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Via Email

Lake Manitoba and Lake St. Martin Outlet Channels Project
Canadian Environmental Assessment Agency
9700 Jasper Avenue, Suite 1145
Edmonton Alberta T5J 4C3

Attention: Matthew Dairon

Dear Sir:

RE: Lake Manitoba and Lake St. Martin Outlet Channels Project

Please be advised that we represent Sandy Bay Ojibway First Nation ("SBOFN") regarding the Lake Manitoba and Lake St. Martin Outlet Channels Project (the "Project"). This correspondence is in response to your letter dated March 9, 2020 which contains an invitation to review and provide comments on the March 2020 Environmental Impact Statement ("EIS") submitted by Manitoba Infrastructure ("MI").

On March 9, 2020 the Impact Assessment Agency of Canada (the "Agency") accepted the EIS submitted by MI and commenced its technical review. As stated in your March 9, 2020 letter, the Agency is interested in receiving SBOFN's views regarding, but not limited to, the following key areas:

1. The potential environmental effects of the Project as described under section 5 of the *Canadian Environmental Assessment Act, 2012* ("CEAA 2012"), in particular, the potential effects from changes to the environment with respect to Aboriginal peoples on:
 - health and socio-economic conditions;
 - physical and cultural heritage;
 - current use of lands and resources for traditional purposes; and,
 - any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

2. The potential impacts of the Project on the Aboriginal or treaty rights of SBOFN, including the ability to exercise those rights.
3. The effectiveness of the proposed mitigation measures and/or follow-up programs related to potential adverse environmental effects or impacts on the Aboriginal or treaty rights of SBOFN.

Due to the lack of meaningful consultation with SBOFN to date, providing comments on the points above has proven difficult. The failings surrounding consultation are detailed in **1. Consultation** below. Further, the EIS is so deficient in many areas that understanding the Project's potential effects on SBOFN's Treaty or Aboriginal Rights and the effectiveness of the proposed mitigation measures is impossible.

SBOFN has retained two experts to assist in the review of the EIS. The findings and concerns of the experts are discussed in sections 2 and 3 below and are explained in greater detail in the Information Requests ("IR") that form part of this submission. The comments and requests in this correspondence and the IR's provided by the experts are to assist the Agency in the environmental review of the Project and to ensure that the requirements of s. 35 consultation and *CEAA 2012* are met.

1. Consultation

The May 31, 2018 EIS Guidelines (the "EIS Guidelines") indicate that, for the purpose of developing the EIS, the proponent is expected to "strive towards developing a productive and constructive relationship based on on-going dialogue with" Indigenous groups listed in the EIS Guidelines, which includes SBOFN, in order to support information gathering and the effects assessment.

The Agency reviewed the EIS submitted by MI on August 30, 2019 for the Project and determined that the EIS did not conform to the requirements of the EIS Guidelines due to "conformity gaps" detailed in correspondence dated October 22, 2019. Those gaps were outlined in a 26-page document that included numerous issues regarding engagement with Indigenous groups, one example being the following information requirement found in Annex 1 of the October 22, 2019 correspondence:

2.3 Engagement with Indigenous groups

The EIS requires more detail on the ongoing and future Indigenous engagement.

Information and/or clarity is required to fully understand:

- *the potential effects of changes to the environment on Indigenous peoples, and potential impacts to Aboriginal and Treaty rights for each of the Indigenous groups identified by the Agency;*
- *how information from Indigenous groups, including, but not limited to Indigenous knowledge, was considered and incorporated into Project Design and the EIS;*
- *how areas of discrepancy between the views of Indigenous groups and the proponent were addressed; and*
- *the efforts taken to validate with affected Indigenous groups regarding the integration of Indigenous knowledge.*

Further engagement may be required to fulfill the information requirements related to Indigenous groups' views on the project, the assessment of environmental effects, the assessment of impacts to rights, and the use of Indigenous knowledge.

"Annex 2: Advice to the Proponent" makes note of how little information has been provided regarding how Indigenous Groups were engaged and assisted with project planning and mitigation:

These sections of the EIS, where Indigenous Information and Traditional Knowledge have been incorporated should be expanded, to include information from as many of the Indigenous groups as possible. Considering there were many Indigenous groups to be engaged for the project there does not seem to be very much information included from them.

(emphasis added)

In correspondence dated March 9, 2020 the Agency concluded that the EIS submitted by MI on March 5, 2020 conforms with the EIS Guidelines and as such commenced technical review of the EIS. The Indigenous Consultation Approach and Current Status ("ICACS") report found in Appendix 5C of the March 2020 EIS provides a summary of consultation with SBOFN to date. The ICACS is a poor attempt by MI to satisfy the requirements set forth by the Agency to fill the conformity gaps outlined in its October 22, 2019 correspondence.

We have requested on numerous occasions that a face-to-face meeting be held with MI to develop a meaningful consultation process for SBOFN which takes into consideration the points outlined in Annex 1 and Annex 2 of the October 22, 2019 letter from the Agency. Due to Covid-19 and the impossibility of meeting in person,

we have now requested on multiple occasions to be provided with a draft consultation work plan for SBOFN. As of today's date, SBOFN is still waiting for a draft consultation plan

A CBC article from August 2017 quotes Premier Brian Pallister as calling the consultations for the Project the "most comprehensive, thorough and robust Crown and Indigenous communities consultations in the history of Manitoba." However, these "robust" consultations are nothing more than box checking exercises where MI seeks to do as little as possible to meet the EIS Guidelines. The Premier has been vocal in the press regarding his displeasure with the federal environmental review process. As stated in a November 7, 2019 Winnipeg Free Press article:

Pallister had asked the federal Liberals to streamline consultations on the billion-dollar project, warning that it's needed to avoid another disastrous flood in the Interlake. He said Manitoba has had "approaching 600 meetings" with Indigenous groups over the last three years.

"Métis, Indigenous consultations and community consultations are going to continue until such time as we're able to satisfy the requirements that the federal government's environmental process has now imposed on us, which were not there at the outset," the premier told reporters Thursday.

"I guess what I'm trying to say as politely as possible is that the federal government keeps changing the yardsticks so that after three and a half years we've got about two months of actual consultation we can count. Because the consultations and the meetings don't count unless you've satisfied all of the federal requirements."

It is very difficult to remove federal environmental assessment from the realm of politics. However, the Agency must push back against MI to ensure that meaningful consultation with SBOFN is given the time that is required. Delays in timely consultation can be fatal to a project. The Treaty and Aboriginal rights of SBOFN have not been adequately assessed and its input has not been meaningfully incorporated into the planning, design, assessment, or potential mitigation of the Project.

The entire world is currently in a state of emergency due to Covid-19. This fact has complicated an already onerous task of consulting with a proponent that is merely interested in streamlining engagement to ensure timely approval of a project. The

Project is highly technical, complex and will impact SBOFN indefinitely and in ways which are not yet understood **by either MI or SBOFN.**

We request that the legislated timeline within which the Minister of the Environment and Climate Change is to make an EA decision remain paused until meaningful consultation with SBOFN has occurred. Further, the results and lessons learned during consultation with SBOFN must be incorporated into the design, assessment, operation, and mitigation of the Project.

2. Overall Review of EIS/Wildlife and Land and Resource Use

James Rettie, Ph.D. of Paragon Wildlife Research and Analysis was retained to conduct a review of two primary sections of the EIS; Wildlife and Land and Resource Use. Dr. Rettie also reviewed the full EIS to put the Project into context with respect to possible impacts and whether the EIS met the requirements of *CEAA 2012*.

Dr. Rettie generated a compilation of comments, in the form of IR's where the information in the EIS was either lacking or not sufficient to complete the assessment (**TAB A**). Dr. Rettie also provided an Executive Summary at **TAB B** outlining concerns regarding the EIS and the Project. Dr. Rettie's major concerns regarding the EIS are as follows:

Project Description

- a. The EIS has not been examined and planned in a careful and precautionary manner;
- b. The EIS Project Description (Section 3.0) is deficient of the details that are necessary to determine what construction will occur, when construction will occur, and where it will occur;
- c. MI repeatedly refers to future decisions, standard practices, and appropriate planning and permitting to be completed as required;
- d. Without a completed Project description, the effects assessment is premature and affected parties are asked to trust that future decisions will be mitigated;

Selection of Valued Components ("VC's")

- e. The selection of VC's is far too broad - they do not take into consideration the variability of Project effects and the vulnerability of certain species;

- f. Selection of broad VC's masks Project effects that are local, or that are specific to some elements;
- g. Poor assessment of Project effects on vegetation led to poor assessment of effects on wildlife which then led to poor assessment of Land and Resource Use ("LRU") and Traditional Land and Resource Use ("TLRU");

Selection of Temporal Boundaries/Metrics for VC Assessment

- h. MI elected from the outset to restrict the temporal scope of the EIS to begin at present and did not properly include historic effects on the cumulative effects assessment;
- i. Long term modelling of Project effects to important VC's are omitted or criteria are not measurable for future change;
- j. Overall, the metrics for assessment are a combination of crudely categorized and measured parameters and unmeasured parameters - this precludes proper assessment of the Project and precludes future effective monitoring;

Mitigation Measures/Follow-up and Monitoring

- k. Mitigation strategies presented throughout the EIS can be described as lists of best practices and potential mitigation actions;
- l. The specific details required to demonstrate careful planning and consideration are absent in the EIS
- m. There is a consistent failure to demonstrate any clearly planned and quantifiable mitigation of Project effects; and
- n. Effective environmental monitoring is a scientific process requiring data, predictive outcomes, and pre-defined methods of data collection, analysis, and reporting – in the absence of baseline measurements or proposed mitigation with quantifiable objectives there can be no effective monitoring program.

Dr. Rettie is of the opinion that the deficiencies in the Project EIS cannot be overcome with a series of remedial actions. The flaws in the EIS are foundational. He began drafting his recommendations one element at a time, but soon realised that each successive recommendation depended on a sequence of other

recommendations having been addressed first. Ultimately the problems are a deficient scoping process and a failure of MI to take responsibility for a thorough assessment.

Dr. Rettie is of the opinion that the Project should be re-scoped, re-assessed, and a new EIS prepared.

3. Aquatic Resources

A team comprised of Aquatic Resource Management Ltd., Westhoff Engineering Resources, Inc., and Jon Fennell was retained to conduct a review of three primary sections of the EIS; Geochemistry and Groundwater, Surface Water and Fisheries and Fish Habitat. The team also reviewed the full EIS to put the Project into context with respect to possible impacts that would carry over to the principal components that the team was jointly reviewing.

The team generated a compilation of comments, in the form of IR's where the information in the EIS was either lacking or not sufficient to complete the assessment (**TAB C**). A summary of findings from the team is found below (the IR's contain further detail):

- a. Flaws in the assessment methodology were noted, with regards to spatial and temporal boundaries, and significance determinations;
- b. Insufficient presentation of some of the baseline data, with either a lack of data or an unclear presentation of the data. There also seems to be a lack of consistency in the comparison of pre-2011 and post-2011 baseline data, which was a clear requirement from the project-specific EIS Guidelines;
- c. There is insufficient comparative water quality data for Lake Manitoba, Lake St. Martin, and Lake Winnipeg and almost none for the minor lakes and wetlands. As part of this deficiency there is no metals water quality data for surface water or groundwater;
- d. There is a lack of benthic and primary productivity data. Although there are several references to this type of data, they are either not provided or summarized so that the statements made with respect to fish habitat are not supportable;

- e. Fish spawning areas are discussed in non-specific terms in the EIS. The EIS Guidelines require that spawning areas be located and defined so that impacts can be determined at a specific location;
- f. The EIS does not provide sufficient information regarding the makeup of the bottom substrates in the waterbody studies. Bottom substrate type and distribution is causally related to benthic productivity, fish feeding, and spawning habitat use. With an increase in sediment transport and subsequent deposition, substrate diversity would be expected to decrease, and this would lead to a corresponding decrease in benthic diversity and subsequently use by fish;
- g. The groundwater effects on wetlands and lakes are not clearly defined. Groundwater effects could have direct impacts on Fish and Fish Habitat as defined in the *Fisheries Act*;
- h. Where the EIS identifies that a Habitat Alteration and Destruction will occur, mitigation is to occur by creating new habitat in the channels. However, no data is provided that demonstrates that the newly created habitat will be equivalent to that which is lost;
- i. The Emergency Outlet Channels ("EOC") that were put in to operate in 2011 and 2014 to relieve the spring flood waters in those years will not be decommissioned. Reach 3 of the EOC will be reused as part of the LSMOC. As a result, during construction of the two channels there will be a cumulative and compounding effect on the groundwater from both EOC's and this will in turn affect fish and fish habitat in the wetlands that drain the area in their proximity. There is a general lack of acknowledgement that this represents an additional impact to the Local and Regional Impact zones as defined in the EIS;
- j. The effect of seiche setup on the level of inundation was not properly assessed in the EIS. Both Lake Manitoba and Lake Winnipeg are subject to lake setup which increases the effective wave height substantially in some instances. Although the lake elevation modelling provided in the EIS does indicate a rise in lake elevations which is predicted to be fairly low, with wind set up lake effects the shoreline differential in inundation could be significant. The North Basin of Lake Winnipeg is most susceptible to wave set up because of long fetch and the prevalence of high winds from the north or northwest;
- k. Insufficient details on mitigation measures and monitoring programs, with too much reliance on developing the programs during the detailed design

stage. Additional details should be presented in the EIS, based on best practice and current project understanding, with an acknowledgment that further refinement will take place during the detailed design stage;

- l. Insufficient hydrologic, hydraulic, and sediment transport modeling. Either additional modeling or further clarification is required;
- m. Insufficient discussion on potential impacts and mitigation measures to wetlands;
- n. Lack of clarity or uniform presentation on future studies that will be conducted (including baseline data collection, impact analysis, and modeling);
- o. Conclusions on climate change effects should be backed-up with water balance modelling for climate change scenarios;

Due to the lack of information within the EIS regarding the extent of potential water quality impacts (such as sediment plumes), it is difficult to determine the magnitude of the adverse effects.

With respect to the aquatic environment, the fens and minor lakes along the preferred route could be dewatered which would affect the ability of the fens and the shallow lakes to support a viable and diverse ecosystem.

Plant based traditional and cultural activities will be directly affected by adverse effects to water. Similarly, any animals that rely on these affected waterways to sustain their way of life, such as muskrat, white-tailed deer or moose will likely decrease in abundance.

Due to the lack of detailed information contained with the EIS and an absence of meaningful consultation with SBOFN, any further assessment of the potential impacts of the Project on the Aboriginal or treaty rights of SBOFN, including their ability to exercise those rights, is premature.

4. Conclusion/Requests

The entire world is currently in a state of emergency due to Covid-19. This fact has complicated an already onerous task of consulting with a proponent that is merely interested in streamlining engagement to ensure timely approval of a project. The Project is highly technical, complex and will impact SBOFN indefinitely and in ways which are not yet understood by either MI or SBOFN. Consultation with SBOFN and numerous other First Nations has been insufficient to date and does not adhere to the EIS Guidelines. Input from SBOFN has not been properly incorporated into the design, assessment, and mitigation of the Project.

The Agency approved the revised March 2020 EIS two business days after it was submitted by MI. Meaningful steps regarding consultation have not been taken by MI to resolve the conformity gaps outlined in the October 22, 2019 correspondence from the Agency. It is the position of SBOFN that the March 2020 EIS did not meet the EIS Guidelines and should never have been allowed to proceed to the technical review phase. This is supported by the 50 pages of IR's put forth by the Agency and other federal authorities in April 2020.

The contents of the EIS are so lacking and the methodologies implemented are so flawed that Dr. Rettie has concluded that the Project should be re-scoped, re-assessed, and a new EIS prepared. We agree.

If the Project cannot be re-scoped, re-assessed, and a new EIS prepared, SBOFN requests that the legislated timeline within which the Minister is to make an EA decision **remain paused** until the following occurs:

1. A consultation work plan has been carried out for SBOFN that satisfies the EIS Guidelines and Annex 1 of the October 22, 2019 correspondence from the Agency;
2. The results of SBOFN's consultation work plan have been incorporated into the design, assessment, operation, and mitigation of the Project;
3. MI provides detailed responses to each of the conformity gaps found in the October 22, 2019 correspondence from the Agency;
4. The attached IR's are given complete and thorough responses by MI; and
5. SBOFN is given at least one more opportunity to provide IR's after MI issues their responses to the first round of IR's.

SBOFN appreciates the deadline extension provided by the Agency to provide comments on the EIS. Covid-19 has greatly affected and continues to affect the ability of SBOFN members to meet and discuss the EIS and the overall Project. The foremost concern of SBOFN at this time is to protect the health and safety of its members. MI must not be allowed to "streamline" the approval of a massive infrastructure project during the middle of a global pandemic.

We thank you for this opportunity to provide comments on the EIS and look forward to participating in the upcoming Technical Advisory Group meetings.

Yours truly,

MYERS LLP

Per:

<Original signed by>

ALEX NISBET

cc: SBOFN Chief and Council