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SENT BY EMAIL

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Re: Pinaymootang First Nation Review of the draft Environmental Assessment Report for the Lake Manitoba and Lake St. Martin Outlet Channels Project

Dear Mr. Carriere,

We, the leadership of Pinaymootang First Nation (PFN), are writing to you today to share our comments on the Impact Assessment Agency of Canada's (IAAC or "the Agency") draft Environmental Assessment Report ("the Draft Report") for the Lake Manitoba and Lake St. Martin Outlet Channels Project ("the Project") as well as of the draft conditions that will be recommended to the Minister of Environment and Climate Change ("the Minister").

Attached to this letter, you will find two tables:

- Table 1 provides our detailed review of the proposed conditions ("the Conditions Comment Table").
- Table 2 provides our detailed comments on key areas of concern and interest contained in the Draft Report ("the Draft Report Comment Table").

We ask that you give all these materials sincere consideration and incorporate these findings into the final draft of the Report and recommended conditions.

We look forward to meeting with the Agency to discuss how to implement our suggestions and resolve our outstanding concerns. If the Agency elects to not include some or all of our proposed conditions and mitigations in the final Environmental Assessment (EA) Report and/or Manitoba Transportation and Infrastructure (MTI or "the Proponent") fails to meaningfully and adequately address our stated concerns, PFN will not be able to give our free, prior, and informed consent (FPIC) for the Project.

Pinaymootang First Nation will be providing a "final stance" statement letter in May 2024 to affirm our position on the Project and provide a clear statement of our consent or lack thereof for the Project. The Agency's draft proposed conditions are not adequate to avoid or mitigate for likely catastrophic impacts to PFN's culture, land use, and associated rights. At this point in time, **Pinaymootang First Nation withholds our consent to the proposed project and the**

contents of this document are entirely without prejudice to our position that this project must not be allowed to proceed.

In this letter, we first provide a statement on PFN's stance regarding the Project and IAAC's determinations of impacts. We then provide an overview of key gaps and outstanding issues identified in our review of the Draft Report. Finally, we provide a high-level summary of required revisions for the Draft Report and recommendations for IAAC. These recommendations summarize and build on the recommendations found in the Conditions Comment Table and the Draft Report Comment Table. **Any statements herein about requirements that must be in place should the Project be allowed to proceed, are without prejudice to PFN's outright opposition to the Project proceeding and should not be read as support for the Project being allowed to proceed.**

Pinaymootang First Nation's Statement on the Agency's Draft Determinations

Pinaymootang First Nation would like to start by stating that we **agree** with the Agency's determination that:

"... after taking into account the implementation of the key mitigation measures identified in this draft EA Report in relation to section 5 of CEAA 2012, the Project is likely to cause direct and cumulative significant adverse environmental effects on:

- Indigenous peoples' current use of lands and resources for traditional purposes, including from loss or alteration of access, effects to the availability and quality of resources, and effects to quality of experience;
- Indigenous peoples' physical and cultural heritage, including from effects to aspects of intangible cultural heritage, such as sense of place, spiritual connection to the land, and intergenerational knowledge transfer; and
- Indigenous peoples' sites or things of historical, archaeological, paleontological, or architectural significance, including from the loss of sites of importance and lack of mitigations for effects to sites outside the Project's footprint."¹

We are heartened by the Agency's acknowledgement of the seriousness of the Project's likely adverse impacts on PFN's land use, culture and by extension, priority rights under the Constitution Act 1982. We also appreciate the Agency's reiteration of Canada's commitment to implementing

¹ Impact Assessment Agency of Canada. *Lake Manitoba and Lake St. Martin Outlet Channels Project, Draft Environmental Assessment Draft Report*. April 2024. pg. iv.

the United Nations Declaration on the Rights of Indigenous People (UNDRIP).² We wish to emphasize that the implementation of UNDRIP includes respecting and adhering to FPIC decisions of First Nations regarding the approval of any project affecting their lands or territories and other resources.³

However, we **fundamentally disagree** with the Agency's draft determination that:

“...[w]hile the Project may result in residual effects to other valued components, the Agency is of the view that, after taking into account the implementation of the key mitigation measures identified in this draft EA Report in relation to section 5 of CEEA 2012, the Project is not likely to cause significant adverse environmental effects on fish and fish habitat, migratory birds, federal lands, and Indigenous peoples' health and socio-economic conditions.”⁴

Contrary to the Agency's draft determination, if the Project is approved there will be significant adverse effects on all of the aforementioned valued components.

- **Fish and Fish Habitat:** The current status of fish and fish habitat in the Interlake region has been severely impacted as a result of decades of water management; the proposed Project will introduce further adverse effects to this already altered ecosystem. The Proponent has made a limited effort to collect thorough, accurate, and current baseline data regarding fish and fish habitat in the region, undermining the reliability of its predictions regarding potential impacts. The Proponent has also failed to adequately consider, amongst other things, the potential impacts of changes to water flows throughout the Interlake system, increases in sedimentation associated with the operation of the channels, the acceleration of aquatic invasive species dispersal associated with the same, and increased competition and predation to species compelled to relocate due to project construction and operations. MTI's proposed Fish and Fish Habitat Offsetting Plan does not even begin to meaningfully address the potential negative impacts that will result from the proposed Project. In addition, neither the Proponent's assessment nor its proposed mitigations adequately consider the importance of fish and fishing to the cultural, economic, and nutritional wellbeing of PFN and other impacted Nations. Given these issues, IAAC cannot make the determination that “...the Project is not likely to cause significant adverse environmental effects on fish and fish habitat.”
- **Migratory Birds and Wildlife:** The proposed vegetation clearing will have a significant adverse effect on migratory birds. As currently presented, the proposed mitigations do not adequately protect nests and individuals, including those listed as species at risk such as the yellow rail and short-eared owl. Additionally, the Draft Report relies heavily on the

² Letter from Tanishka Gupta (Impact Assessment Agency of Canada) to Chief Kurvis Anderson, Pinaymootang First Nation. *SUBJECT: Draft Environmental Assessment Draft Report and Draft Potential Federal Conditions for the Lake Manitoba and Lake St. Martin Outlet Channels Project.* 8 April 2024.

³ Article 32(2). *United Nations Declaration on the Rights of Indigenous Peoples.* 13 September 2007.

⁴ Impact Assessment Agency of Canada. *Lake Manitoba and Lake St. Martin Outlet Channels Project, Draft Environmental Assessment Draft Report.* April 2024. pg. iv.

western science viewpoint that impacts to species and their habitats are minimized if suitable habitat remains or is replaced elsewhere. This perspective does not acknowledge the important and unique value of the specific habitats that will be directly and indirectly impacted by the proposed works, nor the inherent behaviour of wildlife species (e.g., who may demonstrate site fidelity). The presence of suitable habitat elsewhere is not an acceptable reason for assuming project effects to wildlife and their habitat are minimized. There also remains considerable concern over the construction and operation of the channels as a barrier to wildlife movement and habitat fragmentation. There is potential that culturally important wildlife and species at risk will be forced into adjacent areas which are already highly fragmented by anthropogenic disturbances (particularly near the proposed Lake Manitoba Outlet Channel (LMOC)). Given these issues, IAAC cannot make the determination that "...the Project is not likely to cause significant adverse environmental effects on migratory birds and wildlife."

- Federal Lands: It is important to first note that the only federal lands within the Project area are reserve lands, and the nature of reserve lands implies certain fiduciary duties on the part of the Crown. In the Draft Report, the Agency concludes that federal lands (read: reserve lands) are not likely to experience significant adverse environmental effects as a result of the Project after taking into account mitigation measures, monitoring, and follow-up programs (section 7.6). However, while the Agency references mitigation measures discussed in other sections of the Draft Report, it does not identify any specific mitigation measures or explain how they will mitigate the specific effects on federal lands. Additionally, the Agency's view that impacts to federal lands will be minimal or adequately mitigated by the Proponent's proposed measures appears to be premised on the ostensible capacity of the Project, once completed, to reduce flooding along Lake Manitoba, Lake St. Martin, and Lake Winnipeg. In this, the Agency fails to acknowledge that flooding related to the Project's operation will itself impact federal lands, even if the goal of the Project is to reduce *overall* flooding. Based on the Proponent's own modelling, federal lands around Lake St. Martin are predicted to flood once every 13 years; this area includes the lands of several First Nations, as well as lands that are used by both upstream and downstream First Nations. Additionally, a variety of key valued components including ground water, migratory birds, species at risk, and current use of lands and resources for traditional purposes (CULRTP) are not assessed in the Federal Lands section despite their relevance to reserve lands and the inhabitants of those lands. Finally, reserve lands that are outside of the Project Development Area (PDA) but are located along the shores of Lake Manitoba, Lake St. Martin, and Lake Winnipeg will all face significant adverse effects should the Project proceed. Given these issues, IAAC cannot make the determination that "... the Project is not likely to cause significant adverse environmental effects on federal lands."
- Health and Socio-economic Conditions: The Draft Report only considers biophysical impacts when assessing effects to the health and socio-economic conditions of Indigenous peoples and does so with a limited scope. This limited approach does not account for Indigenous indicators of health, which are more holistic in nature and include mental health and community wellness. The proposed project will increase barriers to

accessing to traditional food sources – also known as ‘country foods’ – including wildlife, fish, and plant foods. These foods are not only critical to the physical and mental health of PFN community members but are fundamental to cultural rights and practices and are deeply connected to our ability to maintain and pass on our way of life. We have made it clear to the Proponent and the Agency throughout the EA process that the Project will have wide-ranging impacts on the health and wellbeing of First Nations communities in the Interlake region – including PFN – however, our concerns, perspectives, and knowledge on the subject have not had any evident impact on the Proponent’s plans nor on the Agency’s determination. Additionally, the Draft Report does not acknowledge the degree to which baselines for our community health and socio-economic conditions have been impacted by past flooding and man-made changes to hydrological systems. Both the Proponent’s and IAAC’s failure to adequately consider significant, pre-existing, and cumulative adverse effects in their analyses means that assessments underestimate the current degree of vulnerability to change of Indigenous socio-economic and health conditions and, by extension, underestimate the impacts of these same effects in the Project and Planned Development cases. For more detail, please refer to the attached Comment Table which provides a detailed analysis of each section of the Draft Report. Given these issues, IAAC cannot make the determination that “... the Project is not likely to cause significant adverse environmental effects on the health and socio-economic conditions of Indigenous peoples.”

We disagree with the language used in the Draft Report to describe the likelihood of impacts. The Draft Report states that:

“[t]he Project **may** also result in residual environmental effects to species at risk that are of cultural importance to Indigenous groups, including from habitat loss and effects to wildlife health and mortality. The Project **may** impact Aboriginal and treaty rights, including from loss or alteration of access to sites of traditional and cultural importance, and effects to the availability and quality of lands and resources of importance.”⁵

This contradicts **the Agency’s own conclusions that the Project will cause “direct and cumulative significant adverse environmental effects” to First Nation’s current use of land and resources. It is inconsistent and illogical for the Agency to conclude that the practice of our Aboriginal and Treaty Rights in the Interlake region may not be adversely affected while the elements that constitute the practice of rights will be impacted: CULRTP.** As previously identified, impacts to valued components such as wildlife, fish, and plant foods constitute fundamental impacts to PFN’s cultural rights and practices as well as our physical and mental health. These practices are deeply connected to our ability to transmit knowledge and ensure the vitality of our way of life. Impacts to our use of lands and resources for traditional purposes therefore directly constitute impacts to our Aboriginal and Treaty Rights including, but not limited to, our right to subsistence and our right to practice our own culture and customs. Understanding the connection between the practice of our rights and our ability to maintain our

⁵ Ibid. pg. v.

current use of land and resources is imperative to assessing potential project impacts; if one is significantly and adversely affected by the Project, then the Agency must conclude that the other will be similarly affected.

Overall, PFN is profoundly disappointed by the Agency's draft findings regarding impacts to fish and fish habitat, migratory birds, federal lands, Indigenous peoples' health and socio-economic conditions, and rights given the substantial evidence on the public record that the Project would be certain to bring devastating effects should it be allowed to proceed, across a wide variety of valued components. It is necessary for the Agency to recognize the manifest unsuitability of the Project as proposed, highlighted in the written and oral evidence from various First Nations, including evidence of clear public distress with the Project expressed at meetings with the Agency.

Summary of findings from the draft EA Draft Report review

While PFN agrees with some of the Agency's findings regarding significant adverse impacts, several issues regarding certain determinations by the Agency, as well as gaps in the draft EA Draft Report and in proposed project conditions regarding how impacts to PFN's rights have been assessed and addressed remain. The draft conditions proposed by the Agency will do little, if anything, to reduce the overall anticipated project impacts to manageable or acceptable levels. In the attached Comment Tables, PFN raises several issues with the Agency's Draft Report and with the proposed project conditions. We want to emphasize here that our proposed revisions to the Draft Report and conditions do not equal PFN's support for the Project. PFN's Draft Report Comment Table also addresses the Agency's conclusions regarding potential adverse environmental effects related to terrestrial landscapes, wildlife, and fish.

The following sections summarize specific gaps, inadequacies, and other problems with the Draft Report. This is not a complete list and must be read alongside the attached Draft Report Comment Table. PFN urges the Agency to consider both these overarching issues and our specific comments in the attached tables and to respond to PFN's recommended changes to both the Draft Report and the proposed conditions in writing. Please refer to the Comment Tables for more detail on revisions recommended by PFN to ensure the final Draft Report and conditions adequately address our concerns.

Engagement and Consultation

The Agency concludes the Draft Report by stating that it is the Agency's expectation that the Project will be carried out in a precautionary manner, with all the Proponent's commitments (including monitoring, mitigation, and follow-up plans) implemented as proposed. Furthermore, the Agency expects that the Proponent will continue to engage, inform, and communicate with Indigenous groups throughout the life of the Project (should it be approved).

The First Nations have no faith that the Proponent will adhere to the commitments outlined in the regulatory documents, nor engage with our communities in a meaningful fashion. Our experience in this EA process has been one of repeated failures on the part of MTI to operate under the principle of precaution and to illustrate a desire to implement mitigation measures, follow-up plans,

or monitoring initiatives. A condition or requirement based on implementing empty promises is not a condition or requirement at all.

In addition, as expressed in our numerous submissions,⁶ Indigenous groups have found the Proponent's means of consultation to be woefully inadequate. MTI has in no way meaningfully engaged with our communities, nor has it incorporated our knowledge and concerns into the Project design and development. As such, we find the Agency's proposed requirements inadequate. The Proponent cannot be trusted to adhere to commitments set out in the EA documents, nor can it be assumed that it will engage and consult with our Nations. If the Agency wishes to ensure the Proponent's adherence to a precautionary approach and the implementation of commitments, including consultation, a clear accountability mechanism with defined repercussions for breach of commitments must be outlined in the EA Conditions. Furthermore, it should be noted that PFN considers it too late in the EA process for MTI to implement meaningful consultation and engagement. The development of meaningful relationships between Proponents and First Nations must occur prior to the start of an EA. PFN and the First Nations are not interested in haphazard, last-minute efforts by the Proponent to consult should they implement the Agency's requirements and expectations. This entire EA process has exemplified the legacy of the Proponent's manipulation and disregard of First Nations.

Section 4 of the Draft Report remains incomplete and requires additional information on whether the duty to consult and accommodate has been met. **Section 4 should include details on Indigenous feedback and analysis of the experiences of the First Nations with consultation and engagement.** This must include documentation that many of our communications, requests, and concerns have not been acknowledged or responded to by MTI, despite clear requests for written responses.

Now that the draft EA Report has been released, PFN expects further consultation and engagement with the Agency. The details of this can be planned out with our leadership; however, these engagements must include extensive face-to-face meetings in our community. We also expect timelines to be extended so that we can meaningfully participate in the remainder of the EA process and review the extensive technical documents that have been provided by both IAAC and the Proponent. A 30-day review period is NOT an adequate amount of time for our communities to review and compile comments on key EA documents in order to ensure the protection of our rights and interests. We also require the provision of time so that we might engage with our community in order to develop final stance letters and provide additional community-based Indigenous Knowledge to support our assertions and conclusions throughout this EA Report review.

In regard to consultation with the Proponent, MTI itself has admitted in a communication from April 23, 2024, that its consultation has been inadequate and that it intends to delay construction to carry out more consultation. In this email communication, the Proponent related the following:

“Based on the status of Crown-Indigenous consultation, the federal and provincial environmental licensing processes, and concerns from communities, [MTI] recognize[s]

⁶ See the attached packet of materials for our submissions.

that additional work must be done. As such MTI plans to take additional time to engage in meaningful dialogue with communities to ensure that we understand and are fully addressing the concerns that have been raised”.

This is unacceptable for a number of reasons. MTI cannot expect the Minister to approve a project when the Proponent itself admits that consultation has not been adequate. Should the Minister approve the Project as proposed now, despite evidence presented by both Indigenous Groups *and the Proponent* that consultation has been inadequate, this is tantamount to the Crown admitting that it is making an irrevocable decision about a project where consultation demonstrably has been inadequate. This is not a defensible decision for Canada to make. Crown decisions on whether the Project should be allowed to proceed must be made after meaningful consultation has taken place, not where future consultation will be required to resolve multiple and substantive outstanding issues material to the decision itself.

We are also not confident that after the Project is approved MTI will suddenly know how to, and want to, consult with First Nations respectfully. It is our fear that, in the eyes of MTI, the Project will suddenly become acceptable as it is proposed under the current EA and consultation about the likely impacts will halt. We stand by our initial request that MTI and Manitoba go back to the drawing board with First Nations to develop a project that works with the lands and waters, not against it. We want real flood and drought mitigation in our territories, not short-term solutions that are easier for the province to get done quickly.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 12, 14, 137, 147) and the Conditions Table (Items 8 and 9):

- The Agency to include details in the final Report about MTI’s flawed engagement and consultation, and that the Agency identify that there are substantial gaps in the Proponent’s engagement and consultation that must be addressed before any positive determination on the Project can be made by the Crown. In the Draft Report, the Agency notes the importance of the Proponent’s ongoing and meaningful consultation with First Nations. The Agency must also note, however, the repeated and ongoing failure of MTI to meaningfully consult with First Nations throughout this process. Despite repeated efforts by the First Nations to engage with the Proponent, MTI has repeatedly failed to meaningfully consult and engage and has not incorporated our Indigenous Knowledge in any substantial capacity. Therefore, while ongoing consultation is important, the limitations of MTI’s consultation and the perspectives of the First Nations who have suffered at the hands of this lack of consultation must also be clearly stated.
- The Agency must include a description of the methods/approach taken by the Proponent to include Indigenous groups in each stage of the Alternative Means Assessment (AMA) and note their absence, where such is the case, in section 3.2. PFN was not adequately engaged on the Project’s design and the assessment of alternative means to undertake

the Project. The Draft Report fails to identify the obvious gaps in the Proponent's AMA regarding both Indigenous engagement and the analysis of impacts to rights.⁷

Although we are completely opposed to this project proceeding, on a without prejudice basis, should the Project be allowed to proceed, we request the Agency include conditions for approval whereby the Proponent is required to:

1. Co-develop Nation-specific Communication Plans with each Nation (see Comment #2 in the Conditions Comment Table for more detail). The plans would ensure that terms for engagement with Indigenous groups are clearly defined and there must be multiple avenues for reporting complaints and seeking redress. It is crucial that there are routes not under the control of the Proponent but are set out in a manner that best suits the needs of the Nations.
2. Work with all potentially affected First Nations to establish a consultation process to determine parameters for mitigation monitoring, where adequacy of consultation and required compensation will be defined by affected Indigenous groups.
3. Through the consultation process identified above, collaborate with affected First Nations to define specific decision points and benchmarks (i.e., thresholds for change in selected monitoring indicators) for mitigation monitoring of Project effects on traditional land use and in what instances further mitigative and compensatory action and consultation is required.

The Environmental Advisory Committee

We do not agree with the Agency's approach to the Environmental Advisory Committee (EAC). MTI has insisted on the use of the EAC as a mechanism of engagement with First Nations and as a mitigation measure for project-related impacts. For some time now, we have consistently raised our concerns with the governance, membership, approach, and processes of the EAC. PFN was invited to participate in the EAC, but we have declined to do so due to our numerous concerns. Though the EAC is highly flawed, and we strongly believe that it needs to be replaced with a more acceptable and effective alternative, it is, at this time, the only way for First Nations to engage with the Proponent to discuss monitoring and mitigation activities. The Proponent has not responded to any of our concerns and has maintained its position on both the substance and purpose of the EAC, a stance which undermines MTI's assertions of good faith and of its interest in working collaboratively with Indigenous groups.

A myriad of outstanding issues with the EAC have been shared repeatedly with the Proponent across numerous reviews and letters. They include, but are not limited to the following:

- The EAC is embedded with top-down processes through which the Proponent controls key aspects of the committee including information-sharing and decision-making. There is

⁷ Impact Assessment Agency of Canada. *Lake Manitoba and Lake St. Martin Outlet Channels Project, Draft Environmental Assessment Draft Report*. April 2024. pg. 20-28.

no space for meaningful or appropriate contributions from Indigenous committee members;

- The terms of the EAC do not allow member Nations to contract their own outside consultants to assist in the review of materials shared through the committee. Instead, Nations are expected to rely on the consultants provided by the Proponent, contributing to a clear imbalance of power;
- Indigenous groups were given no role in determining the structure, governance, or decision-making processes of the EAC;
- The Proponent has continued to insist that the EAC will be a key mechanism for planning and implementing adaptive mitigation measures. We believe this has allowed the Proponent to rely too heavily on the prospect of adaptive management and, consequently, to avoid proposing adequate proactive mitigation measures addressing Indigenous groups' legitimate concerns regarding project impacts;
- Membership of the EAC is defined entirely by the Proponent. This has resulted in the exclusion of First Nations up- and downstream from the proposed project who the Proponent has asserted will not be significantly impacted by the construction and operation of the Project. This view is not supported by evidence, and we feel that it constitutes a heavily biased and unilateral determination which we strongly reject; and
- The Proponent has not thus far demonstrated a willingness to hear the concerns of Indigenous communities, apply Indigenous Knowledge and perspectives to project design or assessment, or engage meaningfully or adequately with all potentially impacted communities. MTI has not acted in good faith towards Indigenous groups, and it is not credible that it will do so in the context of the EAC when it has failed to do so thus far.

The Agency has proposed conditions to improve the operation and outcomes of the EAC. We agree with the spirit of a number of the proposed conditions, including extending participation to all Indigenous groups, providing support to ensure meaningful participation, and the creation of an Indigenous-led monitoring committee. However, in the Draft Report the Agency errs in referring to the EAC as a “means of continued engagement and involvement of Indigenous groups”.⁸ The EAC has never been an effective mechanism of engagement and several of the First Nations who were invited to participate in the committee have since withdrawn their participation.

Should the Project be allowed to proceed, without prejudice to our position that the project should not be approved, we believe that the EAC should be disbanded, and a new committee, built from scratch with control not in the hands of the Proponent but in the hands of governance institutions (especially the affected Nations). We recommend an approach modelled after the “Indigenous Advisory and Monitoring Committee” created in 2016 for the Trans Mountain Pipeline and Trans Mountain Pipeline Expansion projects. Key characteristics of these committees were their ability to make enforceable decisions regarding project construction and operations, and their prioritization of protecting environmental and Indigenous interests in the lands and waters

⁸ Ibid 146.

impacted by the pipeline projects. This type of group has previously been proposed to the Proponent as a more appropriate tool for collaboration⁹ though it has chosen to disregard this alternative approach.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 35, 54, 63, 64, 145) and the Conditions Table (Item 41):

- The Agency must include PFN's stated concerns regarding the EAC in the Final EA Report as well as the reasons why PFN and other Indigenous groups have rejected the EAC as an unacceptable mechanism for engagement.

Should the Project be allowed to proceed, without prejudice to our position that the project should not be allowed to proceed, we request the Agency include a condition for approval whereby the Proponent is required to:

1. Co-develop terms of reference for this group that includes mutually satisfactory mechanisms for reporting and accountability, and First Nation decision-making about project activities, mitigation, and monitoring. This new system needs to be Indigenous-led and centre Indigenous leadership, and it must include collaboratively developed dispute resolution mechanisms that are rooted in Indigenous teachings regarding conflict resolution. The Agency must require the inclusion of PFN, and all potentially impacted First Nation in the new, collaboratively established mechanism.
2. Ensure that First Nations have the resources necessary for informed decision-making and ensure sufficient and culturally appropriate resources to support involvement in technical discussions and decisions. Importantly, this system must be premised on the empowerment of Indigenous communities, support Indigenous resilience, and build trust between the Proponent and Indigenous groups, something that is currently absent from the relationship between MTI and impacted Indigenous communities.

Impacts to wildlife and wildlife habitat

Pinaymootang First Nation disagrees with the Agency's view that the Proponent has adequately considered potential effects to wildlife species at risk. Over the course of multiple Information Request processes, PFN has consistently raised the same, persistent deficiencies in the Proponent's data regarding project impacts on wildlife. In particular, the lack of adequate baseline data for a number of species undermines the reliability of the Proponent's assessments and brings into question the credibility of their conclusions regarding the extent and nature of potential impacts. It also reduces our confidence in the potential effectiveness of the Proponent's proposed Wildlife Monitoring Plan and associated mitigation measures.

⁹ Interlake Reserves Tribal Council to George Ryle, Manitoba Transportation and Infrastructure. *Re: Proposed Environmental Advisory Committee for the Lake Manitoba and Lake St. Martin Outlet Channels Project*. 20 September 2022.

Due to the lack of baseline studies, potential impacts cannot be assumed to be confined to the Local Assessment Area (LAA). The Proponent has consistently suggested that where significant impacts may be anticipated within the LAA, wildlife (and, subsequently, the traditional hunting and trapping activities which are only possible in the context of healthy wildlife populations) in the larger Regional Assessment Area (RAA) is unlikely to experience any significant effects from either project construction or operation. This assertion is extended to fish, with the Proponent asserting that there is abundance of additional habitat throughout Lake Winnipeg, and fish will most likely disperse into alternative habitat where habitat within the LAA is adversely impacted by the Project. These predictions are made without sufficient evidence and with no consideration of other potentially aggravating conditions within the RAA. Therefore, potential impacts, unanticipated by the Proponent's assessments, may be seen throughout the RAA.

There remains considerable uncertainty regarding the amount of habitat for reptile and amphibian species at risk that may be affected by the Project and the extent of habitat use within the Project area. The Proponent has not fully characterized mitigation measures or follow-up programs for these species. Without this important information, Project effects on snapping turtle and northern leopard frog cannot be accurately mitigated or compensated for. There similarly remains considerable uncertainty regarding at-risk bats and the amount of bat habitat that may be affected by the Project, the extent of habitat use, and the distribution of bat species within the Project Development Area (PDA), LAA, and RAA. The Proponent has not fully characterized mitigation measures or follow-up programs to monitor residual impacts to at-risk bats. This information is vital to accurately determine project effects on little brown myotis and northern myotis and for accurately mitigating those effects.

The Proponent's current mitigation measures do not account for the fact that significant nesting bird mortality may occur due to clearing of non-woody vegetation, haying, and mowing from April 1 to September 15.¹⁰ The Proponent has also not provided enough information about the large mammal and furbearer den sweeps that will be completed prior to construction activities.¹¹ Information is lacking about additional measures to prevent the mortality of culturally important large mammals and furbearers that den or burrow. This information is required to determine whether the proposed mitigation measures will be sufficient to avoid impacts to these species.

Finally, the follow-up and monitoring program required by the Agency does not include clear decision points, benchmarks, associated actions, or requirements regarding which additional mitigation and adaptive management measures should be required at which point.¹²

Ultimately, the Draft Report relies heavily on the western science viewpoint that impacts to species and their habitats is minimized if suitable habitat remains or is replaced elsewhere. This perspective does not acknowledge the important and unique value of the habitats that will be directly and indirectly impacted by the proposed works, nor the inherent behaviour of wildlife

¹⁰ Impact Assessment Agency of Canada. *Lake Manitoba and Lake St. Martin Outlet Channels Project, Draft Environmental Assessment Draft Report*. April 2024. pg. 115.

¹¹ Ibid 86.

¹² Ibid 83.

species (e.g., who may demonstrate site fidelity). The presence of suitable habitat elsewhere is not an acceptable reason for assuming projects effects to wildlife and their habitat is minimized. There also remains considerable concern over the construction and operation of the channels as a barrier to wildlife movement and habitat fragmentation. There is potential that culturally important wildlife and species at risk will be forced into adjacent areas which are highly fragmented by anthropogenic disturbances (particularly near the proposed LMOC).

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 20, 22, 24, 26, 27, 42, 91, 108, 149-157) and the Conditions Table (Item 5):

Pinaymootang First Nation wishes to reiterate that the existing conditions related to baseline data collection and impact assessment are indicative of the highly flawed environmental assessment. The Crown cannot, and should not, approve a project where the effects of which are both significant and/or inadequately assessed and still not fully understood. In fact, the EA should not have progressed to this stage given the profound information gaps and missing information listed here and in our earlier submissions.

Should the Project be approved, without prejudice to our position that the project should not be allowed to proceed, we request the Agency include conditions for approval whereby the Proponent is required to:

1. Collect additional baseline data prior to Project construction to ensure that sufficient year-to-year comparisons for species-specific surveys can be made.
2. Reassess the residual impacts to all species including those requested in previous IRs. These previous requests include:
 - A detailed reassessment of residual effects arising from increased levels of predation on wildlife as a result of Project infrastructure (IAAC-R3-05 comment C vi).
 - A detailed reassessment of residual effects arising from the fragmentation of the landscape as a result of Project infrastructure and barriers to wildlife access (IAAC-R3-06 comment B i).
 - A reassessment of the residual impacts to snapping turtles due to site fidelity and loss of potential overwintering habitat (IAAC-R3-05 comment C vi).
 - A description of the criteria used in determining the significance of residual effects as noted in the EIS Guidelines (IAAC-R3-06 comment B i).
3. Consult with all potentially affected Indigenous groups to determine and implement appropriate no work buffer zones around active denning sites, suitable methodology for surveying for (and monitoring) active denning sites, and other mitigation measures that will be taken to avoid impacts to culturally important large mammals and furbearers.

Impacts to fish and fish habitat

The Agency concludes that fish habitat losses would be adequately addressed through mitigation and monitoring programs and unlikely to result in a significant change in fish abundance and distribution within the LAA and RAA, provided that more detailed biological data is collected prior to construction; PFN disagrees with this conclusion. We agree that more biological data must be collected prior to construction; however, given the Proponent's limited efforts to date to collect fish and fish habitat data, the Agency must be clearer in their expectations of this data collection. As well, given the absence of adequate baseline data, it's unclear to us how the Agency reached their draft conclusion of insignificance: its conclusions regarding impacts to fish lack clear detail and analysis. The Proponent did not collect enough biological data during baseline assessments to assure confidence in predictions about the potential impacts from the Project. Furthermore, there is a lack of commitment on the part of the Proponent to conduct long-term monitoring activities and a lack of proposed off-setting ratios and measures.

Additional baseline monitoring prior to construction, alone, is neither adequate nor appropriate as a mitigation measure. **Ultimately, the resulting level of uncertainty must be stated in the Draft Report and the Project should not be permitted to proceed until convincing evidence of insignificant impacts is available, and there must be a commitment from the Proponent to establish additional mitigation monitoring with adaptive management strategies to be implemented to minimize impacts to fish and fish habitat.** To more accurately assess the potential impacts from the Project, three additional years of baseline studies on fish and fish habitat must be completed. Without clear direction, it is expected that the Proponent will again inadequately conduct baseline fish and fish habitat assessments, and additional mitigations measures to minimize impacts to fish and fish habitat will not be implemented.

Pinaymootang First Nation disagrees with the Agency's statement that the likelihood is low that the Project will notably increase the risk of aquatic invasive species (AIS) dispersal.¹³ The proposed LMOC and Lake St. Martin Outlet Channel (LSMOC) provide direct routes of travel for new AIS, therefore likely increase the rate of spread of these invasive species. Potential impacts from these species (especially zebra mussels) could drastically impact PFN's fishing rights. PFN requests that the Agency change their statement within the Draft Report to accurately reflect the high likelihood of an increase in the rate of AIS dispersal from the proposed Project.

We do not agree with the Agency's statement that impacts on fish and fish habitat will be negligible due to changes in systems and environmental flow needs in Birch Creek and Buffalo Creek.¹⁴ Known reductions/changes in flow and the unknown impacts due to the lack of baseline data collection mean that impacts may be significantly adverse. There are no details regarding if and how environmental flow needs for fish species of interest and associated fishing rights and interests have been evaluated. Quantifying environmental flow should consider Indigenous

¹³ Ibid 105.

¹⁴ Ibid 105.

Knowledge. Linkages to socio-cultural impacts on Indigenous rights are increasingly important consideration in water management in Canada and globally.

The Agency echoes the Proponent's statement that there is an abundance of additional habitat throughout Lake Winnipeg, and fish will most likely disperse into alternate habitat.¹⁵ This prediction is made with no consideration of additional competition or predation to currently established populations of fish in Lake Winnipeg. Potential impacts to fish populations may be seen throughout the RAA.

The Proponent's Fish and Fish Habitat Offsetting Plan does not begin to mitigate the potential impacts from the Project. The Proponent does not clearly state what offsetting ratio is being applied or how it was calculated, and therefore it is not possible to determine adequacy of current proposed offsetting structures. Furthermore, it is unclear how types of offsetting structures were selected, especially considering very little is known about the current fish habitat due to the lack of location-specific surveys. There is also no information on how the Proponent will seek engagement with Indigenous groups and incorporate Indigenous Knowledge into Fish and Fish Habitat Offsetting, nor post-mitigation monitoring.

The importance of protecting fish and fish habitat in the Interlake region cannot be understated. The potential for direct and significant project-specific impacts on ecologically and culturally important fish species in the region has been grossly underassessed – and by extension, underestimated - by the Proponent with implications not only for the health and integrity of the Interlake environment but of Indigenous cultural practices, nutritional needs, and economic activities which depend on the maintenance of stable and health fish and fish populations.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 29-40, 115, 117) and the Conditions Table (Items 4, 16, 18):

- The Agency must include Birch and Buffalo Creek and their connected lake systems into its assessment of the alteration or destruction of fish and fish habitat and that they include a summary of how environmental flow needs, including from Indigenous Knowledge perspectives and considering impacts on Aboriginal rights and interest, were considered in the effects determination.
- The Agency must revise potential impacts on fish and fish habitat as high (not negligible) throughout the RAA.
- The Agency must require that the Proponent develop a new Fish and Fish Habitat Offsetting plan collaboratively with the First Nations in order to assure appropriate mitigations and offsetting from the impacts of the proposed Project.

¹⁵ Ibid 105.

- The Agency must include a statement in the EA Report regarding invasive species to accurately reflect the high likelihood of an increase in the rate of AIS dispersal from the proposed Project.

Should the Project be approved, without prejudice to our position that it should not be allowed to proceed, we request the Agency place additional, more specific conditions on the Proponent including:

1. The requirement of a minimum 30 m riparian buffer on all freshwater ecosystems, with a commitment to work with affected Indigenous Nations and communities to identify locations where larger buffers may be warranted to protect ecologically and culturally sensitive water bodies;
2. The inclusion of a detailed restoration component that includes engagement with Indigenous groups and incorporation of Indigenous Knowledge in the design and monitoring plan;
3. Inclusion of the implementation of additional baseline assessment for at least three years prior to construction mitigation monitoring continually throughout the lifespan of the project of all freshwater systems potentially impacted by the proposed Project within the RAA.
4. Additional fish and fish baseline assessment and mitigation monitoring must follow scientifically rigorous standards protocols using a watershed-scale based approach (i.e., assessing the whole subwatershed instead of individual waterbodies) and be developed in consultation with affected Indigenous groups.

Impacts to Terrestrial Ecosystems

We do not agree with IAAC's view that the Proponent has adequately considered potential effects of the Project on the terrestrial landscape. We also disagree that the Proponent's proposed mitigation, monitoring, and follow-up programs are appropriate to address potential project effects. PFN disagrees with these statements for several reasons. For one, the Proponent has not committed to undertake offsetting for Class II wetlands that will be directly affected by the Project, which provide habitat for species at risk (e.g., yellow rail) and provides important ecosystem functions such as but not limited to ecological and hydrological connectivity. Furthermore, considerable uncertainty remains regarding potential effects to vegetation and wetland areas of importance to Indigenous groups.

It is also unclear whether the Agency has accounted for indirect impacts to wetlands from the Project, such as alterations to surface and subsurface flows and water levels.¹⁶ If the Agency has neglected to consider indirect impacts to wetlands, this will lead to inadequate measures to mitigate or compensate for impacts to wetlands and wetland habitats, especially for species at risk. This could in turn reduce PFN members' ability to maintain their current uses of the lands and waters within the project area.

¹⁶ Ibid 79.

The Draft Report's conclusions regarding wetland offsetting are problematic for PFN.¹⁷ Under *The Water Rights Act*, only 0.1 hectares of wetland compensation is required for the planned removal of 768.5 hectares necessary for the construction of the LSMOC. At present, the Agency does not require anything more of the Proponent. While we do note that the Proponent has provided higher offsetting ratios for Class III, IV, and V wetlands, we find the legal wetland offsetting requirement of 0.1 hectares to be woefully inadequate. The Proponent's proposed wetland offsetting ratios will not fully account for all impacted wetland functions. Further, the Proponent has stated it will not be providing offsetting for Class II wetlands.¹⁸ Ephemeral wetlands are extremely important for many herptile and avian species. Class II wetlands provide essential habitat functions and maintain connectivity between terrestrial and aquatic habitats. Without effective mitigation and offsetting, altered habitat function of wetlands may cause adverse impacts on species at risk (e.g., yellow rail). Finally, the Agency also fails to consider and recognize offsetting for wetlands that may be indirectly impacted by the Project in the RAA through hydrological alterations.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 18-28) and the Conditions Table (Items 3 and 6):

- The Agency must revise the EA Report to consider the full suite of Project effects on all wetlands RAA, including indirect hydrologic impacts, on all wetland classes.
- The Agency to show in further detail, through both in-person consultation meetings, and in writing:
 - If and how indirect hydrological impacts to wetlands were previously reviewed, including detailed explanation of the methodologies used to assess hydrological impacts to wetlands;
 - How indirect hydrological impacts have been integrated into evaluating project impacts to all classes of wetlands, and the ways in which this consideration has impacted the assessment of other valued components;
 - Whether these direct and indirect impacts are justified and accepted, taking into consideration the mitigations proposed by the Proponent.

Should the Project be allowed to proceed, without prejudice to our position that it should not be allowed to proceed, we request the Agency place additional, more specific conditions on the Proponent including:

1. Proponent to undertake offsetting for all wetlands (i.e., of all wetland classes) that will be directly and indirectly affected by the Project and to determine an appropriate wetland compensation ratio with input from impacted Indigenous groups.
2. Proponent to develop, in collaboration with impacted Indigenous communities including PFN, an invasive species monitoring and management program. The Agency has not

¹⁷ Ibid 81.

¹⁸ Ibid 81.

required the Proponent to take adequate measures to limit the introduction and spread of invasive plant species within the project area.¹⁹ PFN disagrees with this omission because invasive plant species may impact PFN valued use areas.

Surface Waters

The Agency asserts that “the Proponent has adequately considered potential effects of the Project on surface water” and that “the Proponent’s proposed mitigation measures, monitoring and follow up programs are appropriate to address potential project effects to surface water.” We do not agree with the Agency’s conclusions on this matter. The Proponent’s management plans and monitoring programs remain deficient in design and are not adequate to detect future adverse effects of the Project’s operations. Despite sharing our detailed concerns regarding these deficiencies over the course of multiple Information Request Reviews, the Proponent’s management and monitoring plans have not undergone any notable alterations in response. Without improved Environment Management Plans or Monitoring Programs, we do not believe it is possible for the Project’s adaptive management approach, which includes the objectionable EAC, to effectively address project impacts.

Local drainage areas throughout the PDA and LAA will be altered by the construction of the outlet channels. The intersection of the LMOC with the Birch Creek drainage basin will result in a decrease in the total drainage area of about 27.4%; the LSMOC will decrease the drainage area of Buffalo Creek by 51.5%. There are no mitigation plans to offset this loss of flow which threatens the integrity of connected wetlands. The Proponent also failed to consider how the current drought and long-term climate change will aggravate these conditions.

MTI has used the extent of the damage done to the area by the Emergency Outlet Channel (EOC) as a measuring stick to determine the damage that will be done by the LSMOC. But this is an over-simplification. The EOC is one-third the depth and one third the length of the LSMOC with some parts of the channel extending through the overlying sediments to the bedrock. We expect that the effects of the LSMOC will be much greater than MTI’s estimate and will be irreversible. Experience with other diversion channels in Alberta, B.C., and the Northwest Territories supports this view and points out that monitoring and mitigation proved useless in preventing the effects of dewatering wetlands. We therefore disagree with the Agency’s view that the Proponent has adequately characterized potential project effects to the Big Buffalo area.

The Draft Report does not look at water quality outside of the effects of the construction and operation of the outlet channels and as such really does not anticipate any substantive changes to water quality within the PDA, LAA, or RAA apart from sediment transport and erosion. The Proponent has developed several strictly-project related monitoring programs and states that it will use best management practices to limit the potential for degrading water quality. This includes monitoring of depressurization groundwater and runoff from cattle operations where these are being intercepted and rerouted to outside drains.

¹⁹ Ibid 86.

However, the channels will be used to divert highly nutrient enriched and contaminated flood waters from Lake Manitoba directly into Lake St. Martin via the LMOC. Eventually these enriched waters will pass into Lake Winnipeg via the LSMOC. Even though the projects themselves will not generate this poor water quality they are the conduit that will introduce these waters into Lake St. Martin, and, because of this, the channel will over time degrade the water quality in that lake. Because of the flow management systems that will be deployed to restrict flows through the Fairford River, the dilution effect of the waters from the Northern basin of Lake Manitoba will not be as dominant in determining Lake St. Martin water quality as they were in the past. We therefore conclude that the water management plans that will control the operation of the Lake Manitoba and Lake St. Martin outlet channels will be directly responsible for this poor water quality and that this is will constitute a very large direct impact to the LAA and RAA and all First Nations within those boundaries. The impact is negative, potentially large in magnitude, likely irreversible and cumulative in terms of its downstream effects (i.e., downstream of the RAA boundary), becoming more severe the longer the project operates.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 15, 16, 17) and the Conditions Table (Item 4 and 7):

- An independent analysis for the potential for erosion and sedimentation in the north basin of Lake St. Martin.
- Revise predictions to areas downstream of the Project to more accurately capture the magnitude, temporal scale, frequency, and reversibility of impacts.
- Development of a physically-based modelling system to better simulate the hydraulics and water quality from the Portage Diversion to Lake Winnipeg.
- Incorporate climate change and drought into future prediction models.

Should the Project be allowed to proceed, without prejudice to our position that it should not be allowed to proceed, we request the Agency place additional, more specific conditions on the Proponent including:

1. Proponent to develop a concrete mitigation and monitoring plan, in tandem with offsets, to reduce the impacts arising to drainage areas throughout the PDA and LAA as a result of the Project construction. These mitigations, monitoring plans, and offsets must be co-developed by MTI and the First Nations and must include tangible action items, follow up plans, and accountability measures.
2. Proponent to provide a study which details how current drought conditions and long-term climate change will impact the drainage areas located throughout the PDA and LAA. This study must include at least 10 years of past data, and project at least 50 years into the future.
3. Proponent to co-develop, with the First Nations, a mitigation and monitoring plan to address the influx of nutrient enriched waters passing into Lake Winnipeg via the LMOC

and LSMOC. This plan must contain clear action items, thresholds, and accountability measures and must include participation of Indigenous monitors.

Health, socio-economic conditions, and wellbeing

Pinaymootang First Nation strongly disagree with the Agency's draft determination that the Project is not likely to cause significant adverse effects on Indigenous peoples' health and socio-economic conditions. If the Project goes ahead, it will have impacts on the mental health and wellbeing of Indigenous communities' members and will impact the ability of those community members to access country foods and spend time out on the land. The Agency acknowledges that the Project will lead to barriers to accessing the lands and waters of the Interlake region, practicing culture, and spending time on the land (as reflected in IAAC's determination of significant adverse impacts to CULRTP and intangible cultural heritage, including sense of place and spiritual connection to the land, and knowledge transfer). Barriers to practicing culture, safely spending time on the land, and accessing country foods will impact the health of community members. There is significant evidence demonstrating the relationship between major project development in Canada and serious, adverse impacts to the health of Indigenous communities;²⁰ we strongly encourage the Agency to consult the referenced research and make a more informed final determination in light of this existing evidence.

The Draft Report does not reflect an accurate understanding of Indigenous perspectives on health.²¹ PFN requires that impacts to our community's health and socio-economic conditions be evaluated through a holistic framework. This holistic framework should evaluate, among other things, potential project impacts on mental health, PFN members' ability to practice traditional skills, ability to use the lands and practice culture, peaceful enjoyment of the lands, and access to country foods.

While the *Canadian Environmental Assessment Act* (CEAA), 2012, only explicitly requires consideration of health impacts relating to bio-physical impact pathways, this assessment is being conducted in 2024 and the Agency must implement best practices and instead draw on the *Impact Assessment Act*, 2019, which incorporates a more inclusive consideration of all Project-related impacts on Indigenous health, including those caused by both biophysical and social changes. The present assessment, under CEAA 2012, already indicates that there will likely be impacts on Indigenous health when measured narrowly by CEAA, 2012, let alone when measured using required practices for 2024. When a holistic lens is applied, further evidence will indicate that changes to the environment will in fact lead to effects on Indigenous health. The Crown, in possession of this knowledge and due to its need to be precautionary and fiduciary in its decisions that affect Indigenous peoples, cannot limit its decision to the dictates of an outdated legislation.

²⁰ Including for example, Firelight Research Inc. (2021). *Indigenous Mental Wellness and Major Project Development: Guidance for Impact Assessment Professionals and Indigenous Communities*. The Firelight Group: West Vancouver, BC.

²¹ Impact Assessment Agency of Canada. *Lake Manitoba and Lake St. Martin Outlet Channels Project, Draft Environmental Assessment Draft Report*. April 2024. pg. 168-183.

We request that the Agency implement this approach and revisit the definition and framing of Section 7.5.1 on health to ensure Indigenous perspectives on health are included.

Both the Proponent and the Agency must understand and acknowledge that the planning and assessment of the Project is taking place in a context of historic, recent, and ongoing trauma on the part of Indigenous groups in the Interlake region, attributable to recent flooding events (including the devastating flood of 2011) and a history of major infrastructure programs imposed on the region and its residents without their input or consent. Impacted Indigenous groups have openly expressed how this has already induced stress, fear, anger, anxiety, solastalgia, post-traumatic stress disorder, and depression amongst community members as well as feelings of a loss of agency and control. All of these sentiments were shared with the Agency at the recent Technical Advisory Group (TAG) meetings (held February 5-7, 2024) and in previous submissions on the Project.

At the TAG meetings, community members shared stories and experiences of the hardships faced as a result of the legacy of water management infrastructure in the Interlake region. The members fear that these hardships will only worsen if this project is approved by the Minister. The emotions shared by the community members were palpable as they discussed potential environmental, economic, cultural, and social impacts of the proposed Project. In the words of a PFN Councillor, this EA process has “retraumatized” community members. This mental toll has been exasperated by the Proponent’s continued disregard and marginalization of our concerns and knowledge. As clearly articulated and illustrated at the TAG meetings and through our numerous submissions to the EA process, the Project will have significant adverse effects on our way of life. To disregard our concerns and the impacts we have identified, and to make the assertion that the wellbeing and way of life of First Nations will not be impacted by the Project is blatantly false and ignores the inputs from First Nations. Such a finding would be beneath the honour of the Crown to make.

If approved, the Project will, through impacts to the land, waters, and wildlife of the Interlake region, have serious adverse effects on the cultural, spiritual, physical, and mental well-being of our members. The Project cannot be allowed to proceed given the likelihood of the devastating impacts associated with it.

Should the Crown make what PFN considers to be an unacceptable decision and allow the Project to proceed, it is incumbent on the Proponent and the Crown to proactively provide support for the health of impacted communities. Such supports are not evidenced in the Proponent’s current commitments and would need to be conditions of any such approval.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 75-78) and the Conditions Table (Items 34-39):

- The Agency must update its approach to health and wellness so it reflects present-day best practice and Indigenous perspectives on health and wellness and socio-economic conditions. PFN requires that impacts to our community’s health and socio-economic conditions be evaluated through a holistic framework. This holistic framework should evaluate, among other things, potential project impacts on mental health, PFN members’

ability to practice traditional skills, ability to use the lands and practice culture, peaceful enjoyment of the lands, and access to country foods.

- The Agency must update its determination regarding impacts to health and socio-economic conditions considering the above.

Should the Project be allowed to proceed, without prejudice to our position that it should not be allowed to proceed, to address the impacts the Project will have on the health of impacted Indigenous groups, a condition for approval must be included that requires the Proponent to provide material support for local health and wellness programs to support Indigenous community members. This may include the following, to be determined with the Indigenous Nations:

1. The Proponent must provide financial and in-kind support for the establishment and operation of Nation-specific Country Foods Programs. ‘Country foods’ are those harvested from the lands and waters, including wild game, fish, and plant foods. Access to and consumption of country foods are central to the physical, mental, and cultural health of Indigenous communities. Safe access to country foods is also inseparable from Indigenous land rights and sovereignty. By supporting safe, culturally appropriate access to traditional foods through such measures as land-based programming, community gardens, the documentation of Traditional Knowledge, and educational courses, the Proponent will be taking significant steps towards mitigating and offsetting expected project impacts to the health of Indigenous groups in the Interlake region.
2. In addition to supporting the physical health of impacted communities, the Proponent should also be tasked with materially supporting aspects of mental and cultural health as well. MTI must work with impacted Nations to identify mental health needs and services and provide funding for Nation-specific mental health and healing services. Additionally, the Proponent must work with First Nations to develop Nation-specific cultural resiliency programs to help protect the connection of members to the lands, waters, and culture. This could include youth land camps, food programs, language programs, elder-youth programs, etc.
3. Furthermore, the Agency must work with the First Nations to identify, develop, and implement complementary measures to help mitigate and offset the impacts from the proposed Project, should it be approved. This process will require substantive meetings with the impacted First Nations in order to co-develop mitigations and offsets.

Current Use of Lands and Resources for Traditional Purposes

We agree with the Agency’s determination that “the Project’s residual adverse effects to access for current use would likely be high in magnitude, irreversible, and long-term” and that “the Project’s adverse residual effects to access, availability and quality of resources, and quality of experience are likely to cause significant adverse environmental effects to Indigenous peoples’ current use of lands and resource for traditional purposes.” However, we are not satisfied with the extent and detail of the proposed conditions and request that IAAC require more substantial and

concrete conditions on the Proponent to mitigate project impacts on First Nations in the Interlake region.

The Proponent has consistently, in our view, underestimated the potential impacts of project operations to the RAA. MTI has acknowledged that the Project will have significant effects within the LAA but has routinely minimized the potential seriousness of these impacts on current use by asserting that they will not have significant effects in the greater RAA. This demonstrates a failure on the part of the Proponent to understand and/or acknowledge the implications of a reduced ability of PFN members to maintain their current uses of the lands and waters of the LAA. Where preferred hunting and trapping sites within the LAA are lost, and culturally relevant species are removed or driven out, their persistence in the larger RAA is not a substitute for the loss. To maintain the hunting and trapping practices which currently take place in the LAA, community members will have to travel further, requiring a greater investment of time and resources without guarantee of success; the economic implications of this change may be more than some households are able to bear. Important sites within the LAA, some of which may have been used for generations, cannot merely be replaced by those in the RAA. The proposed solution of “going elsewhere” to access key resources and to engage in cultural practices is strongly rejected by Indigenous Nations in project assessments around the world. Such a “solution” is a direct attack of our ways of knowing and being which are fundamentally connected to the lands and territories within which we reside. Our practices and way of life are grounded in the local environment and ecology, and “going elsewhere” is an unacceptable proposition. We refuse to be relocated by the Crown once again.

The Proponent’s conclusions regarding the magnitude of impacts on current use routinely contradict the conclusions made by PFN and their experts. For example:

- "The Proponent concluded that the overall residual effects of the Project on access for current use from the construction, installation, and maintenance of permanent outlet channels are anticipated to be moderate in magnitude...";²²
- "...the Proponent concluded the potential effect on fish habitat was expected to be negligible";²³
- "The Proponent concluded that the overall disruption to access to traditional lands and resources is anticipated to be moderate";²⁴
- "...there should be no effects to traditionally harvested fish species".²⁵

The Proponent has come to conclusions such as these despite acknowledging the permanent and irreversible impact of certain aspects of project construction and operation on current use,

²² Ibid 134.

²³ Ibid 137.

²⁴ Ibid 138.

²⁵ Ibid 138.

and despite a serious lack of important data to make these determinations (including fish habitat impact determination, see comments on fish above).

The lack of crossing points over the LSMOC is another illustration of the Proponent's neglect of adequate consideration of project impacts on current use. The Proponent has simultaneously acknowledged the potential danger involved in crossing the LSMOC anywhere other than a formal crossing and refrained from proposing the construction of any formal crossings of the channel ROW and structure. This is consistent with the Proponent's disregard for the safety and security of Indigenous community members: MTI is aware that there is a potentially serious issue with a component of the proposed project but fails to provide a solution or propose measures to mitigate the acknowledged issue. The Proponent is also aware that the members of several First Nations, including PFN, routinely traverse the area crossed by the LSMOC in the course of hunting, trapping, and gathering activities, and that the construction and operation of the channel will disrupt access by interrupting established access routes. It is highly concerning that, despite knowing this, the Proponent has refrained from taking steps to reduce impacts related to safety and access.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 47-58) and the Conditions Table (Items 40-49):

- The Agency must state clearly for the record that the Proponent's conclusions regarding the severity of impacts on current use do not correspond with PFN's own conclusions (and ideally the Agency's as well) and that the evidence on which the Proponent's conclusions are based has been challenged on the basis of both Indigenous Knowledge and scientific soundness.
- The Agency must note in the final draft of the Report that the Proponent has consistently dismissed significant impacts to the lands, waters, and non-human inhabitants of the LAA by asserting that, as project impacts will be less significant within the larger RAA, current use practices can simply be deferred or relocated to that area. We additionally request that the Agency indicate that such conclusions are not acceptable and are not supported by the evidence provided. In so far as current use is concerned, the relative 'intactness' of the RAA does not render losses within the LAA acceptable.

Should the Project be approved, without prejudice to our position that the project should not be allowed to proceed, we request the Agency place additional, more specific conditions on the Proponent including:

1. We request that the Agency make the construction and maintenance of LSMOC crossings, distributed at reasonable intervals the length of the channel, a condition of approval. The specific locations and natures of these crossings must be determined in consultation with PFN and other First Nations who have indicated that the LSMOC would interrupt existing travelways and disrupt current use patterns in the area.

Cultural Heritage

We agree with the Agency's determination that the Project will have significant effects on "Indigenous peoples' physical and cultural heritage, including impacts on aspects of intangible cultural heritage such as sense of place, spiritual connection to the land, and intergenerational knowledge transfer". We appreciate the Agency's perspective and approach to intangible cultural heritage, and we are pleased to see that several of the conditions and recommendations we requested have been integrated into the Draft Report and Draft Conditions.

However, we maintain our strong opposition to the Proponent's plan to impact ancestral village sites. **If the Agency is willing to accept these impacts to this ancient site, the impacts must be stated clearly in the Report and our objection and deep concern with these impacts must likewise be highlighted in the Report.** Additionally, there must be a condition for approval that includes accommodations to First Nations for any unavoidable impacts, though we will continue to reject the Crown's acceptance of destroying an ancient village site.

We appreciate that the Agency has included many of our previously stated requirements regarding heritage monitoring and mitigation. However, stronger language and increased Indigenous involvement in these plans are essential. We lack confidence in the Proponent's ability to consult with us appropriately in preparing plans, assessments, and training, and thus advocate for these activities to be conducted with the assistance of a qualified third party and First Nations.

As stated throughout the EA, the Proponent's proposed plans regarding the protection of cultural heritage are also inadequate. The proposed Heritage Resource Protection Plan (HRPP) has not been revised in response to our concerns, which include the destruction of an ancient ancestral village, impacts on cultural use and continuity, and a lack of protection for Indigenous rights and interests. Additionally, there is insufficient Indigenous input into the plan and its implementation. In general, the Proponent has not adequately considered impacts to intangible cultural heritage nor has the Proponent adequately considered mitigations for said impacts.

The Proponent has also failed to recognize the necessity of Indigenous-led heritage and archaeological monitoring activities with concrete accountability mechanisms to ensure adherence to heritage protocols (e.g., chance find protocols). There is no firm commitment from the Proponent to fund training for Indigenous monitors.

Requirements

To begin to address some of the issues discussed here, the following, without prejudice of our position that the project should not be allowed to proceed, is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 59-71) and the Conditions Table (Items 50-53):

- The Proponent must commit to revising the existing HRPP in collaboration with Indigenous groups to prioritize cultural heritage, continuity, and rights.
- The Proponent must involve Indigenous groups in all matters of cultural heritage, including the creation and implementation of an Indigenous-led archaeological monitoring program.

- The Proponent must provide financial support for the training of Indigenous heritage and archaeological monitors, including covering costs of transportation, accommodation, supplies, and appropriate compensation.

The Proponent must avoid impacts to ancestral village sites and accommodate the First Nations for any unavoidable impacts. We reiterate our strong opposition to the Crown accepting the destruction of one of the oldest Indigenous heritage sites found in Manitoba.

Impacts on Section 35 Rights

We disagree with the Agency's determination that Section 35 rights "may" be impacted by the Project. Based on the submissions from various Nations and the Agency's own determination regarding the impacts on the current use of lands and resources, it is clear that Section 35 rights "will" be impacted should the Project be approved, and this should be reflected in the EA Report.

In the draft EA report, the Agency acknowledges that the "Project is likely to cause significant adverse environmental effects to Indigenous peoples' current use due to residual effects to access for current use, the availability and quality of resources, and quality of experience (see Chapter 7.4 for additional details), after taking into account the implementation of proposed key mitigation measures, monitoring, and follow-up programs." The Agency supports this with several other statements throughout section 9.2 that express agreement that there will be impacts to rights, for example:

- "Effects to current use directly impact Indigenous groups' hunting and trapping rights";²⁶
- "Effects on hunting and trapping are anticipated to be long-term, regular, and continuous due to the presence of project infrastructure and the irreversible loss of land";²⁷
- "The Agency anticipates that the Project would result in declines in the availability and quality of resources for current use, reduced access to lands and waters, and changes to Indigenous groups' quality of experience";²⁸
- "Project components would create barriers on Indigenous peoples' ability to access preferred sites for harvesting, hunting, trapping, and fishing, which are critical to maintaining cultural continuity rights through the persistence of Indigenous groups' culture and land-based ways of life";²⁹
- "Project would affect Indigenous groups' quality of experience, resulting in changes to cultural traditions, sense of place, mental well-being, and ability to transfer knowledge";³⁰ and

²⁶ Ibid 232.

²⁷ Ibid 232.

²⁸ Ibid 238.

²⁹ Ibid 238.

³⁰ Ibid 239.

- "The Agency anticipates that the Project would cause effects to physical and cultural heritage and sites of significance, including areas used for inter- and intra-generational transfer of knowledge and skills, gathering and ceremonial places, and multiple sacred and spiritual sites".³¹

Regardless of these statements, the Agency still makes the determination that there "may" be impacts to rights.

Additionally, we disagree with several of the conclusions made in Table 14 and Table 15 (section 9.2) of the draft EA Report, regarding the severity of potential impacts on the rights of Indigenous groups located near and upstream of the Project. We provide detailed comments on the issues and required changes on the severity of impacts to rights in Draft Report Comment Table comment 133 and 124. Please closely review these comments and revise as suggested.

We urge the Agency to revisit the assessments and conclusions presented in the EA Report on impacts to Section 35 rights with a holistic understanding of land use and the interconnectedness of cultural continuity, identity, stewardship, control and knowledge of lands and cycles, and the ways in which hunting and fishing rights are exercised.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 99-135) and the Conditions Table (Item 1):

- The Agency must revisit the assessments and conclusions presented in the Draft Report on impacts to Section 35 rights with a holistic understanding of land use and the interconnectedness of cultural continuity, identity, stewardship, control and knowledge of lands and cycles, and the ways in which hunting and fishing rights are exercised.
- The Agency must update the determinations based on the above feedback.

Should the Project be allowed to proceed, without prejudice to our position that the project should not be allowed to proceed, we request the Agency place additional, more specific conditions on the Proponent including:

1. The Proponent to fund an Indigenous Advisory Committee which will review the Proponent's adherence to commitments and conditions outlined throughout the EA process. This Advisory Committee must be Indigenous-led and must be provided with the tools and power to ensure MTI is accountable for adhering to all described regulations. This Advisory Committee will monitor impacts to Aboriginal and Treaty Rights and will ensure that the First Nations are able to continue to practice our way of life.

Flood Mitigation

The Proponent has consistently asserted that the proposed project will itself act as a mitigation measure to reduce the incidence and severity of future flooding events in the Interlake region.

³¹ Ibid 240.

The Agency appears to accept the Proponent's argument, stating that "The Agency is of the view that given current conditions, the Project would serve to reduce flooding within Lake Manitoba and Lake St. Martin once constructed."³² However, this is not consistent with the information available. According to the Proponent's own consultants, the proposed Project has the design potential, in the event of a large-scale flood, to flood Lake St. Martin to a level of 806 feet above sea level (803.5 feet due to flooding plus additional wind and wave action). Flooding on this scale would result in the devastation of reserve lands, sacred cultural sites, cultural landscapes, core hunting and trapping areas, gathering areas, and fishing areas essential to the exercise of PFN's Aboriginal and Treaty Rights.

The Proponent has additionally continued to rely on fundamentally flawed hydrological modelling and on outdated literature to support its conclusions. Numerical models, including that applied to Lake St. Martin, have not been verified or validated, leaving us with no way to confidently judge the credibility of the models' predictions. Frequency analyses were conducted Lake Manitoba and Lake St. Martin water levels predicted by the numerical model and water balance model; in other words, simulated conditions. This adds another level of uncertainty to the Proponent's estimates. **The confidence levels surrounding the frequency analyses using dependent annual events, plus the uncertainty of using estimates from a water balance model's simulation that was modified based on an unverified and unvalidated numerical model's predictions must be described. The uncertainty in the estimates must be evaluated, in order to fully understand the implications of these estimates on project design and on the environment and treaty rights.**

We believe that the Agency has made a serious mistake in not including the Portage Diversion in the RAA for the Project. The purpose of the Project is to protect against flooding. Flooding on the lakes is not a natural phenomenon: flooding in Lake St. Martin is caused by flooding in Lake Manitoba which in turn is caused by operation of the Portage Diversion. This was the major finding of a court case brought against the Province of Manitoba. Whenever the gates are opened at the Portage Diversion the lakes flood. If the channels are built, they will operate in conjunction with operation of the Portage Diversion – accordingly, the operation and environmental impacts of the Portage Diversion cannot be left out of the review. The omission is a failing of the EIS and of the EA more generally.

The Proponent defined the temporal boundary as six years for the construction phase and in perpetuity for the operation phase. Accordingly, the Environmental Management/Monitoring Plans (EMPs) proposed for the project must be conducted in perpetuity. Floods do not occur every year, but when they do occur, they will have an effect on water quality, fish, and fish and benthic habitat and shorelines. Monitoring must be conducted during and between floods in perpetuity to understand the changes the Project will continue to cause to the environment. However, EMPs proposed by MTI do not have this long-term view and the Agency will commit a grave oversight if the project is approved without this condition.

³² Ibid 246.

Finally, the Agency's review includes a section entitled alternative means which lists the options for the routing of the diversion channels, numbers of bridges, placement of water control structures, routing of transmission lines and selection of quarry areas - but these are options for building the project not alternatives to the project itself. MTI conducted an alternative means study in 2016, the *Assiniboine River and Lake Manitoba Basins Flood Mitigation Study*, but it was excluded from the EIS and the Agency has repeatedly refused requests to have the study included and reviewed. Some of the alternative means assessed in the Report would provide a technically and economically feasible way to prevent flooding without the Project's social and environmental costs to First Nations. This study requires scrutiny under CEAA 2012 to determine whether the Project is the best choice, especially considering its ballooning costs.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 7, 86, 90) and the Conditions Table (Item 7):

- Review and incorporate of the Proponent's *Assiniboine River and Lake Manitoba Basins Flood Mitigation Study* to more accurately assess flooding prevention alternatives to the Project.
- Include the Portage Diversion in the RAA of the Project.
- Expand the temporal and spatial boundaries of the Project assessment to more accurately capture the potential impacts and potential flooding prevention of the Project.

In light of these issues, and without prejudice to our position that the project should not be allowed to proceed, we request that the Agency include the following conditions for project approval:

1. The Proponent's 2016 Assiniboine River and Lake Manitoba Basins Flood Mitigation Study must be incorporated into the Proponent's submission and into the Agency's Report. The CEAA 2012 requires that environmental assessments of designated projects take into account technically and economically feasible alternative means of carrying out a project. MTI has not done this, and the Agency has failed to require it to do so.
2. The Portage Diversion must be included in the RAA of the Project, especially when considering the severity of impacts and required mitigations. A thorough and accurate assessment of cumulative effects and potential flooding impacts of the Project cannot be completed without this inclusion.
3. The Proponent must revise their temporal boundary for the implementation of the Environment Management/Monitoring Plans. If the operational phase of the Project is perpetual, then so too must be the corresponding EMPs.
4. The Agency and the Proponent must meet with PFN and their chosen technical (hydrology) experts to develop further conditions to address the issues outlined above and the substantial information gaps that remain outstanding.

Accidents and Malfunctions

Impacts to PFN rights due to accidents and malfunctions such as dike breaches and hazardous spills have not been adequately evaluated by either the Proponent or the Agency. Sections 8.1.1 and 8.1.3 of the Draft Report, like the Proponent's EIS, provide only minimal analysis of potential impacts, with inadequate consideration of Indigenous-defined VCs, very little detailed description of impact pathways, no effects characterization, a loose temporal and geographical scale, and substandard analysis of mitigation measures. Flood scenario modelling is also insufficient and there is a lack of clarity on how failure of the water control structures was incorporated into flood modelling. Additionally, the Draft Report provides no detailed assessment of dike failure mechanisms that allows for effective emergency action plans or to establish adequate safety measurements is required.

Pinaymootang First Nation disagrees with this lack of assessment because impacts due to accidents and malfunctions may in fact have significant effects on our ability to exercise our rights. We recommend the inclusion of a more rigorous analysis of potential impacts to rights and interests due to accidents and malfunctions that adequately evaluates impacts to Indigenous VCs. It must also include a detailed assessment of dike failure mechanisms that allows for effective emergency action plans and the establishment of adequate safety measurements; greater clarity on how failure of the water control structures were incorporated into flood modelling; and detailed information on preventative measures for hazardous spills.

The Draft Report also neglects to consider effects to Indigenous rights and interests due to accidents and malfunctions in the context of cumulative effects and instead states that the effects from a catastrophic dike breach would be the same as if the project didn't exist (section 8.1.1). PFN disagrees with this statement due to our experience bearing disproportionate impacts due to Manitoba's flood management schemes for several decades. PFN requires a project design and mitigation plan that avoids severe impacts to our lands, rights, and interests entirely.

The Draft Report also uses an inadequate temporal scale to assess impacts to Indigenous rights and interests due to accidents and malfunctions. It inappropriately considers the likelihood of a 1-in-300-year flood event as a mitigating factor for channel or dike overflows (section 8.1.3) and fails to consider the full duration of potential impacts to a point in time when effects are no longer measurable (section 8.1.1). PFN disagrees with this characterization because it downplays the importance of potential impacts to our rights and interests that may result from accidents, malfunctions, or flood events that are rare but still possible. PFN requires the use of an appropriately long-term scale that considers the full duration of all potential impacts to a point in time when effects are no longer measurable. Specifically, we request that potential 1-in-300 year flood events be included as a potential impact to PFN rights and interests.

Requirements

To begin to address some of the issues discussed here, the following is required. Please note that there are additional requirements in the Draft Report Comment Table (Items 85-88) and the Conditions Table (Items 55-59):

In light of these issues, we request that the Agency include the following conditions for project approval:

Should the Project proceed, without prejudice to our position that the project should not be allowed to proceed, the Agency must require that the Proponent work with each impacted Indigenous group to design Nation-specific, trauma-informed emergency response plans covering all potential emergency scenarios. These plans should:

1. Be designed collaboratively with each impacted Nation, with mechanisms for the Nations' approval of the plans and any subsequent changes.
2. Cover a range of scenarios from the more likely to the worst case.
3. Take into account that Indigenous groups in the Interlake region have experienced, and continue to experience, varying degrees of trauma due to past experiences with flood-based emergencies.
4. Include clear communications protocols to support the rapid and effective distribution of critical information in the event of an emergency.

We also request that IAAC require the Proponent to fund appropriate, trauma-informed emergency preparedness training to be offered to all potentially impacted Indigenous groups at regular intervals to ensure necessary knowledge and skills remain up-to-date. We also request that IAAC require the Proponent fund the development of appropriate emergency response materials and resources, taking into account the specific effects a given potential emergency will have on each respective impacted community (e.g., flood-management resources for communities vulnerable to flooding").

Summary of Recommended Changes

The Proponent's proposed mitigations are not adequately developed and remain focused on adaptive management and monitoring, which, while important to a project's development, are not an adequate form of mitigation. As it stands the Project cannot be approved as the mitigation plans remain fundamentally flawed and there remain a vast array of gaps that MTI has not addressed, nor sought our feedback on. These concerns include:

- The Environmental Advisory Committee, which is MTI-led, advisory-only, and exclusionary;
- Environmental Monitoring Program Plans, which do not include Indigenous co-development, and have not been altered despite extensive comments;
- Heritage Resource Protection Plan and Training, which ignores feedback from and the stewardship rights of PFN; and
- Problematic accommodations, including MTI offering the opportunity to First Nations to name the channel in an attempt at reconciliation, which is insulting and inappropriate considering the Project has been rejected by every Nation in the region.

Pinaymootang First Nation recommends the following changes to the draft Report, project conditions, or both. This is not a complete list; more detail is provided in the attached comment tables.

- Include a more detailed table that identifies all the concerns raised by PFN throughout this assessment process.
- Describe in detail the Proponent's failure to incorporate PFN knowledge and to adequately assess impacts to our lands and community.
- Develop a very clear and detailed condition that requires the Proponent to uphold the precautionary principle, fully implement monitoring, follow-up, and mitigation measures, and consult in a meaningful and ongoing fashion with First Nations. This condition must include very clear Draft Reporting requirements, as well as outline repercussions should MTI fail to meet its commitments.
- Include a condition that requires the Proponent to establish an Indigenous-led committee co-established by MTI, PFN, and other First Nations for engagement, approvals, and communications. The system should include proper mechanisms for Draft Reporting and accountability and must allow First Nations and concerned parties to affect change to Project activities.
- Include the condition that the Proponent fund an Indigenous-led monitoring guardian program.
- Include a description of methods and approach taken by the Proponent to include Indigenous groups in each stage of the alternative means assessment. Also include an analysis of whether the methods employed by the Proponent met the level of effort required by the seriousness of concerns raised by Indigenous groups.
- Evaluate how the Proponent has included PFN in the development of emergency response and adaptive management plans and include a measure in the EA Draft Report or associated conditions for the direct involvement in the development of these plans. Include mechanisms to ensure PFN's prior approval of any accident, malfunction, and emergency-related plans to ensure our rights and interests are protected in the long term.
- Reconsider statements regarding impacts to components of the environment under federal jurisdiction in light of the information provided by our communities that the Project is likely to cause significant, adverse effects.
- Include a more rigorous analysis of potential impacts to rights and interests due to accidents and malfunctions that adequately evaluates impacts to Indigenous VCs. This analysis should use an appropriately long temporal scale that considers the full duration of potential impacts to a point in time when effects are no longer measurable and should consider impacts in the context of cumulative effects to PFN rights and interests.
- Revise the EA to consider the full suite of Project effects on all wetlands, including indirect hydrologic impacts, if this was not accounted for previously. Please also explain why this hasn't been done yet and how this will be accounted for.
- Include a condition that requires the Proponent to undertake offsetting for Class II wetlands that will be directly affected by the Project and to determine an appropriate wetland compensation ratio with input from PFN, if we choose to do so.

- Require the Proponent to develop, in collaboration with impacted Indigenous communities including PFN, an invasive species monitoring and management program.
- Require that the Proponent collect additional environmental baseline data prior to Project construction and that require it to reassess the residual impacts to all species, including those requested in previous IRs (see comment table for details).
- Require the Proponent to consult with PFN (if PFN chooses to do so) to determine and implement appropriate no-work buffer zones around active mammal denning sites, suitable methodology for surveying for (and monitoring) active denning sites, and other mitigation measures that will be taken to avoid impacts to culturally important mammals and furbearers.
- Require the Proponent to conduct three additional years of baseline studies on fish and fish habitat. Additionally, due to the lack of baseline studies, the Project's potential impacts to fish cannot be confined to the LAA and should be considered for the entire RAA.
- Require that PFN be provided with the opportunity to review the additional baseline data collection effort to determine its adequacy before its findings are incorporated into future versions of the Draft Report.
- Require the Proponent to consult with PFN to determine clear decision points and benchmarks that will be used to monitor Project effects on traditional land use and in what instances further mitigative action and consultation is required.
- Change statement within the Draft Report to accurately reflect the high likelihood of an increase in the rate of AIS dispersal from the proposed Project.
- Include Birch and Buffalo Creek and their connected lake systems into its assessment of permanent alteration or destruction of fish and fish habitat.
- Include a summary of how environmental flow needs, including from Indigenous Knowledge perspectives and considering impacts on Aboriginal rights and interests, were considered in the effects determination.
- Revise potential impacts on fish and fish habitat as high (not negligible) and extensive throughout the RAA.
- Require the development of a new Fish and Fish Habitat Offsetting Plan to be developed collaboratively with PFN in order to assure appropriate mitigations and offsetting from the impacts proposed Project.
- State clearly for the record that the Proponent's conclusions regarding the severity of impacts on current use do not correspond with PFN's own conclusions and that the evidence on which the Proponent's conclusions are based has been challenged on the basis of both Indigenous Knowledge and scientific soundness.
- Include more concrete measures (e.g., number and location of crossings) to ensure safe and efficient crossing of the channels.

- Revise the Draft Report to recognize that, even with crossings, the channels will serve as a significant barrier to PFN's current use of lands and resources for traditional purposes.
- Require the Proponent to conduct baseline mental health research and update the Draft Report accordingly.
- Implement present-day best practice approaches to health and revisit the definition and framing of health in Section 7.5.1 to ensure broader, Indigenous perspectives on health are included. Also, add a condition that requires the Proponent to invest in mental health and wellness resources for the communities, including cultural programming.
- In determining its conditions for approval, ensure that impacts to the current use of lands and resources for traditional purposes are treated with the same level of seriousness as other environmental impacts. The Agency should keep in mind the severe and lasting character of the Project's potential impacts on current use practices.
- Require that the Proponent revise and develop cultural heritage mitigations with First Nations, including the HRPP, cultural heritage monitoring, and the chance find procedure, to prioritize Indigenous approaches to cultural heritage, continuity, and rights. The Proponent must by all costs avoid impacts to ancestral village sites and accommodate First Nations in the event of unavoidable impacts.

Conclusion

This cover letter addresses PFN's overarching concerns regarding the Agency's Draft Report. Greater detail and specific requests for revisions to the Draft Report and Project Conditions are provided in the attached Comment Tables. The attached Comment Tables are just as important as the cover letter, so we ask that we closely review and integrate the comments from both Comment Tables as well. PFN looks forward to working with the Agency to address these concerns. In accordance with consultation protocols and best practices, PFN requires the establishment of a clear consultation process with IAAC to review and discuss the Draft Report. This consultation process must include meetings and feedback processes to ensure the meaningful inclusion of our inputs into the finalization of the Draft Report and recommended Draft Conditions. This consultation process is a necessary requirement of the Crown and is integral to ensuring that our knowledge is considered in the EA. We hope the Agency will hold to its commitments that its decisions on this Project will be "based on science, facts, evidence and Indigenous Knowledge, and will be informed by meaningful Indigenous participation" (IAAC Letter to PFN, April 8, 2024, p. 6).

Pinaymootang First Nation has the expectation that, in revising the Draft Report and Draft Conditions, the Agency will adhere to the principles of Indigenous FPIC. Although this assessment is being carried out under CEAA 2012, which has fewer FPIC requirements than IAA 2019, Canada's commitment to implement UNDIRP means that FPIC is now an essential component for any project. Given this context, we hope the Agency will bear in mind the gravity of our concerns and hold the Proponent responsible for ensuring our rights and interests are held to the highest order.

The information we have provided throughout the EA unequivocally illustrates the significant adverse effects the Project will have on our rights, interests, and way of life, should the Project be approved. As such, PFN requires that the Agency:

1. Reconsider any recommendations that the Project proceed, in light of the overwhelming evidence provided by PFN and other First Nations, that illustrates that impacts will be so harmful that it is not in the public interest to approve the Project; and
2. Should the Project be allowed to proceed despite these fundamental and significant failings, that the conditions for approval be much stronger as to avoid catastrophic project and cumulative effects on Indigenous peoples. We want to restate here that a condition or requirement based on implementing empty promises is not a condition or requirement at all.

The Crown has the duty and responsibility to uphold our Aboriginal and Treaty Rights, including our right to maintain a distinct culture and way of life. In tandem with past cumulative effects arising as a result of unilateral decision making by the Province of Manitoba to artificially manage water levels in Lake Manitoba and Lake St. Martin, this project stands impact our communities and territories so severely that we will be unable to meaningfully exercise our rights. As stated in past communications, we are not opposed to the development of flood management infrastructure that will reduce the likelihood of flooding in our communities. Rather, we are opposed to the approval of a project that has been developed without our input or knowledge and will cause our rights to pass a threshold by which they can be meaningfully exercised.

We hope that the Agency will take our concerns and recommendations expressed in this letter and the attached tables seriously. We look forward to further engaging and working with the Agency to ensure the protection of our rights and interests. All of the foregoing content is without prejudice to our position that the Project should not be allowed to proceed and our Nation reserves and maintains all of its rights herein.

Best regards,

<Original signed by>

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