



Interlake Reserves Tribal Council, Inc.

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SENT BY EMAIL

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**Re: Lake Manitoba and Lake St. Martin Outlet Channels Project
IRTC Comments on Draft Environmental Assessment Report and Draft Federal
Conditions**

On behalf of the Interlake Reserves Tribal Council (IRTC), and in particular our member First Nations, Dauphin River First Nation, Kinonjeoshtegon First Nation and Lake Manitoba First Nation, we provide this cover letter and the attached table in response to the Draft Environmental Assessment (EA) Report and Draft Federal Conditions for the proposed Lake Manitoba and Lake St. Martin Outlet Channels Project (the Project) These draft materials were first provided to us on the 8th of April 2024.

While our comments in the attached table might seem extensive, they do not capture the full extent of our concerns. As we have communicated to the Agency on a number of occasions, the IRTC and our member First Nations have grave concerns about the Project. These concerns are centered around the natural, social, and economic systems that we rely on for our sustenance. Put simply, these systems are the foundations upon which our communities tether their livelihoods to.

Accordingly, the Agency's request to provide feedback on 428 pages of technical information in the draft materials in 30 calendar days is simply not feasible nor realistic. This tight timeframe meant we could not carry out any meaningful engagement with our member First Nations or their citizens. The information in the Agency's materials will have far reaching, permanent consequences if the Project is approved. The Agency's and Proponent's approach, as we have said in numerous ways over the years, is not consistent with honourable consultation and the principles in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) that the Government of Canada has committed to. For our

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member First Nations and many of their citizens, the entire EA process, and the way it has been conducted, represents a deep violation of their ability to have any agency over what happens on our territory and to our future generations.

Effectuated Indigenous Communities Unanimously Oppose the Project

The Draft EA Report fails to clearly state that all 27 potentially effected Indigenous Communities are unanimous in their opposition to the Project. We ask that the Agency include this important fact in the final EA Report. It is critical that the Minister and Cabinet understand when making their decisions that authorizing the Project will be contrary to the principle of free, prior and informed consent in UNDRIP, which Parliament committed to in 2021.

Assessment of VC's contradicts assessment of significance

In the Draft EA report, we note that the Agency concludes that the Project is likely to cause significant adverse environmental effects on key valued components (VCs). But then, to our dismay, it goes on to say that 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.

Given the interconnectedness of these VCs, we do not agree with the Agency's conclusion.

Since 2020, we have consistently maintained that the EIS submitted by the proponent, including projects effects on the VCs, were not accurately represented – and in some cases, missing. Part of this stems from: a) an incomplete project design, b) insufficient presentation of baseline data, and c) flaws in the assessment methodology. Furthermore, many of the draft conditions do not explicitly state how they would be accomplished or what would happen if they are not met.

Incomplete responses to Information Requests

During the EIS review, a series of Information Requests (IRs) were submitted by the Agency. The content of some of these IRs were informed from feedback from the IRTC. After review of the final IR responses, we found that the proponent did not resolve many of the IRTC's concerns that led to the IRs nor address most of our comments on the draft IR Responses. We find it hard to comprehend how the Agency arrived at some of its conclusions.

In addition to the 2020 review of the EIS itself, the proponent provided changes in engineering design, various environmental management plans and future monitoring programs. The IRTC examined and provided comments on these. In most cases, the management plans and monitoring programs were found to be deficient in design and were not considered capable of detecting any future adverse effects or changes to the predicted effects of the Project.

We stand by those concerns and reiterate them.

The present Draft EA does not rectify or alleviate any of our stated concerns, in fact it exacerbates our concerns by placing excessive weight on future engagements with Indigenous communities, the EMP's, monitoring and adaptive management to mitigate impacts.

Despite comments from the Indigenous groups, the proponent has not provided meaningful updates to the original environmental management plans (EMPs) or monitoring programs that the IRTC reviewed. Without refined and defined EMPs and monitoring Programs, we do not believe it is possible for the Project's adaptive management approach to resolve future issues. It is unreasonable and contrary to sound environmental assessment practices to place so much weight on future monitoring and adaptive management to make up for missing or poor-quality impact assessments at the front end of the process.

Given past behaviour of the proponent in ignoring and dismissing our comments on the EMP's, we have little to no faith that the proponent will take our comments seriously going forward, especially after the Project has already been approved. We have serious concerns about the weight the Agency has placed on the Proponent's commitment to future engagement with Indigenous groups when the proponent has already shown its unwillingness to meaningfully include Indigenous perspectives throughout this EA process.

There will be *Significant Adverse Effects* on Fish and fish habitat

We strongly oppose the Agency's conclusions that the Project is not likely to cause significant adverse effects to fish and fish habitat.

The excavation of both outlet channels will intersect existing drainage channels and has the potential to negatively impact fish, fish habitat and aquatic ecosystems along the routes of both the Lake Manitoba Outlet Channel (LMOC) and the Lake St. Martin Outlet Channel (LSMOC).

The Proponent states that during construction, local groundwater inflows to Watchorn and Birch Bay, Reed and Clear Lake, which are located east of the LMOC, may be affected. Reduction in groundwater could increase summer water temperatures and reduce dissolved oxygen concentrations for fish. In addition to a reduction in groundwater input, surface flows are also expected to be reduced by the construction of the LMOC by the interception of drains and streams that bisect the channel right of way. The decrease of 27.4% of the inflow to the Birch Creek drainage is predicted by the Proponent. Intersected waters will be diverted towards either Lake Manitoba or Lake St. Martin. This dewatering will have a significant negative effect on fish habitat.

Furthermore, impacts to fish, fish habitat and the general aquatic ecosystems of wetland and fens located to the east of the LSMOC will be severe, highly negative, long term and irreversible. Many of these habitats were also impacted by the 2011 construction and operation of the Emergency Outlet Channel (EOC). The ecology, for instance, of Little Buffalo Lake was severely disturbed by the construction and operation of the EOC. No remediation has ever taken place to rectify the damage done to Little Buffalo Lake and its associated wetland complex or Buffalo Creek since the 2011 flood.

The proposed LSMOC would have additional and cumulative impacts on this system. Little Buffalo Lake and Buffalo Creek between the LSMOC and Dauphin River serve as important habitat for wildlife, aquatic organisms, aquatic and semi aquatic vegetation, birds and cultural harvest foods used by many of our members. As such, environmental impacts to these wetlands are considered highly significant.

In the draft conditions, section 3.15 calls for a 30 m buffer zone along freshwater frequented by fish.

We have four issues with this condition:

- This condition should apply to all freshwater ecosystems, not only those 'frequented by fish'. Due to the lack of baseline studies, it is impossible for the proponent to separate freshwater systems frequented by fish from those that are not. Additionally, freshwater riparian zones provide critical functions to the whole ecosystem regardless of the presence of fish.
- This condition does not address the restoration process that must occur if this buffer zone is disturbed. The Proponent should be directed to co-develop a restoration plan with Indigenous groups that includes both design and monitoring components if the buffer zone is disturbed.
- 30 m buffers should be the minimum buffer. A larger buffer may be warranted for riparian areas adjacent to key locations with specific ecological conditions (e.g., sensitive habitat) or cultural importance.
- It is unclear who will be responsible for compliance and enforcement monitoring for this condition. Also, it is unclear how reporting on compliance and enforcement monitoring will occur.

The IRTC strongly objects to the Agency's reliance on a yet to be defined fish habitat off-setting plan in determining that residual impacts on fish and fish habitat will not be significant. The proponent has had years to develop details of a suitable fish habitat off-setting plan and has failed to do so. It is notable that the proponent has yet to provide the required fish habitat off-setting for the 2011 EOC. It is illogical and unreasonable for the Agency to conclude that an unknown plan to off-set fish habitat

will sufficiently reduce the predicted adverse effects on fish and fish habitat to bring it below the "significance" threshold.

Impacts on Reserve Lands

First, the Draft EA Report fails to include as a "key concern" of "Indigenous groups" (section 4.2) the fact that reserve lands around Lake St. Martin will continue to face a risk of flood even after the Project is built. According to the Proponent's own modelling, lands around Lake St. Martin will face a risk of flooding 1:13 years even with the Project in place. It is critical that this concern and the facts with respect to continued flooding of reserve lands be included in the final EA Report.

The report states that effects to federal lands will be mitigated, and references mitigation measures discussed in other chapters of the Draft EA Report but does not identify any specific mitigation measures for impacts on reserve lands. This oversight by the Agency is troubling. To resolve this, the Agency should provide:

- Detailed discussion and analysis of how the conclusions for each of the VCs in other chapters of the EA report pertain to reserve lands;
- A list of required mitigations to address impacts to reserve lands;
- A condition that the requirements for a taking under section 35 of the Indian Act and the INAC Land Management Manual must be satisfied prior to the commencement of Project construction. Specifically, the requirements of section 35 and the Land Management Manual would be satisfied by way of an easement to permit flooding on reserve lands with a revisionary interest for Little Saskatchewan, Lake St. Martin, and Dauphin River First Nations.

Indigenous peoples' health and socio-economic conditions.

As with other sections in the EA report, we are confused about the inconsistency with the Agency's analysis and conclusions. First, the Agency states that it "recognizes that the Project is in an area currently accessed by Indigenous groups for socio-economic purposes, including subsistence use, and that adverse effects of the Project on surface water and groundwater, vegetation and wetlands, wildlife, and fish may affect Indigenous groups' ability to practice commercial, subsistence and cultural activities in the PDAs and LAAs". The Draft EA Report then goes on to conclude, that the Project is not likely to cause significant adverse environmental effects to Indigenous peoples' socio-economic conditions. As previously stated, we do not agree with this conclusion.

The discussion on views expressed by Indigenous groups incorrectly reflects that only Peguis First Nation indicated that trauma from the 2011 Flooding events should be considered under health and socio-economic considerations. In fact, all the IRTC member First Nations have been vocal about the mental health impacts from the flooding. It is important to document the extent to which the First Nations have raised concerns about health and socio-economic impacts as these concerns are widely shared. Including this context is vital to a robust understanding of potential impact pathways.

We ask that the EA Report reflect the input from the IRTC and all our member First Nations on the mental health impacts from the 2011 flood. The EA Report must also note that our communities are still experiencing adverse effects from 2011 and 2014 flooding events that have yet to be dealt with, offset, or compensated for.

Closure

The attached table covers other VCs not highlighted in this letter. Importantly, The Agency must also note the repeated and ongoing failure of the proponent to meaningfully and respectfully consult with our members throughout this process. Despite repeated efforts by the IRTC, the proponent has consistently failed to engage in real two-way discussions of issues, nor have they been open to accommodating our rights. They have been dismissive and non-responsive to our concerns and have not incorporated our Indigenous Knowledge in any substantial capacity. Therefore, while ongoing consultation is important, the limitations of the Proponent's consultation and the perspectives of our members, who are deeply frustrated by this lack of meaningful dialogue, must also be clearly stated. To restate, consultation, as we understand it, is not only about identifying issues and concerns or note taking, but also about accommodating these concerns. The Proponent has failed in this regard.

Finally, it should be made clear in the EA report that numerous outstanding information gaps and deficiencies identified in past IRs have not been addressed.

Our commitment, as we have always emphasized, is to work with the Agency to protect our inherent Indigenous Rights and Treaty Rights.

If you have any questions, please contact Seetta Roccola, IRTC Technical Services Manager by email at seettaroccola@irtc.ca or by phone at (204) 956-7413.

Sincerely,

<Original signed by>

Karl Zadnik

Chief Executive Officer, Interlake Reserves Tribal Council

Attachments:

IRTC Compiled EA Report and Draft Conditions Table of Comments

CC: Chief Cornell Mclean, Lake Manitoba First Nation, Chair, Interlake Reserves Tribal Council
Chief Lawrence Letander, Dauphin River First Nation
Chief Tony Travers, Kinonjeoshtegon First Nation