

# Response to the Lake Manitoba/Lake St. Martin Outlet Channel Project: Draft Environmental Report (April 2024)

## Offered by Misipawistik Cree Nation

### Executive Summary

Misipawistik Cree Nation (MCN) and its consulting team have reviewed the Draft Environmental Report on the Lake Manitoba/Lake St. Martin Outlet Channel Project (LSMLMOC) prepared by the Impact Assessment Agency of Canada (IAAC). Their responses are included throughout this report.

MCN has been heavily involved in IAAC process throughout the past five years:

- MCN Council, staff, fishers and consulting support team have attended every Technical Advisory Group (TAG) meeting that has been held since summer of 2019.
- MCN has responded to the initial Environmental Assessment report submitted by Manitoba Infrastructure (MI or the Proponent).
- MCN has responded to the subsequent three rounds of Information Request responses from MI.
- MCN intentionally chose not to respond to the mitigation measured proposed by MI as we strongly believe that the science and assessment done to date regarding these mitigation strategies was faulty and incomplete. We do not believe you can create effective mitigation measures on a project that is not sound.
- Internally MCN has met with the fisher community and gained their expertise and experience of the previous 2011 and 2014 temporary channels. This knowledge has been integrated into all our responses.
- MCN attended the one visit by MI to MCN in late summer of 2022. This was a short few hours, most of which included a presentation that did not honestly represent the impacts of the project. We do not consider this visit true consultation as is our Section 35 right.

In March 2024, MCN sent a letter to ECCC (cc'd to several federal and provincial leaders, MLAs and MPs) detailing our ongoing concerns regarding both process and content of the IAAC project. We continue to believe that this project will have devastating impacts on the fishery, our socio-economic rights and our traditional connection with our territory.

While we are pleased to see that IAAC has concluded that the “Project is likely to cause direct and cumulative significant adverse environmental effects on” Indigenous peoples’ current use of lands and resources for traditional purposes, Indigenous peoples’ physical and cultural heritage, including from effects to aspects of intangible cultural heritage, and Indigenous peoples’ sites or things of historical, archaeological, paleontological, or architectural significance, we wholehearted disagree with the findings that “the Project is not likely to cause significant adverse environmental effects on fish and fish habitat, migratory birds, federal lands, and Indigenous peoples’ health and socio-economic conditions.”

Our reasoning, summarized here, but included in more detail in full the body of this response, fall into three primary areas of response:

**Hydrological response:**

- We believe the IAAC's regional assessment area (RAA) does not include areas that are going to increase the overall negative impacts to the surrounding ecosystem. Specifically, the exclusion of the Portage Diversion itself from the RAA (in the process and the report) is problematic.
- The Proponent has not provided an assessment of the impacts of extensive use of riprap (48 kilometers) on the surrounding eco-system. We believe the impacts will not only be on surrounding eco-systems, but also on the protection of Aboriginal and Treaty Rights.
- While some of the Key Mitigation Measures and Monitoring are well thought out, they are incomplete and do not represent the full need of the project. Further, we want to note that these plans heavily represent monitoring – but mitigation and off-setting plans are needed to ensure the protection of the fishery within Lake Manitoba, the Fairford River, the Dauphin River, Lake St. Martin and Lake Winnipeg.
- The impacts to wetlands around Big Buffalo Lake have not been adequately assessed, and will have significant detrimental impacts to fish, animals and medicines in the region. The potential for irreversible effects are not considered in this report, and we are very concerned about this lack of due diligence.
- The cumulative impacts in the area of nutrient loading are not contemplated in the EIS or in this draft report. We know that the impacts of algae as a result of nutrient loading is taking its toll on Lake Winnipeg and those who live on its shores. This channel could increase these cumulative effects.

**Fish and fish habitat response:**

- We continue to be concerned about the disruption of flows and inadequate hydraulic modeling that has been done to date. This modeling must be completed to fully understand what potential, irreversible impacts this project will have on the fish and fish habitat in Lake St. Martin and the Dauphin River, which are key spawning grounds for the Lake Winnipeg fishery.
- Even after thirteen years since the 2011 flood, MCN has not seen adequate offsetting of the impacts of the Emergency Outlet Channel. This, in addition to the exclusion of our community from meaningful consultation, has resulted in significantly eroded trust in ability of the Department of Fisheries and Oceans to adequately create off-setting plans for the fishery of Lake Winnipeg as a result of the LMLSMOC. Indigenous engagement is sorely lacking.
- In this report, we continue to see lack of assurance that the shorelines of Lake St. Martin will be not be impacted. These shorelines are a vital area for fish to lay eggs, and the proposed draw down of water could result in the devastation of these key habitat.
- We still hold significant questions about how the channel will result in fish stranding and impede fish passage and movement.

**Indigenous health, Indigenous rights, and Indigenous consultation response:**

- The draft report works from the assumption that some form of outlet channel is going to be constructed. This forecloses any discussion on alternative means to flood mitigation – some of

which our experts believe would have significantly less environmental impact, and would have far less impact on our Indigenous rights.

- The report does not accurately represent the consultation process to date. The process has engaged in *Crown Consultation*, not Indigenous Consultation. This results in the report to the Ministry being extremely misleading. This report must reflect the lack of due process in the area of Indigenous Consultation.
- We are concerned that the report focuses so heavily on mitigation and monitoring, that the message it implies is that the potential detrimental impacts, are acceptable. We have expressed to the Proponent and IAAC numerous times that the project itself will have these detrimental impacts and that the consultation to incorporate our knowledge was not completed.
- There is a misrepresentation of Indigenous health in the report, MCN has been clear, through our letter of March 2024, and in our other responses, that Indigenous health cannot be understood through a Western lens, nor can it be siloed from socio-economic health. We have provided globally recognized modeling and evidence for this, but the report clearly doesn't convey the relationship between Indigenous health and the health of the land and waters.
- While the hydrology section discusses the cumulative effects from a stance of eutrophication, it cannot go unstated, that Indigenous communities have suffered immeasurably since the 1960s from the colonial water management regime of the province. This project is just one more example of the ongoing cumulative effects of sacrificing the Indigenous Rights and well-being for the benefit of a settler population. This report should reflect this cumulative impact.
- The report fails to indicate that this project is in violation of the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the statement in Environment and Climate Change Canada's (ECCC) mandate letter regarding Aboriginal Rights. We would expect to see this clearly stated in the report.

**We very much hope that these issues can be addressed in the revised report that is presented to the Minister of Environment and Climate Change.**

## Comment on Section 2.1 Project Location and Temporal and Spatial Boundaries

### Hydrology response

The Proponent defined spatial boundaries as the geographic extent over which project-related activities and their potential environmental effects to valued components may occur. The IAAC (Agency) made a serious mistake by not including the Portage Diversion in the regional assessment area (RAA) for the Lake Manitoba and Lake St. Martin Diversion Channels project (Project). The purpose of the Project is to protect against flooding. Flooding on the lakes is not a natural phenomenon: flooding in Lake St. Martin is caused by flooding in Lake Manitoba which in turn is caused by operation of the Portage Diversion. This was the major finding of a court case brought against the Province of Manitoba. Whenever the gates are opened at the Portage Diversion the lakes flood and if the channels are built, they will operate in conjunction with operation of the Portage Diversion – accordingly, the operation and environmental impacts of the Portage Diversion cannot be left out of the review (see comment 5). The omission is a failing of the EIS and the Agency's guidance of the project.

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

## Comment on Sections 2.3 Project Activities and Schedule, 6.3 Terrestrial Landscape & 6.0 Predicted Changes to the Environment

### Hydrology response

The proponent did not include complete armouring of the channels with riprap in the EIS and consequently there has been no assessment of the impacts of this type of channel. The 48 km of riprapped channels will cut the Interlake in half and present a barrier to the free movement of Indigenous people and wildlife. The effect of this formidable barrier has not been adequately assessed in the EIS report or in the subsequent Requests for Information. A full assessment of impacts must be done but before this can happen there are several aspects of the riprapped channels that require more information.

First, MTI has yet to determine the size and shape of the riprap that will armour the bed and banks of the full length of the channels. This determination must be done now because these qualities affect how the channels will impact habitats for aquatic animals, birds, and zebra mussels, and they could injure or deter wildlife from crossing the channels.

The Manitoba and Lake St. Martin Outlet Channels Project: System Hydraulic Design Criteria report states that the LMOC channel geometry is designed for passage of flows up to the Design Flood with a maximum permissible velocity of 1.5 metres per second. Maximum permissible velocity is not given for the LSMOC, but with a steeper channel employing eight drop structures the permissible velocities will be higher. Looking at ASTM Engineering tables for riprap sizing based on permissible velocity suggests that

the riprap for the channels will have to be equal to or greater than 150 millimetres in diameter. This size of riprap will be a impact aquatic habitats and deter wildlife trying to cross the channels. The angular shape of riprap that is being envisioned by MTI for use in the channels will further deter wildlife from crossing.

Once the size and shape of the riprap along the entire channels has been determined, a second aspect to be determined is how wildlife populations and health will be affected by the barrier caused by the riprapped channels. The Agency comments on this in Section 7.3.1 of their review when they state:

*“During operation, the Proponent noted that as northern leopard frog moves through areas with riprap, there may be an additional mortality risk due to lack of vegetative cover and entrapment..... Both the LMOC and LSMOC would potentially fragment local populations of northern leopard frog and snapping turtle habitat, therefore reducing movement across the LAA.”*

But only SERA species were considered; since other wildlife were not considered a Valued Component of the environment in the EIS, the complete assessment of effects of the channels on segregating other wildlife populations is missing. Moreover, this exclusion will also have repercussions to the protection of Aboriginal and Treaty Rights.

A third aspect of the project that must be investigated is the source of the riprap and the impacts of hauling the large amount of riprap required to armour the channels. MTI’s Engineering and Construction: Aggregate Quarries and Haul Routes presentation estimates they will need more than 5 million tonnes of riprap. This amount of riprap will take 250,000 truckloads to haul, assuming each truck has a capacity of 20 tonnes. Over the two years scheduled for placement of the riprap, this will require about 700 truckloads per day. Because some of the riprap will be sourced from granite quarries on the east side of Lake Winnipeg or northern Manitoba the haul routes encompass a range of over 500 kilometers north and west of the project. How this haulage of riprap will affect the condition of roads, traffic and accidents has not been considered in the EIS or the Agency’s Review.

Finally, MTI must provide an updated cost of the Project that takes into account the addition of riprap. The EIS estimates the cost at \$540 million, but this was before the LSMOC intake was lowered and the channels were riprapped. Using industry estimates for riprap delivery and placement, the direct cost of the project could double to beyond \$1 billion, to say nothing of the indirect costs caused by damage to local roads. MTI must provide a new estimate of the project’s cost that includes all changes to the project since the EIS was submitted.

### [Comment on 3.1 and 3.2 Purpose of Project and Alternative Means](#)

#### **Indigenous health, Indigenous rights, and Indigenous consultation response**

We find that IAAC’s assessment of alternative means of flood mitigation is significantly lacking and appears to ignore our earlier contributions regarding this issue. The report focuses mainly on alternative routes, which forecloses discussion of alternative means to flood mitigation as such. As we stated in our letter to Minister Guilbeault dated March 19/24, MTI (and now IAAC) remains committed to a flood mitigation strategy developed in the 1960s long before Indigenous Knowledge, Indigenous rights, and a duty to consult were Constitutionally-protected or were considered at all. Further (and also as stated in the letter from March 19), the commitment to addressing ‘alternative means’ by focusing on alternative

*routes* and mitigation, runs afoul of key features of the Federal Mandate provided to IAAC from the Prime Minister of Canada. Namely:

- to protect and restore large lakes and river systems ... (including) ... the Lake Winnipeg Basin;
- to work in partnership with First Nations, Inuit and the Métis Nation to address climate change and its impacts, and chart collaborative strategies;
- to recognize the “right to a healthy environment” in federal law and introduce legislation to require the development of an environmental justice strategy and the examination of the link between race, socio-economic status and exposure to environmental risk;
- to implement the United Nations Declaration on the Rights of Indigenous Peoples and to work in partnership with Indigenous Peoples to advance their rights.

While the report briefly mentions alternative means of water storage in a single sentence (s.3.2.3, p27), alternatives of this nature are not discussed and there remains no acknowledgement that examining alternative strategies is even up for discussion. Rather, the report quickly shifts back to the assumption that some form of outlet channel construction is a given and frames the issue in terms of alternative means to *routing* only and the related potential impacts of this approach.

Finally, also as stated in our letter from March 19, this continues to stand as a direct contradiction of IAAC’s determination in the letter from February 17/24 that MTI has provided sufficient information for the impact assessment and this report. Much more research and consultation regarding alternative strategies is required.

### [Comment on Section 3.2 Alternative Means of Carrying out the Project.](#)

#### **Hydrology response**

CEAA 2012 requires that environmental assessments of designated projects take into account alternative means to carry out the Project that are technically and economically feasible. The proponent did not include an assessment of alternative means in the EIS; the Agency advised us they had agreed to this exclusion. The Agency’s review includes a section entitled alternative means which lists the options for routing of the diversion channels, numbers of bridges, placement of water control structures, routing of transmission lines and selection of quarry areas - but these are options for building the project not alternatives to the project itself.

MTI conducted an alternative means study in 2016, the Assiniboine River and Lake Manitoba Basins Flood Mitigation Study, but it was excluded from the EIS and the Agency has repeatedly refused requests to have the study included and reviewed. Some of the alternative means assessed in the Report would provide a technically and economically feasible way to prevent flooding without the Project’s social and environmental costs to First Nations. This study requires scrutiny under CEAA 2012 to determine whether the Project is the best choice, especially considering its ballooning costs.

### [Comment on 4 Consultation and Engagement](#)

#### **Indigenous health, Indigenous rights, and Indigenous consultation response**

This report represents a glaring misrepresentation of consultation processes to date and plainly conflates Crown Consultation with Indigenous Engagement. MCN has expressed this concern from the

outset of this process and, in addition to the lack of consultation with MCN and others, it remains an outstanding issue.

MCN and others have clearly expressed that attendance in group forums like the TAG meetings does not constitute consultation. As a case in point, the meeting notes from the February 6-7/24 (ie. the most recent TAG meetings) is replete with examples of numerous Nations continuing to express their concerns that consultation is lacking and that participation in the TAG meetings does not constitute consultation. Yet this report clearly lists all TAG activities as *consultation* activities (Table 3, p.32). Further, while other sections of the report provide some analysis from IAAC regarding the issues at hand, Section 4 (Consultation and Engagement Activities) provides no such analysis thus providing no clear indication as to whether IAAC is of the opinion that consultation has been sufficient to support a determination on the impacts of this proposed project.

Indeed, IAAC has stated (in the TAG Terms of Reference and at meetings with First Nations) that participation in the TAG is meant to “support the Crown’s consultation activities” but that it “does not replace direct consultation”. Yet, despite many Nations raising the issue, IAAC has not responded directly to questions of whether they actually consider participation in TAG meetings as a consultation activity as such. This report appears to answer that question only by muddying the waters and conflating Crown Consultation with Indigenous Engagement.

This type of representation of consultation activities by IAAC serves only to reinforce distrust in the way that IAAC is conducting this process. The fact that this issue appears so often in the notes from the latest TAG meetings yet remains unaddressed is extremely concerning. It appears that, by skirting the issue of drastically insufficient consultation (by both MTI and IAAC) and by conflating Indigenous Engagement with Crown Consultation, IAAC is providing a misleading report to the Minister and failing to acknowledge a key significant flaw that renders this process illegitimate.

### [Comment on Section 6.1.3 Surface Water: Agency Analysis and Conclusion](#)

#### **Hydrology response**

Key Mitigation Measures and Monitoring for surface water proposed by the Agency are laid out in the Report. These proposed monitoring and mitigation programs are well thought out and we hope they will adequately address our concerns regarding the already-identified impacts. As discussed in Comments 5 and 6, there are impacts that have not been fully assessed.

In addition, we would like to see included in the plans:

1. The oversight committee’s make-up and terms of reference;
2. Funding that is driven by the monitoring and mitigation plan requirements as decided by the committee, not the other way around;
3. The development of a physically-based model that can simulate the hydraulics and water quality of the whole aquatic system from the Portage Diversion through Lake Manitoba and Lake St. Martin to Lake Winnipeg. The model simulations will be able to inform monitoring and mitigation plans and provide insight into the future effects of the channels and climate change on the lakes.

### Section 6.3.3 Terrestrial Landscape: Agency Analysis and Conclusions

#### **Hydrology response**

The impacts of the project on the wetlands around the Big Buffalo Lake have not been adequately assessed. The LSMOC will dewater the wetlands, lakes and streams in the area which are used by First Nations to hunt, fish, gather medicinal plants and other herbs, and hold ceremonies. MTI has used the extents of the damage done to the area by the Emergency Outlet Channel as a measuring stick to determine the damage that will be done by the LSMOC. But this is an over-simplification. The EOC is one-third the depth and one third the length of the LSMOC with some parts of the channel extending through the overlying sediments to the bedrock. We expect that the effects of the LSMOC will be much greater than MTI's estimate and will be **irreversible**. Experience with other diversion channels in Alberta, B.C and Northwest Territories supports this view and points out that monitoring and mitigation proved useless in preventing the effects of dewatering wetlands.

Therefore, we disagree with the Agency's view that MTI adequately characterized potential project effects to the terrestrial landscape in the Big Buffalo area. The loss of functional wetland habitat and altered habitat functions will destroy viable and diverse ecosystems that contain and support culturally important wildlife and plant species. Monitoring and mitigation methods will prove useless. Accordingly, we believe a complete assessment of all effects of the LSMOC must be completed before a final decision on the project is made.

#### **Fish and fish habitat response**

Wetlands are a vital part to ecosystem health for both aquatic and terrestrial environments. The government has vowed to protect Class III, IV and V wetlands. This project is going to have significant impacts of numerous wetland habitats within the Project Development Area. It is MCN's view that before these wetlands are impacted, adequate offsetting plans must be planned, presented and established before the destruction of the current wetlands. It is an unacceptable approach to monitor after the fact and try to restore wetlands using an adaptive management strategy. A more solid approach must be in place to ensure the protection of these value and critically important wetland habitats within the Project Development Area and the Local Assessment Area.

### Comment on Section 7.1.3 Agency Analysis and Conclusions – Fish and Fish Habitat - Hydrology

#### **Fish and fish habitat response**

MCN is very concerned about the hydraulic modeling and is of the opinion there will be significant impacts to fish and fish habitat within both Lake St. Martin and the Dauphin River. We are very concerned the flows within the Dauphin River will be altered from their natural state to provide and maintain adequate fish habitat for all stages and species of fish. Flow patterns shape the river and provide the necessary habitat types for fish to colonize and thrive. With the reduction of flows on the Dauphin River, we are concerned this will alter the fluvial morphology of the river and cause long lasting impacts.



## Comment on Section 7.1.3 Agency Analysis and Conclusions – Fisheries and Oceans Offsetting plan

### **Fish and fish habitat response**

The proponent constructed an emergency channel in the Big Buffalo Lake complex and had drastic impacts and alterations to the wetland habitats, fish habitat, fish populations caused death and stranding of countless fish species. Thirteen years later, the proponent has yet to provide adequate offsetting measures to this project. MCN does not trust the actions of DFO to protect fish and fish habitat based on their past performance. Our community requires a list of all offsetting measures planned PRIOR to the construction of any channels. We also want to see the proposed offsetting plans completed for the emergency outlet channel prior to the approval of any new channels on this system. Once fish habitat is destroyed, it is destroyed for ever so adequate planning must be taken by both IAAC and Fisheries and Oceans Canada. IAAC should not leave that decision solely to DFO. The Indigenous communities should be the ones who decide what is adequate offsetting should the project move forward with approvals.

## Comment on Section 7.1.3 Agency Analysis and Conclusions – Fish and Fish Habitat – Lake St. Martin

### **Fish and fish habitat response**

MCN is very concerned about fish habitat along the shorelines of Lake St Martin being impacted when the channels are being operated. It is our understanding that the north basin of the lake is to be drawn down to allow for an increase head differential at the Narrows to force or allow more water to pass the Narrows during a flood event. This draw down of the north basin could have significant impacts of fish and fish eggs likely deposited along the shorelines.

How is the proponent going to monitor these habitats to ensure fish eggs are not destroyed during the operations of the channel?

## Comment on Section 7.1.3 Agency Analysis and Conclusions – Monitoring and Mitigation

### **Fish and fish habitat response**

MCN wants to reiterate that monitoring is NOT mitigation. Monitoring is conducted to ensure each mitigation measure is meeting the requirements and goals they are set out to accomplish. Too often, monitoring is mistaken for either mitigation or offsetting. This is not correct.

Also, if the fishery does collapse and there are significant impacts on fish populations within Lake St. Martin after this channels project is completed, how will the proponent deal with such an event?

This long-term thinking is required to ensure the protection of the fishery with Lake Manitoba, the Fairford River, the Dauphin River, Lake St. Martin and Lake Winnipeg.

## Comment on Section 7.1.3 Agency Analysis and Conclusions – Fish Stranding

### **Fish and fish habitat response**

If fish stranding does occur within the Lake St. Martin outlet channel, the proponent must develop both a long-term monitoring plan and a solution to prevent these events from occurring into the future and for the life of the project. Monitoring here is crucial for the protection of our fish.

## Comment on Section 7.1.3 Agency Analysis and Conclusions – Fish Passage and Movement

### **Fish and fish habitat response**

How does the proponent or IAAC assume the number of fish migrating down the new Lake St. Martin outlet channel will not have impacts on population sizes or productivity?

How was this tested and how will it be mitigated for in the future if large quantities of fish do in fact migrate down the Lake St. Martin channel?

It is understood that when a fish goes over the first drop structure, they will have to descend the entire channel, swim across Sturgeon Bay and then back up the Dauphin River to return to Lake St. Martin.

## Comment on 7.4 Indigenous Peoples – Current Use of Lands and Resources for Traditional Purposes, Physical and Cultural Heritage, Sites of Significance

### **Indigenous health, Indigenous rights, and Indigenous consultation response**

We agree with IAAC's determination that – even after mitigation measures, monitoring, and follow-up programs are taken into account – the project will result in “high magnitude, generally irreversible, and long-term effects to Indigenous groups' access, availability and quality of resources, and quality of experience” (s.7.4.1.3., p146) and “residual effects to Indigenous peoples' physical and cultural heritage and to structures, sites, and things of historical, archaeological, paleontological, or architectural significance would be adverse, high magnitude, long-term, and irreversible” (s.7.4.2.3). However, we are concerned that the significant space given to mitigation measures (s.7.4.3, pp. 160-168) implies that, although the impacts *irreversible*, the project may justifiably proceed.

The focus on mitigation, monitoring, and follow-up measures presents a key insurmountable problem for this assessment and report as it implies that these irreversible impacts are, nonetheless, acceptable. Put simply, as MCN and many other Nations have expressed, the impacts are simply unacceptable as they cut to the core of Indigenous existence. To participate in the willful destruction of Indigenous history and culture – especially the destruction of land, practices, and historical sites that hold this value – is to participate in cultural genocide as expressed by the Truth and Reconciliation Commission of Canada. As MCN and many other Nations have expressed throughout this process – especially during the most recent TAG meetings – it is a profound affront to ask First Nations to engage in discussions of mitigation, monitoring, and follow up processes for a project that promises to further the destruction of Indigenous culture, lands, and practices, and to be complicit in the cultural genocide of their own Nations.

This has been expressed to IAAC before. Yet, in that same way that this report skirts the issue of failed consultation (see above), it also ignores this clear connection between the irreversible impacts that IAAC acknowledges, and the ability of First Nations to survive as such.

## Comment on 7.5 Indigenous Peoples – Health and Socio-Economic Conditions

### **Indigenous health, Indigenous rights, and Indigenous consultation response**

The conclusions regarding Indigenous health in this report, and throughout approaches taken by both MTI and IAAC for the entirety this process, are incorrect as they plainly misrepresent Indigenous health. From the outset of this process MCN has explained that Indigenous health cannot be understood through a Western lens alone but must be understood in a way that is rooted in an understanding of Indigenous worldviews and culture. We have provided literature and advised on appropriate, globally recognized, modelling for Indigenous health that takes into account the profound impact that issues such as maintaining relationships with land, land-based knowledge systems, generational trauma, and experiences of colonialism have on Indigenous health. This report provides clear evidence that our responses regarding Indigenous-specific approaches to understanding and assessing Indigenous health are being ignored by both MTI and IAAC.

Similarly, this process as a whole has assessed socio-economic conditions as a distinct category defined strictly in Western terms – simply including various land-based practices (hunting, fishing, trapping) in terms of Western understandings of generating revenue from land (including animals, fish, water, etc). As we have expressed, these factors cannot be assessed in isolation from each other since engaging in land-based economic activities *is also* an expression and practice of Indigenous knowledge, culture, and worldview and it inextricably linked to Indigenous health. Therefore, as the report suggests, it may be possible that – from a strictly Western economic perspective – certain mitigation measures may allow for some level of sustained economic viability. In effect, this approach continues the assimilative practices that force First Nations to acquiesce to colonization and transform their cultural practices, allowing them to be defined and valued in Western economic terms. As a result, although some economic opportunities may exist, the project will, nevertheless, result in irreversible harm to First Nations very existence.

Further, according to Indigenous perspectives, it is impossible to treat socio-economic health as a siloed separate category divorced from Indigenous health. Put simply, the “high magnitude, generally irreversible, and long-term” impacts acknowledged in *Section 7.4. Indigenous Peoples – current Use of Lands and Resources for Traditional Purposes, Physical and Cultural Heritage, Sites of Significance*, above, are precisely the kinds of impacts that map perfectly on to well-established ‘Indigenous Determinants of Health’. It simply strains credulity and logic that IAAC can acknowledge these impacts as significant and irreversible, yet conclude that Indigenous health is cordoned off in another discrete category altogether and not impacted in the same way.

Taking this into account, we strongly disagree with IAAC’s basic premise that MTI has “adequately characterized potential Project effect to Indigenous peoples’ health” (s.7.5.1.3., p.174). The fact that an Indigenous Determinants of Health model has not been utilized throughout this process provides further support for our contention in our March 19<sup>th</sup> letter that IAAC was incorrect in its determination that MTI had provided sufficient information to create this report. The requisite Indigenous health research was

simply not conducted – this in spite of the fact that we provided all the necessary literature and modelling.

Given this, we can only conclude that IAAC (and MTI) considers this approach as illegitimate. However, if this is the case, it is incumbent upon IAAC to provide a response to us as to why these approaches are considered inapplicable to the current context.

## Comment on Section 8.3 Cumulative Effects Assessment

### **Hydrology Response**

The cumulative effects of the project's nutrient loading to Lake Winnipeg is not assessed in the EIS or in subsequent IR responses from MTI. Also, because the Portage Diversion was excluded from the Agency, the water quality of the flood waters emanating from the Assiniboine River were not contemplated in the EIS or by the Agency.

The assimilative capacity for nutrients, particularly phosphorus, in Lake Winnipeg is exhausted as evidenced by increases in the extent and make-up of algae blooms. There are many sources of nutrients to the Lake and the project is adding to these sources by short-circuiting the route that flood waters would naturally take to Lake Winnipeg. The assimilative capacity of the natural route through the Assiniboine River, Red River, Netley-Libau Marsh and southern basin of Lake Winnipeg will be lost as flood waters will flow directly from the Portage Diversion into Lake St. Martin and the north basin of Lake Winnipeg.

We are of the view that the release of nutrients from the Project, in combination with past, present, and reasonably foreseeable projects and activities, is likely to cause significant adverse cumulative environmental effects to surface water, fish and fish habitat, and the health and socio-economic conditions of Indigenous Peoples. Accordingly, we believe a complete assessment of the cumulative effects of nutrients must be conducted before a final decision on the Project is made.

### **Indigenous health, Indigenous rights, and Indigenous consultation response**

Our responses to sections 7.4. and 7.5. above are applicable here as well. Specifically, we agree that “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 ... will not be appropriately mitigated and cumulative effects would threaten the ability of Indigenous groups to practice traditional and cultural use activities within the RAA” (s.8.3.3., p. 220). However, we do not agree with IAAC's representation of ‘Indigenous health and socio-economic conditions’ as restricted to an ability to “harvest country foods” (s.8.3.3., p221).

Our responses regarding the need for a basic understanding of the holistic view imbedded within Indigenous worldview and Indigenous health modelling and the inadequacy of mitigation, monitoring, and follow-up approaches apply here just as they do in Sections 7.4 and 7.5 above.

## Comment on 9. Impacts to Aboriginal and Treaty Rights

### **Indigenous health, Indigenous rights, and Indigenous consultation response**

We agree with IAAC's determination that the project will likely result in an array of impacts to Aboriginal and Treaty Rights. However, as we have noted in previous responses and in meetings, several issues remain.

First, it is unclear why IAAC has chosen to ignore the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in this report and has ignored our responses that refer to this. Both Canada and Manitoba have legislated commitments to enacting UNDRIP as expressed in the Federal *United Nations Declaration on the Rights of Indigenous Peoples Act* and the Provincial *The Path to Reconciliation Act*. As such, UNDRIP must inform how the Crown approaches First Nations' rights in Canada.

However, throughout the entire report, UNDRIP is mentioned only once in a footnote acknowledging that one First Nation (Peguis First Nation) "identified the lack of Free, Prior, and Informed Consent" (s.9.2.2., p. 242). This in spite of the fact that UNDRIP has been referred to on numerous occasions in various meetings and in our responses. If IAAC is choosing to ignore UNDRIP, it is again incumbent upon IAAC to explain to us why this is the case and why our (and others') references to UNDRIP are considered irrelevant to this process.

Second, although IAAC has outlined numerous impacts to Indigenous rights, significant gaps in IAAC's understanding and/or representation of the substance of Indigenous rights and all that is contained therein remain. For example, the 'right to a healthy environment' as expressed in Environment and Climate Change Canada's mandate letter, the Aboriginal right to live in a healthy way as ancestors did, and the federal fiduciary duty to protect these rights in particular are not mentioned.

Finally, the significance of the impacts of rights violations are lost in the structure of this report. Although IAAC has expressed impacts in terms of low/moderate/high (Tables 13-17, pp. 246-255), these categories are defined via a Western-centric lens that does not account for the significance of Indigenous worldviews as expressed above in Sections 7.4 and 7.5. For example, modifying access to a culturally significant areas or disrupting cultural and spiritual traditions are vacuous descriptors if not understood in the context of how significant various practices are to each Nation. Each Nation's specific history and experiences of colonialism will have an effect on how significant their experiences of activities related to continued cultural genocide are.

Numerous examples could be outlined here. However, the key point is that much more research and consultation is required if we are to truly have some sense of how Indigenous rights might be impacted. To be clear, this research and consultation was not conducted adequately if at all. As we have noted throughout this process, this report is premature – as was CEEA's determination that the original EIS 'met conformity' in 2019, and as was IAAC's determination that MTI has provided sufficient information for this report in February of 2024.