



Berens River First Nation

BERENS RIVER, MANITOBA ROB OAO
TELEPHONE: (204) 382-2161

May 7, 2024

Sean Carriere
Regional Director
Impact Assessment Agency of Canada

Via Email: lakemanitoba-lakest.martin@iaac-aeic.gc.ca

Dear Mr. Carriere:

**Re: Lake Manitoba and Lake St. Martin Outlet Channel Project
Comments on Draft Environmental Assessment Report**

I write on behalf of Berens River First Nation (“BRFN”) regarding the draft Environmental Assessment Report (the “Report”) in respect of the Lake Manitoba and Lake St. Martin Outlet Channel Project (the “Project”).

BRFN has repeatedly raised concerns that the Project will have serious, long-term consequences on our rights, culture, and way of life. Despite our requests, the Impact Assessment Agency of Canada (the “Agency”) has yet to take the steps necessary to fully understand how the Project will affect our Treaty rights and way of life. Manitoba Transportation and Infrastructure (“MTI”) has similarly failed to meaningfully consider or address our concerns.

As a result of the shortcomings in the consultation and engagement process, the draft Report cannot be relied on as a comprehensive or accurate assessment of the nature or scope of the impacts of the Project on BRFN’s rights and territory.

Background

BRFN is a self-governing Anishinaabe community located on the eastern shores of Lake Winnipeg in central Manitoba. We hold and exercise inherent and constitutionally protected rights, including rights guaranteed under Treaty 5. We rely on continued access to all lands and waters in the vicinity of Lake Winnipeg to exercise our rights. Preservation of our reserves and off-reserve territory is necessary to ensure our rights are respected and maintained for future generations.



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For decades, our community has been negatively affected by elevated water levels and flooding as a result of hydroelectric projects and water management systems on and around Lake Winnipeg. We have lost homes and vital infrastructure, as well as access to our reserve lands and to portions of our territory we use for hunting, fishing, and trapping. If allowed to proceed, the Project will exacerbate these impacts and make it even more difficult for us to exercise our Treaty rights and maintain our connection to our culture and way of life.

The Draft Environmental Assessment Report

The following is a brief, non-exhaustive summary of our concerns regarding the draft Report.

Consultation and Engagement Activities (s. 4)

We understand the Agency is responsible for coordinating a whole-of-government approach to consultation in respect of the Project. We further understand the Agency intends to rely, in part, on consultation and engagement activities undertaken by MTI to fulfil the Crown's consultation obligations.

The draft Report provides that MTI is engaged with all 28 Indigenous groups who were initially invited by the Agency to participate in consultation, including BRFN. We wish to clarify that MTI failed to invite BRFN to participate in the Environmental Advisory Committee established between MTI, First Nations and other third parties. As a result, we have been sidelined from significant portions of the engagement process. Information provided by MTI in the draft Report should not be relied upon for the purpose of assessing whether and to what extent BRFN's concerns have been considered and addressed.

We have also consistently expressed our concerns regarding the Agency's failure to assess the impacts of the Project on our rights, including its failure to take into account the cumulative impacts of previous and ongoing hydroelectric projects. These concerns are set out more fully below.

Cumulative Environmental Effects (s. 8.3)

The draft Report confirms a number of deficiencies in the scope and methodology for MTI's assessment of cumulative impacts of the Project. Specifically, the Report confirms the concerns raised by First Nations, including BRFN, that MTI failed to adequately determine temporal boundaries for its cumulative effects assessment. The Report further confirms that MTI failed to include a number of key projects and activities in its assessment, including the Lake Winnipeg Regulation and the Portage Diversion.

As you are aware, the Agency must consider the cumulative effects of the Project as part of its environmental assessment. We further understand the Government of Canada intends to rely on information collected for the purposes of the environmental assessment to discharge the Crown's duty to consult. Consultation must take into account the impacts of the Project in the context of the cumulative effects of historic and ongoing hydroelectric projects on our territory and rights.



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BRFN has serious concerns that the Project will exacerbate the existing effects of hydroelectric developments and water management systems on our rights and territory. To this end, we have identified specific concerns regarding the cumulative effects of existing projects on water levels, water quality, shoreline erosion, fish and fish habitat, riparian ecosystems, and wildlife, including species at risk and species of cultural importance. These issues remain outstanding and unaddressed. The Report further acknowledges that there is uncertainty regarding the effects of the Project on many of these values, as well as the effectiveness of proposed mitigations and offsetting.

In light of the above, the draft Report does not provide an adequate basis to assess the cumulative environmental effects of the Project. The Report further cannot be relied upon to assess the cumulative impacts of the Project on our ability to exercise our Treaty rights.

BRFN further disagrees with the Agency's conclusion that the Project is not likely to contribute to significant cumulative effects to fish and fish habitat. The Report does not include sufficient information to properly understand these effects.

Impacts on Aboriginal and Treaty Rights (s.9)

BRFN has repeatedly raised concerns about how this Project will affect our Treaty rights and way of life.

The draft Report provides that in the Agency's view, the Project may affect the exercise of rights for Treaty 5 First Nations, including BRFN. The draft Report further confirms that BRFN and other First Nations located along Lake Winnipeg have been impacted by historic and ongoing water quality and flooding issues on Lake Winnipeg. The Report specifically acknowledges that BRFN may experience the effects of changing water flow directions as a result of the Project.

We reiterate that the severity of the impacts on our Treaty rights has yet to be assessed. In particular, no consideration has been given to the impacts of the Project in conjunction with historic and ongoing hydroelectric projects and water management systems. As such, the conclusions in the draft Report do not reflect the full extent of the effects of the Project on our rights and interests.

Proposed Conditions

The draft Report includes a number of proposed conditions for the Project. In our view, these conditions are premature. It is not possible to determine the effectiveness of proposed conditions or mitigation measures if the extent of the impacts of the Project remain unknown.

Conditions should be developed in collaboration with BRFN and other affected First Nations following a robust assessment of the cumulative impacts of the Project on our Treaty rights.



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Conclusion

To date, the Agency and MTI have consistently failed to properly consider or address our serious concerns about the Project. The deficiencies in the draft Report confirm that our concerns are still not being taken seriously.

We reiterate that BRFN requires a process directly with Crown decision-makers to assess the potential affect of the Project on our Treaty rights.

Please contact us at your earliest convenience to initiate this process.

Meegwetch,

<Original signed by>

Councillor Roland Whiteway
Berens River First Nation

cc. Chief Hartley Everett
BRFN Council Members
Vivienne Wilson, IAAC (Vivienne.Wilson@iaac-aeic.gc.ca)
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