

Lake Manitoba – Lake St. Martin Outlet Channels Environmental Assessment

EA Report and Draft Conditions Response

Manitoba Métis Federation

May 3, 2024



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1.0 Introduction

The Manitoba Métis Federation (MMF), with support from Shared Value Solutions (SVS), as well as past support from Dr. Nicholas Mandrak, and Dr. Ian Smith, has completed a review of the Environmental Assessment Report and Draft Approval Conditions developed by the Impact Assessment Agency of Canada (the Agency), for the Lake St. Martin – Lake Manitoba Outlet Channels project (the Project). The issuance of these two documents represents the final regulatory stage of the federal Environmental Assessment for the Project before a decision is made regarding its approval by the Minister responsible for the Impact Assessment Agency of Canada. The Project was assessed under the *Canadian Environmental Assessment Act, 2012*.

Through this project, Manitoba Transportation and Infrastructure (the Proponent) has proposed to construct two water conveyance channels (collectively the Outlet Channels) in the Interlake region of central Manitoba. The Lake Manitoba Outlet Channel (LMOC), is approximately 24 km in length and is designed to convey flood waters from Lake Manitoba (Watchorn Bay) into Lake St. Martin (Birch Bay). The Lake St. Martin Outlet Channel (LSMOC), is also approximately 24 km in length and is designed to convey flood waters from Lake St. Martin into Lake Winnipeg at Sturgeon Bay. Collectively, the Outlet Channels, in acting with other existing flood infrastructure, are designed to quickly move floodwaters from Lake Manitoba to Lake Winnipeg, reducing the risk of flooding and corresponding public safety concerns through much of central Manitoba.

The Project is of concern to the MMF as it intersects with the MMF Interlake and Northwest Regions and may affect the Southeast Region that borders Lake Winnipeg including areas of Métis Land-Use, Occupancy, and Traditional Ecological Knowledge including hunting, fishing, trapping, gathering, and cultural and occupancy sites. For these reasons, the MMF is concerned that the environmental effects of the Project may in turn impact the rights, claims and interests of the Red River Métis.

In reviewing the Environmental Assessment Report and Draft Approval Conditions, the MMF has focused on examining how the MMF's past submissions, concerns and recommendations have been represented by the Agency, and how the Agency views the Proponent's efforts to incorporate the MMF input into the Environmental Assessment. Additionally, the MMF through our review has worked to understand how draft conditions will be used to guide the delivery of the Project if approved, and by outlining a series of recommendations, has identified expectations for the Agency to adopt additional approval conditions to further safeguard the MMF's rights and interests as they relate to potential impacts of this project.

The MMF, in reviewing these documents notes that while this may be the final step in the Environmental Assessment process, several of the MMF's key concerns remain outstanding including efforts to accommodate impacts to Aboriginal rights held by the Red River Métis. It is therefore the MMF's expectation that meaningful consultation will continue with Canada and that Canada will continue to work to fully uphold its duties to the Red River Métis.



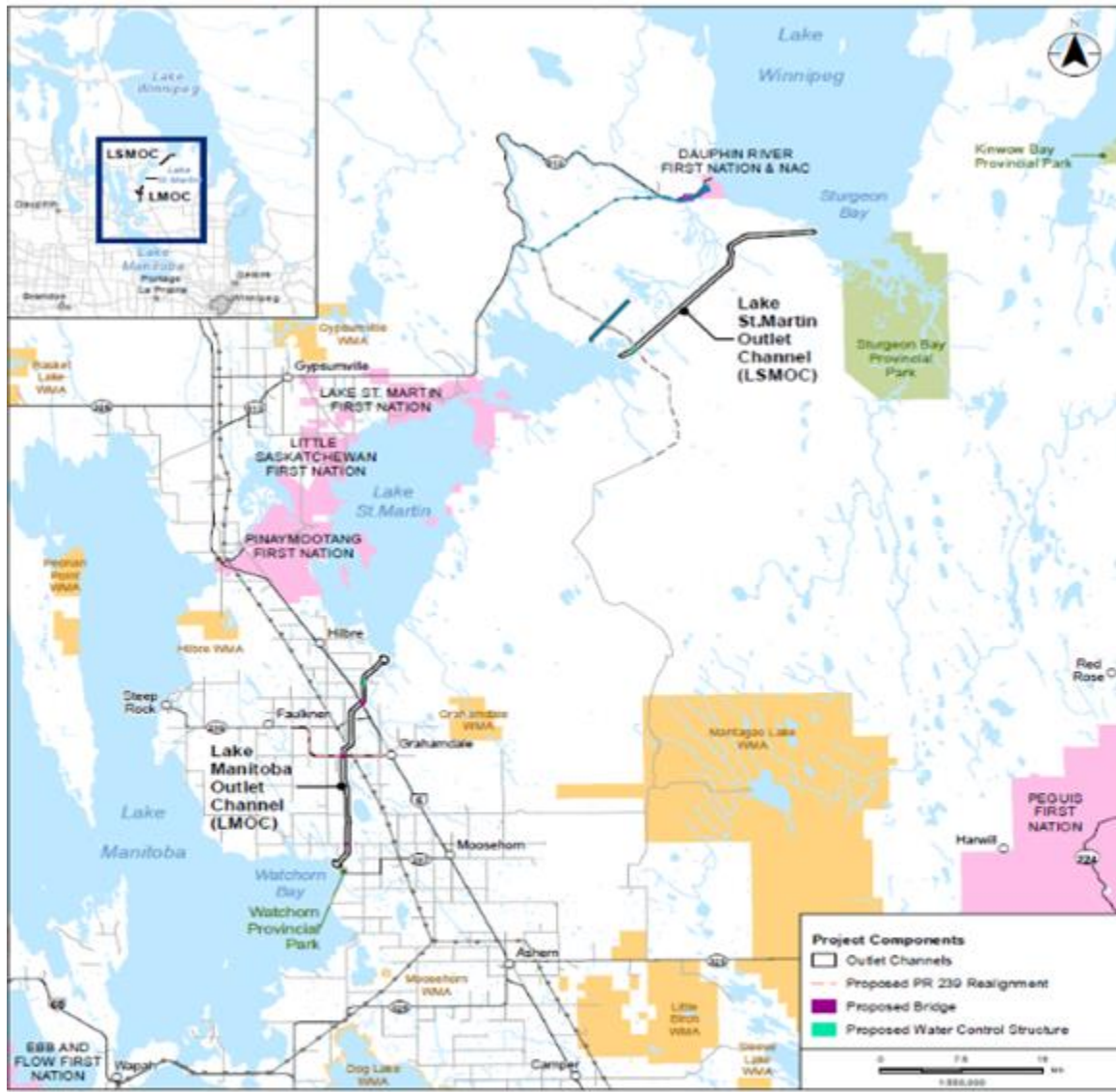


Figure 1B-1

Figure 1 Project location and layout (Manitoba Infrastructure, 2020)



2.0 Background—The Red River Métis and the MMF

2.1 The Red River Métis

The Red River Métis is an Indigenous collectivity and Aboriginal People within the meaning of section 35 of *the Constitution Act, 1982*. Based on our emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, interests, and claims throughout and beyond the Province of Manitoba.

Since 1982, Métis rights have been recognized and affirmed by section 35 and protected by section 25 of *the Constitution Act, 1982*. These rights were further confirmed and explained by the Supreme Court of Canada ("SCC") in *R. v. Powley*, 2003 SCC 43. Manitoba Courts also have recognized Red River Métis rights in *R. v. Goodon*, 2008 MBPC 59. These decisions have affirmed that the Métis hold existing Aboriginal rights throughout their traditional territories. Our Citizens and harvesters, rely on and use the lands, waters, and resources of our traditional territory throughout the Province of Manitoba and elsewhere within the historic Northwest, including in and around the area of the Project, to exercise their constitutionally protected rights and to maintain their distinct Red River Métis customs, traditions, and culture.

2.2 Red River Métis' Rights, Claims, and Interests

Based on its emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, claims, and interests throughout and beyond the Province of Manitoba consistent with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to self-determination.

The MMF is mandated to promote, protect, and advance the collectively held Aboriginal rights of the Red River Métis. Through this mandate, the MMF engages with governments, industry, and others about potential impacts of projects and activities on our community. In 2007, the MMF Annual General Assembly adopted Resolution No. 8, which provides the framework for engagement, consultation, and accommodation with the Red River Métis. Designed by Métis, for Métis, Resolution No. 8 sets out the process that is to be followed by governments, industry, and other proponents when developing plans or projects that have the potential to impact the Section 35 rights, claims, and interests of the Red River



Métis. It was unanimously passed by MMF Citizens and mandates a "single-window" approach to consultation and engagement with the Red River Métis through the MMF Home Office.¹

In engaging the MMF, on behalf of the Red River Métis, the Resolution No. 8 Framework calls for the implementation of five phases:

- Phase I: Notice and Response;
- Phase II: Research and Capacity;
- Phase III: Engagement and Consultation;
- Phase IV: Partnership and Accommodation; and
- Phase V: Implementation.

This project has the potential to impact Red River Métis rights, claims, and interests and as such, engagement and consultation with the MMF, through the process set out above, must be followed. The Project is located within the traditional territory of the Red River Métis, and in the heart of our Homeland. At one time, this was the "postage stamp province" of Manitoba. This is the birthplace of the Red River Métis and where we currently have an outstanding claim flowing from the Federal Crown's failure to diligently implement the land grant provision of 1.4 million acres of land promised to the Red River Métis as a condition for bringing Manitoba into Confederation and set out in section 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.²

Red River Métis section 35 rights are distinct from First Nation's rights and must be respected. The Manitoba Métis Federation is the National Government of the Red River Métis.

Prior to the creation of Manitoba, the Red River Métis had always exercised its inherent right of self-determination to develop its own self-government structures and institutions centered around the Red River Settlement and throughout the Northwest. As described by Louis Riel in his 1885 memoirs, Métis

¹ More information about Resolution No. 8 is available online at: <http://www.mmfmb.ca/docs/2013-Resolution%208%20Booklet-VFinal.pdf>

² *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 SCR 623 ("MMF Case"). The Supreme Court of Canada recognized that this outstanding promise represents "a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Constitution Act, 1982* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import" (para. 140).



self-government was well-established and functioning when Canada came to the Red River Métis in the late 1800s:

When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it . . . but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.

Métis self-government has evolved and changed over time to better meet the needs of the Red River Métis. Today, the MMF is the recognized, democratically elected, self-government representative of the Red River Métis and on July 6, 2021, it signed along with the Government of Canada, the Manitoba Metis Self-Government Recognition and Implementation Agreement.

Since 1967, the MMF has been authorized by the Red River Métis through a democratic governance structure at the Local, Regional, and national levels. As part of this governance structure, the MMF maintains a Registry of Red River Métis Citizens.³ By applying for Red River Métis Citizenship, individuals are confirming the MMF is their chosen and elected representative for the purposes clearly set out in its Constitution,⁴ including as related to the collective rights, claims, and interests of the Red River Métis.⁵

The MMF Constitution confirms that the MMF has been created to promote the political, social, cultural, and economic rights and interests of the Red River Métis. The MMF is authorized to represent the Red River Métis' collective rights, interests, and claims. This authorization is grounded in the MMF's democratic processes that ensures the MMF is responsible and accountable to the Red River Métis.

The MMF governance structure includes a centralized MMF President, Cabinet, Regions, and Locals. There are seven (7) Regions and approximately 135 Locals throughout Manitoba (Figure 2). There are more than three thousand Citizens who live outside of Manitoba. All MMF Citizens are Members of a Local. Locals and Regions work together to authorize and support the MMF Cabinet, and the MMF's

³ MMF Constitution, Article III outlines the citizenship definition and application process. This definition ("Metis" is defined to mean " a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation ") aligns with the definition of what constitutes a section 35 rights-bearing Metis community as outlined by the Supreme Court of Canada in *Powley* at para. 30.

⁴ *Newfoundland and Labrador v. Labrador Metis Nation*, 2007 NLCA 75 at para 47: "Anyone becoming a member of the [Labrador Metis Nation] should be deemed to know they were authorizing the LMN to deal on their behalf to pursue the objects of the LMN, including those set out in the preamble to its articles of association. This is sufficient authorization to entitle the LMN to bring the suit to enforce the duty to consult in the present case."

⁵ *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para 30: "[A]n Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s.35 rights."



various departments and offices. Through elections held every four years, Citizens choose and elect the MMF Cabinet consisting of the MMF President, who is the leader and spokesperson for the MMF, a Vice-President of each Region, and two Regional Executive Officers from each Region. The MMF Cabinet also includes the spokeswoman from the Infinity Women Secretariat.



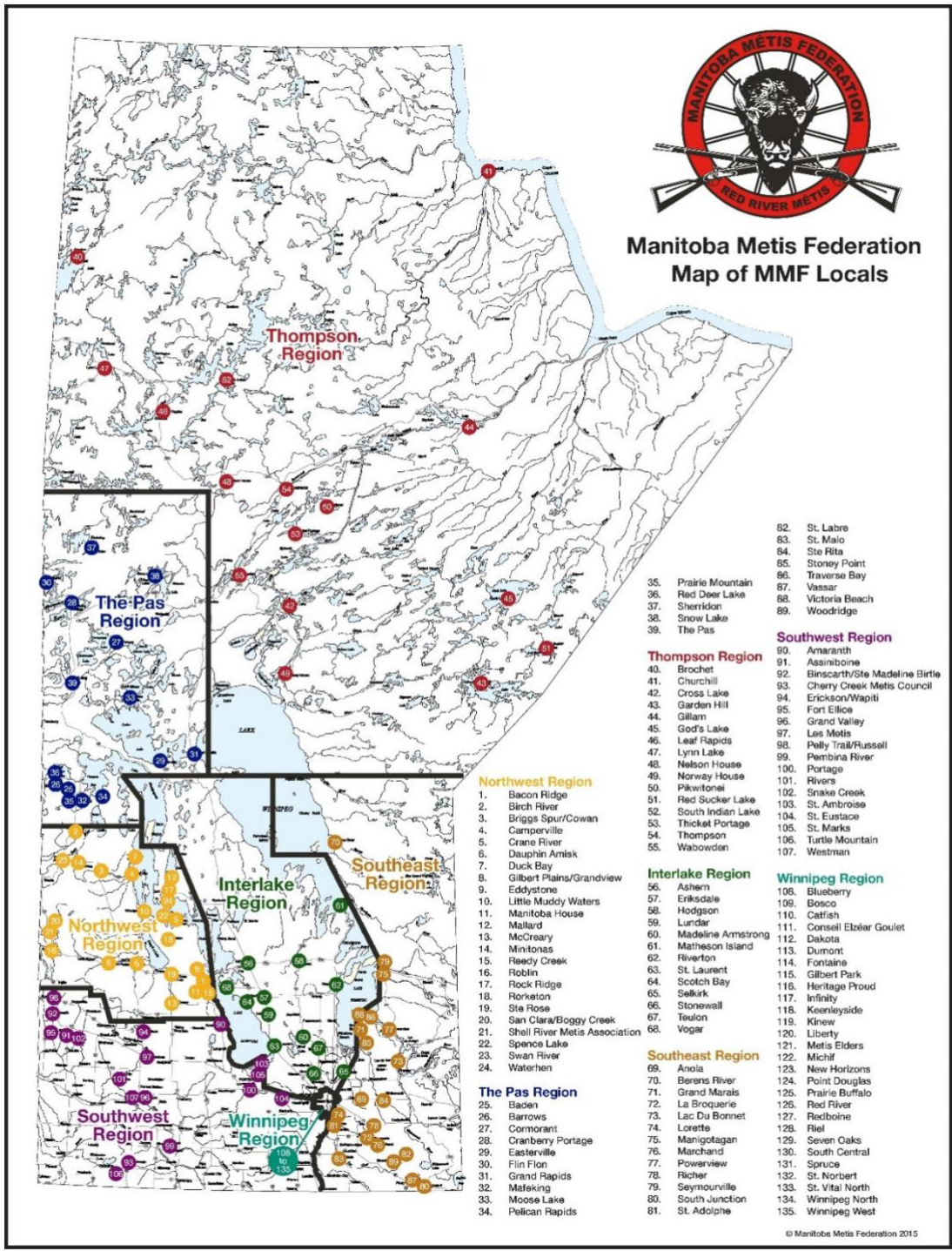


Figure 2 MMF Regions and Locals



The MMF, as the duly authorized representative of the Red River Métis, has been recognized by both the federal and provincial governments in agreements, policies, and legislation. For example, in 2002, *The Child and Family Services Authorities Act* recognized the MMF for the devolution of child and family services to MMF institutions. This Act establishes a series of Child and Family Services Authorities to administer and provide the delivery of services to various distinct Indigenous communities in Manitoba. It creates a Métis Authority, the directors of which is appointed by the MMF.

In 2008, the courts in Manitoba further recognized that "[t]he Métis community today in Manitoba is a well organized and vibrant community. Evidence was presented that the governing body of Métis people in Manitoba, the Manitoba Métis Federation, has a membership of approximately 40,000, most of which reside in southwestern Manitoba."⁶ In 2010, the Manitoba Government adopted a Manitoba Métis Policy, and stated that:

*The Manitoba Metis Federation is a political representative of Métis people in Manitoba and represents in Manitoba the Métis who collectively refer to themselves as the Métis Nation. ... Recognition of the Manitoba Métis Federation as the primary representative of the Métis people is an important part of formalizing relationships.*⁷

In 2012, the *MMF-Manitoba Harvesting Agreement (2012)* negotiated between the MMF and the Manitoba Government recognized some of the collective section 35 harvesting rights of the Red River Métis and relied on the Citizenship processes of the MMF as proof of belonging to a rights-holding Aboriginal community:

*For the purposes of these Points of Agreement, Manitoba will recognize as Métis Rights-Holders, individuals who are residents in Manitoba and who hold a valid MMF Harvesters Card, issued according to the MMF's Laws of the Hunt. [. . . and will] consult with the MMF prior to implementing any changes to the current regulatory regime that may infringe Métis Harvesting Rights.*⁸

In 2013, the SCC recognized the "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada." It went on to grant

⁶ *R. v. Goodon*, 2008 MBPC 59 para 52. Note that the number of MMF Citizens (40,000) identified by the Court was as of 2007. .

⁷ Manitoba Métis Policy, September 2010 at 4, 12, online (PDF): http://www.gov.mb.ca/imr/ir/major-initiatives/pubs/Metispolicy_en.pdf

⁸ MMF-Manitoba Harvesting Points of Agreement (September 29, 2012), ss. 3, 6-7.



the MMF standing as the "body representing the collective Métis interest" in the *MMF Case*.⁹ Additionally, in 2016, the *MMF-Canada Framework Agreement* stated:

the Supreme Court of Canada recognized that the claim of the Manitoba Métis Community was "not a series of claims for individual relief" but a "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada" and went on to grant the MMF standing by concluding "[t]his collective claim merits allowing the body representing the collective Métis interest to come before the court.

*[and that] Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF.*¹⁰

On July 6, 2021, the MMF and Canada signed the Manitoba Métis Self-Government Recognition and Implementation Agreement which immediately recognized the MMF as the national government of the Red River Métis.

3.0 Project Need and Design Considerations

The MMF recognizes the need for flood mitigation infrastructure. Flooding is a way of life in Manitoba. Flooding as a natural process can bring important ecological benefits through groundwater recharge, redistribution of nutrients, natural ecological disturbance, and facilitating species migration, among others. However, flooding often results in negative interactions with public safety and property, which can result in significant personal loss and impact.

This project was precipitated as a long-term response to the 2011 flood, which resulted in the construction of the Emergency Outlet Channels. These channels were emergency earthworks which were created during the flood to help shed water from the landscape. The 2011 flood greatly impacted many Red River Métis Citizens living in the Interlake Region as well as elsewhere in the Homeland. Citizens lost homes and property, lands used for harvest and enjoyment, and threatened the safety and security of many.

In the face of these conflicting views, the MMF has and continues to support the need for this project, however, as we have previously stated at many junctures through the Environmental Assessment and

⁹ *MMF Case*, *supra* note 6 at para 44.

¹⁰ *MMF-Canada Framework Agreement on Advancing Reconciliation*, November 15, 2016, Preamble.



publicly, it is essential that if constructed, these Outlet Channels be designed and constructed to complement the landscape rather than disturb it.

The vision for these Outlet Channels that we have promoted, are structures that while able to function as water conveyance structures, are purpose-built to maintain and promote habitat and ecosystem function for terrestrial, avian, and aquatic organisms alike. Outlet Channels that are designed in this manner would be able to minimize many of the adverse effects on the rights, interests, and values of the Red River Métis and other Indigenous groups impacted by this project. Channel design that includes natural design elements could result in the development of habitat for fish and aquatic organisms. The ROW revegetated intentionally, could be designed to foster habitat and the growth of culturally important species, maintaining strong connectivity between habitats on either side of the respective Outlet Channels, minimizing habitat fragmentation, and facilitating species use and migration through the project corridor.

However, from the onset, while we have advocated for the inclusion of natural design, the Proponent has failed to begin to consider these elements. Instead, the Proponent has designed a conveyance structure that mimics a drainage ditch, intentionally sterile and devoid of beneficial structure. The rationale for this approach has been that natural design will conflict with the ultimate goal of conveying flood waters, however, novel approaches are emerging which demonstrate that flow conveyance and ecologically beneficial design can co-exist, such as has been demonstrated by the Don River Redevelopment in Toronto¹¹, the Sacramento River Yolo bypass¹², and others.

Ultimately, while we support the intention of this Project, we lament that its design and execution could have placed greater emphasis on overall ecological benefits.

4.0 Environmental Assessment Report and Draft Conditions

The MMF with support from Shared Value Solutions Ltd. has reviewed the Environmental Assessment Report and Draft Approval Conditions. In evaluating these documents, while considering previous submissions by the MMF, the Proponent, the Agency, and others as part of the federal Environmental Assessment process, we are generally supportive of how the Agency has framed the concerns presented by the MMF to the process and appreciate the efforts made by the Agency to ensure that the MMF's submissions influenced both the Environmental Assessment Report and the Draft Conditions. However, we still find the Environmental Assessment Report and Draft Approval Conditions failing to acknowledge the level of uncertainty surrounding the potential impacts on fish, fish habitat, and aquatic life. The

¹¹ <https://trca.ca/conservation/watershed-management/don-river/projects/>

¹² <https://norcalwater.org/wp-content/uploads/Floodplainreactivation.wetdryoct2019.pdf>



Agency has taken the position that fish habitat alteration, disruption, and destruction, and the potential for direct fish mortality are matters to be evaluated through an appropriate Fisheries Act Authorization. While this approach is appropriate from a process point of view, deferring a meaningful evaluation of impacts to fish and fish habitat, as well as potential mitigation or offsetting measures, rather than considering it directly within the Environmental Assessment creates a significant blind spot in the Agency's ability to full assess the total impacts of this project. As a result, we argue that in the absence of a full and meaningful assessment of impacts on fish and fish habitat, the Agency's conclusion that "the Project is not likely to cause significant adverse effects on fish and fish habitat" is not grounded in conclusive evidence. We discuss our concerns as they relate to impacts on fish and fish habitat in Section 4.5.

The Outlet Channels are one of the last remaining projects to be assessed following the *Canadian Environmental Assessment Act, 2012* process. Through this process, projects are subjugated to a standard which is no longer current, failing to afford rights-bearing Indigenous groups the same level of engagement and participation opportunities as the current standard outlined in the *Impact Assessment Act, 2019*. Additionally, there are important differences in the scoping of the assessment and treatment of cumulative effects between the two assessment processes. It is these latter differences that were evident in the assessment of the Outlet Channels, as the non-tailored approach to scoping the assessment meant that many of the important assessment questions had to be addressed through Information Requests rather than as part of the core assessment, which resulted in significantly more effort by the MMF and other parties needing to be expended, and further, this approach resulted questions the MMF felt as important to understanding the project not being fully answered as a result of lack of full participation in the scoping of the assessment. Additionally, as we describe in Section 4.6, we find the cumulative effects assessment applied through this assessment to no longer be relevant or meet the expectations of the MMF to meaningfully understand the cumulative, synergistic and interactive effects of this project. The result of this is that the Agency does not appropriately characterize the incremental manipulation of lands and waters in southern and central Manitoba, to assess the overall impacts of this project.

Finally, we note in many instances where there are unknowns regarding the predictions made by the Proponent in the assessment, the Agency through Conditions has made an effort to ensure the predictions are confirmed through follow-up monitoring. However, in many instances as outlined in Sections 4.4-4.6, conditions directing the follow-up monitoring program lack substance to deal with instances where predictions are not confirmed, either through the proactive development of contingency plans or meaningful adaptive management frameworks. We are concerned that without this added structure to deal with instances of non-conformity or otherwise where predictions are not confirmed, the Agency and other relevant authorities may not be in a position to direct meaningful corrective action. As a result, we find the approval conditions lacking in its ability to ensure the project is constructed and operated in a manner that aligns with that described in the Environmental Assessment.

The MMF in reviewing the Environmental Assessment Report and Draft Approval Conditions provides specific and outstanding concerns and recommended changes or additions to the approval conditions to



ensure this project, if approved, will reflect the rights, interests, and values of the Red River Métis, and best provide mutual benefit to all affected.

4.1 Project Overview and Description

Recommended Condition	
Condition	1.4 <i>Closed-gate periods</i> means the periods during operation when the outlet channels are not being used for flood mitigation operations and the water control structures are closed.
Recommendation	For further clarity, it is requested that this definition also capture the ongoing water management efforts that will allow base flow to pass through the Outlet Channels and operators to manage base flow to achieve water quality objectives.
Condition	1.32 <i>Operation</i> means the phase of the Designated Project during which the flood mitigation infrastructures are functional, beginning once commissioning is complete.
Recommendation	For further clarity, it is requested that Operation be defined to specifically include or exclude periods of necessary maintenance or shutdown in which the Designated Project is not functional and may include future instances where all flow is ceased. Additionally, although there is no foreseeable closure, we recommend additional language be included with this definition or as a stand-alone definition to describe a period after "operation" and the circumstances that describe that period.

4.2 Purpose of the Project and Alternative Means Assessment

The Proponent as part of the Environmental Assessment assessed alternative means of carrying out the Project, most notably through:

- LMOC routing;
- LSMOC routing;
- WCSs;
- number of bridge crossings;
- realignment of PR 239;
- routing of electrical distribution lines; and
- quarry and borrow areas.



The Agency in the Environmental Assessment Report continues to suggest that “Input from Indigenous groups, including Indigenous Knowledge and project-specific traditional land use information, was considered by the Proponent in the alternative means assessment and concerning project design and siting”¹³. We agree that the MMF’s Métis Knowledge and Land Use Occupancy Study information was considered as part of routing and siting decisions, we disagree that the Proponent meaningfully considered the input from the MMF on project design. At every opportunity, the MMF has voiced its desire to incorporate and maximize the amount of natural design as an important mitigation for the terrestrial and aquatic impacts. In our view, the Proponent has not meaningfully entertained any of this feedback and dismissed the possibility of incorporating these elements into designs as incompatible with the intended purpose of the project. While we recognize a need to preserve the function elements of the Project as a water conveyance system, we have continued to request the inclusion of natural design where possible to benefit ecosystem function and habitat maintenance. These natural design elements include but are not limited to:

- Stream meanders
- Development of fish habitat in the Outlet Channels, including variation in substrate, creation of pool/riffle sequences, strategic use of natural or artificial structure in the Outlet Channels, development of aquatic plants
- Channel cover
- Integration of aquatic and riparian habitats
- Channel crossings for wildlife
- Habitat-oriented terrestrial and semi-aquatic revegetation

We see these natural design elements as critical mitigations for both terrestrial and aquatic impacts. Further, as we have argued, if designed and implemented effectively will not adversely impact the functionality of the project, as has been demonstrated in other similar projects.

Recommended Condition	
Condition	7.13 The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, and implement a progressive revegetation plan for areas disturbed by the Designated Project for the purpose of controlling erosion and invasive species and encouraging the establishment of

¹³ Impact Assessment Agency of Canada. 2024. Environmental Assessment Report, pg 20.



	<p>native species assemblages, including trees. The Proponent shall provide opportunities for Indigenous groups to participate in revegetation activities.</p> <p>7.14 The Proponent shall develop, prior to construction, and implement during construction and operation, a tree planting program to replace the trees lost during the construction of the designated project. The Proponent shall develop and implement the program in consultation with Indigenous groups.</p> <p>7.20 The Proponent shall develop, prior to construction and in consultation with Indigenous groups, and relevant authorities, a follow-up program to verify the accuracy of the Environmental Assessment and determine the effectiveness of the progressive revegetation of areas disturbed by the Designated Project. The Proponent shall implement the follow-up program during all phases of the Designated Project.</p>
<p>Recommendation</p>	<p>We request that the Agency adopt the following Conditions:</p> <p>7.X.X the Proponent shall in collaboration with Indigenous groups identify goals for the naturalization of the project and develop a Project Naturalization Plan to guide the development and implementation of the revegetation plan, offsetting plan, and, wetland compensation plan as well as structures described in Conditions 7.9, 7.16, and 7.21.2.</p>

4.3 Consultation and Engagement Activities

Through engagement with Indigenous groups, including the MMF, the Proponent identified several key concerns including:

- effects on access and navigation;
- lack of Indigenous engagement in the EIS development, such as updating baseline data, methodology, cumulative effects assessment, and significance determination;
- lack of meaningful Indigenous engagement by the Proponent in the development of methodology;
- effects on fish, habitat and fishing (e.g., lake sturgeon);
- lack of consideration of effects to Indigenous health and socio-economic conditions (e.g., methylmercury and human health) in Project development;
- effects on sites and resources of heritage and cultural importance (e.g., including Indigenous Knowledge on heritage sites);
- the adequacy and anticipated effectiveness of the Proponent's proposed mitigation and follow-up and monitoring measures;



- lack of Indigenous knowledge incorporation on project design;
- changes to resource use (e.g., land use and fishing);
- effects on wildlife including terrestrial plants, birds and species at risk; and
- changes to water, including groundwater and surface waters such as wetlands.

While the Proponent has done a reasonable job in identifying issues and concerns, it has been the experience of the MMF that the issues and concerns were often not meaningfully addressed, or the Proponent did not take proactive measures to demonstrate to the MMF that its input was meaningfully considered and addressed. This is exemplified by the need for the MMF to repeat requests for the Proponent to provide written responses to comments, recommendations and Information Requests issued by the MMF. The Proponent has also failed repeatedly to follow through on commitments to provide support and capacity to the MMF in the form of financial reimbursement for expenses incurred, with the Proponent not providing payment within a reasonable timeframe to the burden of the MMF.

Additionally, throughout the federal Environmental Assessment (as well as part of the provincial Environmental Assessment) the MMF has made several attempts to resolve technical concerns and issues with the Proponent regarding the project by requesting to meet with the Proponent’s technical staff/consultants. Two meetings were identified, the first to allow MMF's fish experts to meet with the Proponent, and the second to enable MMF's ecological and regulatory staff to meet with the Proponent. While the first meeting did occur, the Proponent was not prepared to speak to technical matters as they did not arrange to have appropriate expertise present. The MMF advised the Proponent that while our experts were prepared to meet again in an attempt to resolve issues, the MMF would not meet until the Proponent was willing to ensure appropriate expertise able to speak to relevant project concerns was in attendance. As the Proponent failed to make assurances that appropriate subject matter experts would be made available to discuss technical issues - a second meeting did not occur.

The Agency states in the Environmental Assessment Report that it is “the Agency’s expectation that all of the Proponent’s commitments would be implemented for the Project to be carried out in a precautionary manner”.¹⁴ Given the track record of the Proponent in failing to meet their commitments to the MMF, the MMF lacks confidence in the Proponent’s ability or willingness to meaningfully fulfill their commitments unless specifically bound by the conditions of the project.

Recommended Condition	
Condition	2.3.2 provide all information available and relevant to the scope and the subject matter of the consultation and a reasonable period agreed upon with the parties

¹⁴ Impact Assessment Agency of Canada. 2024. Environmental Assessment Report, pg v.



	being consulted, not to be less than 30 days, to prepare their views and information;
Recommendation	30 days may not be sufficient in all cases to appropriately review documentation, consult with Citizens impacted by a decision, and then respond. As a result, we seek for the consultation window to reflect a minimum of 45 days to prepare views and information, however, all consultation periods should be agreed upon by the parties.
Condition	2.5 The Proponent shall, where a follow-up program is a requirement of a condition set out in this document, determine, as part of the development of each follow-up program and in consultation with the parties being consulted during the development of each follow-up program, the following information, unless otherwise specified in the condition:
Recommendation	We request that the Agency adopt the following Condition: 2.5.X The Proponent will consult with Indigenous groups to identify outstanding environmental concerns not appropriately or conclusively addressed by the Environmental Assessment and develop additional effects monitoring and/or mitigation measures to be evaluated through the follow-up program
Condition	2.9 Where consultation with Indigenous groups is a requirement of a follow-up program, the Proponent shall discuss the follow-up program with each group and shall determine, in consultation with each group, opportunities for their participation in the implementation of the follow-up program, including training, the conduct of monitoring, the analysis and reporting of follow-up results and whether modified or additional mitigation measure(s) are required, as set out in condition 2.8.
Recommendation	We request that the Approval Conditions specifically state that the Proponent is to cover reasonable costs associated with the fulfilment of Condition 2.9.
Condition	2.13 The Proponent shall publish on the Internet, or any medium which is publicly available, the annual reports and the executive summaries referred to in conditions 2.10 and 2.11, the reports related to accidents and malfunctions referred to in conditions 12.5.3 and 12.5.4, the communication plan for accident and malfunction referred to in condition 12.6, the schedules referred to in conditions 13.1 and 13.2, and any update or revision to the above documents, upon submission of these documents to the parties consulted for the respective conditions. The Proponent shall keep these documents publicly available for 25 years following their publication. The Proponent shall notify Indigenous groups and the Agency in writing of the availability of these documents within 48 hours of their publication.
Recommendation	We request that this proposed communication follow the direction outlined in an Indigenous group-specific engagement plan to ensure that information is provided in a meaningful manner.
Condition	9.1 The Proponent shall retain, prior to construction and in consultation with Indigenous groups, the services of Indigenous monitors from the Indigenous groups referenced in condition 1.24 to participate in follow-up monitoring and any ongoing archaeological and culturally significant work. Prior to retaining the services of Indigenous monitors, the Proponent shall undertake a collaborative process to determine, in consultation with Indigenous groups, the scope, purpose, objectives, details of the participation of Indigenous monitors, and



	procedures for the Proponent to receive and respond to feedback related to Indigenous monitors
Recommendation	We request that the Approval Conditions specifically state that the Proponent is to cover reasonable costs associated with the fulfilment of Condition 9.1. Additionally, we seek specific assurances that the retention of an Indigenous monitor is at the discretion of the Indigenous group.

4.4 Predicted Changes to the Environment

4.4.1 Surface Water

4.4.1.1 Loss of Wetland Habitat

Construction of the LSMOC will bisect the Buffalo Creek watershed decreasing the total drainage area by approximately 51.5%. Similarly, the LMOC will bisect the Birch Creek watershed reducing the total drainage area by 27.4%. It is recognized that this will reduce the flows to the Buffalo and Birch Creek Complexes, resulting in at this time unknown implications for the wetlands that are supported by these flows. The MMF supports the expanded requirements to provide specific wetland habitat offsets beyond that required by provincial legislation. Given the uncertainties regarding the potential impacts on wetland function, the MMF requests that continued monitoring be conducted and that the Proponent be responsible for offsetting any impacted wetland habitat at an offsetting requirement greater than 1:1.

4.4.1.2 Changes in Water Quality

The Proponent does not anticipate operation of the Project to result in changes to water quality, including water temperature, maintenance of dissolved oxygen and sediment mobilization (beyond the initial commissioning of the Outlet Channels). The MMF disagrees with this assessment.

Temperature

With regards to potential changes in temperature, the Outlet Channels when functioning under base-flow conditions will expose the shallow water passing through the Outlet Channels more directly to air temperatures through the entirety of residence in the channel. As baseflow will have water level depths of slightly more than 1 m, the volume passing through the Outlet Channels will be limited, with the result being low thermal buffering capacity, and as a result, waters passing through the Outlet Channels will warm or cool relatively rapidly based on local air temperatures. While it is not expected that this input into Lake St. Martin or Lake Winnipeg will be sufficient to cause wide-spread warming or cooling in the receiving waters, it is expected to create a thermal plume at the outflow, which will fundamentally alter the habitat within that plume. Further, in the face of a warming climate, it is expected that the thermal plume will warm more rapidly than that of receiving waters, which may result in localized exceedances in thermal tolerance for some fish and aquatic species. It is, therefore, necessary to implement meaningful thermal monitoring of waters moving through the Outlet Channels, allowing for



the quantification of the thermal plumes, and inform future management decisions on how to intervene in the event the Proponent's predictions are incorrect, or a changing environment place fish habitat at risk due to warming/cooling effects.

Dissolved Oxygen

The MMF has raised several concerns about the potential for the Outlet Channels to serve as an ecological trap. This is based on the lack of exclusion measures in place during operation, the draw of moving waters during operation and under baseflow conditions, and the lack of meaningful habitat within the Outlet Channels. As a result, it is expected that fish may be attracted to the Outlet Channels, but once inside be presented with marginal conditions to support important aspects of their life history. The Proponent has made various commitments to ensure that while the Outlet Channels are not intended to provide fish habitat, conditions will be maintained to prevent direct mortality. Specifically, the Proponent has committed to monitoring surface water quality and the Agency has recommended that the Proponent adhere to Canadian Council of Minister of the Environment (CCME) guidelines of 6 mg/L of dissolved oxygen for water in the Outlet Channels. The MMF supports this as a minimum condition, however, we wish to express concern about the Proponent's ability to increase the dissolved oxygen concentration in the Outlet Channels to maintain dissolved oxygen concentrations. We, therefore, request that conditions not only require the Proponent to maintain a dissolved oxygen level of 6 mg/L in the Outlet Channels at all times but further, an adaptive management program be implemented to trigger an early response in the event dissolved oxygen level trend towards or approaches the critical threshold of 6 mg/L.

Sediment Mobilization

The Agency in evaluating the impacts of sediment mobilization on commissioning, has directed the Proponent to implement additional mitigation measures to further reduce potential sediment release during commissioning. The MMF applauds this approach and believes the additional effort to release the initial sediment pulse on commissioning will significantly reduce the potential impacts on the aquatic habitat of receiving waters.

The MMF has repeatedly expressed concern regarding the potential for residual project-related sediment or naturally occurring sediment accumulation in the Outlet Channels in between uses, which may be mobilized during operations. The root of our concern is that the Proponent has not acknowledged the potential pathway for sediment to accumulate in the Outlet Channels as a result of sediment deposition under base flow scenarios, atmospheric deposition, runoff deposition, and the internal mobilization of sediment associated with the lifecycle of plants in the Outlet Channels. As the Proponent has not acknowledged this potential pathway, the Proponent maintains the assumption that any sediment accumulation in the Outlet Channels between uses will be negligible, and as a result sediment mobilization during use will also be negligible. The MMF maintains that this is a very real concern that has not been appropriately considered, nor is there effective monitoring in place to proactively measure sediment and mitigate its release during Channel operations. To address this concern, it is requested that as an approval condition, the Proponent be required to install an automated turbidity monitoring station that provides ongoing public reports at the mouth of each



channel. To ensure that the proposed guideline remains relevant, it is also requested that the proponent establish a calibration curve to confirm the site-specific relationship between total suspended solids (TSS) and turbidity

Recommended Condition	
Condition	7.12 The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, a wetland compensation plan to offset the residual effects of the Designated Project on wetlands, including class 2 wetlands, resulting from project-related changes in surface and groundwater levels that could not be avoided or minimized. When developing the plan, the Proponent shall take into account Environment and Climate Change Canada’s Operational Framework for Conservation Allowances and the habitat needs for listed species at risk, including yellow rail (<i>Coturnicops noveboracensis</i>), and other wetland vegetation and wildlife species of importance to Indigenous groups. The Proponent shall implement the plan during all phases of the Designated Project.
Recommendation	The MMF supports this condition, however, notes that additional habitat loss assessment may be required given the uncertainties associated with impacts on water quantity in the Buffalo Creek and Birch Creek wetland complexes. Given this uncertainty, final offsetting plans must reflect a compensation area larger than the area of wetland area observed to be adversely impacted.
Condition	3.16 The Proponent shall mitigate the adverse effects on fish and fish habitat related to the transport of sediment from the outlet channels into the receiving environment during commissioning and operation.
Recommendation	We request that the Agency adopt the following Condition: 3.16.X The Proponent Shall develop a Sediment Monitoring and Management Plan to evaluate standing sediment loads within each channel at least annually, and prior to the opening of the WCS.
Condition	3.16 The Proponent shall mitigate the adverse effects on fish and fish habitat related to the transport of sediment from the outlet channels into the receiving environment during commissioning and operation.
Recommendation	We request that the Agency adopt the following Conditions: 3.16.X.1 Prior to the commissioning of the Outlet Channels, the Proponent will conduct an additional assessment to estimate the amount of sediment to be released following the employment of mitigation measures used to limit sediment. 3.16.X.2 The Proponent shall establish a program to evaluate the amount of fish habitat harmfully altered, disturbed or destroyed following each operation.
Condition	3.16.3.2 monitor total suspended solids at the outlets of both outlet channels in real time throughout commissioning and operation, and if results demonstrate that levels of total suspended solids are likely to exceed 25 mg/l above background levels determined pursuant to condition 3.16.3.1, the Proponent shall implement additional or modified mitigation measures to avoid exceedance



	of this threshold, including by adjusting the degree to which the water control structures are open.
Recommendation	It is requested that this requirement be enhanced to include the installation of an in situ real-time monitoring station at the upstream and downstream ends of each channel. These stations should provide real-time publicly available measurements of temperature, DO, pH, conductivity, chlorophyll a, and phycocyanin. This will enhance the understanding of real-time water quality and ensure short-term water quality events are not overlooked. These real-time in situ stations should complement ongoing water chemistry sampling for other constituents requiring laboratory analysis.

4.4.2 Terrestrial Landscape

The Outlet Channels will serve as a significant linear disturbance, with a strong potential to adversely impact the ability of wildlife to move across the Outlet Channels, especially while Outlet Channels are in operation. The Proponent noted there were a limited number of mitigation measures that could be applied to reduce Project effects on wildlife movement, particularly when WCS is open, however, the Proponent has committed to several wildlife crossing locations, including primarily at inlets, outlets, bridge crossing locations, WCSs and at the LSMOC between the first drop structure and Lake Winnipeg. The MMF is concerned that while structures identified within the scope of this project may facilitate wildlife movement, these structures were not built or designed to facilitate the movement of wildlife, and as a result, there is no evidence to support the successful use of these structures for wildlife movement. It is therefore unclear whether wildlife will be able to effectively cross the Outlet Channels, or whether they will serve as physical barriers to migration effectively fragmenting the habitat on either side of the respective Outlet Channels.

Recommended Condition	
Condition	<p>7.13 The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, and implement a progressive revegetation plan for areas disturbed by the Designated Project for the purpose of controlling erosion and invasive species and encouraging the establishment of native species assemblages, including trees. The Proponent shall provide opportunities for Indigenous groups to participate in revegetation activities</p> <p>7.14 The Proponent shall develop, prior to construction, and implement during construction and operation, a tree planting program to replace the trees lost during the construction of the designated project. The Proponent shall develop and implement the program in consultation with Indigenous groups.</p> <p>7.20 The Proponent shall develop, prior to construction and in consultation with Indigenous groups, and relevant authorities, a follow-up program to verify the accuracy of the Environmental Assessment and determine the effectiveness of the progressive revegetation of areas disturbed by the Designated Project. The</p>



	Proponent shall implement the follow-up program during all phases of the Designated Project.
Recommendation	The MMF requests that the Proponent be directed to increase efforts to align revegetation efforts in the ROW with the goals of Indigenous groups and be done so to specifically promote the re-establishment of terrestrial habitat.

4.5 Predicted Effects on Valued Components

4.5.1 Fish and Fish Habitat

4.5.1.1 Overall Effects Determination and Deferral of Offsetting Measures

A major challenge to the effective understanding regarding project effects and the overall impact on rights has been the lack of substance regarding the loss or disturbance of fish and fish habitat, as well as measures to be implemented to offset this loss. The Agency has agreed with Fisheries and Oceans Canada, who asserted that there are no technical barriers that would prevent the Proponent from developing an adequate fish habitat offsetting plan, however, failed to require such as plan as part of this assessment. Rather, the Agency has effectively determined unilaterally that the full characterization of fish habitat loss, and subsequent offsetting plan is out of the scope of this Environmental Assessment, and that those details are better assessed through a *Fisheries Act* Authorization process.

We do not specifically disagree that the requirements for a *Fisheries Act* Authorization fall outside the scope of this Environmental Assessment, including that of the offsetting requirements; impacts to fish and fish habitat are an important consideration to the overall residual impacts. The Proponent has not effectively quantified the full extent of impacts to fish habitat, and presented a valid plan for therefore has not adequately considered the full implications of impacts from this project. This echoed throughout Section 7 of the Environmental Assessment report, as the Agency notes uncertainty in how the project will adversely affect fish and fish habitat in receiving waters and the deficiencies in information provided by the Proponent.

The MMF has been pushing the Proponent to elaborate on its plans to fully quantify project impacts on fish and fish habitat throughout the Environmental Assessment process, however, we have not received any meaningful response beyond a commitment to do so in the future. The MMF strongly believes that this knowledge gap has resulted in the Agency's determination that there will not be significant impacts on fish, a determination that is poorly founded. The MMF raises this as a concern for which the Minister responsible for Environmental Assessment should carefully examine whether this project will result in Significant Adverse Environmental Effects. Additionally, we expect that Fisheries and Oceans Canada, in contemplation of future Fisheries Act Authorization(s) for this project will consider the impacts on fish and fish habitat independently and in a manner unbiased by the position of the Agency.



4.5.1.2 Impacts of Sediment on Fish Habitat

As outlined in Section 4.5.1.2 above, the MMF is concerned by the potential impacts of sediment mobilization during commissioning and subsequent openings of the WCSs, on fish habitat in Lake St. Martin and Sturgeon Bay. The Agency agrees with the Proponent's prediction that residual effects of sediment deposition on fish and fish habitat are expected to be moderate and occur sporadically over the long term. Given the potential for impacts on fish habitat due to sediment release both during commissioning and each subsequent operation of the Outlet Channels afterwards, appropriate predictions need to be made about the potential harmful habitat alteration associated with each operation. We request that additional assessment be conducted to estimate sediment deposition during operation, as well as for the Proponent to establish a program to evaluate the amount of fish habitat harmfully altered following each operation. Within the scope of future Fisheries Act Authorization(s) required for this project, it is requested that habitat offsets be designed to include the maximum extent of habitat to be affected through the life of the Outlet Channels, as harmful alteration due to sediment transport and deposition in key fish habitat will result in frequent and continuing harmful alteration and disturbance to fish habitat, life cycle, and function.

The Agency agrees with Fisheries and Oceans Canada that sediment release associated with the commissioning of the Outlet Channels will affect fish habitat that requires offsetting, due to the direct effect on food sources for local fish species. The MMF agrees with this, however, as noted previously, these effects have the potential to be recurring each time the water control structures (WCSs) are opened to release flood waters. The MMF maintains significant reservations about the assumptions regarding the impacts on fish and fish habitat. While the Agency does recognize that there will be localized impacts, they also suggest that changes in the number or sizes of species of cultural importance will be relatively negligible. This may indeed be the case; however, we are currently unsatisfied with the level of details regarding fisheries and fish habitat monitoring (i.e., the level of vigilance in effects surveillance), and the ability of the Proponent to enact meaningful intervention short of decommissioning the Outlet Channels. This knowledge gap maintains a possibility where the assumption of effects on fish and fish habitat are incorrect, and either the Proponent is unable to recognize these effects or is unable/unwilling to intervene meaningfully, resulting in residual effects that are more severe than assumed through this assessment. To rectify this, the MMF expects the Proponent to continue to work with the MMF to improve monitoring efforts and demonstrate an ability to meaningfully intervene and implement effective adaptive management processes.

It is requested that this requirement be enhanced to include the installation of an in situ real-time monitoring station at the upstream and downstream ends of each channel. These stations should provide real-time publicly available measurements of temperature, DO, pH, conductivity, chlorophyll a, and phycocyanin. This will enhance the understanding of real-time water quality and ensure short-term water quality events are not overlooked. These real-time in situ stations should complement ongoing water chemistry sampling for other constituents requiring laboratory analysis.



4.5.1.3 Fish Salvage and Rescue Efforts

The Agency has requested that the Proponent commit to developing a fish rescue plan and appropriate site-specific mitigation and monitoring measures, including measures to mitigate effects on surface water quantity and adjustments to outlet channel flow rates, in consultation with federal and provincial authorities and Indigenous Groups. The MMF raises concern regarding this direction and commitment by the Proponent, as the Proponent has previously stated that a fish salvage program is not feasible for the Project. While we are interested in understanding what circumstances may have changed since the Proponent previously held this position, we are concerned that even if the Proponent can develop and implement a fish rescue plan, it will not be effective. Given the previously stated position, which raises concerns about the effectiveness of this plan, we request that the Agency view the impacts on fish from a conservative position that assumes the plan will not be effective in rescuing fish.

4.5.1.4 Impacts of Mercury and Methylmercury on Fish

The Agency has recognized that flooding and drying associated with channel operation may mobilize mercury and/or methylmercury, resulting in elevated risks of mercury bioaccumulation in fish populations in Lake St. Martin. The Proponent has not recommended any mitigations to address this potential risk. The Agency requires that the Proponent engage in follow-up monitoring to ensure that mercury or methylmercury does not increase in fish tissues as a result of this Project, however, in the event elevated mercury or methylmercury are observed, there are no specific conditions requiring intervention to mitigate or minimize this risk. The MMF recommends the addition of language requiring that all follow-up monitoring be paired with an adaptive management framework with triggers for intervention, and proactive contingency measures or mitigations to ensure effects greater than those predicted in the Environmental Assessment are not realized

4.5.1.5 Follow-Up Monitoring

The Agency has required follow-up monitoring to continue throughout the life of the Project to verify accuracy of the environmental assessment predictions as they relate to fish and fish habitat. Specifically, the Agency has outlined Condition 3.17:

The Proponent shall develop, prior to construction and in consultation with Indigenous groups, Fisheries and Oceans Canada, and other relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and determine the effectiveness of the mitigation measures as it pertains to adverse environmental effects of the Designated Project on fish and fish habitat. The Proponent shall implement the follow-up program during all phases of the Designated Project.

We recognize that follow-up monitoring is in place to verify predictions of the Environmental Assessment, however, we note that there is a lack of conditions in place to compel the Proponent to intervene in the event predictions are not verified. The MMF recommends the addition of language requiring that all follow-up monitoring be paired with an adaptive management framework with triggers



for intervention, and proactive contingency measures or mitigations to ensure effects greater than those predicted in the Environmental Assessment are not realized.

Recommended Condition	
Condition	3.16 The Proponent shall mitigate the adverse effects on fish and fish habitat related to the transport of sediment from the outlet channels into the receiving environment during commissioning and operation.
Recommendation	We request that the Agency adopt the following Condition: 3.16.X The Proponent Shall develop a Sediment Monitoring and Management Plan to evaluate standing sediment loads within each channel at least annually, and prior to the opening of the WCS.
Condition	3.16 The Proponent shall mitigate the adverse effects on fish and fish habitat related to the transport of sediment from the outlet channels into the receiving environment during commissioning and operation.
Recommendation	We request that the Agency adopt the following Conditions: 3.16.X.1 Prior to the commissioning of the Outlet Channels, the Proponent will conduct an additional assessment to estimate the amount of sediment to be released following the employment of mitigation measures used to limit sediment. 3.16.X.2 The Proponent shall establish a program to evaluate the amount of fish habitat harmfully altered, disturbed or destroyed following each operation.
Condition	3.16.3.2 monitor total suspended solids at the outlets of both Outlet Channels in real time throughout commissioning and operation, and if results demonstrate that levels of total suspended solids are likely to exceed 25 mg/l above background levels determined pursuant to condition 3.16.3.1, the Proponent shall implement additional or modified mitigation measures to avoid exceedance of this threshold, including by adjusting the degree to which the water control structures are open.
Recommendation	It is requested that this requirement be enhanced to include the installation of an in situ real-time monitoring station at the upstream and downstream ends of each channel. These stations should provide real-time publicly available measurements of temperature, DO, pH, conductivity, chlorophyll a, and phycocyanin. This will enhance the understanding of real-time water quality and ensure short-term water quality events are not overlooked. These real-time in situ stations should complement ongoing water chemistry sampling for other constituents requiring laboratory analysis.
Condition	3.19.1 monitor, at a minimum, the parameters outlined in Table 2 of the Surface Water Management Plan within Attachment 4.1 of the Proponent’s Response to Information Requests Round 1 (Canadian Impact Assessment Registry Reference Number 80148, Document reference number 147) including field parameters, general chemistry, substrates, sediment, carbon parameters, total and dissolved metals (including mercury and methylmercury), hydrocarbons, pesticides, and total and dissolved nutrients at a minimum two years post-commissioning and to capture seasonal variability and effects after a minimum number of outlet



	channel operations and a range of magnitudes of floods, including any new record floods;
Recommendation	We find the terminology selected to describe the parameters of focus to be ambiguous. Therefore we recommend that specific parameters to be monitored at a minimum be described within this condition or as an attached schedule to these conditions.

4.5.2 Indigenous Peoples – Current Use of Lands and Resources for Traditional Purposes, Physical and Cultural Heritage, and Sites of Significance

The Proponent and the Agency both represent Crown entities and as a result, both maintain the honour of the Crown to fulfill the Duty to Consult and Accommodate. To this end, the MMF is dissatisfied with both parties' consideration of impacts on current use as it relates to the exercise of rights. Both the Proponent and the Agency advocate for continued engagement and involvement of Indigenous groups in monitoring the potential adverse environmental effects, with the Agency specifically requesting the following for the maintenance of the Environmental Advisory Committee to provide a platform to express concerns:

- ensure opportunities to participate in this committee are offered to all Indigenous groups;
- ensure adequate support is provided to Indigenous groups to enable their participation in Indigenous monitoring;
- offer opportunities for Indigenous groups to lead sessions for the EAC, including but not limited to training, reporting on monitoring outcomes that they have been a part of, and recommendations for further mitigation measures; and
- on an annual basis, the Proponent will post a report of the key recommendations coming out of the committee, along with a plan for their implementation. Should a recommendation not be intended to be brought forward, a rationale must be provided.

The MMF supports continued dialogue and expects full participation in the EAC and many other aspects of Project monitoring and oversight, however, within itself, communication Outlet Channels and opportunities to monitor project impacts are not meaningful mitigations for adverse impacts on the rights of the Red River Métis, nor do they meaningfully fulfill the Crown's Duty to Accommodate. Communication does not commit to actions nor does it minimize many of the real impacts associated with the loss of land. To this end, our expectations are for the Proponent and applicable Crown representatives to work with the MMF to identify just accommodation for impacts that have not been adequately mitigated.



4.5.2.1 Quality of Experience

Effects on overall enjoyment can extend to air, water, land, sites, animals, vegetation, and culture. The Proponent acknowledged that Indigenous groups identified potential effects on quality of experience including increased noise, light, dust, and vehicular emissions; avoidance of areas due to changes in aesthetics from development, and avoidance due to perceived effects on plants and wildlife. The Proponent noted that the use or enjoyment of traditional resources could be discontinued due to Project-related effects. Within this must be an acknowledgement that especially for the LSMOC, there will be a loss in largely naturalized lands. These are important areas in Manitoba, as the area east of Lake St. Martin is some of the furthest south "natural" or "undisturbed" lands in Manitoba. We recognize the effect that this has on nearby First Nations whose traditional territory this overlaps with, but it is also important not to downplay the significant loss to the Red River Metis, who move throughout the National Homeland to harvest - the loss of this area represents the loss of lands for rights-based exercise. Since these lands are relatively accessible for Red River Metis Citizens in southern Manitoba, the loss may not only make these lands inaccessible or unsuitable for the exercise of rights (whether this is based on individual perceptions or substantiated by the loss of resources for rights exercise, there must be recognition that the loss of these lands push "natural" or "undisturbed" lands further north as a result of cumulative land disturbance in the southern extent of the National Homeland, which may for some Citizens make travel to lands where rights can be exercised unachievable.

The Agency recognizes that change to Indigenous peoples' experience due to the Project would be dependent on each individual and emphasizes the importance of continued engagement throughout the life of the Project to better understand how land users are experiencing changes and implementation of additional mitigations to address these experiential effects. The MMF does not accept continuing engagement as a meaningful form of accommodation due to the residual effects of this project on the quality of experience. The Agency in concert with other Crown entities (which includes the Proponent in this instance), must work with the MMF to ensure it fulfills its obligations to the MMF in providing just accommodation.

4.5.2.2 Access for Current Use

The Outlet Channels will serve as a physical barrier not only for wildlife but also for Red River Métis Citizens using the lands around the Outlet Channels. The LSMOC section of the Outlet Channels will only have a single crossing located at the WCS, and while the Proponent has indicated intentions of continuing discussions with Indigenous groups on the effects to access, no commitments have been made for an additional crossing. The lack of access and crossing of the LSMOC will further limit Red River Métis from exercising rights in this area. The MMF therefore seeks further commitments from both the Proponent and the Crown to clarify how impacts to rights will be accommodated in instances such as this where they are not effectively avoided or minimized.



4.5.2.3 Availability and Quality of Resources for Current Use

The Agency has not recognized the loss of non-fish habitat including that associated with the loss of Wetlands, beyond the limited compensation requirements under the Water Rights Act. Additionally, as the Agency has questioned the Proponent's completeness in understanding impacts to Buffalo Creek and Birch Creek wetlands, it is unclear whether the entire extent of terrestrial and aquatic ecosystem habitat is understood. The MMF is of the position that these impacts need to be appropriately characterized before a decision is made and confirmed through follow-up monitoring. Additionally, where the Proponent is to adversely impact the habitat of species of cultural significance and area utilized by the MMF for rights-based activities, appropriate land use compensation is viewed as a necessary component of just accommodation. Therefore, the MMF seeks specific direction from the Agency acting on behalf of the Crown in identifying applicable land use offset for both habitat and use that facilitates rights-based activities. The MMF welcomes continued dialogue with both the Crown and Proponent on how all parties can work together to establish meaningful accommodation.

Recommended Condition	
Condition	7.21 The Proponent shall develop, prior to construction and in consultation with Indigenous groups, and relevant authorities, a follow-up program to verify the accuracy of the Environmental Assessment and determine the effectiveness of the mitigation measures as they pertain to adverse effects from the Designated Project on ungulates and furbearers. The Proponent shall implement the follow-up program during the first six years of operation
Recommendation	<p>This Condition is an example of the Follow Up Monitoring Program failing to ensure that the Proponent will implement meaningful intervention in the event predictions made in the Environmental Assessment are incorrect.</p> <p>We request that the Agency adopt the following Condition:</p> <p>7.21.X The Proponent shall develop and implement an adaptive management framework to proactively respond to observances of inaccuracy in predictions made as part of the Environmental Assessment. The framework will include specific trigger points developed in collaboration with Indigenous groups, management actions, and appropriate mitigation and intervention measures that can be employed to mitigate effects.</p>
Condition	7.9 The Proponent shall design and build crossing structures over the outlet channels to facilitate safe access through the Designated Project area by Indigenous groups so they can cross.
Recommendation	The MMF seeks further commitments from both the Proponent and the Crown to clarify how impacts to rights will be accommodated in instances such as this where they are not effectively avoided or minimized



4.5.3 Indigenous Peoples – Health and Socio-Economic Conditions

4.5.3.1 Impacts on Commercial Fishing

The Project itself may directly and indirectly cause harmful alteration, disruption or destruction of fish habitat, which may adversely impact Red River Métis commercial and subsistence fishers, other elements such as the potential release of mercury/methylmercury are poorly considered within the scope of this assessment. Concerning the impacts of mercury or methylmercury on commercial fishing conducted by Red River Métis Citizens, the potential impacts are two-fold. First is the direct impacts of the consumption of fish or other country foods containing mercury or methylmercury which may contribute to accumulation within the consumer and any adverse physical health implications that are associated with uptake of mercury in any form. The second which is more intangible is the perceived risks associated with the consumption of fish from the PDA/LAA/RAA, which by extension may lead to reductions in rights-based fishing or harvest, intergenerational transference of knowledge, connectedness to the land and other implications for rights-based activities, as well possible implications for the local and regional commercial fishery, as markets may show increase aversion to the purchase and consumption of fish from this area if there is a perception (or realization) of mercury or any other contaminant influencing the quality of fish. Although there is an effort to alleviate the potential impacts of rights-based harvest for personal consumption, the Agency has not safeguarded commercial fishing to the same extent. As many Red River Metis in the region engage in the commercial fishery as both an important source of livelihood and an important part of the cultural heritage of Red River Metis in the Interlake Region, changes in the market's perception of the quality of fish from this area, as a result of this Project will have direct personal and cultural implications. It is therefore necessary for the Proponent to implement appropriate measures to measure changes in market conditions and ensure that impacts from perceptions or realized effects from the project are avoided and/or appropriately offset.

The Proponent has committed to engagement with Indigenous commercial fish harvesters and anglers throughout the life of the project to address potential conflict, disturbance, or access restrictions to fish/harvesting areas and the availability of fish resources. This is another example of the Proponent committing to dialogue rather than action, as there is no guarantee that Project-related effects or conflict will be appropriately evaluated, considered, or addressed. For issues such as the loss of fish, fish habitat, release of mercury, and others, without a clearly defined structure on how to appropriately deal with foreseeable and unforeseeable issues impacting fishing, our concern is that the Proponent will not be held accountable for resolving concerns.

We firmly request that as an approval condition, the Proponent engage with Indigenous groups and relevant Commercial fishers to establish a dispute resolution structure to deal with concerns as they are identified, ensuring that mitigation measures can be put into place to avoid future impacts or where impacts have been incurred, parties be appropriately compensated for losses.



4.5.3.2 Psychological Impacts of the Project

The MMF believes that for some Red River Métis Citizens, this Project will serve as a physical and psychological barrier to rights exercise in this area. For some this may mean finding new locations to exercise their rights through hunting, trapping, fishing, gathering, and overall connectedness to the land, however, for others, they may face physical, psychological, monetary, or other barriers to finding new locations, and as a result stop participating in those activities altogether. For others who may choose to continue to use the lands and waters in the LAA and RAA, concerns regarding fences, and signage may be viewed as deterrents to those seeking to exercise their rights. The MMF notes that the Proponent will attempt to restrict public access to the PDA to maintain Indigenous groups’ quality of experience through the use of fencing and signage at access points to the PDA. Similarly, the Proponent intends to Prohibit employees and contractors associated with the Project from fishing, hunting, trapping and gathering for any purposes not associated with the Project, within the PDA, or using the PDA to access lands outside the PDA for fishing, hunting, trapping and gathering, unless an Indigenous employee or contractor is provided access by the Proponent for traditional purposes or for exercising Aboriginal rights, to the extent that such access is safe. The MMF agrees with the intention of the Proponent, however, maintains significant doubts about the effectiveness of this approach both in limiting access by the general public, as well as in preserving the quality of experience for rights-bearing individuals. Any form of signage or barriers used to dissuade the general public also serves as a psychological deterrent for Red River Métis Citizens. Similarly, a need to seek permission to access an area to exercise rights in some cases may be sufficient to deter that activity altogether.

In considering the balance between limiting access by the general public while preserving access for rights-bearing individuals to preserve the quality of experience and reduce competing harvest pressures, we caution the Proponent about creating unintended psychological impacts. It is therefore requested that these Conditions be paused pending further consultation with the MMF and appropriate First Nations to better understand how to best achieve this balance.

Recommended Condition	
Condition	6.4 The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, a follow-up program to verify the accuracy of the Environmental Assessment as it pertains to contamination of country food as it relates to real and perceived effects from the Designated Project on the health of Indigenous peoples. As part of the development of the follow-up program, the Proponent shall determine in consultation with Indigenous groups, the vegetation, fungi, and wildlife species, including fish, and their components, that shall be monitored, the locations where the monitoring shall be conducted, the contaminants to be monitored and the timing and frequency of the monitoring
Recommendation	We request that the Agency adopt the following Condition: 6.4.X Develop and implement an adaptive management framework to proactively respond to trends in methylmercury concentrations in fish. Framework will



	include specific trigger points developed in collaboration with Indigenous groups and affected commercial fishers, management actions, and appropriate mitigation and intervention measures that can be employed to prevent methylmercury presenting a risk to consumers
Condition	3.X Fish and Fish Habitat
Recommendation	We request that the Agency adopt the following Condition: The Proponent shall engage with Indigenous groups and relevant Commercial fishers to establish a dispute resolution structure to deal with concerns as they are identified, ensuring that mitigation measures can be put into place to avoid future impacts or where impacts have been incurred, parties be appropriately compensated for losses.
Condition	7.7 The Proponent shall develop, prior to construction and in consultation with Indigenous groups, measures to limit public access through the Designated Project area in order to maintain Indigenous groups' quality of experience during all phases of the Designated Project. The Proponent shall implement these measures during construction and operation and submit these measures to the Agency prior to implementing them. 7.10 The Proponent shall prohibit, during all phases of the Designated Project, employees and contractors associated with the Designated Project from fishing, hunting, trapping, gathering and using recreational vehicles for any purposes not associated with the Designated Project, within the Designated Project area, or using the Designated Project area to access lands outside the Designated Project area for fishing, hunting, trapping, gathering and using recreational vehicles, unless an employee or contractor is provided access by the Proponent as a member of an Indigenous group for traditional purposes or for exercising Aboriginal rights, to the extent that such access is safe.
Recommendation	In considering the balance between limiting access by the general public while preserving access for rights-bearing individuals to preserve the quality of experience and reduce competing harvest pressures, we caution the Proponent about creating unintended psychological impacts. It is therefore requested that these Conditions be paused pending further consultation with the MMF and appropriate First Nations to better understand how to best achieve this balance.

4.6 Cumulative Environmental Effects

This Project will contribute significantly to Cumulative Effects in southern and central Manitoba. The Proponent recognizes the historical development which has taken place in the RAA, which dates back to the 1800s through land privatization, the creation of transportation networks, pipelines and utility corridors, tourism and recreation activities, and commercial and residential development. These somewhat regional impacts become compounded when considering the greater development of this natural further south of the RAA, and the manipulation and management of water throughout the Lake Manitoba and Lake Winnipeg watersheds, which although recognized since at least 1960, date back far before that.



In considering the implications of cumulative effects, what is overlooked by both the Proponent and the Agency in this assessment is that for the Red River Métis, the natural lands found in the RAA, especially those which surround the LSMOC, are some of the southern-most natural lands where Métis Citizens can engage in rights-based activities, such as trapping, hunting, gathering, knowledge sharing, and connectedness to the land. The effect is that the cumulative loss of lands in southern Manitoba where many Citizens may preferentially exercise their rights, are pushed northward to conduct these activities. Disturbance in the RAA and the construction of a linear disturbance corridor may have the effect of dissuading use from this area for Métis Citizens – pushing some Citizens further north to find natural lands at additional costs and burden, or for those who cannot bear additional cost or burden, they may no longer be able to exercise their rights or engage in traditional activities to the degree that they would like, ultimately presenting a threat to their Aboriginal rights.

Ultimately, the Agency raises questions about the Proponent's assessment of cumulative effects, and even taking into account the proposed key mitigation measures, monitoring, and follow-up programs and considering the effects of the Project and its interactions with the effects of past, present, and reasonably foreseeable projects and activities, the Project is likely to cause significant adverse cumulative environmental effects to Indigenous peoples' current use of lands and resources for traditional purposes, physical and cultural heritage, and structures, sites, and things of historical, archaeological, paleontological, or architectural significance. However, the Agency is of the view that the Project is not likely to cause significant adverse cumulative environmental effects on fish and fish habitat and Indigenous health and socio-economic conditions. Through this assessment, the Proponent has focused on the incremental increase in effects this Project will have relative to the existing environment. Unfortunately, this employs a degraded baseline approach to cumulative effects assessment, rather than an assessment that compares future conditions to a natural baseline. As a result of this approach, the assessment ignores the significant changes to water quality, fish, and fish habitat, that have already occurred and have resulted in a current state that is significantly affected. Any additional development, except those which result in a net benefit, should be also considered to extend the detriment of cumulative effects.

The Crown in consideration of impacts to rights must appropriately consider impacts associated with cumulative effects from a natural baseline.

5.0 Commitments and Ongoing Engagement

The Agency states in no ambiguous terms that “it is the Agency's expectation that all of the Proponent's commitments would be implemented in order for the Project to be carried out in a precautionary manner”. This expectation aligns with the position of the MMF, however, we feel it necessary to provide additional context on our unease in the gap which may exist between the Agency's expectations, and requirements specifically stated in approval conditions.



5.1 Monitoring Participation

The MMF has regularly confirmed in direct correspondence with the Proponent as well as in submissions to the Agency that monitoring participation is a priority for our Nation. The Proponent in response has confirmed that monitoring and economic development are their two priorities for Indigenous engagement, participation, and mitigation activities. However, in practice the Proponent has not meaningfully followed through on this commitment as a result of not providing sufficient notice of opportunities, capacity support, or participation opportunities.

5.1.1 Notice of Opportunities

The MMF has worked to participate in monitoring events where possible, however, the Proponent has frustrated our ability to participate by not providing adequate notice of monitoring opportunities. For example, in the Spring of 2023, the Proponent provided only 1 business day notice for sampling that was taking place on the following Monday, which was a national holiday, with the Proponent pointing to their consultants having short windows due to expected seasonal weather conditions.

The MMF have insisted that the Proponent needs to take responsibility for their consultants as they are in their employ, and that they need to be clear with timelines to allow for Indigenous participation. They committed to a 2-week notice since, which has resulted in improved notice, we feel this is not a long-term solution.

Although instances may arise where plans for monitoring may need to shift, the repeated lack of notice to allow for our staff to mobilize and lack of consideration for dates of importance, reflects on the tone-deaf nature that the Proponent takes to collaboration with the MMF, and ultimately undermines their commitments.

5.1.2 Capacity Support

To date, the Proponent has offered inconsistent financial re-imbusement and below-expectation rates for Red River Métis Citizen monitoring support. Reimbursement for expenses must be done promptly, and at rates which align with those set by the MMF. Currently, the Proponent offers monitors compensation of \$19/h, which is far below the MMF's expectations and below fair market value.

5.1.3 Participation

The monitoring activities that have been provided to date are not a partnership or an offer of capacity building or knowledge sharing. Rather, participation has been an example of a token "check box" exercise by the proponent as an opportunity to observe monitoring. The monitoring participation to date has not provided the opportunity for meaningful participation or input, and no follow-up from the consulting firm's project team has been afforded to the MMF.

For the Proponent's monitoring program to be meaningful, the MMF expects the Proponent to actively seek input from Indigenous monitors to include in their consideration and reporting of sensitive areas as an example. Additionally, we expect that programming be conducted in a manner that supports capacity development leading to Indigenous-led efforts.



The MMF emphasizes that for the level of Indigenous participation as required by the draft approval conditions, a long-term relationship must be established, including a clear communication structure and projected work schedules to help mobilize our assets and facilitate meaningful involvement by the MMF.

Recommended Condition	
Condition	2.9 Where consultation with Indigenous groups is a requirement of a follow-up program, the Proponent shall discuss the follow-up program with each group and shall determine, in consultation with each group, opportunities for their participation in the implementation of the follow-up program, including training, the conduct of monitoring, the analysis and reporting of follow-up results and whether modified or additional mitigation measure(s) are required, as set out in condition 2.8.
Recommendation	We request that the Agency adopt the following Condition: 2.9.X The Proponent will develop a long-term relationship agreement with each affected Indigenous group, which includes agreed-upon terms for overall financial and resource capacity, monitoring participation opportunities, training opportunities, opportunities to review, respond, and intervene on reporting described in condition 2.8, engagement structure.

5.2 Economic Development Opportunities

The MMF has written a letter to the Proponent insisting that all economic development opportunities be divided 50/50 with First Nations and the Red River Métis based on the population breakdown of both groups in Manitoba. We assert that this approach would enable more tailored and distinctions-based opportunities and accommodations which are directed federally by the *Principles respecting the Government of Canada's relationship with Indigenous peoples*¹⁵ and provincially by the *Manitoba Métis Policy*¹⁶. In recognizing the distinct interests and values of the Red River Métis, the MMF is not necessarily looking for the same types of opportunities as First Nations affected by this project, but rather opportunities which will enable Red River Métis to thrive. Similarly, we seek this distinctions-based approach concerning all project mitigations. While we do not seek to discount the valuable insights of First Nations affected by this project in crafting mitigation and accommodation opportunities for this project, without taking an appropriate distinctions-based lens, we fear the unique rights, interests, and values of the Red River Métis may stand to miss out in this project.

¹⁵ Department of Justice Canada. 2021. Principles respecting the Government of Canada's relationship with Indigenous peoples. Available from: <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

¹⁶ Government of Manitoba. 2010. Manitoba Métis Policy. Available from: https://www.gov.mb.ca/inr/pdf/mbmetispolicy/pubs/metis_policy_en.pdf



To date, the Proponent has not responded to the letter, nor have we been provided with any level of commitment describing how the Proponent, as guided by *Manitoba Métis Policy*, will fulfill its obligations to apply distinctions-based efforts to mitigation, accommodation, and opportunity.

Recommended Condition	
Condition	1.24 Indigenous groups means the following Aboriginal Peoples: Berens River First Nation, Black River First Nation, Bloodvein First Nation, Brokenhead Ojibway Nation, Dakota Tipi First Nation, Dauphin River First Nation, Ebb and Flow First Nation, Fisher River Cree Nation, Fox Lake Cree Nation, Hollow Water First Nation, Keeseekoowenin Ojibway First Nation, Kinonjeoshtegon First Nation, Lake Manitoba First Nation, Lake St. Martin First Nation, Little Saskatchewan First Nation, the Manitoba Métis Federation, Misipawistik Cree Nation, Norway House Cree Nation, O-Chi-Chak-Ko-Sipi First Nation, Peguis First Nation, Pimicikamak Okimawin, Pinaymootang First Nation, Poplar River First Nation, Sagkeeng First Nation, Sandy Bay Ojibway First Nation, Skownan First Nation, Tataskweyak Cree Nation, and York Factory First Nation.
Recommendation	In recognizing the distinct rights, values, and interests, of the Red River Métis, and the unique challenges and opportunities which our Citizens face, we request that the Agency adopt specific language to reflect the direction of both the <i>Government of Canada's relationship with Indigenous peoples</i> and the <i>Manitoba Métis Policy</i> , in ensuring the Proponent employs a distinction-based approach to engagement, mitigation, and accommodation. We further request that this distinctions-based language apply to all instances where the term “Indigenous groups” is applied in the Approval Conditions, and all applicable management plans described in said conditions.

5.3 Continuing Engagement and Participation

The MMF supports the efforts made by the Agency in attempts to codify participation by Indigenous groups in the Approval Conditions. We believe that this level of participation is necessary based on the assessment’s finding that this project will likely 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.



We, however, are concerned by the lack of direction the Agency provides to the Proponent on precisely how to carry out continuing engagement and participation, beyond utilizing the status quo mechanisms of the Environmental Advisory Committee (EAC). It is recognized that Condition 7.2 does direct the Proponent to revisit the EAC Terms of Reference, however, it does make specific requirements for the Proponent to ensure Indigenous groups are afforded reasonable and meaningful capacity of resources to engage in the EAC, as well as other participation opportunities outlined in the Approval Conditions.

The MMF is concerned that if the status quo is perpetuated post-approval, the MMF and other Indigenous groups will fail in their ability to continue meaningful engagement through the EAC.

Currently, the EAC has allocated a total of \$3.1 million for 11 stakeholders and rightsholders comprised of the MMF, one Rural Municipality, and 9 First Nations. Divided evenly, it would provide approximately \$280,000 per group for staffing, monitoring, and other supports for the life of the project. As there are requirements in the Approval Conditions for Indigenous participation through the life of the project (which is in perpetuity), meaningful capacity support must be afforded also in perpetuity. We are concerned that as currently conceived the MMF will be able to participate for approximately 2 years, after which we will lack the resources to remain meaningful involved.

Functionally, the MMF has been asked by the EAC to share in detail how the MMF has successfully run monitoring programs, such as the one to be required for this project in the past (using examples such as the MMF's long-term monitoring support of Line 3, and ongoing monitoring of Whiteshell Laboratories). While we are encouraged the EAC is looking to build off the successes and lessons learned from past MMF-led monitoring programs, the concern is that in leading this effort the MMF is still being offered only 1/12th of the funding.

A current concern with the EAC structure is that the First Nations are presently boycotting the project and therefore not involved in attending the EAC meetings. The EAC is chaired by the Proponent, and acts as a decision-making power on the committee. For this committee to function, these two issues must be addressed, encouraging dialogue to bring the First Nations back to the EAC table, and to shift to a committee model of balanced and shared power. If the Proponent maintains its approach of having effective veto power over decisions made by the EAC, we cannot see how this committee will function as intended, and further, we cannot see how the EAC works as a mechanism for meaningful participation, mitigation, and accommodation.

Finally, although the MMF serves as the representative of Red River Métis on the EAC, advising the project on how to mitigate impacts on the Red River Métis, our efforts are to provide fair and meaningful direction to the committee through a distinctions-based lens. The Proponent, however, continues to respond and act on the MMF's input with pan-Indigenous approaches. This again is a further example of the Proponent's inability or unwillingness to respect the unique rights, interests, values, and concerns of the Red River Métis, considering how our Citizens are affected by this project. As the Proponent is a representative of the Crown on behalf of the Government of Manitoba, we are disappointed that the Proponent continues to fail in applying provincial direction, and as a result, we



feel this further underlines the need for specific direction to apply a distinctions-based lens in all aspects of the project, to come from the Agency in the form of Approval Conditions.

