



Interlake Reserves Tribal Council, Inc.

**Interlake Reserves Tribal Council
General Delivery
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Re: Conformity review of the Environmental Impact Statement for Lake Manitoba – Lake St Martin Outlet Channels Project – Filed August, 2019

The Interlake Reserves Tribal Council (IRTC) provides these comments in response to the Environmental Impact Statement (EIS) filed by Manitoba Infrastructure (Proponent or MI) dated August 19, 2019, and provided to the IRTC on August 30, 2019. We provide these comments on behalf of four of the IRTC's member First Nations: Lake Manitoba First Nation, Lake Saskatchewan First Nation, Dauphine River First Nation and Kinonjeoshtegon First Nation, who are collectively are part of the larger Salteaux Tribe.

Even a cursory review of select portions of the EIS make it abundantly clear that the EIS fails to fulfill the EIS Guidelines, particularly as they relate to engagement and consultation with affected Indigenous communities, and the assessment of impacts on Indigenous rights and other interests. It is clear that CEAA must conclude that the August 2019 EIS does not conform with the EIS Guidelines.

In addition to a finding of non-conformity, we also request that CEAA provide unequivocal direction to the proponent about its obligation to engage affected Nations, and to respectfully carry out studies on the project impacts on our rights and interests. In particular, we seek clear direction from CEAA to MI that MI must properly fund and carry

out studies of a sufficient scope and according to modern best practices (i.e, the studies need to be community-led where a community is willing to share its IK) to assess potential impacts section 35 rights held by those who will be most adversely impacted by the Channels, namely First Nations in the Interlake area.

It is extremely frustrating for us - and frankly, disrespectful of our communities, our limited recourses, and the assessment process in general - that MI would submit an EIS that is so obviously deficient. Reviewing a far-from-complete EIS is a less than productive use of money and time for the IRTC and everyone else involved. As we have tried to impress upon MI for more than a year, the IRTC's is willing and open to engage and our First Nations' are willing to share their Indigenous knowledge, including land use information. Our preference is to spend our time and money on actual consultation, impact assessment and developing effective mitigation and accommodation measures. Instead, as detailed below, MI has:

- stonewalled
- reneged on a signed funding agreement for consultation resources
- refused to provide its consultation logs, which we have repeatedly requested
- failed to transparently communicate its proposed consultation process
- shut us out of the development of the EIS, despite specific requests to be included.

Inviting us to meetings and open-houses where thoughts are exchanged, but nothing concrete is done, actions are not followed up on, no one with the Province has authority to take the most basic steps, follow-up correspondence is mostly ignored or deflected, is not meaningful consultation. It leaves us with the distinct impression that the proponent is simply using these

meetings to pad its consultation record, without actually having to do the hard work of consultation and reconciliation.

We appreciate the extension granted by CEAA to provide these comments. Due to time and resource constraints, and that fact that CEAA has significant in-house expertise to review most of the EIS, our comments are high-level in nature and focused on those matters where CEAA may not have adequate information and the IRTC has direct knowledge. Given the obvious deficiencies in the August 2019 EIS, we assume CEAA will conclude it does not conform. **If however CEAA is of the preliminary view that it may conform with the EIS Guidelines, we request you contact us and provide further time more comprehensively review the EIS and provide further comments.**

We reiterate that the comments below are not to be taken as a comprehensive review of the conformity of all VCs assessed in the EIS. These comments focus on engagement and consultation, as well as Aboriginal land use. However, we emphasize that a preliminary review of other parts of the EIS clearly reveal how a lack of consultation & engagement affects other assessed VCs like "fish & fish habitat" and wildlife, and possibly others.

We understand that the IRTC will have further opportunities to provide comments on any EIS which is determined to confirm with the Guidelines.

EIS Does not Conform

As noted, the IRTC has concluded that the recently submitted EIS by the proponent does not conform to the EIS guidelines. Specifically, four of the value components (VCs) assessed were deficient, they include: Heritage resources, traditional land & resource use, Indigenous health &

socio-economic conditions, and Aboriginal & Treaty Rights. The non-conformity or seemingly lack of credible information about the assessed VCs points to the proponent's unwillingness to consult and adequately engage with Indigenous communities.

1) Value components to be examined

Section 3.2 .2 of the EIS guidelines requires the proponent to identify VCs that may be impacted by the project, and that VCs are supposed to be identified in collaboration with affected Indigenous communities:

Valued components (VCs) refer to environmental biophysical or human features that may be impacted by a project. The value of a component not only relates to its role in the ecosystem, but also to the value people place on it. For example, it may have been identified as having scientific, social, cultural, economic, historical, archaeological or aesthetic importanceThe list of VCs presented in the EIS will be completed according to the evolution and design of the project and reflect the knowledge acquired through public consultation and engagement with Indigenous groups.

The proponent provided a list of VCs that was not obtained through the process described above. Community members agree that this presents a fundamental flaw in the EIS present to CEAA, as VCs are the foundation for impact assessment. Furthermore, CEAA (2012) outlines the process of identifying VCs. Section 1.1, in particular, states that gathering data and information should include regional studies and input from aboriginal groups. The IRTC recommends that the proponent provide VCs that are reflective of our Tribe's input.

Likewise, the IRTC was not engaged at all in the setting of temporal or spatial boundaries (Section 3.2.3).

Below is just a sample of directions in the EIS Guideline regarding Indigenous Engagement that have not been followed. Quotes from the EIS Guidelines are followed by IRTC comments in italics:

Section 2.3

- "The proponent is expected to work with potentially affected Indigenous groups to establish an engagement approach." – *See attached, correspondence between the IRTC and the Province dating from the spring of 2018 to the present where the IRTC has endeavoured to get MI to agree to a transparent consultation process. Efforts to do so started in earnest in June 2018, where the IRTC met in person with provincial consultation leads, who rejected out of hand a proposed consultation process. In December, 2018 the province provided us a draft process to comments on, which we did. To our knowledge, to date – 10 months following this meeting – the process has not yet been finalized. The only concrete response from the province was to attempt to ignore the express direction of the four member First Nations we represent to run consultation through the IRTC and arrogantly impose an alternative route of consultation. Manitoba entered into a consultation funding agreement or Workplan in the summer of 2017, which was to provide multi-year consultation capacity funding in relation to the project. **No consultation capacity funding from Manitoba has flowed to the IRTC since late 2017.** Our many attempts to rectify this situation with the province have been stonewalled.*
- "The proponent will make reasonable efforts to integrate Indigenous knowledge into the assessment of environmental effects." – *We are not aware that there was any or any meaningful effort integrate IK into the environmental effects.*
- "The EIS will document these efforts and the validation process with affected Indigenous groups regarding reasonable efforts to integrate Indigenous knowledge." – *MI has not engaged in any validation process with the IRTC. The first we saw of the EIS, or any part of the EIS (save for the referenced Golder report, which we address below) was when CEAA forwarded it to us a August 30, 2019.*

Section 4.1

- "The proponent is encouraged to engage with Indigenous groups on the planning and development of relevant sections of the EIS, including effects from changes to the environment and impacts to potential or established Aboriginal or Treaty rights as well as assessment of environmental effects as outlined in paragraph 5(1)(c) of CEAA 2012." - *Attempts by the IRTC to become engaged in the development of studies in the EIS were rebuffed by the Province (see attached material).*

2) Traditional knowledge studies

Section 4.3 (study strategy and methodology) require that incorporate traditional/indigenous knowledge in assessments of VCs. Traditional knowledge and/or Resource use - This particular study is required to inform proponents about community land use, potential impacts Treaty Rights, potential impacts community resources, and so on. And throughout the EIS guidelines, incorporating indigenous knowledge into EIS underpinned the described study strategy/methodology. To clarify, we refer the proponent to page 10 on the EIS guidelines, which explicitly states:

“ The assessment of environmental effects on Aboriginal peoples, pursuant to paragraph 5(1)(c) of CEAA 2012, will undergo the same rigour and type of assessment as any other VC (including setting of spatial and temporal boundaries, identification and analysis of effects, identification of mitigation measures, determination of residual effects, identification and a clear explanation of the methodology used for assessing the significance of residual effects and assessment of cumulative effects).The proponent will consider the use of both primary and secondary sources of information regarding baseline information, changes to the environment and the corresponding effect on health, socio-economics, physical and cultural heritage and the current use of lands and resources for traditional purposes. **Primary sources of information include traditional land use studies, socio-economic studies, heritage surveys, cultural impact assessments or other relevant studies conducted specifically for the project and its EIS. It is recommended that potentially affected Indigenous groups are a source of this information** and that the determination of information requirements includes Indigenous groups”

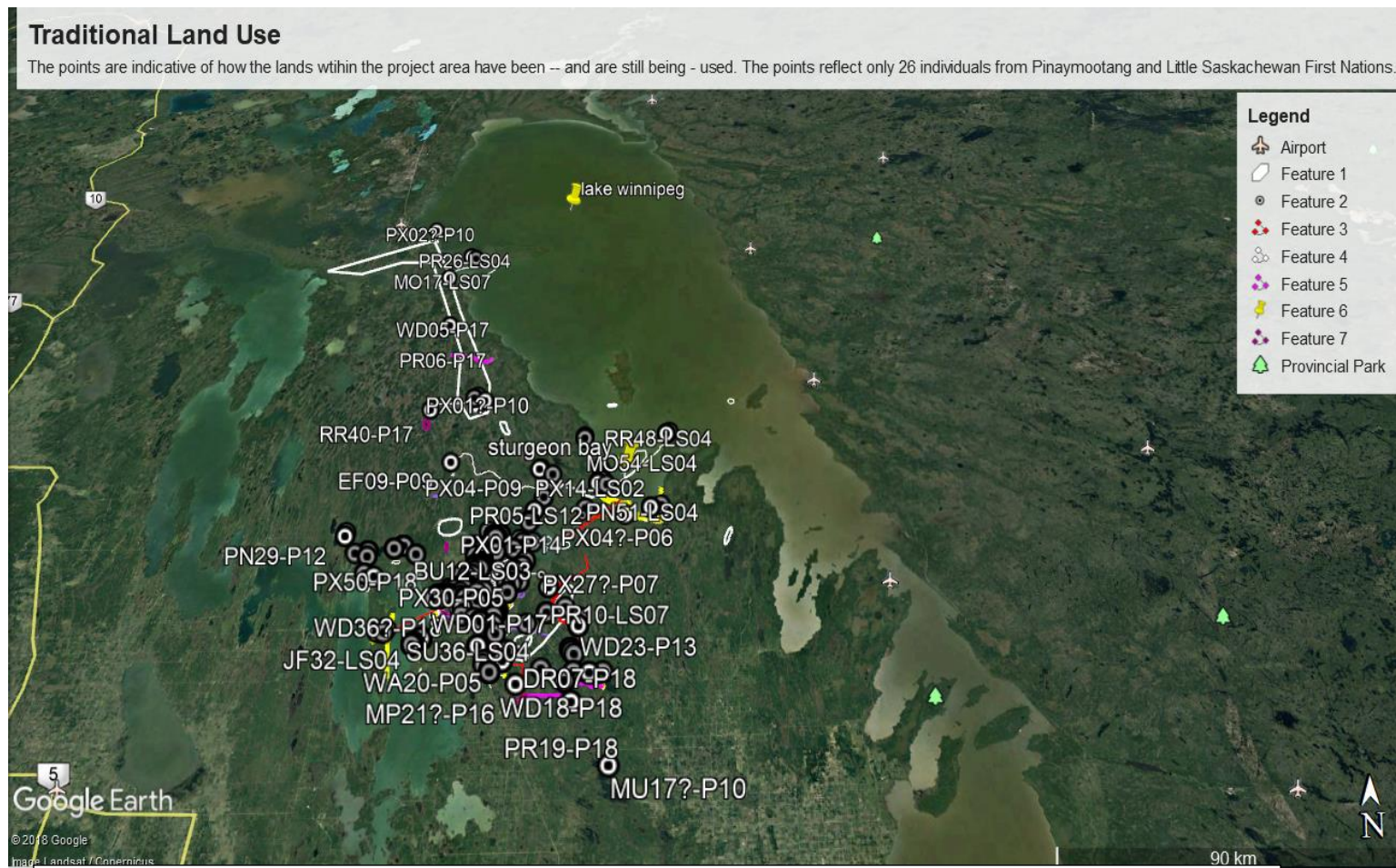
There is no description of studies carried out (e. g up to date land use studies) by the proponent. Effective accommodation measures can not be developed without good baseline information, studies, and reliable impact assessments. Additionally, section 7 of the EIS guidelines stipulates that baseline information for current use of lands and resources for traditional purposes should focus on traditional activities (e.g. hunting, fishing, trapping, plant gathering) and include a characterization of all attributes of the activity that can be affected by environmental, social, and/or cultural change. This information was not collected. The use of publicly available information in lieu of the relevant studies – as described above – does not take into account the dynamic nature of land use and community's consent to use such information. Most importantly, the EIS lacks information on current use of land. Again, EIS guidelines clarifies aspects to be considered, they include:

- “location of traditional territory (including maps where available);
- traditional uses currently practiced or practiced in recent history;
- location of reserves and communities;
- location of hunting, trapping, and fishing camps, cabins and traditional gathering or teaching grounds;
- fish, wildlife, birds, plants or other natural resources of importance for traditional use;
- places where fish, wildlife, birds, plants or other natural resources are harvested, including places that are preferred;
- access and travel routes for conducting traditional practices;
- frequency, duration or timing of traditional practices;
- cultural values associated with the area affected by the project and the traditional uses identified; and so on”

None of this information is in the EIS. Time and again, the proponent has refused to conduct relevant studies, despite the IRTC's repeated attempts to reach out and explain the need for these studies

For purely illustrative purposes, the figure below shows traditional land use from a recently conducted study of twenty-six individuals in two of our member First Nations

How will the project impact the rights to keep practicing these activities or access to these resources? What are the accommodation measures or mitigation measures? None of these was described in the EIS.



Source: IRTC 2019

To emphasize, the map above does not represent the entirety of use in the area. Only use by a handful of members from two communities. If comprehensively conducted, the study will accurately reflect the scale of traditional land use and its potential impact. This potential was also not considered, nor was accommodation/mitigation measures.

Other deficiencies:

Section 4.2.1 and 4.3

- "Agreement should be obtained from Indigenous groups regarding the use, management and protection of their existing Indigenous knowledge information during and after the EA." – *No attempt by MI to do this*
- "Secondary sources of information include previously documented information on the area, not collected specifically for the purposes of the project, or desk-top or literature-based information. The proponent will provide Indigenous groups the opportunity to review and provide comments on the information used for describing and assessing effects on Aboriginal peoples ..." – *This was never done.*
- "The proponent will respond to the comments of Indigenous groups prior to submitting the EIS to ensure that the comments are adequately addressed. Where there are discrepancies in the views of the proponent and Indigenous groups on the information to be used in the EIS, the EIS will document these discrepancies and the rationale for the proponent's selection of information." – *there was no attempt by MI obtain our comments. At no time did MI show us a draft EIS, or any portion of EIS, including its section on TLRU, before submitting it to CEAA.*

The IRTC does not consent to MI's desk-top review of land use information and its reliance and characterization of the Golder Report as a c study sufficient to align with the Guidelines. The Golder Report was based on land use information collected as an incidence of open-houses in each community. Relying on land use information from those who happen to show up at an opening house is not methodology sound. Some of these meetings lasted as little as 1.5 hours. The longest meeting appeared to be 2.5 hours. Those who shared information and the IRTC were told the Golder report to collect preliminary land use information. In addition to mis-using the Indigenous Land Use information in the Golder Report, MI did not obtain consent from the IRTC or its member First Nation to rely on the other sources Indigenous Land Use information set out in its EIS.

In 2011, the Province constructed the Lake St Martin Emergency Outlet Channel without any environmental assessments or consultation with affected Indigenous communities. The Provincial Cabinet created the *Lake St. Martin Outlet Channel Authorization Regulation*, which exempted the project from the usual review under the *Environment Act*. This action has affected livelihoods and resources and inflicted untold hardship on First Nation communities and our members. When all the waters came through, there was breaches in the lagoons, around lake Manitoba, through the First Nations, Fairford, lake St martin, Little Saskatchewan, there was a major, major fish kill. And when the emergency channel was built, there was a huge fish kill that was never reported. At the time, this was reported to the north south consultants that were biological study for KGS group. "We sent in samples of fish that were dead along the shores. And they came in and did some research. Later, they were mandated to do a fish count. They had to count what was caught in the channel. The fish had been caught in the channel when the water

receded. And there was major fish kill in there. We have reports from fishermen who go out to reindeer island and they the debris out there is tremendous”. If relevant studies – and possible mitigation measures - had been conducted, however, this catastrophe would have been avoided.

Section 9.5.2.1 of the Proponents EIS states that: “Project effects on resource use, including hunting, trapping, fishing, mining/aggregates, forestry, and groundwater and surface water have been considered and reduced through the application of mitigation measures and are of low to moderate magnitude. The Project will not degrade, restrict or disrupt any of these land and resource uses to a point where they cannot continue at or near baseline levels” How did the proponent arrive at this conclusion? What were the methods used? Have these mitigation measures taken into consideration the resource area shown in the map above – which represents, again, less than a quarter of land use in the project area.

As noted above, the Golder report does not meet the EIS Guidelines.

3) Consultation & Engagement

Opportunities to learn about the project and its related activities should not be confused with consultation. The engagement and consultation process, as noted in the report, was tailored into several rounds of public opens houses and series of meetings with each community. These sessions, according to MI, were to provide our communities “with the opportunity to hear, understand and voice their thoughts regarding the proposed project”.

Meaningful consultation and accommodation entails listening and being prepared to adjust policy or project plan/proposal based on feedback or information. Those undertaking consultation for MI need to be empowered to negotiate and accommodate concerns and carry out those things to properly execute meaningful consultation and accommodation. Moreover, the open houses were designed to address questions related to the outlet channels. In responding

to some of these questions, MI simply stated: “these comments were noted”. For instance, no answers were provided to a question relating to decline in Moose population around the area. This affects how First Nations exercise their Aboriginal & Treat Rights.

Although no meaningful response has been received from MI regarding issues raised, project work has commenced, as the contract was awarded on the 20th of June, 2019. This is another example of the province circumventing due process – at the expense of indigenous communities - to achieve its objectives. On the whole, as gleaned from the EIS, it is safe to conclude that MI did not meaningfully incorporate the information it obtained from these open-houses. Consultation is not only about identifying issues and concerns or note taking, it is about responding to and accommodating these concerns.

4) Alternative Means of Carrying out the Project

Section 2.2 states on page 15 states:

- "The Proponent will identify whether and how Indigenous groups have been engaged in project design and in the analysis and identification of preferred means of carrying out the project from the alternative means"

The IRTC was not engaged in the identifying preferred or alternative means of carrying out the project. Had we been engaged the Province would know that a number of our member First Nations would prefer to see the LSMOC go around Lake St. Martin. While this may result in more clearing and a longer channel, from their perspective, there may be important benefits as compared to the proposed project, the main benefit being less impacts on the commercial fishery and members' livelihoods.

Conclusion

First Nations in the Interlake area will bear a disproportionate share of the adverse impacts arising from Channels. It is crucial for our Tribe that these impacts be properly understood and assessed from the Indigenous perspective, and that regulatory bodies like CEAA work with us to mitigate, accommodate, or if possible, avoid these impacts.

To date, the proponent has refused to accept or respect the requirements in the EIS Guidelines, particularly as they relate to impacts on Indigenous peoples. Accordingly, we respectfully request and implore CEAA to clearly direct MI to resource community-led rights impact assessments, and include or at least engage the IRTC in its other studies undertaken as part of the EIS.

Again, we ask that if CEAA is of the view that the EIS confirms with the EIS Guidelines, you provide an opportunity for the IRTC to comprehensively review the EIS and provide further comments.