



455 – 167 Lombard Ave. Winnipeg MB Canada R3B 0T6
<http://manitobawildlands.org>
GaileWE@icloud.com Ph: 204-944-9593

May 11, 2024

Impact Assessment Agency of Canada

Re:

Lake Manitoba Lake St. Martin Lake Winnipeg Channel Project
Public comments on IAAC Report and Conditions

Attention:

Tanishka.Gupta@iaac-aeic.gc.ca
Jennifer.Fitzgerald@iaac-aeic.gc.ca
Allisson.Lefebvre@iaac-aeic.gc.ca
lakemanitoba-lake.st.martin@iaac-aeic.gc.ca

This letter is a public response to the IAAC draft Environmental Assessment Report and potential conditions for the Lake Manitoba and Lake St Martin Outlet Channels Project based on our experience since before the EIS was filed for the project. I attended the Manitoba Transportation and Infrastructure (MTI) Open Houses held in Winnipeg before the MTI Environmental Impact Statement (EIS) was filed with IAAC, under CEAA. Manitoba Wildlands is not a funded participant.

The Open Houses convinced me of a few things:

- The technical/scientific expertise to file the EIS was not present in the room.
- The MTI staff and consultants did not appear to be aware of recent EIS for other public works in Manitoba, which could assist them in the task ahead.
- They also did not seem to know anything about CEAA or IAAC.
- The information boards around the room looked nice but broadcast that MTI did not think any significant impacts were likely from the project, and that their very small project area was all that was needed, all that would be impacted. It is mostly the construction area.
- They had left out Lake Winnipeg, the Emergency Outlet Channels, First Nations, and protected areas.
- We were invited to correct the boards and write on them. However, nothing ever came of the information I put on those boards. There were no phone calls, emails, or follow-ups.
- None of the water infrastructure between the Lake of the Prairies and the project area were acknowledged on the maps or in their information - written or spoken.
- Each of the water infrastructure elements that would bring water to the proposed Channel is federal-provincially planned and often jointly funded and licensed.
- None of the workshop staff or consultants seemed to be aware of any other water infrastructure.
- (The first of these infrastructures was federal-provincial in 1978. The most recent is the Emergency Outlet Channels, which has federal and provincial permits.)

A Decade Has Passed

Since those open houses a decade ago the Environmental Impact Statement (EIS) was filed - and found to be inadequate during the IAAC review.

The federal-provincial project agreement for the Channels project was finally signed by Manitoba - and we assume federal funds started to flow. A public accounting of how those federal funds were spent is needed. An updated costing of the Channel project is needed since almost a decade has passed since the costing was announced and assumed to be correct.

Technical and scientific experts who supported over twenty participant First Nations during the CEAA - IAAC EIS reviews, TAG meetings, and MTI answers to information request (IR) reviews have consistently identified what is missing in the MTI EIS. They have assisted participants in putting Aboriginal and Treaty Rights and potential impacts front and centre in the EIS review and IR answers reviews and now in the IAAC draft report review. This means the original EIS cannot be the basis for any permits or licences regarding the Channels project. Everything in writing from the Information Requests and commitments made by MTI are now part of the basis for decision making. The Final IAAC Report and Conditions also provides a basis for decision making.

Imagine leaving out of the EIS: (partial listing)

- The Emergency Outlet Channel (licensed by both federal and provincial government, still in place).
- Lake Winnipeg, where Channels would pump water during a flood.
- Aquifers, wells, water tables, groundwater, etc.
- Winter.
- How a flood would be dealt with during construction.
- Climate change (except for truck, earth moving and equipment emissions).
- Many species.
- Archaeology (the 2020 TAG meeting where the MTI report was presented was embarrassing and far below the calibre of archaeology studies for other large public works in Manitoba.
- Inadequate site studies for birds, land and water species, groundwater, etc.
- Environmental plans, and information about risks to Indigenous and Aboriginal land access, traditional activities, treaty and inherent rights, social effects, etc.
- Consultation concerning Aboriginal rights and potential impacts on social, economic, and environmental impacts.
- Most of the lands and waters needed in the EIS reviews, and most of the communities potentially impacted.
- Decommissioning of the Channels project.

Aboriginal Consultations

The problem that has dogged this public works project with a government proponent for most of a decade is that the *proponent cannot also be the Crown* in Aboriginal consultations. A proponent's job is to provide the technical information and scientific basis for the EIS so that the project can be licensed. A proponent *only engages the communities*.

The Crown has a fiduciary responsibility to identify and learn about Aboriginal rights, entitlements, risks, or potential impacts from a proposed project. Upholding the honour of the Crown in Aboriginal consultation seems to be a foreign concept for MTI. A meaningful Aboriginal consultation identifies and shares among the parties any benefits and any potential impacts or risks from the project. The process is mutually agreed to.

With over 20 Indigenous participants involved in the reviews and potentially impacted by the proposed Channels project, it's clear that nothing meaningful in consultation occurred. How could it if MTI sees its

job as making sure the Channels project is built? IAAC asked and then repeated its information requests to MTI about Aboriginal consultation, rights, access to land, risks to culture, and community economies. (See IAAC Indigenous Guideline for the project.)

For most of the last several years the Manitoba Government has not had current standards for Aboriginal consultation by the Crown. There was an attempt to impose a set of standards late in 2019, but it failed, the government apologized and took the public material down. No one knows what MTI used for what they call a “consultation”. There are former 2009 Aboriginal consultation standards on the Manitoba.ca website. We see no indication they were used for the Channel Aboriginal ‘consultations’.)

MTI or their in-house legal counsel seem not to have read the Supreme Court of Canada Mikisew decision. It contains a 10-point guide to the stages and degree of consultation needed. Court decisions before and since Mikisew indicate phone messages, faxes, email messages, notices in correspondence, or meetings that are not acknowledged by all parties do not constitute a consultation! The notes or record of any consultation presentation or meeting need to be acknowledged as consultation by all parties. And the record needs to be transparent. Did any of this occur with the attempted, inappropriate Aboriginal ‘consultations’ for the Channels project?

Imagine phone messages left on phone lines in offices closed due to a pandemic being listed by MTI as if they are part of a consultation. Imagine the advantage a proponent attempts to gain in a review under federal law if they list elements that are not legitimate elements of consultation as if they are legitimate. Imagine MTI thinking a reverse onus as if the responsibility for consultation is with the Indigenous community!

New Government, Recent Announcement

Recently the new Manitoba government and new minister for Manitoba Transportation and Infrastructure responded in the media to the IAAC draft Environmental Assessment report and Potential Conditions report by agreeing that Aboriginal consultations for the Channel project were inadequate. The minister indicated publicly they will be redone. Does the minister may think their meetings with some First Nation chiefs are consultations?

There is a hitch with this position. The now six-year-old EIS is inadequate – as the EIS and answers from MTI and participant comments to three sets of MTI answers to Information Requests from IAAC show. The new Manitoba government lacks up-to-date standards for Aboriginal consultation *and* material to base new consultations on – except for the information and content in the extensive federal review - *and* the Manitoba government *lacks a staff unit with the know-how* to conduct Aboriginal consultations.

Clearly, MTI staff will not conduct new consultations. Most, if not all, of the independent staff unit for Aboriginal consultations under the former NDP Manitoba government are gone. The new minister’s comments do not include *funding* the community consultations.

There are ancient and racist assumptions in some bureaucracies. One is that Aboriginal rights are in the past and only pertain to trapping, gathering, hunting, and only to reserve land. Aboriginal rights are here, now and modern. Manitoba Hydro learned this during a 20-year period of environmental hearings regarding transmission lines and new generations. They *only engaged* the affected First Nations. Manitoba Hydro legal counsel and experts consistently said in hearings they were not the Crown and were not consulting. They were only the proponent. Advice for MTI to read transcripts, and First Nation evidence in former public works environmental hearings fell on deaf ears. Manitoba undertook *and funded* the hydro project consultations. The former NDP Premier of Manitoba initiated the Aboriginal

consultation policy in an Assembly of Manitoba Chiefs meeting. It included an independent staff unit and community funding.

IAAC Draft Assessment and Potential Conditions List for Channel Project

We appreciate the IAAC draft Environmental Assessment report being clear throughout, especially in the conditions for building the Channel project, if it is built. IAAC repeats in its potential project conditions that First Nation and Indigenous involvement with respect to fulfilment of the conditions is intended to continue for the life of the project.

We are overdue for conditions in a potential public works license to be in place for the project's life. IAAC has taken that approach with these conditions, and they are right. The communities around Lake Winnipeg and downstream where the waters in Lake Winnipeg (operated as a hydro reservoir) travel are potentially affected during the operation of the Channel. (We note no scenarios were provided for the intended Channel project other than the 2011 flood; we could have a 2011+ flood where Lake Winnipeg is largely still frozen).

The IAAC potential conditions intend the proponent to involve, notify and include those potentially communities throughout the Channel project life cycle. They are right about this also. Their conditions now and information requests during the reviews about the Environmental Advisory Committee for the Channel project are also important. Imagine a project potentially affecting twenty or more communities having an advisory committee of only four to six communities. MTI assumed their initial project area, that left out all but four communities affected in 2011 was all that was needed. This shows a proponent's assumption that it serves their interests only. Perhaps the initial EIS and assumptions it is based on will be used in university courses as an *example of how not to prepare an EIS*.

Manitoba Environment Act, Public Registry, and Licenses

There is an ongoing Manitoba Environment Act partial process going on beside the CEAA (via IAAC) EIS process. See the Manitoba Environment Act public registry. The minister for MTI provided comments to the media in Winnipeg as if her department would be making a decision about whether to go ahead with the Channel. In Manitoba law that decision is the responsibility of the Minister of the Environment. Permits or licences needed from Manitoba should a project approval result from IAAC reviews would be from the Environment departments also.

Similarly, an independent staff unit will need to conduct corrective Aboriginal consultations – in a model that at the least fulfills the former Manitoba NDP government's Aboriginal Consultation process.

Species - Life of the Project

If requirements/conditions for projects like the Channel project are in place for the life of the project, both provincial and federal governments involved *need to make conditions regarding species for the life of the project*. Life of project conditions need to include *both current and future at-risk species*. Both governments' laws regarding habitat, species (land and aquatics) must reflect the life and habitat for *species for the life of the project*. The CEAA and ESI review undertaken via the IAAC Conditions report includes long and clear timelines for aspects of this potential project for the life of that project. We commend IAAC on these contents in their report, and we urge IAAC and Manitoba to engage in steps for *the life of species during the life of the project*. *This would include any species at risk, and species identified by Indigenous people for the life of the project*.

Capacity and Science

Currently the Manitoba government is facing an urgent need to renew its science knowledge base. This includes placing scientists and technologists in departments that currently lack these capacities. We are unaware of any capacity in Manitoba departments to manage, oversee, or fulfill the conditions in the IAAC conditions report. The life of project requirements provides an opportunity for a future based on the scientific know-how and capacity needed for this project and others. The need for this capacity applies to other *existing public works* in our province. It applies to the ability to *manage our water bodies and waterways*. It is needed in order to *join western science and Indigenous Knowledge* for the best decisions and best guardianship of Manitoba lands and waters. It is time to face what is lacking and for our current government to step up for our environment.

A question lingers. Does the Manitoba government want to avoid the federal EIS review results and conditions because Manitoba does not have the capacity to fulfill the project conditions?

Climate Change - Drought, not Floods

Since the 2011 flood the material change with respect to weather and climate in Manitoba means we have moved *from floods to drought and fires*. Northern hemisphere countries are finding this out rapidly, and experts are conceding that the UN IPCC predictions about future climate impacts are being fulfilled decades ahead of time.

While Manitoba had floods in the 1990s and early 2000s - and some very close calls, 2011 was water from across Alberta and Saskatchewan. Most floods in Manitoba history have been on the Red River, not the Assiniboine River as in 2011 (This is from the perspective of someone who has lived on a Metis river lot on the Red River through several floods).

Water on the Red River comes from the United States. Water on the Assiniboine River comes from Alberta and Saskatchewan – and is subject to the renewed Prairie Water Management Agreement between Alberta, Saskatchewan, Manitoba and Canada. Lake of the Prairies (on the border of Saskatchewan and Manitoba) is the reservoir for excess water in this agreement. In 2011 it was not enough.

The Channels project original EIS does not acknowledge the number of federal-provincial water infrastructures that water flowing toward the Channels and Lake Winnipeg would pass through. Under CEAA this is a failure of both provincial and federal assessment of the project. It was an NDP government in Manitoba that signed one of the first federal-provincial agreements for those infrastructure in 1978. This review should have included each of several pieces of federal-provincial water infrastructure along the way. These are connected to the intended Channels.

Throughout the Channels EIS review, information requests, and filings it has been evident that MTI and the Manitoba government were minimising climate change. Now its time for the new government to move forward rapidly regarding climate change for all public works, existing and potential. The new

government has embraced climate change action. This current situation is an opportunity waiting for action.

Cost of Channel Project

There is a lack of information about the potential cost of the Channels project. Federal commitments made in 2015 and again a year or so later are based on the estimated cost by the Manitoba government. We believe no further information was provided during the review of the EIS. Given it's almost a decade later – like much of the aged data the EIS is based on, the cost and risks could have increased dramatically. Our estimate is that the cost is now one billion dollars. The IAAC conditions require ongoing tracking, consultations, and supervision and management of the project, should it be built. Why is there no information available about the current costs?

Outstanding questions – will Manitobans wish to spend that much on the Channels? Are the potentially affected Nations convinced that the Channels project is needed?

IAAC Role

We want to acknowledge the years of work, research, and assessment which IAAC staff and experts in several federal government departments have contributed to all steps to date in the review of the MTI Channels project. Most Canadians are not aware of what you do, or why until a project comes to their lands and their community.

As someone who supported the Independent Panel meetings across Canada, attended in Manitoba, when the steps to get to the new IAAC were underway, and who also attended workshops, conference calls, and training for CEAA – just saying your work is important!

Thank you,

Original Signed by

Gaile Whelan Enns
Director
Manitoba Wildlands.