



# CHIEF AND COUNCIL BRIEFING NOTE

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**DATE:** MAY 8, 2024

**SUBJECT:** COMMENTS ON IMPACT ASSESSMENT AGENCY CANADA'S ENVIRONMENTAL ASSESSMENT REPORT FOR THE LMOC-LSMOC PROJECT

## ASSESSMENT REPORT EXCERPT

### Executive Summary

In reviewing the potential environmental effects of the Project, the Agency also considered factors such as effects of potential accidents and malfunctions, extreme and periodic weather events, and cumulative effects in conjunction with other past, present, and reasonably foreseeable projects or physical activities.

## FISHER RIVER CREE NATION COMMENTS

The cumulative effects assessments (CEA) are inadequate as noted by Fisher River Cree Nation (FRCN) numerous times. It is clear from the definition in the act and EIS guidelines that for any Valued Component (VC) that is assessed, the CEA must consider the past present and reasonably foreseeable future effects of other projects and activities regardless of the degree of potential effects of the Project alone. This has not been done by the Proponent. FRCN recommends that a condition of the federal authorization include a requirement for the Proponent to do a proper cumulative effects assessment in consultation with Chief and Council of FRCN.

## ASSESSMENT REPORT EXCERPT

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

- Indigenous peoples' current use of lands and resources for traditional purposes, including from loss or alteration of access, effects to the availability and quality of resources, and effects to quality of experience
- Indigenous peoples' physical and cultural heritage, including from effects to aspects of intangible cultural heritage, such as sense of place, spiritual connection to the land, and intergenerational knowledge transfer; and

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- 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.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN fully agrees with the Agency's conclusion that the Project is likely to cause direct and cumulative significant adverse environmental effects on the Indigenous peoples, including FRCN, in the categories described above.

FRCN recommends that a condition of environmental authorization, if granted, require that FRCN be reasonably compensated, in a form to be negotiated by Manitoba and FRCN, to offset cumulative adverse impacts.

#### **ASSESSMENT REPORT EXCERPT**

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

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN does not agree. The Project will definitely impact FRCN's socio-economic conditions. FRCN's resource tourism business license covers a large part of the Project area, and provides important and valuable resources for FRCN's big game, waterfowl and upland game bird outfitting services.

FRCN recommends that the federal environment authorization, if approved, include a condition that FRCN be compensated for the loss or impact on resources and business operations in FRCN's licensed resource tourism operating areas.

#### **ASSESSMENT REPORT EXCERPT**

The Agency identified key mitigation measures, monitoring, and follow-up programs that would prevent or reduce potential adverse environmental effects, verify the accuracy of the environmental assessment predictions, and verify the effectiveness of mitigation measures. The Agency, in selecting key mitigation measures, monitoring, and follow-up programs, was informed by the Proponent's commitments, advice from federal authorities and provincial ministries, and comments from Indigenous groups and the public.

Key mitigation, monitoring and follow-up measures include: minimizing atmospheric emissions and noise; monitoring and management of groundwater and surface water quantity and quality

changes; managing sediment concentrations in potentially affected waterbodies by implementing erosion and sediment control measures; implementing a fish rescue plan and monitoring effects to fish and fish habitat; developing appropriate measures to offset fish habitat losses; carrying out project activities in a manner that protects and avoids harming, killing, or disturbing migratory birds, nests, eggs, or habitat that would directly affect migratory birds; continual engagement with Indigenous groups, including with respect to monitoring and access management; and development of an Environmental Advisory Committee (EAC) to support ongoing engagement and information sharing.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN is not confident that the key mitigation, monitoring and follow-up measures with respect to monitoring and management of groundwater and surface water quantity and quality changes, will be effective. There are far too many unknowns with respect to potential Project impacts on groundwater, surface water and wetlands.

The loss of moose habitat and mitigation plans to protect marten and fisher during nesting periods is not addressed. It should be included unless it is addressed in other sections of the report.

FRCN remains concerned with the use of the term “engagement” in place of “Consultation”.

FRCN recommends that the Agency revise the above section, and others, to ensure that the duty of the Crown to consult and where appropriate, accommodate, remains clear. FRCN further recommends that the federal environment authorization, if approved, include a condition that a) the Crown consultation with FRCN be completed in accordance with the terms of the Manitoba – Fisher River Cree Nation protocol and Manitoba – Fisher River Consultation agreements prior to any construction work beginning; or b) alternatively, that the Crown consultation with FRCN be completed in accordance with the terms of the Manitoba – Fisher River Cree Nation protocol and Manitoba – Fisher River Consultation agreements within a reasonable time frame agreed to by Chief and Council.

#### **ASSESSMENT REPORT EXCERPT**

##### **1.2.3 Methodology and Approach**

The application of mitigation measures was considered by the Proponent in its analysis and the predicted residual environmental effects were characterized based on the following assessment criteria: direction, magnitude, geographic extent, frequency, duration, timing, reversibility, and ecological/socio-economic context.

The Agency reviewed various sources of information in conducting its analysis, including:

the EIS, EIS Summary, and EIS supplemental filings; Proponent responses to Agency information requests; advice from federal and provincial authorities, and the Technical Advisory Group; advice and comments from potentially affected Indigenous groups; and comments received from the public. The Agency established a Technical Advisory Group (TAG) comprised of representatives of federal and provincial authorities, municipalities, Indigenous groups, and other invited entities<sup>4</sup>

### **FISHER RIVER CREE NATION COMMENTS**

The Proponent has provided volumes of information related to the Project, conducted in-depth assessments of potential environmental impacts on the selected Valued Components, and convened a variety of multi-party meetings, including regular update meetings and Environmental Advisory Committee meetings. The information and opportunities for commenting that have been provided to date have helped immensely in the Crown-Indigenous Consultation process. However, the information sharing, feedback opportunities provided, and multi-party meetings that have been held, do not absolve the Crown of its legal duty to enter into a meaningful consultation and accommodation process specifically with the Fisher River Cree Nation. Unfortunately, the Crown has, to date, not satisfied their obligations.

FRCN recommends that the federal environment authorization, if approved, include a condition that Manitoba complete a meaningful consultation and accommodation process with FRCN within a reasonable time frame acceptable to FRCN, and to be completed prior to the start of construction.

### **ASSESSMENT REPORT EXCERPT**

#### **2.3.1 Construction Phase: Site Preparation, Construction, and Commissioning**

The construction phase is expected to occur over a six-year period, with site preparation and construction lasting up to four years followed by a two year period for vegetation establishment and commissioning of the channels. Commissioning would occur over two to three months outside of the fish spawning period.

Site preparation of the PDA and sites selected for temporary construction camps and staging areas would include transporting equipment, machinery, vehicles, construction materials and supplies; preparation of equipment marshalling areas, construction camps, and staging areas; establishing traffic management; and the relocation or removal of any infrastructure (e.g., fences, buildings) and waste piles. Clearing of vegetation and grubbing of the ROW would occur outside of breeding bird nesting periods and prior to excavating the outlet channels.

#### FISHER RIVER CREE NATION COMMENTS

FRCN notes that nesting periods and habitat for important fur-bearers such as marten and fisher have not been included in the above section

#### ASSESSMENT REPORT EXCERPT

### 3.2 Alternative Means of Carrying out the Project

CEAA 2012 requires that environmental assessments of designated projects take into account alternative means of carrying out the designated project that are technically and economically feasible, and the environmental effects of any such alternative means.

The Proponent assessed alternative means of carrying out the following aspects of the Project:

#### FISHER RIVER CREE NATION COMMENTS

FRCN wasn't consulted on the alternative means of carrying out the Project.

#### ASSESSMENT REPORT EXCERPT

Fisher River Cree Nation, Hollow Water First Nation, the Interlake Reserves Tribal Council, Little Saskatchewan First Nation, the Manitoba Métis Federation, Mispawistik Cree Nation, Norway House Cree Nation, Pinaymootang First Nation, Sagkeeng Anicinabe First Nation, Sandy Bay Ojibway First Nation, and York Factory First Nation expressed concern that while the Project would reduce flooding, it would not eliminate flooding for impacted communities.

#### FISHER RIVER CREE NATION COMMENTS

The Project will not prevent flooding; it will only reduce the level of floodwaters. The Proponent has not explained what the level of floodwaters would be under a 2011 flood scenario. If communities and properties are still going to be flooded by two feet of water, then in FRCN's opinion the Project will not serve its intended purpose and should be cancelled.

#### ASSESSMENT REPORT EXCERPT

### 3.2.3 Agency Analysis and Conclusions

The Agency recognizes that concerns remain regarding the routing of the Project. The Agency is of the view that the Proponent considered the environmental, socio-economic, and technically feasible alternative routes for the Project. Additionally, the Agency is of the view that the Project is designed to manage the design flood volume; however, the Agency recognizes that outstanding concerns may remain regarding residual flooding on reserve lands.

The Agency recognizes that concerns have been raised about the need for an assessment of alternatives to the Project that may achieve the same purpose as the Project. The Agency has provided an analysis on alternative means of carrying out the Project, as alternatives to the Project are not considered under CEAA 2012.

The Agency is of the view that the Proponent considered the cost-effectiveness, technical feasibility, reliability, potential environmental effects, and feedback from federal authorities, the public, and Indigenous groups on the identified alternative means of carrying out the Project.

#### **FISHER RIVER CREE NATION COMMENTS**

The Proponent may have considered the cost-effectiveness etc. as mentioned in the above paragraph, but FRCN does not agree with their decision to proceed with the Project. It is definitely not cost-effective; it is not technically feasible since the Proponent had to modify the design and thus reduce its capacity to mitigate flooding; potential environmental effects are horrendous; and feedback from all of the groups mentioned have been negative.

The Agency has limited its analyses to the options presented by the Proponent for movement of water from Lake Manitoba to Lake Winnipeg. In FRCN's opinion, the alternatives that need to be seriously considered are alternatives to the Project itself, not just the different routings for movement of water from L. Manitoba to L. Winnipeg. Alternatives that should be considered include a combination of specific components of options in previous studies and assessments that considered creation and enhancement of wetlands, water retention reservoirs, dams, dykes, the Waterhen River water control works proposal, etc.

The assessments should also include the economic values of potential ecological goods and services that would be generated including the potential benefits to agriculture in drought prone areas, and other potential benefits to tourism and recreation.

The Manitoba Drought Management Strategy states "In southern regions of Alberta, Saskatchewan and Manitoba, multi-year droughts were observed in the 1890s, 1930s and 1980s. Almost every year, parts of Manitoba, most commonly in the western and south-western areas, are affected by drought. Ironically, many of these areas are also prone to significant flooding." Water retention works to keep flood waters in the western and south-western regions instead of funneling the water north to Lake St Martin could help to mitigate the existing drought situation.

#### **ASSESSMENT REPORT EXCERPT**

The Agency understands that the Proponent committed to ongoing engagement with Indigenous groups throughout the life of the Project, and the establishment of an Environmental Advisory Committee (EAC) to facilitate ongoing engagement with Indigenous groups regarding the Project, its potential effects, and follow-up and monitoring programs. Further details regarding the EAC are available in Chapter 7.4. The Agency is satisfied that the Proponent has sufficiently assessed the technically and economically feasible alternative means of carrying out the Project and their environmental effects under CEAA 2012.

#### FISHER RIVER CREE NATION COMMENTS

FRCN wasn't consulted on the alternatives. In any event, FRCN does not agree that the Proponent has sufficiently assessed the technically and economically feasible alternative means of carrying out the Project's purpose, which is to prevent or reduce flooding of lands and properties around Lake Manitoba and Lake St Martin. See comments on previous page.

#### ASSESSMENT REPORT EXCERPT

### 6.1 Surface Water

The Project could cause residual effects to surface water through changes to: regional flow and water levels; regional and/or local fluvial and shoreline geomorphology; local drainage areas and local drainage patterns; surface water quality; and regional and local ice processes. The Agency is of the view that the Proponent has adequately considered potential effects of the Project on surface water and that the Proponent's proposed mitigation measures, monitoring and follow up programs are appropriate to address potential project effects to surface water.

#### FISHER RIVER CREE NATION COMMENTS

FRCN is concerned that surface water studies and proposed mitigation measures have not adequately considered potential impacts on the Mantagao River watershed and potentially the Fisher River watershed and community. FRCN recommends that the conditions of federal authorization include a requirement for LIDAR topographical mapping of the Mantagao River watershed area east and northeast of LSMOC and including any part of the Fisher River watershed not previously mapped by LIDAR.

#### ASSESSMENT REPORT EXCERPT

### 6.1.3 Agency Analysis and Conclusion

Therefore, the Agency is of the opinion that the Project would result in residual adverse effects to fish and fish habitat (Chapter 7.1), migratory birds (Chapter 7.2), species at risk (Chapter 7.3) and current use of lands and resources for traditional purposes and physical and cultural heritage, and sites of significance (Chapter 7.4) due to changes in drainage areas and patterns.

The Agency agrees with ECC Canada's recommendation that the Proponent implement additional monitoring to inform the volumes necessary should a rewatering system be considered; and continuously monitor flows in the outside drainage channel of the LSMOC during construction and for two years post construction to understand the surface water flows that will no longer reach the Big Buffalo Lake complex upon completion of the LSMOC.

The Agency is of the view that technically and economically feasible measures are available to collect and remove sediment and reduce adverse effects to surface water quality, fish and fish habitat, current use, and health and socio-economic conditions. The Agency therefore requires additional mitigation measures to be implemented to achieve the collection and removal of sediment prior to commissioning, using a method that results in the minimum residual fine sediment being retained in-channel that would be mobilized into receiving waterbodies during commissioning.

The Agency highlights the importance of engagement with Indigenous groups regarding the development and implementation of mitigation measures, monitoring, and follow-up programs with respect to surface water quality and quantity, including the establishment of water quality benchmarks and adaptive management triggers, to ensure that Indigenous land and resource use practices and Indigenous Knowledge are adequately considered.

The Agency is of the view that potential project effects to surface water quality and quantity would be adequately addressed, taking into account the implementation of the mitigation, follow-up, and monitoring measures proposed by the Proponent and the key mitigation measures described below.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN agrees with the Agency's recommendations regarding consultation, monitoring and follow-up programs. The LIDAR topographical mapping recommended by FRCN is required in order that proper monitoring can occur. FRCN also recommends that the Proponent develop potential mitigation measures in the event that the mapping and assessments show the potential for the Project to contribute flood waters into the Mantagao River and Fisher River watersheds.

#### **ASSESSMENT REPORT EXCERPTS**

##### **Key Mitigation Measures and Monitoring to Avoid Significant Adverse Effects and Follow Up Program Requirements**

The Agency considers the mitigation measures, monitoring, and follow-up programs to be necessary to ensure that there are no significant adverse environmental effects to fish and fish habitat, migratory birds, species at risk, and Indigenous peoples, as a result of project effects to surface water quality and quantity.



**Follow-up and Monitoring** Prior to construction, a follow-up program will be developed, in consultation with Indigenous groups, Environment and Climate Change Canada, and other relevant authorities, which will provide a framework for monitoring potential changes in surface water quantity during construction and operation of the Project; to verify the effectiveness of mitigation measures; and to inform the need for contingency measures to be implemented to mitigate effects to surface water quantity.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN agrees with the Agency's conclusions and recommendations regarding key mitigation measures, follow-up and monitoring of surface water quantity and quality.

#### **ASSESSMENT REPORT EXCERPTS**

##### **Groundwater and Hydrogeology**

The Project may cause residual effects to groundwater and hydrogeology through changes in: groundwater quantity, levels and flow paths; and groundwater quality.

The Agency is of the view that the Proponent adequately considered potential effects of the Project on groundwater quantity and quality and that the Proponent's proposed mitigation measures, monitoring and follow-up programs are appropriate to address potential project effects to groundwater. The Agency's conclusions are based on an analysis of the Proponent's assessment, including the Proponent's proposed mitigation, monitoring, and follow-up measures, and the views expressed by federal authorities, Indigenous groups, the public, and members of the TAG.

#### **FISHER RIVER CREE NATION COMMENTS**

For reasons expressed below and elsewhere, FRCN does not agree that the Proponent has adequately considered potential effects of the Project on groundwater quantity and quality and that the Proponent's proposed mitigation measures, monitoring and follow-up programs are adequate to address potential project effects to groundwater.

FRCN is concerned that impacts on groundwater quality can be long term and irreversible, and therefore there are no effective mitigation measures that can be implemented after the fact. The only acceptable mitigation measure would be to ensure, prior to construction and with 100% certainty, that no contamination of groundwater will occur.

#### **ASSESSMENT REPORT EXCERPTS**

##### **6.2.1 Proponent's Assessment of Environmental Effects - Changes in groundwater quantity, levels and flow paths**

Potential effects to groundwater quantity, levels and flow paths from the Project may result from groundwater depressurization activities, groundwater seepage into excavations, and the potential for basal heave.

#### **FISHER RIVER CREE NATION COMMENTS**

One of the conditions of the federal environmental authorization recommended by the Agency is that the aquifer water levels and quality be monitored and mitigation measures implemented whenever water levels or quality falls below set standards. FRCN but is not convinced that the proposed mitigation measures have been adequately tested for effectiveness, or that they can be implemented in a timely enough manner to prevent impacts on aquifer water levels and quality. Again, FRCN wishes to emphasize that groundwater quality and quantity should not be affected, and the only way to accomplish this is through a complete redesign of the Project, or cancellation of this Project and development of an alternative flood mitigation project that may consider a combination of water control works previously suggested by FRCN.

#### **ASSESSMENT REPORT EXCERPTS**

Active depressurization could result in changes to the bedrock aquifer groundwater quantity, levels and discharge to surface water features. The Proponent characterized the residual effects during construction as adverse, short-term, moderate in magnitude, infrequent, reversible, and occurring within the LAA with effects beyond **seasonal variation** occurring within five kilometres of the LMOC.

#### **FISHER RIVER CREE NATION COMMENTS**

The term “seasonal variation” is frequently used in the Proponent’s reports to support claims of no Project impacts on a Valued Component. Without context however, the term is meaningless. For example, seasonal variation during a period of several years of severe drought conditions would likely be far different than a scenario in which the region experienced extreme wet years.

#### **ASSESSMENT REPORT EXCERPTS**

##### **6.2.3 Agency Analysis and Conclusion**

The Agency is of the view that the Proponent adequately characterized potential project effects to groundwater quantity and quality. The Agency acknowledges that the Project may result in changes to groundwater quantity and quality during construction and operation of the Project, which may affect surface water, vegetation and wetlands, and by extension wildlife, migratory birds, fish and fish habitat, current and traditional land use, and Indigenous peoples’ health within the LAA.

The Agency agrees with the Proponent that the Project would not affect long-term aquifer sustainability, but that the Project would change the discharge location from lakes, wetlands, and springs to the outlet channels.

The Agency recognizes that there are concerns from Indigenous groups and the public with regards to the long-term sustainability of the bedrock aquifer. The Agency highlights the importance of follow-up and monitoring to verify the results of the environmental assessment, including model predictions; verify the effectiveness of mitigation measures; and inform the need for contingency measures.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN is concerned that the assessment has only looked at long-term aquifer sustainability in terms of always containing some water, and not the volume and level of water that it currently holds. The status quo of the aquifer will not be sustained long-term since it will be subject to significant depressurization and dewatering, the effects of which will be long term.

#### **ASSESSMENT REPORT EXCERPTS**

The Agency agrees with Natural Resources Canada, Indigenous groups, and the RM of Grahamdale that uncertainty remains regarding the effects to surface water features along Birch Creek. The Agency recognizes that a spring site east of Reed Lake would cease due to the construction and operation of the Project with a small effect on the flow to Birch Creek. Further, the Agency understands that the effectiveness of the overlying till unit to adequately mitigate effects of depressurization needs to be confirmed with monitoring.

The Agency recognizes that concerns were raised by Indigenous groups regarding uncertainty and lack of confidence in the groundwater modelling. The Agency agrees with Natural Resources Canada that trigger mechanisms to re-evaluate the modelling assessment need to be developed prior to construction to address this concern.

The Agency notes that changes to surface water features due to altered groundwater flow may result in effects to fish and fish habitat (Chapter 7.1).

The Agency understands that there is a risk of basal heave, particularly during construction of the Project and that uncertainty remains regarding the depressurization locations and methods. However, the Proponent has committed to manage the risk of basal heave through construction sequencing and promoting interconnections in a concentrated, central channel area, should they occur. Additional groundwater discharge from basal heave or a compromised till unit to the outlet channels may alter surface water quality and exacerbate low dissolved oxygen conditions which may negatively affect fish in the outlet channels, particularly in the LSMOC (discussed in Chapter 6.1 and Chapter 7.1).

The Agency recognizes that there are concerns regarding the use of reverse drains and passive depressurization wells. Agency highlights the importance of follow-up and monitoring to verify the results of the environmental assessment, including model predictions; verify the effectiveness of mitigation measures; and inform the need for contingency measures.

The Agency acknowledges that groundwater discharge to artesian springs may be reduced or cease due to the construction and operation of the Project.

..... the Agency agrees with Natural Resources Canada that uncertainty remains regarding the quantity of groundwater discharging to the north of the LSMOC, and the overall effect of the LSMOC on the water balance within this region including Buffalo Creek, wetlands and groundwater seeps. The Agency is of the view that uncertainty remains on changes to groundwater due to the LSMOC, and therefore effects to fish and fish habitat (Chapter 7.1), migratory birds (Chapter 7.2), species at risk (Chapter 7.3), and current use of lands (Chapter 7.4).

The Agency recommends that the Proponent implement additional monitoring for both groundwater drawdown and flow monitoring and additional mitigation measures informed by consultation and input from Indigenous groups to mitigate effects to the Big Buffalo Lake and the Buffalo Creek complex.

The Agency understands that uncertainty remains regarding the location of quarry activities. The Agency agrees with Natural Resources Canada that new quarries requiring groundwater depressurization may result in cumulative groundwater drawdown with the Project. Groundwater drawdown beyond EA predictions may result in changes to fish and fish habitat (Chapter 7.1). The Agency is of the view that new quarries requiring groundwater depressurization shall not be developed where overlap exists between groundwater depressurization drawdown of the Project and new quarry sites.

The Agency agrees with Natural Resources Canada and the Proponent that the upward gradient in the LMOC LAA would generally limit groundwater under direct influence. The Agency agrees with Natural Resources Canada that, in areas where the baseline groundwater elevation is near the base of the till unit and may experience downward gradients seasonally, Project depressurization activities may result in a permanent downward gradient condition.

The Agency is of the view that potential effects of the Project to groundwater quantity and quality would be adequately addressed, taking into account the implementation of the mitigation, follow-up, and monitoring measures proposed by the Proponent and the key mitigation measures described below.

## **Key Mitigation Measures and Monitoring to Avoid Significant Effects and Follow-Up Program Requirements**

The following key mitigation measures are based on mitigation measures, monitoring, and follow-up programs proposed by the Proponent, expert advice from federal authorities, and comments received from Indigenous groups.

### **Mitigation Measures**

Install an active and passive depressurization system in the PDA to reduce the groundwater pressure during construction and operation to manage the risk of basal heave. Develop a depressurization system, including depressurization wells, sump pumps, reverse drains, and other equivalent technology, in consultation with relevant federal authorities prior to construction.

Maintain groundwater levels above the top of the bedrock aquifer at a minimum. If groundwater levels are below the top of the bedrock aquifer in baseline conditions, the Proponent shall maintain groundwater levels within baseline conditions. Select the best methodology for building project components on the bedrock aquifer in consultation with relevant authorities.

No new quarries shall be used or developed below the water table where depressurization drawdown overlaps with the depressurization zone of the LMOC and LSMOC.

### **Changes in groundwater quality**

The Proponent will add a filter material to any site of direct or potential connection between the bedrock aquifer and surface water environments to avoid impacts to groundwater quality.

Maintain bedrock aquifer groundwater quality within baseline conditions. The section of exposed bedrock in the EOC Reach 3 integrated into the LSMOC would be managed in a way to prevent changes to groundwater quality as it relates to Indigenous peoples' health.

### **Follow-up and monitoring**

Prior to construction, a follow-up program will be developed, in consultation with Indigenous groups and relevant federal and provincial authorities to provide a framework for monitoring potential changes in groundwater quantity and quality during construction and operation and verifying the effectiveness of mitigation measures implemented to protect groundwater resources as it relates to fish and fish habitat, the current use of lands and resources for traditional purposes, and Indigenous peoples' health. The groundwater monitoring results will also be used to verify the results of the environmental assessment, including model predictions, and inform the need for additional mitigation.

## FISHER RIVER CREE NATION COMMENTS

Similar to surface water concerns, FRCN is not confident that adequate assessment has been done regarding potential effects on groundwater aquifers east northeast of the project (Mantagao River and Fisher River watersheds. Despite MTI's explanations, after further review of available maps FRCN is not entirely convinced that groundwater in FRCN's region will not be affected.

The high land ("hydrological divide") east-northeast of the LSMOC is a groundwater recharge zone. Water from the high point will flow towards LSMOC but also towards Mantagao River watershed. Will the result of aquifer depressurization at the LSMOC result in a continued lowering of the water level in the recharge area until there is no longer upward pressure at LSMOC; i.e. when the piezometric pressure target level is reached at LSMOC.

If this is true, does that not mean that recharge water that would normally flow east-northeast would now flow toward LSMOC, until the water levels are the same on both the east and the west sides of the recharge area? If this is true, then that means the groundwater in FRCN's territory may be impacted.

The water quality concern stems from the fact that a fracture of the bedrock could result in contamination of groundwater. Also of concern is the decrease in the amount of water in the aquifer due to depressurizing or dewatering of the aquifer to prevent fracture of the bedrock. The question FRCN has asked but has not received a full explanation for, is why not make the channel wider so it does not have to go as deep – this would eliminate potential fracturing of bedrock, reduce or eliminate the need to depressurize the aquifer, and should eliminate many environmental concerns related to surface water and groundwater flow and quality, wetland impacts, etc.

## ASSESSMENT REPORT EXCERPTS

### 6.2 Terrestrial Landscape

The Agency is of the view that the Proponent adequately considered potential effects of the Project on the terrestrial landscape and that the Proponent's proposed mitigation measures, monitoring and follow-up programs are appropriate to address potential project effects to the terrestrial landscape.

## ASSESSMENT REPORT EXCERPTS

### Changes to Wildlife Habitat

The Proponent identified wildlife species of concern based on the potential for these species and their habitat to support the traditional and cultural practices of Indigenous groups (see Chapter 5.1 Biophysical Environment, Chapter 7.3 Species at Risk and Chapter 7.2 Migratory Birds). Project construction and operation would cause direct wildlife habitat loss or alteration and reduced habitat effectiveness due to removal of vegetation, changes to plant community composition, and sensory disturbance.

This could affect a species' ability to carry out basic life requirements such as breeding and overwintering and could result in altered daily and seasonal wildlife movements. The Proponent noted that approximately 267.5 hectares of potential large mammal and furbearer denning, or burrow habitat will be affected during winter clearing (September 1 – March 31) within the PDAs. As the LMOC and LSMOC ROWs would be cleared and revegetated with grassland species, the Project could indirectly result in a loss of suitable wildlife habitat; however, the Proponent indicated that the amount of wildlife habitat directly and indirectly affected would be relatively small (a total of 6.3 percent direct loss of habitat in the LAAs) compared to the availability of wildlife habitat remaining in the RAA.

The Proponent noted that for both LSMOC and LMOC, high flows during operation of the channels are anticipated to impede wildlife movement by deterring wildlife (including ungulates, semi-aquatic furbearers and amphibians) from entering the channels, and elevating mortality risk for furbearers and ungulates due to potential drowning and reduced escape cover.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN recommends that, if the Project receives federal environmental authorization, a condition be attached that requires the Proponent to create or enhance wildlife habitat for affected species such that there is no net loss of wildlife benefits.

#### **ASSESSMENT REPORT EXCERPTS**

##### **Changes in Wetland Area and Functions**

The Proponent indicated that vegetation clearing during construction was anticipated to result in the direct loss of wetlands within the PDAs. Indirect effects to wetlands may also occur from dewatering and water management activities during construction and operation that would alter surface or groundwater flow patterns and water levels, as noted in Chapter 6.1 Surface Water and Chapter 6.2 Groundwater.

This could result in the loss of or changes to wetland plant communities and functions (e.g., nutrient cycling, decomposition and carbon accumulation rates, water filtration and storage, wildlife habitat, and socio-economic functions such as hunting, trapping, and harvesting) through changes to water levels and nutrient and mineral inputs.

Dewatering in fens would result in decomposition of peat and lowering of the peat profile, reducing carbon sequestration functions.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN has expressed concerns in frequent submissions concerning wetland loss impacts. The Proponent has acknowledged that the understanding of the interconnection of wetlands with surface water, groundwater and fish habitat is limited. It follows, therefore, that there would also not be a clear understanding of the extent of potential impacts on wetlands nor on the related VCs of surface water, groundwater and fish habitat.

FRCN recommends that, if the Project receives federal environmental authorization, a condition be attached that requires the Proponent to work in collaboration with FRCN and other Indigenous communities and supportive stakeholders to implement permanent regulatory protection of all wetlands identified by FRCN et al in the Regional Assessment Area (RAA).

#### **ASSESSMENT REPORT EXCERPTS**

##### **Plant Species, Community and Landscape Diversity**

Fisher River Cree Nation expressed concerns regarding the potential contamination of waterbodies and adjacent wetlands from use of phosphorus, glyphosate, and other fertilizers and herbicides to control weeds or vegetation when re-establishing vegetation along the outlet channels after construction.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN remains strongly concerned and opposed to the proposed vegetation control plans referred to in the above paragraph. The chemicals will undoubtedly enter the surface water systems regardless of what the application instructions state. The proof is in the amount of nutrients, harmful and toxic chemicals that currently flow into our lakes and rivers from agricultural run-off. Obviously, the practice of ignoring application instructions on container labels is widespread.

FRCN recommends that, if the Project receives federal environmental authorization, a condition be attached that disallows any use of herbicides, pesticides or other harmful chemicals in revegetation activities, regardless of whether the chemicals can be safely used under specific conditions. Safe application instructions are generally ignored and in most cases not feasible.



## ASSESSMENT REPORT EXCERPTS

### Wildlife Habitat

Fisher River Cree Nation, Hollow Water First Nation, the Interlake Reserves Tribal Council, Sandy Bay Ojibway First Nation, and Sagkeeng Anicinabe First Nation remain concerned with clearing work planned between late January and late March that may destroy active dens or burrows or disrupt nesting birds or other wildlife. They are concerned that the Proponent has not provided enough information about den sweeps that will be completed prior to construction activities. Indigenous groups requested that the Proponent ensure that active dens are identified and have relevant setback distances applied, with additional measures taken to prevent or minimize mortality of culturally important large mammals and furbearers that den or burrow and are vulnerable to vegetation clearing and ground disturbance activities.

### FISHER RIVER CREE NATION COMMENTS

FRCN remains concerned with the minimal attention given to dens and nesting periods in comparison to that given to the identified species at risk. FRCN's concern is that the cumulative effect of unmitigated impacts on fisher and marten habitat and habits, for example, could eventually result in those species becoming "at risk" as has happened in other jurisdictions.

FRCN recommends that, if the Project receives federal environmental authorization, a condition be attached that requires the proponent to undertake much more effective programs to eliminate or offset impacts on fisher, marten, lynx, and other wildlife species; both fur-bearers and big game animals.

### Wetlands

Black River First Nation, Dauphin River First Nation, Fisher River Cree Nation, Hollow Water First Nation, Little Saskatchewan First Nation, Norway House Cree, Poplar River First Nation, Pimicikamak Okimawin, Pinaymootang First Nation, and Lake St. Martin First Nation requested the Proponent include more details regarding proposed wetland compensation and offsetting, how habitat function will be considered, and steps taken to developing enhancement and restoration plans. Ephemeral and temporary wetlands should be fully compensated on treaty and traditional First Nation lands. Dauphin River First Nation, Fisher River Cree Nation, Lake St. Martin First Nation, Peguis First Nation, the Manitoba Métis Federation, and Tataskweyak Cree Nation noted concerns about effects to wetlands and wetland-dependent species of cultural importance.

### FISHER RIVER CREE NATION COMMENTS

FRCN's concerns remain as stated. FRCN recommends a condition that all impacted wetlands, including: marshes, swamps, peat bogs and fens, Classes 3, 4 and 5 wetlands, and Classes 1 and 2 (ephemeral and temporary) wetlands, as described as in the Water Rights Act and Regulation, will be fully compensated, or offset through appropriate land designations that provide permanent protection, creation of new wetlands or enhancement of existing wetlands, and that all offsetting and compensation be implemented in a timely fashion.

## **ASSESSMENT REPORT EXCERPTS**

### **6.3.3 Agency Analysis and Conclusions**

The Agency is of the view that the Proponent adequately characterized potential project effects to the terrestrial landscape. The Agency recognizes that the Project would result in the loss of terrestrial habitat, including the permanent loss or alteration of wetlands and wetland functions, and that these changes to terrestrial habitat and wetlands may affect migratory birds, species at risk, and species of importance to Indigenous groups.

The Agency understands that effects to terrestrial vegetation and wetlands would be partially mitigated through revegetation and wetland offsetting (the Proponent has made offsetting commitments for the loss of 239 hectares of mineral wetlands and 769 hectares of peatlands directly affected by the Project).

The Agency recognizes that uncertainty remains regarding potential effects to vegetation and wetland areas of importance to Indigenous groups. The direct loss of wetland areas and drawdown of the water table in wetland areas surrounding the Project will create potential effects for current use by Indigenous groups, including access to and use of wetland plant species and wetland hunting, trapping and fishing areas, as well as effects to species of importance to Indigenous groups such as moose, beaver and wetland-dependent plant species. Further information is provided in Chapter 7.4.1 Current Use of Lands for Traditional Purposes.

The Agency notes that the Proponent is committed to adaptive management protocols, implementing the Revegetation Management Plan and the Wetland Monitoring Plan to assess potential Project effects to wetlands adjacent to the PDA (within 100 to 200 metres).

The Agency recommends that the Proponent engage with Indigenous groups prior to construction to identify the location of culturally sensitive wetland and vegetation areas that may be affected by the Project, including the location of plant species of traditional and cultural importance within or near the PDA and LAA, \ to collaboratively develop mitigation measures.

As such, there is uncertainty surrounding the efficacy of proposed mitigations or key mitigation measures that could be applied to reduce or avoid Project effects to valued components.

Further, the Agency is of the view that there is uncertainty about the overall effects to vegetation, wetland functions, and wildlife habitat and the effects migratory birds (including migratory birds species at risk) and to species at risk (that are not migratory birds) as described in Sections 7.2 and 7.3, respectively.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN recognizes that in any major project there may be impacts that were not considered or exceed what were considered in the environmental assessments and mitigation plans, and that adaptive management protocols are necessary to address these situations. However, there are limits to what can be controlled by adaptive management. For example, as the Agency has stated in the paragraph above, there is uncertainty about the overall effects of the Project on a wide range of valued components.

FRCN is concerned that there is no feasible adaptive management measure that can be implemented in certain circumstances, and therefore follow-up and monitoring will only highlight the problem, not resolve it. FRCN recommends that a condition of any environmental approval be a requirement to develop effective contingency mitigation plans prior to beginning construction of the Project, and if residual effects remain significant after all mitigation options are exhausted, that the environmental authorization application be rejected.

#### **ASSESSMENT REPORT EXCERPTS**

The Agency is of the view that potential project effects to the terrestrial landscape would be adequately addressed, taking into account the implementation of the mitigation, follow-up, and monitoring measures proposed by the Proponent and the key mitigation measures described below.

The Proponent will undertake, in consultation with Indigenous groups and relevant authorities, revegetation of areas disturbed by project activities. Conduct seeding and planting of native trees and shrubs for revegetation purposes, to reduce the establishment of weed species, restore native and culturally important species assemblages, and reduce erosion of exposed soils. Plant and seed areas immediately upon completion of a section of the outlet channel to maximize potential for growth and establishment of vegetative cover.

- Determine in consultation with Indigenous groups, prior to construction, the appropriate seed mixes, native shrubs and plant seedlings to use during revegetation, including:
  - species of value to moose and other mammals of interest to Indigenous groups, as identified by Indigenous groups;

- species of interest to Indigenous groups for traditional and medicinal use as per discussions with Indigenous groups.
- Ensure safe movement of wildlife across and through outlet channels and spoil piles as indicated by the restricted activity periods in Appendix D Species at Risk, Migratory Birds, and Species of Cultural Importance Setbacks and Mitigation Measures by:
  - Installing and maintaining wildlife crossing structures for ungulates over the outlet channels at locations identified in consultation with Indigenous groups.
  - Designing and constructing the outlet channels in a manner that allows ungulates not using the wildlife crossing structures to cross safely.
  - Installing and maintaining spoil pile breaks for ungulates, semi-aquatic furbearers and the northern leopard frog at locations identified in consultation with Indigenous groups.
  - Maintaining the slopes of spoil piles at a gradient that allows ungulates, semi-aquatic furbearers and northern leopard frog to cross them safely.

#### FISHER RIVER CREE NATION COMMENTS

FRCN supports the above mitigation measures for wildlife, and agrees that many of the potential project effects to the terrestrial landscape would be adequately addressed. However, FRCN does not agree that all project effects to the terrestrial landscape will be addressed by the planned mitigation, follow-up and monitoring programs committed to by the proponent. Loss of wildlife habitat, other than wetlands, has not been compensated for or offset.

#### ASSESSMENT REPORT EXCERPTS

##### 7.1 Fish and Fish Habitat

The Project could cause residual effects to fish and fish habitat, as defined in the *Fisheries Act*, and listed aquatic species at risk, through permanent alteration or destruction of fish habitat, change in fish passage, and effects to fish health, growth and survival.

The Agency is of the view that the Project is not likely to cause significant adverse effects to fish and fish habitat, after taking into account the implementation of key mitigation measures, monitoring, and follow-up programs.

#### FISHER RIVER CREE NATION COMMENTS

FRCN agrees in principle with the Agency's assessment, provided key mitigation measures are implemented in a timely fashion. However, due to the accepted uncertainty surrounding potential impacts to the inter-connected ecosystem of wetlands, surface water, groundwater, fish habitat and wildlife habitat, FRCN remains concerned with any potential impact on fish and fish habitat.

## ASSESSMENT REPORT EXCERPTS

### Proponent Conclusions

The Proponent noted that the Project would alter stream flows and lake levels to alleviate flooding of communities along Lake Manitoba and Lake St. Martin and, therefore, cannot be built or operated without negative effects to fish and fish habitat. However, the Proponent predicted that the potential negative effects of the Project on fish and fish habitat could be eliminated or reduced to a level that substantially reduces risks to the long-term sustainability and production of focal fish populations in the LAA and RAA, following the implementation of mitigation measures. All residual effects are expected to be negligible or low in magnitude, but medium-term to long-term in duration because they are likely to occur each time the WCSs are opened. The Proponent noted that fish passage will be altered, but the Project is not expected to measurably affect critical movements (e.g., lake whitefish spawning movements to and from Dauphin Lake) or substantially increase the risk of AIS dispersal. Although the LSMOC may cause some low level of fish and fish egg mortality (e.g., from stranding, entrainment), the risk and potential magnitude have been limited through Project design (e.g., deep pools) and how it will be operated (e.g., provision of year-round baseflows).

The mitigation, monitoring, and follow-up measures the Agency views as key for preventing significant adverse effects to fish and fish habitat are described in Section 7.1.3 of this Chapter

## FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's views, however, the key mitigation, monitoring, follow-up and offsetting measures must be implemented in a timely fashion. FRCN notes that offsets for fish HADDs that resulted from the Emergency Channel construction still have not been offset 13 years after the fact.

## ASSESSMENT REPORT EXCERPTS

### 7.1.3 Agency Analysis and Conclusion

#### Permanent Alteration or Destruction of Fish and Fish Habitat

##### Conclusions

The Agency is of the view that the Project is not likely to cause significant adverse effects on fish habitat and fish populations. The Agency acknowledges that the adverse effects to fish habitat, fish passage, and fish mortality and health would be reduced following the implementation of mitigation measures, monitoring, and follow-up programs. The Proponent has identified the creation of additional habitat and fish stocking as contingencies.

The Agency emphasizes the importance of monitoring measures and follow-up programs to evaluate the accuracy of the predictions related to fish habitat, fish passage and fish mortality and health, and to determine the effectiveness of mitigation measures to minimize adverse effects.

#### FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's views, however, the key mitigation, monitoring, follow-up and offsetting measures must be implemented in a timely fashion. FRCN notes that offsets for fish HADDs that resulted from the Emergency Channel construction still have not been offset 13 years after the fact.

FRCN also notes that at the present time, no fish habitat offsets have been confirmed by the Proponent. FRCN submitted proposals over one or two years ago at the request of the Proponent, but to date has received no response. Confirmation of fish offset projects before the start of construction should be a condition of environmental authorization, if given by the Minister.

#### ASSESSMENT REPORT EXCERPTS

##### 7.2 Migratory Birds

The Project could cause residual adverse effects to birds and their eggs, nests, and habitat, including migratory birds, as defined in the *Migratory Birds Convention Act, 1994*, and bird species at risk listed under Schedule 1 of SARA or assessed as Endangered, Threatened, or of Special Concern by COSEWIC, through habitat loss or alteration, and changes in bird mortality risk.

The Agency is of the view that the Project is not likely to cause significant adverse effects to migratory birds or bird species at risk, after taking into account the implementation of proposed key mitigation measures, monitoring, and follow-up programs.

#### FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's views.

#### ASSESSMENT REPORT EXCERPTS

##### 7.3 Species at Risk

Subsection 79(2) of the SARA requires the Agency to identify any adverse effects of the Project on wildlife species listed in Schedule 1 and associated critical habitat. The Agency must ensure that measures are taken to avoid or lessen those effects and to monitor them, and measures must be consistent with any applicable recovery strategy and action plans.

The Agency is of the view that the Proponent adequately considered potential project effects to species at risk and that the Proponent's proposed mitigation, monitoring and follow-up measures and key mitigation measures identified by the Agency are appropriate to address potential project effects to species at risk.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN agrees with the Agency's conclusions.

#### **ASSESSMENT REPORT EXCERPTS**

### **7.4 Indigenous Peoples - Current Use of Lands and Resources for Traditional Purposes, Physical and Cultural Heritage, and Sites of Significance**

The Agency is of the view that the Project is likely to cause could cause significant adverse effects to Indigenous peoples' current use of lands and resources for traditional purposes, physical and cultural heritage, and any structure, site, or thing that is of historical, archaeological, paleontological, or architectural significance (sites of significance).

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN agrees with the Agency's conclusions. FRCN requests fair compensation, in a form to be discussed by FRCN and the Crown, for impacts to their current use of lands and resources.

#### **ASSESSMENT REPORT EXCERPTS**

### **7.4.1.3 Agency Analysis and Conclusions for Current Use**

The Agency is of the view that the Project's residual adverse effects to access for current use would likely be high in magnitude, irreversible, and long-term. The Agency acknowledges that the Project would result in the direct loss of important trails and access routes identified by Indigenous groups that support navigation to and through current use areas. The Agency notes the Project would result in limitations on the ability to undertake current use activities through changes to groundwater and surface water, including the risk of basal heave (that is, a fracture in the till unit that results in uncontrollable groundwater discharge) and the modification of water levels resulting in changes to shoreline access to rivers and lakes. The Agency therefore recommends additional mitigation measures, follow-up, and monitoring programs as described in Chapter 6.1 (Surface Water) and Chapter 6.2 (Groundwater).

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN agrees with the Agency's conclusions. FRCN requests fair compensation, in a form to be discussed by FRCN and the Crown, for impacts to their current use of lands and resources.

## ASSESSMENT REPORT EXCERPTS

### Availability and Quality of Resources for Current Use

The Agency is of the view that the Project's adverse residual effects to the availability and quality of resources for current use would likely be high in magnitude and long-term due to compounding effects to species of cultural importance and their habitat, including plants, wildlife, and fish. The Agency notes that some effects may be reversible in the long-term should areas be successfully revegetated and restored to conditions suitable for cultural practices to resume. However, altered behaviours of wildlife and Indigenous peoples due to the disturbances will likely not be able to return to baseline conditions and would be irreversible.

The Agency acknowledges that Indigenous groups identified moose as a species of particular importance. Due to their critically low populations, moose may be affected to a greater degree by the Project. While the Proponent does not expect the Project to threaten the viability of moose in the RAA, the loss of moose habitat and changes to moose behaviour and movement could adversely affect the ability of Indigenous groups to harvest moose in preferred locations and require significant effort to continue practicing in the same way as without the Project.

## FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's assessments and conclusions, but FRCN is of the view that although the Project may not threaten the viability of moose in the RAA, it will affect the numbers, movements, browsing locations and calving grounds of moose in the PDA and LAA.

FRCN is also of the view that although the Project may not threaten the viability of moose in the RAA, the loss of moose habitat will affect the total carrying capacity of the RAA. The moose habitat loss should require offsetting as previously recommended by FRCN, and this should be a condition of environmental authorization if granted.

## ASSESSMENT REPORT EXCERPTS

### Overall Conclusions

The Agency accepts the views expressed by Indigenous groups that the context of historical flooding in the region must be considered in characterizing residual effects to current use. The Agency recognizes that multiple historic flooding events have already significantly altered the landscape and resources and modified Indigenous groups' use activities. Therefore, the Agency understands that the Project is located in a region of already disturbed and degraded ecological and socio-economic context.

The Agency anticipates high magnitude, generally irreversible, and long-term effects to Indigenous groups' access, availability and quality of experience.



After taking into account the implementation of key mitigation measures, monitoring, and follow-up programs, the Agency is of the view that the Project's adverse residual effects to access, availability and quality of resources, and quality of experience are likely to cause significant adverse environmental effects to Indigenous peoples' current use of lands and resources for traditional purposes.

The Proponent proposed the EAC as a means of continued engagement and involvement of Indigenous groups in monitoring of the potential adverse environmental effects as a result of the Project being carried out. However, the Agency notes that Indigenous groups have identified concerns about the limitations of this committee, including lack of transparency and accountability of decision making, limitations on Indigenous participation, and lack of support for involvement.

While the Agency understands that a Proponent-led advisory committee is important to ensure continued involvement of Indigenous groups in monitoring and providing a forum for discussions, the Agency proposes some additional key considerations as a part of this committee:

- 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.

In order to support ongoing engagement, address concerns regarding the EAC, and to ensure Indigenous groups are fully engaged in monitoring of potential effects of the Project, the Agency is recommending the creation of an Indigenous-led monitoring committee.

The Agency is of the view that additional key mitigation measures would be necessary to ensure that access, availability and quality of resources, and quality of experience are maintained to the extent possible in the LAA. These key measures are described below.

Some critical measures include: accommodating key traditional harvesting periods when determining project activities and schedules; avoiding use and disturbance of key harvesting/cultural areas; developing community-specific notification and engagement plans; providing training for Indigenous groups; ensuring adequate support is provided to ensure the participation of Indigenous groups in monitoring programs; and ongoing consultation with Indigenous groups throughout the life of the Project.

The Agency is of the view that continued Proponent-led consultation will be critical for validating the effects assessment, assessing the effectiveness of the mitigations proposed, and identifying issues and solutions to concerns as they arise throughout the life of the Project.

The Agency notes the importance of continued engagement with each Indigenous group separately, understanding that large forums do not always allow for community-specific concerns to be raised.

The Agency recognizes the importance of utilizing Indigenous Knowledge and information gathered from community-specific consultation to inform the need for additional mitigation and adaptive management measures for any unanticipated effects that arise. A follow-up program for effects to current use involving the continued gathering and consideration of Indigenous Knowledge and the incorporation of monitoring results is critical for verifying effects of the Project and for implementing adaptive management measures as required.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN agrees with the Agency's views, conclusions and recommendations. However, it must be made clear that the role of the environmental advisory committee (EAC) is technical, and must not encroach into the area of Crown consultation and accommodation. Additionally, FRCN's participation on the EAC should be discussed and agreed to by MB and FRCN as part of the consultation process. This discussion would include the number of FRCN representatives and their positions. No limits should be implemented without prior discussion with FRCN as MTI did with the EAC in 2023.

#### **ASSESSMENT REPORT EXCERPTS**

##### **7.4.2.3 Agency Analysis and Conclusions Physical Cultural Heritage and Sites of Significance**

The Agency understands some physical and cultural heritage resources and sites of significance, including the complex settlement site and Fairford Trail, would be permanently lost, altered, or inaccessible and that the requirements mandated under Manitoba's *The Heritage Resources Act* may not fully mitigate or protect these sites and resources, acknowledging that the Proponent and Indigenous groups may have different definitions of physical and cultural heritage and sites of significance.

The Agency notes that spiritual and cultural practices of Indigenous groups are often integrally linked to specific locations and surrounding landscape features, as well as structures, sites, and things of historical, archaeological, paleontological, or architectural significance.

The Agency recognizes that the loss or alteration of heritage resources and sites of significance has the potential to affect the transmission of traditional language, oral history, and teachings between generations of Indigenous peoples.

The Agency is of the view that additional key mitigation measures would be necessary to reduce adverse residual effects to physical and cultural heritage and to structures, sites, and things of historical, archaeological, paleontological, or architectural significance, as described in Section 7.4.3. These include: Indigenous monitoring of land disturbance activities, conducting ceremonies, developing an archaeological and heritage management plan in consultation with Indigenous groups, developing a procedure for the involvement of Indigenous groups in chance finds, discussing with Indigenous groups the opportunity to return artifacts of Indigenous origin to the communities, and developing additional mitigations for effects to culturally important resources, sites, and harvesting areas within the LAA and RAA.

### **Overall Conclusions**

The Agency is of the view that 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 given that:

- Indigenous groups have outstanding concerns regarding disturbance and salvage excavation of archaeological sites within the PDA (in particular the complex settlement site and Fairford Trail),
- there remains uncertainty regarding potential effects to physical and cultural heritage and sites of significance outside of the PDA, and
- effects to current use are anticipated to result in adverse effects to intangible aspects of cultural heritage.

After taking into account the implementation of key mitigation measures, monitoring, and follow-up programs, the Agency is of the view that the Project is likely to cause significant adverse environmental effects to Indigenous peoples' physical and cultural heritage and to structures, sites, and things of historical, archaeological, paleontological, or architectural significance.

### **FISHER RIVER CREE NATION COMMENTS**

FRCN agrees with the Agency's views, conclusions and recommendations.

## ASSESSMENT REPORT EXCERPTS

### 8.3 Cumulative Environmental Effects

The Agency focused its analysis on effects to fish and fish habitat; the current use of lands and resources for traditional purposes; physical and cultural heritage; structures, sites, and things of historical, archaeological, paleontological, or architectural significance; and the health and socio-economic conditions of Indigenous peoples.

The Agency is of the view that effects to the other valued components identified in this EA Report are unlikely to act in combination with the effects of other past, present, or reasonably foreseeable projects or activities given the negligible to low magnitude and limited geographic extent of the Project's anticipated residual effects to these components. The Agency therefore excluded other valued components from the analysis of cumulative effects.

The Agency is of the view that the Project, in combination with past, present and reasonably foreseeable projects and activities is likely to cause significant adverse cumulative environmental effects to current use of lands and resources for traditional purposes, on physical and cultural heritage, and on structures, sites, and things of historical, archaeological, paleontological, or architectural significance after taking into account the proposed key mitigation measures, monitoring, and follow-up programs.

### FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's conclusions regarding significant adverse cumulative environmental effects to current use of lands and resources for traditional purposes, on physical and cultural heritage, and on structures, sites, and things of historical, archaeological, paleontological, or architectural significance. However, FRCN is of the view that wildlife, moose in particular, should have been included in the cumulative effects analysis.

Aboriginal and Treaty Rights should be included in Cumulative Effects Assessments as the incremental impacts on most, if not all, of the Valued Components affected by the Project, in combination with other past, present, and reasonably foreseeable future actions and activities have a significant cumulative effect on FRCN.

## ASSESSMENT REPORT EXCERPTS

The Agency is of the view that the Project, in combination with past, present, and reasonably foreseeable projects and activities, is not likely to cause significant adverse cumulative environmental effects to fish and fish habitat, and the health and socio-economic conditions of Indigenous peoples and additional mitigation measures or follow-up programs are not required.

### FISHER RIVER CREE NATION COMMENTS

FRCN's view is that the degree of significance of effects on fish and fish habitat cannot be reasonably assessed due to the uncertainty surrounding impacts on surface water, groundwater and wetlands. FRCN agrees with the Agency's view that significant effects are not likely but wish to highlight the fact that there exists uncertainty, and that it is of utmost importance that the Proponent monitor and follow up with FRCN fishers at McBeth Point after commissioning of the LSMOC.

With respect to economic impacts, the loss of large portions of FRCN's Operating Areas, and to a large extent the noise and activities associated with construction, will adversely affect FRCN's outfitting business licensed under the Resource Tourism Act. This has not been assessed by the Proponent, and neither has the loss of timber harvest areas authorized for FRCN in their traditional territory notice area.

## ASSESSMENT REPORT EXCERPTS

### 8.3.1 Proponent's Assessment of Cumulative Environmental Effects

The Proponent identified past, present, and reasonably foreseeable projects and activities that could potentially interact with the Project, including infrastructure development, resource use, residential and community developments, recreation and tourism, agriculture, fishing, roads, quarries and borrow pits, and other land uses (Table 12 and Figure 14).

The Agency is of the view that the Project, in combination with past, present and reasonably foreseeable projects and activities is likely to cause significant adverse cumulative environmental effects to current use of lands and resources for traditional purposes, on physical and cultural heritage, and on structures, sites, and things of historical, archaeological, paleontological, or architectural significance after taking into account the proposed key mitigation measures, monitoring, and follow-up programs.

## FISHER RIVER CREE NATION COMMENTS

FRCN does not agree with the Proponent's interpretation and application of Cumulative Effects Assessments, and with the portion of the statement that reads "... potentially interact with the Project ...". It should read "... potentially affect a Valued Component ....."

One of many examples to support FRCN's position relates to the moose conservation closure in GHA 21 and 21A. That particular action infringed FRCN's treaty and aboriginal rights related to hunting and cultural practices. In the Project, Treaty and Aboriginal Rights is a Valued Component. Therefore, all potential impacts resulting from the Project must be considered together with potential or established effects on FRCN's treaty and aboriginal rights from past, present and reasonably foreseeable projects and activities.

“Activities” include government decisions, such as the moose hunting closure, night hunting regulation etc., not only physical activities or projects.

FRCN has identified in previous submissions a number of past, present, and reasonably foreseeable projects and activities that could potentially interact with VC’s affected by the Project. These have not been considered in the Cumulative Effects assessments and therefore it is FRCN’s opinion that the entire Cumulative Effects Assessments and conclusions are flawed and thus invalid.

#### **ASSESSMENT REPORT EXCERPTS**

##### **Cumulative Effects to the Current Use of Lands and Resources for Traditional Purposes, Physical and Cultural Heritage, and Sites of Significance**

The Proponent predicted that the magnitude of adverse cumulative effects would be low as it relates to the change in availability of lands and resources currently used for traditional purposes; medium for the change in access to lands and resources currently used for traditional purposes; and medium to high in changes to cultural and spiritual sites or areas. All residual cumulative effects to the current use of lands and resources for traditional purposes, physical and cultural heritage, and sites of significance would be long-term in duration, continuous in frequency, irreversible, and would occur within the RAA.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN doesn’t agree with the “low” cumulative assessment for change in availability of lands and resources for traditional purposes. FRCN does not agree with the Proponent’s practice of using the RAA to support “low impact” assessments: impacts may be very significant in the LAA or PDA.

#### **ASSESSMENT REPORT EXCERPTS**

**8.3.3 Agency Analysis and Conclusions** The Agency recognizes that Indigenous groups have raised significant concerns about cumulative effects to the lands and waters for which they live, utilize resources from, and obtain their livelihoods. The Agency acknowledges that increase development and the Province of Manitoba’s historic and continued management of water in the region has resulted in significant changes to Indigenous groups’ ability to continue practicing traditional and cultural use activities.

Given the significant extent of concerns raised and input shared by Indigenous groups, the Agency acknowledges that there is uncertainty in the Proponent’s conclusions related to cumulative effects.

The Agency is of the view that the Proponent did not adequately determine temporal boundaries for the cumulative effects assessment or adequately examine physical activities that have been and will be carried out. While the Project is intended on operating in perpetuity, the Proponent only included reasonably foreseeable physical activities that are anticipated to occur within a relatively short period of time (the Project construction phase or the first years in the Project operations). This contributes to uncertainty in understanding the potential significance of cumulative effects of the Project in combination with other past, present, and reasonably foreseeable projects and activities.

The LWR and non-provincial dykes located in the Project RAA were not included in the past or present physical activities. The replacement of the fish ladder at the FRWCS and maintenance and repairs of the Portage Diversion channel were included in the list of reasonably foreseeable future projects but were not assessed by the Proponent. In addition, the assessment did not explicitly examine past effects in the context of cumulative effects. Rather, the Proponent integrated the effects of past projects and activities into the baseline assessment. The Agency acknowledges that past projects and activities should be properly considered in the cumulative effects assessment to ensure that the potential for significant cumulative effects is understood.

The Agency is of the view that, after 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 identified in Table 12, the Project is likely to cause significant adverse cumulative environmental effects to Indigenous peoples' use of lands and resources for traditional purposes, physical and cultural heritage, and structures, sites, and things of historical, archaeological, paleontological, or architectural significance.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN strongly supports the Agency's conclusions.

In FRCN's opinion, a proponent should not be responsible for mitigation or compensation to offset "significant impacts" that may be determined by a CEA, if the proponent was not responsible for all of the incremental impacts that make up the cumulative impact. In this case however, the Proponent is an arm of government and it is the government that was, is and will be responsible for the past, present and reasonably foreseeable future actions and decisions. Therefore, the responsibility to fully mitigate or compensate for the cumulative adverse effects on FRCN's treaty and aboriginal rights and economic interests lies with the government (the Crown).

## ASSESSMENT REPORT EXCERPTS

The Agency is of the view that the key mitigation measures identified in Chapter 7.1 (Fish and Fish Habitat) of this draft EA Report, and additional measures to mitigate and offset effects to fish and fish habitat will be developed as part of the *Fisheries Act* authorization process for the Project will adequately minimize the Project's contributions to cumulative effects to fish and fish habitat, and therefore, cumulative interactions of project effects with effects of future projects and activities would not threaten the viability of fish and fish habitat in the RAA.

## FISHER RIVER CREE NATION COMMENTS

FRCN's opinion is that effects to fish and fish habitat may be minimized but if the effects are not eliminated, then there is a contribution to cumulative effects and therefore the cumulative effects must be fully assessed and quantified or adequately described. The incremental impacts on surface water, groundwater and wetlands, that affect fish or fish habitat must be considered cumulatively in conjunction with incremental effects of other past, present, reasonably foreseeable future actions and decisions affecting fish. In addition, the resulting cumulative effects on fish and fish habitat must be considered in the cumulative effects assessments on the Current Use of Lands and Resources for Traditional Purposes, and on the impacts on Aboriginal and Treaty Rights.

## ASSESSMENT REPORT EXCERPTS

## ASSESSMENT REPORT EXCERPTS

### 9 Impacts on Aboriginal and Treaty Rights

Members from Dauphin River First Nation, Ebb and Flow First Nation Lake St. Martin First Nation, Little Saskatchewan First Nation, Peguis First Nation, and Pinaymootang First Nation were evacuated from their communities due to 2011 flooding events.

## FISHER RIVER CREE NATION COMMENTS

The above statement should be corrected as FRCN was evacuated as well due to flooding of the Fisher River combined with overland flooding from the northwest.

Chief and Council once again emphasize the importance of doing proper topographical mapping and surface water flow assessments for the LAA and RAA areas east and northeast of the LSMOC to determine whether there is a potential for the Project to contribute to overland flooding of the FRCN community and traditional use lands. The requested mapping and assessment should also include groundwater flow patterns and any connections with groundwater to the west of LSMOC.



FRCN also notes that MTI has acquired LIDAR topographical mapping in 2022 however, FRCN does not know as of the date of this submission what areas were mapped.

## ASSESSMENT REPORT EXCERPTS

### 9.1.1 Context in Which Impacts on Rights Would Occur

Throughout the EA, Indigenous groups expressed concerns about the cumulative effects of historical and ongoing water control structures on their Aboriginal and Treaty rights. Indigenous groups, including Black River First Nation, Bloodvein First Nation, Dakota Tipi First Nation, Fisher River Cree Nation, Hollow Water First Nation, the Interlake Reserves Tribal Council, Lake St. Martin First Nation, Little Saskatchewan First Nation, Mispawistik Cree Nation, Norway House Cree Nation, Pimicikamak Okimawin, Peguis First Nation, Pinaymootang First Nation, Poplar River First Nation, Sagkeeng Anicinabe First Nation, Sandy Bay Ojibway First Nation, and Tataskweyak Cree Nation expressed the perspective that various water control structures and other industrial and agricultural activities in the region have already significantly altered baseline conditions, their way of life and their ability to meaningfully practice their Aboriginal and Treaty rights. Indigenous groups identified significant concerns about the Proponent's lack of consideration of various water control structures operating as a whole system which results in increased flooding into the region.

## FISHER RIVER CREE NATION COMMENTS

FRCN considers various other developments, activities and actions by the provincial government to be key factors that must be considered in cumulative effects assessments on FRCN's treaty and aboriginal rights, use of lands and resources for traditional and cultural purposes, and FRCN's economic interests. FRCN has identified a large number of these in previous submissions.

## ASSESSMENT REPORT EXCERPTS

### 9.2 Potential Adverse Impacts of the Project on Section 35 Rights

#### 9.2.1 Hunting, Trapping, and Fishing Rights

A brief summary of the potential interactions and pathway of the Project's effects to the physical and biological conditions that support the right to hunt and trap are outlined below. Dauphin River First Nation, Kinonjeoshtegon First Nation, Lake Manitoba First Nation, Lake St. Martin First Nation, Little Saskatchewan First Nation, Peguis First Nation, and Pinaymootang First Nation described hunting and trapping to be core cultural practices for Indigenous groups.

The Manitoba Métis Federation described how hunting is a Métis way of life, providing important sources of food and shaping childhoods.

Hunting, trapping, and gathering are essential practices as a means of survival, but also maintain Indigenous culture.

### FISHER RIVER CREE NATION COMMENTS

The Fisher River Cree Nation is not mentioned in the above list of First Nations having concerns with impacts on hunting and trapping, despite submitting numerous concerns regarding impacts on FRCN's treaty and aboriginal rights and on their hunting, fishing and trapping traditions and practices. FRCN notes that Fisher River Cree Nation's name is missing in other sections of 9.2.1 and requests that the Agency follow up on this.

### ASSESSMENT REPORT EXCERPTS

#### Assessment of Impact on Hunting and Trapping Rights

The Agency acknowledges that historic and ongoing flooding, reduced quality and quantity of harvesting resources (e.g., wildlife species of cultural importance), and that increased development have resulted in a loss of traditional territory and decreased opportunities to hunt and trap. The Agency is of the view that the Project is likely to cause significant adverse environmental effects to Indigenous peoples' current use due to residual effects to access for current use, the availability and quality of resources, and quality of experience after taking into account the implementation of proposed key mitigation measures, monitoring, and follow-up programs.

Effects to current use directly impact Indigenous groups' hunting and trapping rights. The Agency understands that the Project may result in impacts on Indigenous groups' ability to practice hunting and trapping rights in their preferred manner through changes to access to preferred hunting and trapping areas, and changes to wildlife and wildlife habitat. The Project would result in the direct loss of wildlife habitat in the LAA, in changes to wildlife movement and availability, and in Indigenous peoples' access due to the barrier created by the channels.

Project components and resulting habitat fragmentation would change the availability and movement of species used for hunting, which would in turn reduce hunting opportunities and access to preferred hunting areas and methods for a long-term duration (longer than one generation). The Agency notes that wetland offsetting and compensation as per Manitoba's *The Water Rights Act* would only require compensation for 0.1 hectares of the 768.5 hectares of wetlands removed for the construction of the LSMOC. Uncertainty exists in the effectiveness of offsetting for the loss of wetlands in mitigating potential effects to species of cultural importance that rely on wetlands, such as moose, beaver, muskrat, otter, and wetland dependent birds.

Higher magnitude effects to wildlife movement would be anticipated intermittently during periods of high flows when the WCS gates open and the channels begin diverting floodwaters.

The Agency understands that the Project is intended to reduce flooding along Lake Manitoba and Lake St. Martin and that the Proponent predicted that flood protection provided by the Project would have positive effects to hunting and trapping areas. Changes to Indigenous groups ability to hunt and trap would be potentially reversible with adequate mitigation measures, such as revegetation with species of value to culturally important wildlife and effective engagement with Indigenous groups, including community-specific access management plans. The Agency notes that maintaining unimpeded access to preferred sites and the availability and quality of resources for current use, including species of cultural importance, is critical to enable the continued exercise of hunting and trapping rights. The Agency recognizes that the severity of project impacts on hunting and trapping rights would vary by Indigenous group.

#### FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's assessments and conclusions.

#### ASSESSMENT REPORT EXCERPTS

##### Fishing Rights

Fisher River Cree Nation noted that changes to currents and fish species in Lake Winnipeg have occurred over the past several decades. At the 2024 TAG Meeting, participants indicated that water quality in Lake Winnipeg and downstream along the Nelson River has been severely impacted by pollution from run off and other inputs into Lake Winnipeg. Dauphin River First Nation noted the reduced confidence in the water quality and use for drinking, swimming, and fishing

The Agency understands that the Proponent would be required to offset for any harmful alteration, disruption, or destruction of fish and fish habitat as a part of the *Fisheries Act* authorization required for the Project. While this offsetting may offset potential effects to fish and fish habitat, offsetting is likely to not occur within the LAA. This could in turn result in an increased effort and travel distance required by Indigenous peoples to successfully fish. As the Project would be operating in perpetuity, the Project would result in long-term, irreversible impacts on Indigenous groups' ability to successfully practice fishing rights. The Agency recognizes that the severity of project impacts on fishing rights would vary by Indigenous group.

#### FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's assessments and conclusions.

## ASSESSMENT REPORT EXCERPTS

### Assessment of the Level of Impact to Way of Life Rights

The Agency is of the view that the Project is likely to cause significant adverse environmental effects to Indigenous peoples' current use and physical and cultural heritage due to residual effects to access for current use, the availability and quality of resources, quality of experience, and physical and cultural heritage and sites of significance (see Chapter 7.4 for additional details), after taking into account the implementation of proposed key mitigation measures, monitoring, and follow-up programs. Effects to current use, physical and cultural heritage, and sites of significance directly impact Indigenous groups' way of life rights.

The Agency understands that the Project would likely affect the cultural and spiritual relationship between Indigenous groups and surrounding lands and resources, consequently resulting in changes in sense, experience, or enjoyment of cultural practices and spiritual places. The Project is likely to cause changes in access, loss of areas of significance, and changes to the availability and quality of resources that support traditional practices. Such changes would accelerate the loss of inter-generational teaching of language or traditional practices through changes to the way in which Indigenous groups can practice their rights.

## FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's assessments and conclusions.

## ASSESSMENT REPORT EXCERPTS

**9.4 Agency Conclusions Regarding Impacts on Section 35 Rights** The Agency also acknowledges that Indigenous groups, including Black River First Nation, Bloodvein First Nation, Fisher River Cree Nation, Hollow Water First Nation, the Interlake Reserves Tribal Council, Lake St. Martin First Nation, Little Saskatchewan First Nation, Misipawistik Cree Nation, Norway House Cree Nation, Pimicikamak Okimawin, Peguis First Nation, Pinaymootang First Nation, Poplar River First Nation, Sagkeeng Anicinabe First Nation, Sandy Bay Ojibway First Nation, and Tataskweyak Cree Nation noted a strong opposition to the Project; stating that their rights have already been significantly impacted and any incremental impact from the Project would be unacceptable.

Particularly, the Indigenous groups for which the Project is intended to benefit (those located where the Project would reduce flooding) including Dauphin River First Nation, Little Saskatchewan First Nation, Lake Manitoba First Nation, Lake St. Martin First Nation, and Pinaymootang First Nation, noted that the Project would not alleviate flooding, only reduce the negative effects that have and continue to occur due to the Province of Manitoba's use of existing flood management infrastructure.

The Agency notes that the Project may impact rights of Indigenous groups to different degrees depending on factors such as the location of their reserves, preferred areas for practicing rights, and consideration of Indigenous Knowledge and input shared by Indigenous groups.

### FISHER RIVER CREE NATION COMMENTS

FRCN agrees with the Agency's assessments and conclusions.

### ASSESSMENT REPORT EXCERPTS

#### 9.4.1 Agency Conclusions

**Table 13 Degree of Severity for Adverse Impacts on Rights of Indigenous Peoples**

<b>Low</b>	Impacts are likely to cause minimal constraints on the ability to exercise rights in a meaningful way relative to historical opportunities. Factors influencing a finding of low level of severity include: a resilient context, localized or site-specific spatial extent, low magnitude, partially or fully reversible, short in duration, and/or low to moderate likelihood.
	Mitigation should allow for the practice of the right to continue in the same or similar manner.
<b>Moderate</b>	Impacts are likely to cause moderate constraints on the ability to exercise rights in a meaningful way relative to historical opportunities. Factors influencing a finding of moderate level of severity include: a moderately sensitive context, localized or site-specific spatial extent, moderate magnitude, partially reversible, medium-term in duration, and/or moderate to high likelihood. Mitigation may not fully ameliorate impact but should enable the Indigenous community to continue exercising its rights as before, or in a modified way.
<b>High</b>	Impacts are likely to surpass the levels where the right can be exercised in a meaningful way relative to historical opportunities. Factors influencing a finding of high level of severity include: a highly sensitive context, large geographic scale of impact, high magnitude, reduced reversibility, longer-term in duration, and/or high likelihood. Mitigation is unable to fully address impacts such that the practice of the right is substantively diminished or lost.
<i>Definitions informed by Dauphin River First Nation, Kinonjeoshtegon First Nation, Lake Manitoba First Nation, Lake St. Martin First Nation, Little Saskatchewan First Nation, Peguis First Nation, and Pinaymootang First Nation's Rights Impact Assessments</i>	



Table 14 Severity of Potential Impacts of the Project on the Exercise of Rights for Indigenous groups located along the Fairford River, Lake St. Martin, and Dauphin River and that have identified preferred use of directly affected areas, including Dauphin River First Nation, Fisher River Cree Nation, Kinonjeoshtegon First Nation, Lake Manitoba First Nation, Little Saskatchewan First Nation, Lake St. Martin First Nation, Peguis First Nation, Pinaymootang First Nation, and the Manitoba Métis Federation

Criteria	Values			
<p><b>Historical Context and Cumulative Impacts:</b>                      Identification and understanding of the degree to which the existing exercise of rights may be vulnerable to Project effects when the effects are added to, and interact with, the baseline conditions, including existing cumulative effects from other sources.</p>	<p><b>Highly sensitive</b>                      Historic and ongoing flooding of Lake St. Martin and adjacent watercourses has heavily impacted Indigenous groups located along the Fairford River, Lake St. Martin, Dauphin River and those that utilize these areas for practicing rights. In 2011, severe flooding forced the evacuation of numerous communities; many of which were not able to return to their homes for several years. Many Indigenous peoples remain impacted by the lasting trauma of this event and have dealt with immeasurable health, social, economic, and environmental impacts from the upheaval of their lives. In addition to flooding, these Indigenous groups have faced increased development resulting in a loss of traditional territory, barriers to accessing areas, declines in water quality, fluctuating water levels, effects to health, and reduced quality and quantity of harvesting resources (e.g. wildlife species of cultural importance) which has greatly impacted their ability to practice hunting, trapping, and fishing rights. Indigenous groups have witnessed changes over time in their traditional territory and cultural context that have resulted in a decline in the conditions required for the full expression of cultural continuity as it pertains to knowledge transmission, cultural heritage, ceremonies, and sense of place. Indigenous groups' ability to exercise stewardship has diminished over time as a result of governments controlling resources within their traditional territory. The development and operation of water control structures has been particularly impactful on their stewardship of water, fish, and terrestrial values. The Agency is of the view that the Project would create a more direct connection for water flow between Lake Manitoba, Lake St. Martin, and Lake Winnipeg, which would reduce the effects of flooding for the Indigenous groups surrounding Lake St. Martin.</p>			
	Hunting, Trapping	Fishing	Cultural Continuity	Stewardship
<p><b>Likelihood:</b> An estimation of how probable it is that the impact would occur.</p>	<p><b>Potentially moderate</b>                      Project activities would have a moderate likelihood of disturbing and disrupting wildlife and wildlife habitat and changing Indigenous groups' ability to access preferred hunting and trapping areas.</p>	<p><b>Potentially moderate to high</b>                      Project activities would have a high likelihood of disturbing and disrupting fish and fish habitats and changing Indigenous groups' ability to access preferred fishing areas.</p>	<p><b>Potentially moderate to high</b>                      Project activities would have a high likelihood of disturbing and disrupting the continued practice of cultural and spiritual traditions, specifically when species of cultural importance are affected, or sites or resources of significance are removed or disturbed.</p>	<p><b>Potentially low to moderate</b>                      The Project would modify areas that support the stewardship of the land. Project activities would disturb and disrupt waterbodies, which could have important consequences for how the Indigenous groups' members practice their rights, given the overarching importance that water represents for Indigenous groups.</p>
<p><b>Geographic extent:</b>                      Includes the consideration of the geographic extent of the impacts in relation to the geographic</p>	<p><b>Potentially moderate</b>                      Effects anticipated to extend into the LAA. The Project would result in the direct loss of wildlife habitat in the PDA and changes to wildlife</p>	<p><b>Potentially moderate to high</b>                      Effects anticipated to extend into the RAA. As a flood mitigation project, the Project would unavoidably result in changes to fish and fish</p>	<p><b>Potentially moderate</b>                      Effects anticipated to extend into the LAA. The Project would result in the loss of culturally important sites in the PDA and change</p>	<p><b>Potentially low to moderate</b>                      Effects anticipated to extend into the LAA. As a flood mitigation project, water quantity and quality would unavoidably be affected and</p>

Criteria	Values			
extent of the right, as practiced.	movement and availability, and Indigenous peoples' access due to the barrier created by the channels.	habitats throughout Lake Manitoba, Lake St. Martin, and Lake Winnipeg.	access to sites of significance throughout the LAA.	thus would result in changes in how Indigenous groups are able to manage water resources in the area.
<b>Frequency, duration and reversibility:</b> Includes the consideration of how often the impact may occur within a given period of time, the length of time that an impact may be discernible, and whether the exercise of rights is expected to recover from the impact.	<b>Potentially moderate to high</b> Project components and resulting habitat fragmentation would change the availability and movement of wildlife species, which would reduce hunting and trapping opportunities and access to preferred hunting and trapping areas and methods for a long-term duration. The frequency of the disturbance would be intermittent, and changes are potentially reversible with adequate mitigations.	<b>Potentially moderate to high</b> Project effects to fish and fish habitat would have a long-term duration, because disturbance would occur each time the WCS gates open for flood operation. The frequency of the disturbance would be intermittent. Reversibility is low.	<b>Potentially high</b> Project effects to cultural continuity would be long term. Use and sense of connection to a portion of their traditional territory has the potential to change permanently. The effect is irreversible because the loss of heritage structures and access would be permanent.	<b>Potentially low</b> The effect on how the Indigenous groups perceive the change to their ability to be stewards of the land would be one time upon construction of the Project. Depending on the perceived benefit from flood reduction and the effectiveness of ongoing engagement and monitoring with Indigenous groups, the effects could be reversible.
<b>Overall conclusions on impacts on rights for Indigenous groups located along the Fairford River, Lake St. Martin, and Dauphin River and that have identified preferred use of directly affected areas.</b>	<b>Moderate</b> Highly sensitive context, moderate likelihood, moderate geographic scale of impact, long-term in duration, intermittent frequency, and partially reversible. Mitigation may not fully ameliorate impact but should enable Indigenous groups to continue exercising rights in a modified way.	<b>Moderate to high</b> Highly sensitive context, moderate to high likelihood, large geographic scale of impact, long-term duration, intermittent frequency, and low reversibility. Mitigation is unable to fully address impacts.	<b>Moderate to high</b> Highly sensitive context, moderate to high likelihood, moderate geographic scale of impact, long-term duration, permanent, and irreversible. Mitigation would not likely fully address impacts but should enable Indigenous groups to continue exercising cultural practices in a modified way.	<b>Low to moderate</b> Highly sensitive context, moderate likelihood, localized spatial extent, one-time change upon construction of the Project, and potentially reversible. Depending on the flood reduction benefit and effectiveness of mitigations, Indigenous groups should be able to continue exercising stewardship in a similar manner.

Should the Project proceed, the Agency acknowledges that the Project is likely to cause changes to the exercise of Aboriginal and treaty rights. These include:

- Moderate severity of impacts on the right to hunt and trap,
- moderate to high severity impacts on the right to fish, moderate to high severity impacts on cultural continuity, and
- low to moderate impacts on stewardship for Indigenous groups that would be most directly impacted, including those surrounding the Fairford River, Dauphin River, Lake St. Martin, or that have identified preferred use of directly affected areas (Dauphin River First Nation, Fisher River First Nation, Kinonjeoshtegon First Nation, Little Saskatchewan First Nation, Lake Manitoba First Nation, Lake St. Martin First Nation, the Manitoba Métis Federation, Peguis First Nation, and Pinaymootang First Nation).

Agency recommends that the Proponent develop and implement a survey program for impacts on rights to be conducted within five years post-construction to provide insight regarding the impacts on Indigenous groups, efficacy of mitigation measures and whether additional mitigation measures would be required.

The Proponent developed the EAC as a mechanism for ongoing engagement. However, Indigenous groups have raised and continue to raise concerns about the structure, function, transparency, and decision-making authority of the EAC.

The Agency acknowledges many Indigenous groups have refused to participate in the EAC due to the concerns raised. Thus, this committee has limitations on the ability to adequately engage with Indigenous groups moving forward. Therefore, the Agency is recommending, as a part of the EAC, that the Proponent revisit the terms of reference in consultation with each Indigenous group and modify it based on any input received, provide Indigenous groups with the support needed to lead meetings, and submit annual reports to the Agency and Indigenous groups with the recommendations that come out of the EAC and with the Proponent's response regarding the implementing of such recommendations.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN fully agrees with the Agency's assessments and conclusions.

#### **ASSESSMENT REPORT EXCERPTS**

##### **10 Conclusions and Recommendations of the Agency**

The Agency concludes that the Project is likely to cause direct and cumulative significant adverse environmental effects, as defined in section 5 of CEAA 2012, on the current use of lands and resources for traditional purposes by Indigenous peoples, on physical and cultural heritage, and on structures, sites, and things of historical, archaeological, paleontological, or architectural significance despite the implementation of mitigation measures, monitoring, and follow-up programs.

The Agency is of the view that the Project is likely to cause impacts to the exercise of Aboriginal and treaty rights, including moderate to high severity of impacts to fishing rights and cultural continuity of those Indigenous groups that are more directly impacted by the Project. The Agency acknowledges that despite the Project's intended purpose of reducing flooding, Indigenous groups feel that this Project would enable the continued flooding of the region and remain in opposition to the Project. The Agency notes the importance of the Proponent's ongoing and meaningful consultation to continue to understand and address the Project's real and perceived impacts on rights. Furthermore, the Agency concludes that the Project is not likely to cause significant, adverse effects to other components of the environment under federal jurisdiction, taking into account the implementation of mitigation measures.

#### **FISHER RIVER CREE NATION COMMENTS**

FRCN fully agrees with the Agency's assessments and conclusions.