¹¹

2.2 Rights and Representation of the Manitoba Metis Community

The second methodological deficiency of the RCEA submitted by Manitoba Hydro is the position the report takes on the status of the Manitoba Metis Community as a rights-bearing Aboriginal community and the MMF as the sole representative of the Aboriginal rights, claims, and interests of the Manitoba Metis Community. While the RCEA reports recognize that the Metis in Manitoba hold section 35 Aboriginal rights under the Constitution Act, 1982, Manitoba Hydro does not clearly and consistently recognize the Manitoba Metis Community as a rights-bearing Aboriginal community and do not clearly and consistently recognize the MMF as the duly-authorized and sole representative of the Manitoba Metis Community. This mistake as to the nature and representation of the Manitoba Metis Community allows Manitoba Hydro to claim the Metis were adequately consulted and compensated and to downplay or ignore the impacts of hydroelectric development on the Aboriginal rights of the Manitoba Metis Community as a distinct, rights-bearing community.

The RCEA reports consistently treat the Metis in the ROI as individuals who reside throughout the region. For instance, the reports contain numerous statements such as "There are Metis people who reside in communities in the Region of Interest" or "[t]he historical studies that sometimes informed the negotiation of these settlement agreements,

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase I Report, 2014, p. 3-5.



Manitoba Conservation and Water Stewardship and Manitoba Hydro, Terms of Reference – Joint Approach to Undertaking a Regional Cumulative Effects Assessment for Hydro Development as per Section 13.2 of the Clean Environment Commission (CEC) Bipole III Report, May 27, 2014.

Noble, Bram, "Strategic Approaches to Regional Cumulative Effects Assessment: A Case Study of the Great Sand Hills, Canada," *Impact Assessment and Project Appraisal* 26, no. 2 (2013): 88.

including studies regarding the effects of hydroelectric development on resources use, focused on geographic communities and/or individual resources user groups (e.g., trappers association). Metis peoples resident in those communities and/or belonging to a specific resource use group were captured in those studies." Indeed, the reports repeatedly and explicitly omit the Manitoba Metis Community as an impacted community: "There are a range of communities in the RCEA Region of Interest, including eight First Nations, seven Northern Affairs Communities, four towns and one city."

These statements reflect a fundamental error and denial of the Manitoba Metis Community as a community by treating the Metis as individual resources users rather than as citizens of a rights-bearing Aboriginal community. The corollary of this treatment of the Metis in the ROI as individual residents and resource users is that consultation and agreements with Northern Affairs Communities (NACs) or resource-user associations are perceived adequate to assess and address the impacts of hydroelectric development to the Manitoba Metis Community, when in reality they are anything but. For example:

Manitoba Hydro entered into additional settlement agreements...with other communities who were impacted by Manitoba Hydro's operations. This included settlement agreements with affected community councils of Northern Affairs Communities, many of which have Metis populations. Individual Metis residents are included in these agreements.¹⁵

This position reflects a long-standing pattern of denial, despite efforts by Manitoba Hydro to engage more seriously with the MMF in recent years. For instance, in the recent hearings of the Clean Environment Commission (CEC) on the licencing for LWR, a lawyer for Manitoba Hydro intimated that the MMF – and by logical extension of Manitoba Metis Community – was represented at the negotiations of the NFA because the executive director of the Northern Flood Committee was a founder of the Manitoba Metis

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Integrated Summary Report, 2017, p. 41.



Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, 2015, p. 3.5.8-1.

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Integrated Summary Report, 2017, p. 2.

Federation.¹⁶ This line of reasoning is consistent with the position expressed by Manitoba Hydro in other instances, such as at the CEC hearings for the Keeyask Generating Station, where Manitoba Hydro sustained that public meetings in places "where Metis may or do reside" constitutes "work to identify potential effects on Metis."¹⁷ Similarly, in their submission to the CEC for LWR hearings, Manitoba Hydro contended that because Metis people resided in the NACs and participated in resource-user groups, impacts to the Metis were adequately mitigated and compensated by agreements with these organizations: "There are Metis people who live in communities in the Downstream Area. Adverse effects experienced by Metis residing in the LWR Downstream Area have been addressed through mitigation programs and works and the various community and resource user group settlement agreements."¹⁸

These positions – that impacts to the Metis should be assessed and compensated in terms of the Metis individual resource users who reside in the ROI and that consultation with NACs and resource-user groups are adequate as consultation with the Manitoba Metis Community – are inconsistent with the existence of the Manitoba Metis Community as the bearer of constitutionally-protected Aboriginal rights. The courts have been clear that Aboriginal rights are held collectively – by communities – not by individual members of those communities. Similarly, these positions are inconsistent with the repeatedly and consistently articulated position of the MMF and the Manitoba Metis Community, as demonstrated in the MMF Constitution and in the unanimously passed Resolution No. 8. Resolution No. 8 states that consultation with the Manitoba Metis Community must be organized through the MMF Home Office, which is the only legitimate and duly elected representative of the Aboriginal rights, claims, and interests of the Manitoba Metis Community.

¹⁶ Clean Environment Commission, *Lake Winnipeg Regulation Review Under the Water Power Act: Transcript Proceedings Volume 16*, April 14, 2015, pp. 2440-2441.

¹⁸ Manitoba Hydro, *Lake Winnipeg Regulation: A Document in Support of Manitoba Hydro's Request for a Final Licence Under the Manitoba Water Power Act*, July 2014, p. 35.



¹⁷ Keeyask Hydropower Limited Partnership, *Keeyask Generation Project Environmental Impact Statement – Responses to Request for Additional Information from TAC & Public Reviewers, Round 2*, Appendix A1, p. 1-2. Available online: http://keeyask.com/wp-content/uploads/2013/05/Responses-to-Request-for-Additional-Information-from-TAC-Public-Reviewers-Round-2-secured.pdf.

2.3 Assumption of Adequate Existing Information

The ToR agreed to by the Government of Manitoba and Manitoba Hydro rests on the false assumption that there exists an adequate amount of publicly available and existing information to carry out a RCEA consistent with the recommendation from the Bipole III final report produced by the CEC.¹⁹ It is the position of the MMF that this is a grave error and a fundamental methodological flaw that undermines the accuracy, adequacy, and usefulness of the RCEA reports. As discussed above, the absence of key components of a CEA, such as clear indicators and benchmarks for impacts to the human environment strongly suggests that there was *not* adequate and publicly-available information to carry out a proper assessment of the cumulative effects of hydroelectric development on the human environment in northern Manitoba.

More importantly from the perspective of the MMF is that there is clearly not adequate information on impacts *to the Metis* in the RCEA reports, particularly for projects that predate the 2000s. As will be discussed below, there is an enormous disparity between the sources utilized in the assessment of impacts that were produced by or about First Nations compared to those produced by or about the Metis. What this assumption does, then, is simply reproduce the historical invisibility of the Metis in the history and assessment of hydroelectric impacts, and in relations with Manitoba Hydro.

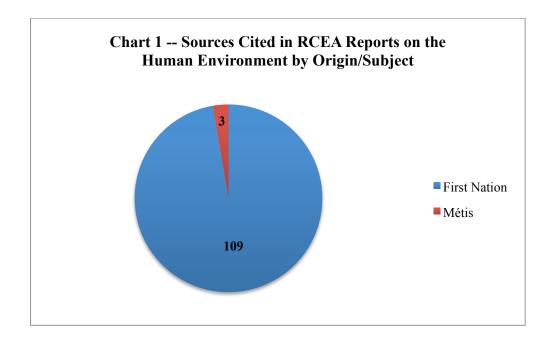
2.4 Lack of Metis-Specific Sources

Due to the reliance upon existing and publicly available information, the assessment of impacts to the human environment lacks Metis-specific sources and information. In the review of the reports submitted by Manitoba Hydro, the author tabulated the sources cited in the bibliographies contained in the Integrated Summary Report, sections I-III of the Phase I Report, and section III of the Phase II Report. The tabulated sources were divided

¹⁹ Manitoba Conservation and Water Stewardship and Manitoba Hydro, Terms of Reference – Joint Approach to Undertaking a Regional Cumulative Effects Assessment for Hydro Development as per Section 13.2 of the Clean Environment Commission (CEC) Bipole III Report, May 27, 2014.



into two categories: (1) those that were either produced by First Nations or were exclusively about First Nations; and (2) those that were either produced by or on behalf of Metis organizations or were exclusively about the Metis. Chart 1 presents the findings:



As one can see in Chart 1, the discrepancy between First Nation and Metis sources is striking. In the sections identified above, 109 referenced sources were produced by First Nations and/or were exclusively about First Nations while only 3 were produced by or on behalf of Metis organizations and/or were exclusively about the Metis. Most of the Metisspecific sources are found in the MMF community summary. Their inclusion in the report, however, is undermined by the proviso that the section consists of the "MMF's perspectives, experiences and concerns" and that "This summary does not document the perspective of other parties including Manitoba Hydro, Manitoba or Canada, in some cases, the perspectives of these other parties differ from those expressed by the MMF."²⁰ This absence of Metis-specific sources in the assessment of impacts to the human environment and the qualifications inserted into the MMF community summary give the strong impression that Manitoba Hydro does not accept the findings of these MMF-commissioned studies as valid.

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, 2015, p. 3.5.8-13.

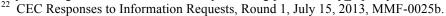


The absence of Metis-specific sources in the RCEA reports is part of and indeed reflects a wider historical pattern. For instance, the summary report of the Lake Winnipeg, Churchill and Nelson Rivers Study Board (LWCNRSB), which was commissioned to undertake consultation on and an environmental review of the two projects [LWR and CRD], including potential impacts on northern Aboriginal communities, makes no mention of the Metis, referring instead to the 'Native' population.²¹ Similarly, in response to criticism from the MMF that its impact assessment for the Keeyask generation project failed to provide Metis-specific baseline data and impacts, Manitoba Hydro asserted that impacts to the Metis population were captured in the assessment of impacts for the City of Thompson.²²

Claims that impacts to the Manitoba Metis Community are adequately captured by impacts to 'Aboriginal' or 'Native' peoples or to wider communities are flawed for several reasons. First, to claim that impacts to the Manitoba Metis Community are adequately addressed in studies that discussed 'Aboriginal' or 'Native' populations deny the existence of the Metis as a distinctive Indigenous peoples and smacks of a bigoted era in which Indigenous peoples were defined not by their characteristics and qualities but rather by the absence of characteristics and qualities associated with European settlers. Second, the claim that impacts to the Manitoba Metis Community can be adequately assessed as part of larger entities to which citizens allegedly belong or in which they reside denies the communal nature of Metis rights and commits the fallacy of division: that what is true for the whole must be true for each of its parts. To provide a simple example of the limits of this kind of reasoning: a ten per cent increase in the price of food may not impose a significant burden upon the median resident of a city, and yet it would represent a significant burden for those individuals and families whose access to food is limited.

It is important to be clear, given the past positions taken by Manitoba Hydro, as to the appropriate meaning of a 'community-specific' or 'Metis-specific' assessment. During the CEC hearing for the Keeyask generation project, the Keeyask Hydro Power Limited

²¹ Lake Winnipeg, Churchill and Nelson Rivers Study Board, *Summary Report*, 1975. Available at: http://www.gov.mb.ca/waterstewardship/licensing/pdf/summary_report.pdf.





Partnership, of which Manitoba Hydro is a member, repeatedly questioned the existence of Metis-specific project impacts: 'At this time, based on available sources of information, the Partnership is not aware of any...potential Project effect that is specific to the Metis.'23 The term 'Metis-specific' is not synonymous with 'Metis-exclusive'. An assessment of 'Metis-specific' impacts would examine how hydroelectric development and projects have specifically affected the Metis. Some impacts may be similar to those experienced by other populations such as First Nations; other impacts may be exclusive to the Metis. All impacts, however, require a consideration of the specific ways in which a project may impact the Manitoba Metis Community – as a distinct community, with collectively held rights and unique claims and interests. Indeed, for Keeyask each First-Nation member of the Partnership was tasked with carrying out its own community-specific impact assessment and then subsequently signed community-specific Adverse Effects Agreements (AEA), not because each impact in each community was exclusive or wholly unique but rather because the objective was to address the specific or precise ways each community would be impacted.

2.5 Historical Presence and Rights of the Metis

The Manitoba Metis Community is nearly invisible in the historical sections and the discussion of impacts. Incredibly, there is no mention of the Manitoba Metis Community in the discussion of the fur trade, despite the well-known centrality of the Metis to the fur trade in Canada, and particularly in Manitoba and the northwest. There is similarly no mention of the commitment to provide land to the Manitoba Metis Community as part of the *Manitoba Act of 1870* or the fact that the 1870 census identified more than 80 percent of the Manitoba population as Metis. In fact, in the historical discussion the Metis are mentioned in only one paragraph that briefly discussed the Riel Resistance.²⁴ Beyond a brief acknowledgement that the Metis in Manitoba hold section 35 rights to harvest for

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, 2015, p. 3.3-7.



²³ Keeyask Hydropower Limited Partnership, *Responses to Request for Additional Information from TAC and Public Reviewers, Round 2*, Winnipeg: Keeyask Hydropower Limited Partnership, 2013, TAC Public Rd. 2 CEAA-0014, Lines 131-132.

subsistence use, there is little to no discussion of the Aboriginal rights of the Manitoba Metis Community and how and whether these have been considered in the consultation processes and whether infringements have been properly mitigated and compensated. Indeed, in the discussion of Supreme Court of Canada (SCC) cases that have defined and clarified Aboriginal rights, there mention of neither the landmark *Powley* case nor the *Manitoba Metis Federation Inc. v. Canada (AG)* case that discussed the outstanding claims of the Manitoba Metis Community and characterized reconciliation with the Manitoba Metis Community as "a matter of national and Constitutional import."

At odds with their invisibility in the historical section of the RCEA Phase II Report, historic and more modern evidence demonstrates that the Manitoba Metis Community have maintained a continuous presence in northern Manitoba from the 1700s to the present. The first year-round European settlements north of the St. Lawrence/Great Lakes were located in the area where the Nelson River drains into Hudson's Bay. By the final decades of the seventeenth century, British and French traders had established fur-trade forts near the mouths of the Nelson and Hayes Rivers, most importantly the construction of York Factory in 1684 by the Hudson's Bay Company (HBC) on the Hayes River, upstream of Hudson's Bay. Following the Treaty of Utrecht in 1713, which the HBC was granted exclusive trading rights on Hudson's Bay, York Factory was expanded and became the primary trading post on Hudson's Bay. In 1717, the HBC began construction on the Churchill River Post (which had been first established in 1689 but was burned down that same year). These two fur-trade forts facilitated trade with Cree, Assiniboine, Chipewyan (Dene), and even Inuit traders from as far west as Great Slave Lake and as far north as the Arctic Ocean. 26

At first, the HBC made efforts to segregate its employees from Indigenous traders and their families. Such efforts, however, only heightened the dependence of the HBC upon the Indigenous peoples of the area and increased contact between the Euro-Canadian employees and Indigenous peoples. Because the HBC restricted the movements of its

²⁶ See Jones, Gwynneth C.D., *Historical Research Report on Metis Presence in the Nelson-Hayes River System*, submitted to the Manitoba Metis Federation, 2014.



²⁵ Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, at para. 14.

employees, the local Indigenous peoples acquired roles as providers of wild game and other 'country foods' for the HBC posts. Indigenous providers, called the "Home Guard" by HBC employees in turn set up permanent and semi-permanent encampments around the fur-trade posts, from which they harvested traditional resources to trade with the HBC. These conditions facilitated the close relationships and intermarriages between Indigenous women and European men that led to the Metis Nation and the establishment of unique Metis customs, practices and traditions.

While it is difficult to estimate the Metis population in northern Manitoba accurately (due to inconsistencies in the historic records, availability of data, and other factors), there is clear evidence of a distinctive Metis population in the region from the 1700s to the present. Scrip applications, for instance, were accepted from Norway House, York Landing, and Churchill, while scrip files identify applicants with major life events (residence, birth, death, and/or marriage) at Cross Lake and Split Lake.²⁷ The 1881 census enumerated HBC employees and their families individually and other population categories affiliated with the post in the aggregate. Of those, at least 68 (from five of the eight pages for York Factory available in the online database of Library and Archives Canada) were listed as 'half-breeds'. The census described an additional 412 persons affiliated with York Factory as descendants of the Swampy Cree, with "very few pure blooded Indians among them, mostly half-breeds." This observation is consistent with historiography suggesting that there were significant populations of mixed-Swampy-Cree-Scots-Orkney descent around York Factory, Split Lake, Oxford House, and Norway House.²⁹ In the 1911 census, 56 persons were identified as 'half-breed', while 21 'half-breeds' were recorded at Cross Lake and at least 39 were registered at Norway House.

It is important to note that scrip and census records likely underreport the Metis population, perhaps significantly. The accuracy of scrip applications as a representation of the Metis

²⁹ See Frank Tough, "Economic Aspects of Aboriginal Title in Northern Manitoba: Treaty 5 Adhesions and Metis Scrip," *Manitoba History* 15 (1988), pp. 3-16.



²⁷ Jones, *Historical Research Report on Metis Presence*, p. 9; Tough, Frank, '*As Their Natural Resources Fail': Native Peoples and the Economic History of Northern Manitoba, 1870-1930*, Vancouver: UBC Press, 1996) pp. 120-125.

²⁸ Cited in Jones, *Historical Research Report on Metis Presence*, p. 9.

population is limited by the fact that scrip was not offered as part of Treaty 5 signed in 1875 and 1876 and there is evidence that the decision to take Treaty or scrip was influenced more by economic considerations than by ethno-cultural identification. ³⁰ Despite the fact that people of mixed ancestry were able to withdraw from Treaty 5 and take scrip, the scrip commissioner noted that "...at Norway House, Fisher River, and Fort Alexander, there are large settlements of half-breeds residing on Indian reserves, and in receipt of Indian annuities, but who all preferred to remain members of the Indian bands to which they belong, and to continue to enjoy as such all treaty privileges."³¹ These 'half-breeds' who remained in Treaty were subsequently captured in census records as 'Indians'. The economic incentives fomented by the unequal system of compensation discussed below, and their impact upon identity, thus have deep historical roots.

Second, the accuracy of census data, in terms of its representativeness, is limited by the fact that census records identify Metis as 'half-breeds' in the origin category, and with varying terminology. As such, it is not clear to what degree the perceptions of enumerators distort these findings. Coupled with that is the fact that some Metis families may have hesitated to declare themselves 'half-breed' or 'Metis' to government officials following the two well-documented Metis acts of resistance against the Canadian state, including the 1885 uprising in nearby Saskatchewan, and the widespread discrimination faced by the Metis at the time. What this would suggest, and what the Lagassé report likewise suggests, is that census records likely underreport the Metis population. Clearly the question of the Métis history in northern Manitoba is one that requires additional research in order to assess properly the impacts of hydroelectric development on the Manitoba Métis Community.

³⁰ See Gerhard Ens, "Taking Treaty Eight Scrip, 1899-1900: A Quantitative Portrait of Northern Alberta Metis Communities," in *Treaty 8 Revisited: Select Papers of the 1999 Centennial Conference* (Grand Prairie: Grand Prairie Regional College, 2000).

³² Heather Devine, "The Alberta dis-advantage: Metis issues and the public discourse in wild rose country," London Journal of Canadian Studies 26 (2010/2011), p. 32; Jean Teillet, Metis Law in Canada (Vancouver: Pape Salter Teillet, 2013), pp. 1-9; Kenichi Matsui and Arthur J. Ray, Delimiting Metis Economic Communities in the Environs of Fort McMurray: A Preliminary Analysis Based on Hudson's Bay Company Records, submitted to McMurray Metis, 2014.



Jones, Historical Research Report on Metis Presence, p. 7.

Manitoba Metis citizens and harvesters in northern Manitoba maintained the 'moditional economy' model characteristic of the Metis in other parts of the country. Haggarty applies the concept of a moditional economy, which is a mix of subsistence Indigenous practices and Euro-Canadian commercial endeavours, to describe the Metis economy that articulated local modes of subsistence and norms of kin-based support and sharing with the mercantilist fur trade and the emergent Euro-capitalist economic order. For the Metis, wage labour and other commercial endeavours did not negate the Aboriginal character of their traditional subsistence harvesting. To the contrary, they were and are two sides of the same coin and served to reinforce each other and bolster the economic position of the Manitoba Metis Community.

As Tough and others have noted, the Metis in Treaty 5 and elsewhere tended to have a greater involvement in the commercial and wage-labour economies, all-the-while maintaining a firm anchor in the reciprocal Indigenous subsistence economy. If For instance, the construction of railways (the railway was extended north to Kettle Rapids in 1917 and Churchill by 1929) not only drew many Metis men into the construction, but also contributed to the growth of railway communities with significant Metis populations. As railway builder Claude Johnston observed in the late 1920s "there are about thirty families of Metis living in Pikwitonei. These people exist by trapping, fishing, working for prospectors or working on railway section crews or extra gangs." Census data supports the prominent place of the Metis in these new communities. The 1921 census, for instance, listed about half the population at Thicket Portage as 'half-breeds'. The settlement of Metis families around the railway is consistent with the evidence in Alberta, where the Metis settled many of the rail communities like Conklin and Imperial Mills. This participation in the commercial economy was always anchored, however, by

Liam J. Haggarty, "Metis Economics," in *Metis in Canada: History, identity, Law, and Politics*, edited by Christopher Adams, Gregg Dahl, and Ian Peach (Edmonton: University of Alberta Press, 2013), pp. 205-248; Clark et al. *Fort McMurray: Historic and Contemporary*, pp. 54-62.

³⁷ Clark, Timothy, Dermot O'Connor, and Peter Fortna, *Fort McMurray: Historic and Contemporary Rights-Bearing Metis Community*, submitted to McMurray Metis Local 1934, 2014, pp. 74-76.



³⁴ See Tough, "Economic Aspects of Aboriginal Title"; J. M. Parker, *History of the Athabasca Oil Sands Region*, 1890s to 1960s, Volume II: Oral History (Calgary: AOSERP, 1980).

Jean Lagassé, *A Study of the Population of Indian Ancestry Living in Manitoba, Volume 1*, Winnipeg: Department of Agriculture and Immigration, 1959, pp. 75-77.

³⁶ Cited in Jones, *Historical Research Report on Metis Presence*, p. 13.

participation in the Indigenous subsistence economy. In places like Norway House, for example, where permanent employment was scarce, the Indigenous subsistence economy and the commercialization of traditional resources like timber, ensured the Metis could adjust to economic cycles and provide for family members.³⁸

In 1956, the Province of Manitoba commissioned the Social and Economic Research Office of the Manitoba Department of Agriculture and Immigration, under the direction of Jean Lagassé to undertake a study of the Metis and non-reserve Indigenous population in Manitoba. The study began with the 1941 census, which indicated that 8,692 Metis lived in the Manitoba.³⁹ Due to the way the Metis population was recorded in the provincial census, including the reliance upon the subjective determinations of enumerators and the tendency to group the Metis with other ethnic groups, whether as 'Indians' or into the catch-all category of 'Other', Lagassé determined that "it is doubtful that the figures given in the Dominion Census for the Metis population were ever accurate except in the case of the 1870 census taken in Manitoba immediately after that province joined Confederation."⁴⁰

The Lagassé report estimated the Metis population of Manitoba to be 23,579, with 4,497 of those residing north of the 53rd parallel in the 1950s. Of those, Lagassé estimated significant Metis populations at Norway House, Cross Lake, Wabowden/Thicket Portage/Pikwitonei, Churchill, Southern Indian Lake, and Nelson House. The estimates provided by Lagassé come with an important proviso: they were made on a fairly ad hoc basis and were rooted in ethno-cultural and socioeconomic stereotypes. The evidence suggests, however, that the less-than-ideal conditions under which the Metis population of the time was estimated resulted in a significant *underestimation* of the actual Metis population. For instance, Lagassé himself suggested that his figures could underrepresent the actual Metis population by as much as 80%. 42



³⁸ Jones, *Historical Research Report on Metis Presence*, p. 14.

³⁹ In the 1931 census, the Metis were included in the 'Indian' category, but in 1941 were identified in a footnote as the majority component of the 'Other' category.

⁴⁰ Lagassé, A Study of the Population of Indian Ancestry Living in Manitoba, Volume 1, p. 50.

⁴¹ *Ibid.*, pp. 57-77.

⁴² *Ibid.*, p. 77.

The underrepresentation hypothesis is substantiated by other studies and reports. In his study of Southern Indian Lake, for example, Waldram provided an estimate of the Metis population in the 1960s that was 123% higher than the Lagassé report. Similarly, Krotz placed the Metis population along the route of the CRD at approximately 1/3 of the total Aboriginal population, well above the estimates of Lagassé. These estimates are consistent with the oral history of Manitoba Metis citizens in northern Manitoba. For instance, one Metis resident at Southern Indian Lake who participated in a consultation session held in 2015, stated that the population at Southern Indian Lake was approximately 75% Metis prior to the construction of the CRD, but that many Metis had either left the area or taken Treaty status as a result of the inadequate and inequitable compensation structure provided to the Metis vis-à-vis the First Nation population.

2.6 Specific Impacts to Manitoba Metis Community

One major effect of the methodological deficiencies in the RCEA reports is the limited acknowledgement of impacts to the Manitoba Metis Community. The ToR requires Manitoba Hydro to "identify, describe, and acknowledge the cumulative effects of past Hydro developments." With the exception of the MMF community summary, which is qualified by the statement that the summary does not represent the position of Manitoba Hydro or the Government of Manitoba, there is very little in the way of discussion and acknowledgement of impacts to the Manitoba Metis as a distinct Indigenous people and rights-bearing Aboriginal community.

⁴⁶ Manitoba Conservation and Water Stewardship and Manitoba Hydro, Terms of Reference – Joint Approach to Undertaking a Regional Cumulative Effects Assessment for Hydro Development as per Section 13.2 of the Clean Environment Commission (CEC) Bipole III Report, May 27, 2014.



James B. Waldram, As Long as Rivers Run: Hydroelectric Development and Native Communities in Western Canada, Winnipeg: University of Winnipeg Press, 1988, p. 116;
 Larry Krotz, "Damned and Diverted," Canadian Geographic, Feb/March 1991, pp. 36-44.

⁴⁵ Clark, Timothy David, Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future, submitted to the Manitoba Metis Federation, 2015, p. 24.

Overlooked and absent in the historical summary and in the discussion of specific impacts in section 3.3.2 and section 3.4 the RCEA Phase II Report, Manitoba Hydro's positions on the potential impacts to the distinct, rights-bearing Manitoba Metis Community is unclear and ambiguous. At best, its position rests upon an unfounded assumption that the Manitoba Metis Community are an Indigenous people in northern Manitoba who experienced impacts to their Aboriginal rights and way of life that were comparable to those experienced by First Nations; at worst, it the erroneous position that the Metis were no more than individual residents of ROI communities who were primarily affected as domestic resource users rather than as Aboriginal peoples per se. For instance, in the discussion of impacts to and compensation for culture and way of life, it is not clear whether such impacts to the Manitoba Metis Community's culture and way of life are recognized. The discussion of such effects refers only to impacts on 'people', while the discussion of mitigation and compensation for such effects in settlement agreements refers only to agreements signed with First Nations, including the NFA, the Comprehensive Implementation Agreements (CIAs), and AEAs signed as a part of the Wuskwatim and Keeyask generation projects.⁴⁷

The first position is consistent with the tendency of the discussion of impacts to blur the lines between First Nation and Metis, assuming a pan-Indigenous approach, but it is inconsistent with the discussions of mitigation and compensation, which clearly differentiates between the agreements signed with First Nations and those made with NACs and trapper associations, the latter of which were primarily financial and commercial in nature and were made with organizations that had no authority to represent collectively-held Aboriginal rights. The second position is consistent with Manitoba Hydro's claim that impacts to the Metis were captured by agreements with NACs and resource-user groups. As already noted, however, this position is inconsistent with the recognition of the Metis as a distinct, rights-bearing Indigenous people. And neither position is consistent with that of the MMF: that the Manitoba Metis Community is a

⁴⁷ Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, 2015, pp. 3.4-32 and 3.4-33.



single, rights-bearing Indigenous community whose Aboriginal rights, claims, and interests are represented solely by the MMF.

There is thus a fundamental ambiguity in the RCEA as currently framed: what are the specific impacts to the Manitoba Metis Community? Are they similar to or distinct from the impacts experienced by First Nations? If they are similar, then were the mitigation and compensation measures made available to the Manitoba Metis Community comparable to those afforded to the First Nations? And if not, why? None of these questions have been addressed or properly answered in the report. Indeed, it seems that Manitoba Hydro is trying to have its cake and eat it too: on the one hand, they seem to recognize the Manitoba Metis Community as an Indigenous people while blurring the lines between impacts to First Nations and the Manitoba Metis Community; and on the other hand, they maintain and defend the basic dual system of mitigation and compensation that emerged from the 1970s, in which one set of comprehensive agreements (NFA, CIAs, project-specific Adverse Effects Agreements) apply to First Nations as Aboriginal rights-holding collectives and another, more narrow set of agreements (with NACs and resource-user groups) are held to capture Metis individuals and other northern residents. The Manitoba Metis Community as a collective falls into neither of these. Given the lack of baseline information on the Manitoba Metis Community, the lack of clarity regarding the nature and character of the impacts to Metis rights, and the ambiguity regarding the distinctions between the impacts to and compensation for First Nations and the Manitoba Metis Community, it is difficult to see how the RCEA has clearly and adequately assessed the impacts of hydroelectric development on the Manitoba Metis Community.

2.7 Mitigation and Compensation

Manitoba Hydro and the Government of Manitoba recognize that consultation, mitigation, and compensation norms were different in the 1960s and 1970s and have evolved over time. In response to these changing realities, Manitoba Hydro has made attempts to address the adequacy of past effects and compensation in light of contemporary norms, for



example through the CIAs that sought to address the inadequacies and complications that arose from the NFA process. The perspective of Manitoba Hydro with respect to the Manitoba Metis Community, however, has been to double-down on the adequacy of the compensation structures designed put in place from the 1970s. In the RCEA Phase II Report, for example, Manitoba Hydro states "Adverse effects experienced by Metis residing in the RCEA ROI have been addressed through the various community and resource user group settlement agreements (discussed in Section 3.4), as well as by various mitigation measures (discussed in Section 3.4)."

The MMF – on behalf of the Manitoba Metis Community – strongly dispute these positions. There are three main issues regarding the existing mitigation and compensation measures, particularly in relation to pre-2000s projects and effects: (1) mitigation and compensation was inequitable between the Manitoba Metis Community and First Nations; (2) mitigation and compensation failed to reach the Metis; and (3) mitigation and compensation was not provided for the infringement of the collectively-held Aboriginal rights of the Manitoba Metis Community.

One of the primary concerns with respect to the systems of compensation that began to be negotiated from the 1970s is the inequity between the agreements and benefits to which First Nations had access and those to which the Manitoba Metis Community had access. The NFA and CIAs, for instance, provided for land exchanges, priority allocation of resources, programming to support and encourage traditional use, trapping and fishing programs, cultural preservation and transmission programs, remedial and compensatory measures and claims processes for issues like property loss and damage, financial compensation packages and trust indentures, resource management areas, community planning processes, and a burden of evidence on Manitoba Hydro to prove that damages caused were not the result of hydroelectric development. The summary provided on the settlement agreements with NACs and resource-user groups, on the other hand, appear to

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, 2015, pp. 3.4-3-3.4-5.



⁴⁸ Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, 2015, p. 3.2-3.

be significantly less comprehensive and focussed primarily upon the compensation for financial and commercial losses. 50

The MMF and the citizens of the Manitoba Metis Community have for decades protested the inequity of the benefits available to First Nations and the Metis as a result of agreements to mitigate and compensate for the effects of hydroelectric development. At first glance, the list and range of benefits available to First Nations members appears to be considerably greater in amount and more extensive in type than those available to citizens of the Manitoba Metis Community. Because there is no detailed information available in the RCEA reports on the financial resources dedicated to the respective agreements, it is difficult to determine the existence and extent of the inequity. If it is the position of Manitoba Hydro, however, that impacts to the Manitoba Metis Community citizens affected by hydroelectric development have been addressed by the existing array of agreements with NACs and resource-user groups, then it is incumbent upon Manitoba Hydro to demonstrate either (1) that the range and resources made available to the Metis were comparable to those made available to First Nations, or (2) that the impacts to the Metis were significantly less than those experienced by First Nations, so as to justify the differential compensation. In the RCEA reports, Manitoba Hydro does neither. And even were such information provided, it fails to address that compensation and accommodation of communally held rights fundamentally needs to be discussed with the representative of that community, not the individuals (i.e. the MMF, not individual Metis citizens).

A second dispute of the MMF and the Manitoba Metis Community is with the assumption that the Metis were full beneficiaries of compensation agreements signed with non-Metis organizations, whether First Nations, NACs, resource-user groups. The assumption that compensation granted to a First Nation or a NAC in which Metis may reside will in effect 'trickle down' to those Metis persons is founded upon shaky empirical ground. For example, Waldram wrote of how the Metis of Cedar Lake and Moose Lake were treated

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase II Report, 2015, pp. 3.4-8-3.4-16.

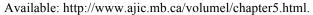


like 'squatters' and were excluded from compensation negotiations, either going uncompensated or left dependent for benefits upon the whims of the band council.⁵¹

Citizens of the Manitoba Metis Community have raised similar concerns about the ability of NACs to represent the interests of Metis residents. Metis residents of Norway House, for instance, have disputed the claim that the Norway House Community Council represents the Metis population and that the Metis residing at Norway House have been adequately compensated. Similarly, Metis residents of Thicket Portage have claimed many of the benefits from arrangements with Manitoba Hydro, such as employment opportunities, rarely go to the Metis.⁵² The Inter-church Inquiry reached found similar concerns, noting the Metis were excluded from the NFA negotiations and that even where benefits were received by Metis residents of compensated First-Nation reserves, access to benefits was controlled by the band council.⁵³ These findings were further echoed by the Aboriginal Justice Inquiry of Manitoba, which noted that "Many Metis and off-reserve Indians in the region still complain bitterly that their homes and traplines were destroyed and their hunting and fishing rights violated without any consultation or compensation" and observed that "Only reserve residents were represented in negotiations and were to receive any of the benefits."⁵⁴

Finally and most seriously, the MMF and citizens of the Manitoba Metis Community have expressed concerns related to Aboriginal rights and representation and the confusion between residency and Aboriginal rights and citizenship. When Manitoba Hydro contends that the Manitoba Metis Community were properly and adequately compensated via the patchwork of agreements with NACs and individual and associated resource users, they in effect deny the existence of the Manitoba Metis as a rights-bearing Aboriginal community. Regardless of whether there were Metis individuals living in the compensated First

⁵³ Inter-church Inquiry into Northern Hydro Development, Let Justice Flow: Report of the Inter-church Inquiry into Northern Hydro Development, Winnipeg: Manitoba Aboriginal Rights Coalition, 2001, p. 45. ⁵⁴ Aboriginal Justice Inquiry of Manitoba, Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: The Justice System and Aboriginal People (Chapter V), Winnipeg: Government of Manitoba, 1991.





James B. Waldram, As Long as the Rivers Run, pp. 81-114.

See Clark, Timothy David, Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future, submitted to the Manitoba Metis Federation, 2015.

Nations or NACs, the Manitoba Metis Community was not included in the NFA or other negotiations as an impacted Aboriginal community, was not allowed to negotiate as a community, and was not compensated as an Aboriginal community.

Neither resource user groups nor NACs are authorized to represent the Manitoba Metis Community as a rights-bearing Aboriginal community; such authorization is exclusively provided to the MMF through its Constitution and democratically elected leadership structure. In the CEC hearing for the LWR licence renewal, one Metis resident of Ilford clearly explained that negotiations with the community council were neither included the MMF nor address the issue of Metis rights:

I'm Metis from Ilford, Manitoba. I want to make one thing clear, when Hydro came to do the consultations in our community, I was the mayor. I still am. But the thing is they didn't come to talk to the Metis Federation, I want to make that clear. It was never even brought up, never mentioned...so I don't know where that came from where they came there and said that. They only come to speak to council. I would just like to make that clear, first of all.⁵⁵

The critical point is that Aboriginal rights are not individually but rather collectively held. As was done with the NFA and the subsequent CIAs, consultation, mitigation, and compensation for collectively held Aboriginal rights should be negotiated with the legally recognized and representative political bodies of the Aboriginal collectivities in question. In order to properly and adequately address the impacts of past hydroelectric development on the Aboriginal rights of the Manitoba Metis Community, therefore, the Government of Manitoba and Manitoba Hydro can only negotiate with the legally recognized political representative of the rights-bearing Manitoba Metis Community, the MMF.

In the RCEA reports, Manitoba Hydro observes that it has increasingly consulted and worked with the MMF to address the impacts of hydroelectric development on the Metis. It should be noted, however, that most of the agreements between Manitoba Hydro and the

⁵⁵ Clean Environment Commission, *Lake Winnipeg Regulation Review Under the Water Power Act: Transcript Proceedings*, April 27, 2015, pp. 37-38.



MMF are related to employment opportunities or consultation related to current and future hydroelectric development. These agreements do not directly address and compensate the past impacts of hydroelectric development. Nor does the *Turning the Page* (TTP) agreement, signed between the Government of Manitoba, Manitoba Hydro, and the MMF in 2014, directly provide compensation for the past effects of hydroelectric development. In fact, as part of the agreement the MMF explicitly reserves the right to negotiate regarding the impacts of existing hydroelectric developments on the Aboriginal rights of the Manitoba Metis Community.

2.8 Interconnectedness of Effects

While Manitoba Hydro recognizes that for Indigenous people impacts are often interconnected rather than separated out into discrete categories, they do a poor job of drawing connections between impacts. The issues around compensation agreements provide an excellent example. For the Manitoba Metis Community, the effects of compensation agreements extend far beyond the specific terms and benefits. To the contrary, the effects of compensation agreements cascade into numerous other socioeconomic and cultural realms, including secondary or indirect effects on employment opportunities and livelihoods, TLU, family bonds, inter-community conflict, and Metis identity and self-identification.

One concern of citizens of the Manitoba Metis Community is the preferential access to employment with Manitoba Hydro enjoyed by First Nations vis-à-vis the Metis. Article 18.5 of the NFA commits Manitoba Hydro to employ, to the maximum extent possible, members of the signatory First Nations who reside on reserve, as well as provide supporting measures to facilitate this end, like education and training programs. Citizens and harvesters repeatedly expressed their frustrations that preferential hiring practices affect the ability of Metis people to earn livelihoods and support their families, regardless of their skills, experience, and qualifications. In a focus group from 2015, one participant from Norway House expressed his frustration about how Manitoba Hydro representatives



favour the First Nation for employment opportunities, in this case for the construction of a power line from Jenpeg:

I explained we're not the First Nation, we are the community council, and he said oh sorry, wrong place. I stopped him and asked why he isn't talking to us and he apologized and said they are only dealing with First Nations. Had a similar situation only a few weeks ago. It's all directed toward the First Nations and it's not fair. 56

Another MMF citizen expressed frustration that even jobs subcontracted by Manitoba Hydro go to First Nations on a preferential basis, even when the Metis are fully qualified: "They pick First Nations, they pick First Nations first and where are the Metis? We have all our qualifications but they just don't call us." MMF citizens and harvesters were similarly clear that their desire is not to have preferential hiring and benefits to be taken from First Nations, but rather that similar benefits be extended to the Metis.

The unequal compensation structure for impacts from LWR and the CRD has similarly affected the traditional use practices of Metis harvesters. Citizens of the Manitoba Metis Community raised concerns about the creation of Resource Management Areas (RMA), which are governed by the First Nations and the Government of Manitoba, with no Metis representation. Metis harvesters have relayed having their access blocked to harvesting areas by First Nations, with one commenting in a focus group that, "The First Nations figure they own the whole area, that's their RMA [Resource Management Area]; they feel Metis don't have rights there and its sad." These restrictions are compounded by the loss of harvesting grounds to First Nations as a result of the Treaty Land Entitlement (TLE) process, under which First Nations have selected more than 750,000 acres of Crown land. Several of the Entitlement First Nations are located near Metis settlements in northern Manitoba, including Norway House First Nation, War Lake First Nation, O-Pipon-Na-Piwin Cree Nation, Nisichawayasihk Cree Nation, and York Factory First Nation. To be clear, the MMF and the citizens of the Manitoba Metis Community do not



⁵⁶ Clark, Timothy David, *Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future*, submitted to the Manitoba Metis Federation, 2015, p. 61. ⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, p. 63.

oppose the TLE process; they simply want to ensure that they, their children, and future generations of the Manitoba Metis Community have access to lands, waters, and other resources in which to harvest and practice traditional use.

Citizens of the Manitoba Metis Community have likewise expressed concerns about the impacts of the unequal compensation structure on family and community relations. One Metis resident at Norway House discussed in a focus group how many members of her family have left the area as a result of the impacts of hydroelectricity projects without access to any of the offsetting benefits and measures such as employment or financial and other forms of mitigation and compensation. The migration of Metis away from the areas impacted by hydroelectric development and into more urbanized areas in turn reduces the opportunities for present and future generations to engage in traditional land use practices and maintain connections to the lands of their ancestors. Unequal compensation also works to divide families that often include mixes of Manitoba Metis Community citizens and First Nation members. One focus group participant spoke of their immediate and extended family contains both Metis and First Nations and how questions of unequal compensation have fomented tensions and divisions within the family. Another spoke about how resentment and tensions is heightened every Christmas when the First Nations members of the family received payments around Christmas while the Metis family members in Pikwitonei receive nothing.⁵⁹

In addition to fomenting division and tensions within families, the unequal compensation structure put in place by the Government of Manitoba and Manitoba Hydro has fuelled tensions between the Metis and First Nations. Citizens and harvesters contend that prior to hydroelectric development, Metis and First Nations lived in close proximity and in relative harmony. Since LWR, the CRD, and the NFA, however, divisions and tension between the Metis and First Nations have grown. As one Metis participant in the Interchurch Inquiry observed: "Everyone worked together, trapped and hunted. Everyone shared what they brought back from the land. Today we see the hydro project has ruined

⁵⁹ See Clark, Timothy David, *Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future*, submitted to the Manitoba Metis Federation, 2015.



the lifestyle in Cross Lake between both communities [First Nation and Metis]. Questions, concerns and feelings of not belonging puts a lot of stress and anger on people."60

Citizens and harvesters have spoken of how First Nations came increasingly to see the Metis as a threat and have worked against the Metis in what they perceive as an attempt to protect their privileges and gains. For instance, several citizens have talked of how the First Nation near their residence has worked against the push for land for new homes and a new cemetery, because they want that land to extend their reserve. Again, it is important to reiterate the MMF does not see Metis-First-Nations compensation as a zero sum game, where benefits for one come at the expense of the other. Rather, it is the position of the MMF that Manitoba Hydro and the Government of Manitoba have constructed this zero-sum game, whether inadvertently or not. Another citizen succinctly stated: "It divides us. They cannot see beyond that. It divides families and communities."

For the MMF and the Manitoba Metis Community, perhaps the most profound and nefarious impact of the unequal compensation structure for the effects of hydroelectric development is found in the realm of Metis identity and identification. Numerous citizens have discussed how the unequal compensation structure and the tensions and divisions it creates have affected Metis identity and self-identification. One citizen, for instance, spoke of his frustration and feeling of being "second-class" whenever he sees the Government of Manitoba or Manitoba Hydro and go straight to see Chief and Council, going right past and never stopping to visit the MMF office. Others spoke of their sense of anger and inferiority when they see their First Nations relatives driving new trucks while they walk or take a cab, with one person saying "We are not important in our own community. You feel like nothing." Yet another citizen who lives in close proximity to a reserve said.

⁶³ Clark, Timothy David, Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future, submitted to the Manitoba Metis Federation, 2015, p. 64.



⁶⁰ Inter-church Inquiry Into Northern Hydro Development, *Complete Transcript of the Hearings*, Winnipeg: Manitoba Aboriginal Coalition, 2001, p. 236.

⁶¹ Clark, Timothy David, Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future, submitted to the Manitoba Metis Federation, 2015, p. 64. ⁶² Ibid., p. 68.

I feel ostracized. As soon as me being Metis comes up, I am no longer included. It affects your culture and identity. People don't want to say they're Metis there. There are only a handful of us in my community and they do not acknowledge it. The others know but no one says anything.⁶⁴

One of the most perverse impacts identified by citizens of the unequal compensation structure is the number of Metis people who have opted for Treaty 'status' under Bill C-31. As one citizen stated: "Out of all my 6 kids and 24 grandchildren, my wife and all my kids are treaty except one. She is Metis and I make sure that she knows she is Metis and to be proud of being Metis." Another citizen, who grew up in Norway House in the 1950s and 1960s and then moved away, said that when she returned in the 1990s many of her relatives had become First Nations. Participants were clear, moreover, that in their experience many people have opted for status under Bill C-31 not because of a sense of historical disenfranchisement but rather out of economic necessity. As one citizen shared, "My daughter is applying for her status because she wants to have support for her children. It's causing major issues for Metis people because its causing people to seek Bill C-31 to get status for economic reasons."

Metis Elders contend that motivation to identify legally as First Nation is incentivized by the unequal compensation structure and has had dramatic effects on the composition of northern Manitoba communities. As mentioned above, one Metis Elder from Southern Indian Lake recalled how the majority of the population was Metis prior to the CRD. A long-time Metis resident of Norway House shared a similar recollection:

There used to be a lot of us [Metis] but now as the, you know, and what's happened here is Manitoba Hydro – and this is true – is when Norway House Cree Nation settled with Manitoba Hydro they went through a process where they negotiated and during that process the would pay per capita payouts out to their people...So, when people seen the people getting all this money around Christmas then people on this side wanted it too. So, then that even made them more want to get their treaty status if



⁶⁴ Ibid.

⁶⁵ *Ibid.*, p. 65.

⁶⁶ Ibid.

they could, just so that they could get these payments, or receive these payments eh. And that's why. ⁶⁷

The effects of the unequal compensation structure in turn feed into the wider inequities in terms of First Nation and Metis. As one Metis Elder from Ilford observed: "At the time Ilford was all Metis...And once they had the new reserve starting, that's the War Lake...lots of them went Treaty." At present, there is no publicly available information on the number of Manitoba Metis Community citizens that have taken Treaty status under Bill C-31, or the contribution of hydroelectric development to this process. Given the Metis population statistics, both pre-hydro estimates and current trends and numbers, and the anecdotal evidence from MMF citizens and harvesters, this is an issue that warrants a more serious investigation, particularly given the gravity of the potential effects.

Another significant impact of hydroelectric development that is overlooked by the RCEA reports is the indirect – or cascading – effects of impacts on traditional use on family and community bonds, Metis identity, and traditional culture. It is well established that traditional use provides among the most significant spaces in which Indigenous families and communities connect and reproduce relations of kin and friendship across generations.⁶⁹ For the Metis in particular, the family, which generally consists of several related or extended families, is traditionally the kinship unit around which hunting and other harvesting activities are organized.⁷⁰

A comprehensive traditional use study carried out by the MMF found that the immediate and extended family represent approximately 80% of the traditional use partners of

Liam Haggarty, "Metis Economics," in *Metis in Canada: History, Identity, Law, and Politics*, edited by Christopher Adams, Gregg Dahl, and Ian Peach (Edmonton: University of Alberta Press, 2013), p. 212.



⁶⁷ Willow Springs Strategic Solutions, *Metis-Specific Socioeconomic*, p. 16.

⁶⁸ Clean Environment Commission, *Lake Winnipeg Regulation Review Under the Water Power Act: Transcript Proceedings*, April 27, 2015, p. 39.

⁶⁹ Hugh Brody, *Maps and Dreams: Indians and the British Columbia Frontier*, Vancouver: Douglas and McIntyre, 1981; Mark Nelson, David C. Natcher, and Cliff Hickey, 2005. Social and Economic Barriers to Subsistence Harvesting in Aboriginal Communities. *Anthropologica* 47, no. 2 (2005), pp. 289-301; James D. Ford et al., "Climate Change in the Arctic: Current and Future Vulnerability in Two Inuit Communities in Canada," *The Geographical Journal* 174, no. 1 (2008), pp. 45-62.

harvesters over the past six decades.⁷¹ Metis traditional use connects generations, as harvesters who began getting out on the land with their parents and grandparents have over time transferred that knowledge and experience to their children. The importance of extended family (uncles and aunts, cousins, spouse/partner family), which accounts on average for around 15% of traditional use partners, and the significant role of friend/other, more than 20% on average, suggest that traditional use plays a significant role in connecting citizens within the wider community.⁷²

Harvesters have discussed the importance of harvesting and traditional use sites in the forging and maintenance of family and community bonds. Harvester from Split Lake spoke passionately of the importance to his family of cabins and a camp they use, not just for regular harvesting but also for wider extended-family reunions, in which up to 90 family members attend.⁷³ Another harvester downstream of Lake Winnipeg touchingly recalled memories getting out on the land with his parents as a child, and the importance of traditional use for his children:

Like, I mean, when my mom and dad were together, [refers to the interviewer], my earliest and fondest memories – excuse me a second [gets emotional]. Spending evenings with my mom and dad plucking fowl and, you know, stuff that we harvested, and fishing, and – yeah. So that was a big thing for us, or for me. Like – like I say, those were very happy memories... I mean, it's – like, it's a carryover that – my children talk about that. You know, to go fishing with me, that's our greatest time together. Just being in the forest or on the land, whatever, it's a big thing.⁷⁴

It is not just the act of harvesting that brings families and Metis settlements together; the sharing and consumption of wild foods plays an important role in the maintenance of social relationships. In a survey submitted during a 2015 consultation session in

Willow Springs Strategic Solutions, Metis-Specific Socioeconomic Baseline Study and Impact Assessment of the Keeyask Generation Project, 2014, p. 13.



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⁷¹ Larcombe, Manitoba Metis Traditional Use, Values and Knowledge Baseline Study for Proposed Keeyask Hydro Generation Project, p. 20.

⁷² Larcombe, Manitoba Metis Traditional Use, Values and Knowledge Baseline Study for Proposed Keeyask Hydro Generation Project, p. 20.

⁷³ Clark, Timothy David, Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future, submitted to the Manitoba Metis Federation, 2015, p. 56.

Thompson, Manitoba, 82% of respondents said they share harvested foods with family and friends, while 91% said they share with other citizens, primarily Elders who can no longer hunt.⁷⁵ These findings suggest that wild foods continue to connect Metis families and settlements across Northern Manitoba.

Impacts on family and community bonds that result from the decline of traditional use activities are intergenerational and long-term in nature and extent. As one harvester observed, "The impact I see from Hydro is families that used to take their kids trapping and fishing and showing them our way of life now can't in a lot of places because those places are under water and kids don't have that knowledge anymore. So a lot of kids are leaving their communities." Insofar as family and community bonds are undermined by the decline of traditional use, the feedback loop kicks in via the weakening of the transmission mechanisms for traditional knowledge. The decline of traditional use undermines family and community networks and the transmission of traditional practices, fomenting the migration of young people to urban areas. This weakening of the transmission mechanisms in turn feeds back into traditional use over time, because there are not only fewer harvesters today, but as the older generation passes and their knowledge and practices are not passed on, fewer and fewer citizens will engage in traditional use and hold traditional knowledge.

Harvesters have identified that impacts to traditional use similarly reverberate into identity and traditional culture. Much like for family and community relations, it is well established that traditional harvesting and the consumption of wild foods are integral to the sense of identity and culture of Indigenous peoples.⁷⁸ Environmental changes can impact

Eleanor E. Wein and Milton Freeman, "Inuvialuit Food Use and Food Preference in Aklivik, Northwest Territories, Canada," *Arctic Medical Science* 51 (1992), pp. 159-172; Mark Nuttall et al., "Hunting, Herding,



⁷⁵ Clark, Timothy David, *Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future*, submitted to the Manitoba Metis Federation, 2015, p. 57. ⁷⁶ *Ibid.*

See Nancy J. Turner, Anne Marshall, Judith C. Thompson, Robin June Hood, Cameron Hill, and Eva-Ann Hill, "Ebb and Flow: Transmitting Environmental Knowledge in a Contemporary Aboriginal Community," in *Making and Moving Knowledge: Interdisciplinary and Community-Based Research in a World on the Edge*, edited by John Sutton Lutz and Barbara Neis (Montreal and Kingston: McGill-Queen's University Press, 2008), p. 49.

traditional use, traditional use areas, and identity and culture in multiple ways. For instance, MMF citizens have discussed powerfully their sense of anguish over the impacts to burial sites, with some telling stories of exposed gravesites and bodies from erosion and crushed rocks being dumped on community gravesites. First Nations downstream of Jenpeg expressed similar concerns at the CEC hearing on LWR.⁷⁹

Harvesters have identified similar indirect effects from impacts to traditional use to values and spirituality. As with identity and culture, there is a well established connected between traditional harvesting and the consumption of harvested foods and Indigenous values and spirituality. Citizens and harvesters have spoken with great passion and eloquence of the spiritual connection between the Manitoba Metis Community and water: "I'll tell you that Manitoba Hydro will not understand that the lake has a spirit like we understand it as Native people." The same Elder would go on to express her anguish that the people were:

Selling our beautiful lake for nothing but money. We have women walk all over the world. When you walk for water it is a spiritual thing. You feel it in your heart, we scooped the water up in Playgreen...It was like I was carrying the whole lake in that little bucket. The spirit of our people will die too. We need the spirit of the water to keep the spirit of the people, the animals, the fish. Without the water we have nothing. 81

One Metis participant in the CEC hearing for LWR discuss the effects of impacts places with which there is a strong spiritual and historical connection: "And it causes a lot of

Fishing and Gathering: Indigenous Peoples and Renewable Resource Use in the Arctic," in *Arctic Climate Impact Assessment* (Cambridge: University of Cambridge Press, 2005), pp. 649-690.

⁸¹ Clark, Timothy David, Report on the Lake Winnipeg Regulation and the Churchill River Diversion: Recognizing the Past, Reconciling the Future, submitted to the Manitoba Metis Federation, 2015, p. 59.



⁷⁹ Clean Environment Commission, *Lake Winnipeg Regulation Report 2015*, pp. 73-74.

⁸⁰ Ann Fienup-Riordan, "Traditional Subsistence Activities and Systems of Exchange Among the Nelson Island Yupik," in *Contemporary Alaskan Native Communities*, edited by Steve Langdon (Lanham: University Press of America, 1986), pp. 173-183; Harvey A. Feit, "Myth of the Ecological Whitemen: Histories, Science, and Rights in North-American Native American Relations," in *Native Americans and the Environment: Perspectives on the Ecological Indian*, edited by Michael E. Harkin and David Rich Lewis (Lincoln: University of Nebraska Press, 2007), pp. 52-92.

stress, not only because of what it has put on me, but what I see happening to our resources."82

3.0 Adequacy Determination

As part of its public outreach program for the RCEA of hydroelectric development in the Nelson, Burntwood, and Churchill Rivers system, the CEC has provided funding to the MMF to submit a written submission that addresses whether the cumulative effects of more than fifty years of hydro development on the Manitoba Metis Community is accurately reflected in RCEA documentation. To fulfill this request, the author has reviewed the RCEA documents and reports that are relevant to the assessment of hydrorelated impacts to the Manitoba Metis Community.

The review and report were organized into two interrelated issues: (1) the existence of methodological deficiencies in the report that have affected the accuracy and adequacy of the assessment of hydro impacts on the Manitoba Metis Community; and (2) the information gaps that result from the aforementioned methodological deficiencies. In relation to the first issue, this report identified the following methodological deficiencies:

- 1) An inadequate CEA methodology with respect to the human environment, including a faulty scoping process and absence of adequate baseline data, clear and consistent indicators, benchmarks/thresholds, and significance determinations. As a result of these deficiencies, it was determined that what the RCEA provides is not an assessment of the cumulative effects to the human environment, but rather a description of impacts and mitigation and compensation measures;
- 2) An inconsistent treatment of the Manitoba Metis Community as a rightsbearing Aboriginal community and recognition of the MMF as the sole

⁸² Clean Environment Commission, *Lake Winnipeg Regulation Review Under the Water Power Act: Transcript Proceedings*, April 27, 2015, p. 33.



representative of Aboriginal rights, claims, and interests of the Manitoba Metis Community. This treatment of the Manitoba Metis Community and the MMF results in an inconsistent and confusing handling of the impacts to the Manitoba Metis Community and the adequacy of mitigation and compensation efforts therein;

- 3) The erroneous assumption that there was sufficient publicly available information to carry out the RCEA without new research. This assumption not only fuelled the deficient CEA methodology, it served to reproduce the historical invisibility of the Manitoba Metis Community in the assessment of hydro impacts and relations with Manitoba Hydro, the Government of Manitoba, and the broader population of the province;
- 4) The lack of Metis-specific sources. The report demonstrated a remarkable imbalance in the sources cited in the assessment of impacts to the human environment between works produced by or exclusively about First Nations and those works produced by, on behalf of, or about the MMF and the Manitoba Metis Community.

These four methodological deficiencies resulted in an RCEA that neither adequately nor accurately assesses the impacts of hydroelectric development on the Manitoba Metis Community. The first manifestation of this inadequacy is the general invisibility of the Metis in the historical discussion and the description of hydroelectric impacts to the human environment. There is thus a fundamental ambiguity to the RCEA. The reports never clearly identify and assess the specific impacts to the Manitoba Metis Community. Are these impacts similar to or distinct from the impacts experienced by First Nations? If they are similar, then were the mitigation and compensation measures made available to the Manitoba Metis Community comparable to those afforded to the First Nations? And if not, why? None of these questions have clear answers in the report. Given the lack of baseline information on the Metis in northern Manitoba, the lack of clarity regarding the



nature and character of the impacts to the Metis, and the ambiguity regarding the distinctions between the impacts to and compensation for First Nations and the Metis, it was determined that the RCEA reports do not clearly and adequately assessed the impacts of hydroelectric development on the Metis.

In addition to the absence of a clear and adequate assessment of hydroelectric impacts on the Metis, the methodological deficiencies result in the absence of numerous key impacts identified by the MMF and the Manitoba Metis Community. The first grouping of impacts relate to the system of mitigation and compensation programs implemented from the 1970s. Three main issues were raised: (1) that there an inequitable distribution of mitigation and compensation measures available to First Nations vis-à-vis the Manitoba Metis Community; (2) that the assumption that citizens of the Manitoba Metis Community were full beneficiaries of the agreements signed with NACs and resource user groups is flawed; and (3) that the Manitoba Metis Community have yet to be compensated as a rights-bearing Aboriginal community for the past effects of hydroelectric development. This would include the recognition of the Manitoba Metis as an impacted Aboriginal community that can negotiate and distribute compensation as an Aboriginal community, through its legally authorized and recognized representative, the MMF.

The MMF and citizens of the Manitoba Metis Community identified a series of indirect – or cascading – effects that have spilled over from the existing system of mitigation and compensation into numerous other socioeconomic and cultural realms, including employment opportunities and livelihoods, traditional use, family bonds, inter-community conflict, and Metis identity and identification. In particular, this review highlighted the noxious effects of the unequal system of compensation on Metis identity and self-identification; this is an issue of grave importance that requires further research and discussion. In addition to cascading effects from the system of mitigation and compensation, the MMF and the Manitoba Metis Community identified a range of indirect effects that have resulted from impacts to traditional use, including family and community bonds, Metis identity, and traditional culture.



For the reasons discussed in this review and the adequacy determination, it is the position of the MMF that the RCEA neither adequately nor accurately assesses the impacts of hydroelectric development on the Manitoba Metis Community. The review now turns to recommendations to address these deficiencies, gaps, and concerns.

4.0 Recommendations

Following the conclusion of the public engagement process and the submission of a report by the CEC on its findings, the Government of Manitoba and Manitoba Hydro will produce an RCEA Next Steps document. At several points in the RCEA reports, Manitoba Hydro expressed the position that concerns about the sufficiency of compensation stemmed from the fact that some impacts were unavoidable and irreversible:

Considerable efforts have been made to address the adverse effects of hydroelectric developments; however, some changes brought about by these projects are unavoidable and irreversible Given this, some of those affected have expressed that established mitigation and compensation measures are not sufficient to address the losses that have been experienced.⁸³

Manitoba Hydro acknowledges that some of the changes brought about by our projects are irreversible and that, as would be expected, some members of various communities may not feel that established mitigation and compensation measures are sufficient to address losses that were experienced.⁸⁴

This viewpoint does not apply to the concerns raised by the MMF. Impacts to the Manitoba Metis Community were neither unavoidable nor irreversible. It is not possible to return to the past or undo what is done. It is very much possible, however, to begin to address more substantially the negative effects of more than fifty years of hydroelectric development on the Manitoba Metis Community. The recommendations made in this

Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Phase I Report, 2014, p. 3-8.



Manitoba Hydro, Regional Cumulative Effects Assessment for Hydroelectric Developments on the Churchill, Burntwood and Nelson River Systems: Integrated Summary Report, 2017, p. 1.

section should be understood in the spirit of reconciliation between the MMF and the Manitoba Metis Community, on the one hand, and the Government of Manitoba and Manitoba Hydro, on the other.

Recommendation 1: The Government of Manitoba and Manitoba Hydro should draft a new Terms of Reference for a comprehensive, strategic Regional Cumulative Effects Assessment.

As they stand, the human environment components of the RCEA are so methodologically deficient that they are of little value as standalone assessments of the cumulative effects of hydroelectric development, as an input into regional planning initiatives, or as dynamic baselines for the assessment of impacts from future hydroelectric projects. The re-scoped RCEA should be consistent with cutting-edge scholarship and guidelines for CEAs and should involve the active participation of the MMF and other Indigenous organizations and key stakeholders and involve new research. The human environment components should be multi-scalar and have clear valued components, pre-hydro baseline data, indicators, benchmarks/thresholds, and a significance determination.

Recommendation 2: The Government of Manitoba and Manitoba Hydro should formally and unambiguously recognize the Aboriginal rights of the Manitoba Metis Community to harvest for subsistence purposes throughout the Province, the Manitoba Metis Community as a rights-bearing Aboriginal community, and the MMF as the sole representative of the Aboriginal rights, claims, and interest of the Manitoba Metis Community.

The present policy of incomplete recognition by the Government of Manitoba of the section 35 rights of the Manitoba Metis Community in northern Manitoba represents an important obstacle to reconciliation between the Government of Manitoba, Manitoba Hydro, and the Manitoba Metis Community. The unwillingness of the Government of Manitoba and Manitoba Hydro, moreover, to recognize the Manitoba Metis Community as a single, rights-bearing Aboriginal community and the MMF as the sole representative of the Aboriginal rights, claims, and interest of the citizens of the Manitoba Metis



Community not only impedes reconciliation over past impacts; it will continue to serve as a millstone to the construction of a productive and mutually-beneficial relationship between the Government of Manitoba, Manitoba Hydro, and the Manitoba Metis Community in the future.

Recommendation 3: In the context of the TTP agreement, the Government of Manitoba, Manitoba Hydro, and the MMF should engage in without prejudice discussions, as soon as possible, toward arriving at a mutually agreeable agreement and settlement regarding the past impacts (pre-Bipole III and Keevask) of hydroelectric development.

These discussions should lay out a timetable and framework to address the concerns raised in this report. The timetable should aim to have a final agreement designed and approved prior to the approval of any future major hydroelectric project. The Government of Manitoba and Manitoba Hydro have affirmed their commitment to address the adverse effects of hydroelectric development and have demonstrated a willingness to revisit past effects and agreements in the light of contemporary norms and circumstances. The time for the Government of Manitoba and Manitoba Hydro to do so with the MMF and the Manitoba Metis Community has come.

Recommendation 4: As part of these tri-lateral discussions, the Government of Manitoba, Manitoba Hydro, and the MMF should negotiate the Terms of Reference and provide adequate resources and time for a cumulative socioeconomic and cultural impact assessment of hydroelectric development on the Manitoba Metis Community.

Although the Terms of Reference should be jointly agreed upon, the execution of the assessment should be managed by the MMF. The assessment could be coordinated with a wider Strategic RCEA if this were amenable to all parties. The assessment should be participatory and community-based in approach, should provide baseline information, indicators, benchmarks/thresholds, and a significance determination. The assessment should likewise make a full list of recommendations for mitigation and compensation of the cumulative effects of hydroelectric development on the Manitoba Metis Community.



Recommendation 5: The Government of Manitoba, in conjunction with Manitoba Hydro, should negotiate with the MMF to implement a comprehensive program of mitigations and compensation measures to address the cumulative impacts of hydroelectric development experienced by the Manitoba Metis Community.

The agreement should extend for at least the full duration of the LWR and the CRD projects and should be commensurate with the NFA and CIAs signed with First Nations. Areas of mitigation and compensation the program to be considered could include, but are not limited to:

- The provision of resources for the design of a Community Development Plan for the Thompson Region of the MMF;
- A land-grant program to compensate for the loss of land by citizens of the Manitoba Metis Community as a result of hydroelectric development;
- A protocol for the protection of cemeteries and sites of cultural significance to the Manitoba Metis Community;
- A program to protect and restore the property of citizens of the Manitoba
 Metis Community damaged as a result of the cumulative and ongoing effects of hydroelectric developments;
- The reformulation of existing and new RMAs in which citizens of the Manitoba Metis Community will enjoy priority and preferential access for the purposes of harvesting and traditional land use, and in which citizens of the Manitoba Metis Community are fully and effectively represented on the management and advisory boards;
- Full participation of the Manitoba Metis Community in the environmental monitoring program for existing and new RMAs; training should be provided so Metis harvesters can play an integral role in monitoring activities;



- A fund to develop Metis infrastructure in RMAs to facilitate the use of these for traditional purposes;
- Compensation programs for Metis harvesters, including trappers;
- Employment and contracting commitments comparable to those presently extended to First Nations;
- Funding for the development of programming to encourage Metis youth to engage in traditional use activities;
- Funding for the development of programming to promote Metis history, culture, and identity in the areas affected by hydroelectric development; and
- An electricity-rate-rebate program for citizens of the Manitoba Metis Community who reside in areas affected by hydroelectric development.

5.0 Conclusion

The CEC has provided resources for the MMF to submit a review of the RCEA documentation submitted by Manitoba Hydro as part of the commitment to fulfill Recommendation 13.2 of the final CEC report on the Bipole III project. This report has reviewed the documentation and provided a determination on the adequacy of the assessment of the cumulative effects of hydroelectric development on the Manitoba Metis Community. The report has determined that the RCEA documentation submitted by Manitoba Hydro provides neither an adequate nor an accurate assessment of the cumulative effects of hydroelectric development on the Manitoba Metis Community. In the spirit of reconciliation, the report provides a series of recommendation designed to address the deficiencies, gaps, and concerns raised here.

