

Mr. Matthew Dairon
Project Manager, Prairie and Northern Region
Impact Assessment Agency of Canada
Canada Place, Suite 1145-9700 Jasper Avenue
Edmonton, Alberta T5J 4C3

Dear Mr. Dairon:

Re: Comments on EIS for L. Manitoba-L. St. Martin Channels Project

Please find attached a summary of Fisher River Cree Nation comments on the Environmental Impact Statement (EIS) for the L. Manitoba – L. St. Martin Channels Project. In addition to the specific EIS referenced items in the summary, we have the following general comments.

1. **Engagement and Consultation:** these two terms are used interchangeably throughout the document. We consider “engagement” to mean the process of information sharing with our community by Manitoba Infrastructure (MI) in its role as the proponent. “Consultation” on the other hand is understood to mean the legal obligation of MI, as representative of the Crown, to consult with and where appropriate accommodate Fisher River Cree Nation for adverse effects that cannot be eliminated or substantially reduced.

The Duty to Consult is the sole responsibility of the Crown – it cannot be delegated to a proponent, although we recognize certain process activities can be.

We recognize that in certain cases, such as an MI meeting with Chief and Council, the meeting will constitute meaningful consultation as information is exchanged, and infringements on Treaty and Aboriginal rights and mitigation and accommodation options are discussed. In other cases, such as a notice and invitation sent to FRCN and to multiple stakeholder groups to attend an Open House in Ashern for example, FRCN would not consider this to be consultation and therefore should not be part of the Crown consultation record.

Recommendation: We recommend that the EIS include clarification of the terms “engagement” and “consultation”, and clearly differentiate the engagement activities of the proponent from those that are considered to be Crown consultation activities.

2. **Consultation and Accommodation:**

The following is an excerpt from the Government of Canada’s manual “Aboriginal Consultation and Accommodation Updated Guidelines for Federal Officials to Fulfill the Duty to Consult March 2011”:

“The courts have said that consultation would be meaningless if, from the outset, it

excluded any consideration of the potential need to accommodate the concerns raised by Aboriginal groups. Consultation may reveal a need to accommodate. Accommodation may take many forms.

The primary goal of accommodation is to avoid, eliminate, or minimize the adverse impacts on potential or established Aboriginal or Treaty rights, and when this is not possible, to compensate the Aboriginal community for those adverse impacts. In some circumstances, appropriate accommodation may be a decision not to proceed with the proposed activity. The Crown may be able to rely on what the industry proponent does in terms of accommodation, to fulfill, in whole or in part, the Crown's duty to consult, and where appropriate, accommodate.

Where it is not possible to avoid, eliminate, or substantially reduce adverse impacts, it may be appropriate to compensate the Aboriginal group for any adverse impacts on their potential or established Aboriginal or Treaty rights. Compensation could take a variety of forms including habitat replacement; providing skills, training or employment opportunities for members of the Aboriginal group; land exchanges; impact-benefit agreements; or cash compensation. “

The EIS does not provide sufficient or clear information regarding the Crown's duty to consult with the Aboriginal communities that may be potentially adversely affected by the project, nor does it address the Crown's obligation to accommodate those Aboriginal communities if the adverse effects cannot be eliminated or substantially reduced.

Recommendation: That the EIS include more comprehensive information regarding the Crown's consultation and accommodation obligations, and relevant references from provincial and federal Crown consultation policies.

3. **Issues Affecting Consultation:** Covid-19 has restricted the ability to meet with Elders, Traditional Knowledge Holders and Traditional Healers. Although efforts are being made to conduct consultation through more complex and time consuming processes (e.g. mailouts, e-mails, web site and teleconferences), full and meaningful consultation has not concluded and nor will it be in time to meet the deadline for the EIS response. The estimated date to complete consultation with FRCN membership and provide a consultation report to MB is September/October 2020.

Recommendation: That IAAC accept additional comments on the EIS when the community consultation takes place.

4. **Outstanding Issues from Previous Consultations:** MB has engaged FRCN in several Sec. 35 consultations over the past 4 - 5 years, specifically respecting Peat Harvesting Licences, L.

Winnipeg Regulation, Moose Hunting Closure, Night Hunting Ban, LMB-LSM Channel Project Access Road, and the Channel Project Hydro Distribution Line and Control Structure. In all cases FRCN submitted comprehensive consultation reports to Manitoba in a timely manner, along with proposed mitigation and accommodation measures as had been requested. To date, however, MB has not provided FRCN with responses to many of the concerns raised, nor has MB advised FRCN of its decisions regarding FRCN's mitigation and accommodation proposals.

Recommendation: That without further delay, Manitoba address all of FRCN's outstanding concerns, and provide clear and unambiguous responses to FRCN regarding the proposed mitigation measures and accommodations presented to MB in the consultation reports. That MB ensure that FRCN receives clear and definitive decisions regarding FRCN's mitigation and accommodation proposals without further delay.

5. **Miscellaneous Errors:** Fisher River Cree Nation is often referred to as Fisher River First Nation throughout the EIS and in one case as Fish River First Nation.

The following paragraph related to Fox Lake Cree Nation was erroneously inserted in the consultation summary for Fisher River Cree Nation. "Manitoba Infrastructure contacted Fox Lake Cree Nation to provide information regarding the Project. In response, a meeting was held with the leadership of Fox Lake Cree Nation on September 25, 2018, to discuss the Project and address questions and concerns of the community. On July 8, 2019, Fox Lake Cree Nation advised Manitoba Infrastructure that they were interested in a meeting in Thompson to discuss the Project.

Recommendation: That the errors be corrected.

Thank you for the opportunity to provide our comments on the EIS. We appreciate the guidance and assistance that we have received from you and the rest of the team at IAAC.

Sincerely,

Chief and Council