



Whitecap Dakota First Nation

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July 27, 2021

Ian Martin
Prairie and Northern Regional Office
Impact Assessment Agency of Canada
Suite 1145, 9700 Jasper Avenue
Edmonton, AB T5J 4C3

c/o: greg.bosse@canada.ca

Dear Mr. Martin:

RE: Whitecap Dakota First Nation Response to Designation Request for the Proposed Lake Diefenbaker Irrigation Expansion Projects under the *Impact Assessment Act*.

Thank you for your letter of July 7, 2021 requesting feedback from Whitecap Dakota First Nation on Phase 1 and Phase 2 of the proposed Lake Diefenbaker Irrigation Expansion Project (LDIP).

Located 26 kilometres south of Saskatoon, the Whitecap Dakota First Nation (WDFN) is a modern and progressive nation with a proud culture and a strong sense of community. WDFN is part of the larger Dakota Nation with traditional lands extending into both Canada and the United States with a long history of working together in the Spirit of Alliance with our neighbours and all levels of government. WDFN has approximately 600 members, many of which live within the community. Whitecap's members have mandated leadership to implement a nation-building vision geared toward Strengthening Community and Building Opportunity. As we continue to act on the community's vision, we use accountable leadership and transparent governance practices to attract external investment. To date, Whitecap has been successful in attracting over \$160 million in capital investment in economic development and tourism. Partnerships with the Saskatchewan Health Authority, Saskatoon Public School Division, RCMP, Saskatoon Fire and Protective Services and many others ensure that residents and visitors have access to the services that create a welcoming, vibrant and healthy community.

We received a letter regarding the Project from the Water Security Agency via email on May 28, 2021 and began our initial research into the project. To date, we have had approximately 30 days to begin to consider the impacts of the LDIP to our community and our nation and only 20 days to respond to the request from the Impact Assessment Agency.

Given the very limited time, financial resources and technical capacity currently available to WDFN to study and identify the impacts of the LDIP Project on our traditional lands, our community, and our future

nation building objectives we respectfully submit the following initial response with the understanding that additional information may be shared as it becomes available.

1. Please describe whether and how the potential adverse effects of the Project could result in changes to your community's:

(a) physical and cultural heritage (e.g. ceremonial sites, burial sites, cultural landscapes)

(b) current use of lands and resources for traditional purposes (e.g. hunting, fishing, trapping)

(c) structures, sites or things of historical, archaeological, paleontological or architectural significance (e.g. artifacts, important historic buildings or symbols)

The proposed Phases 1 & 2 of the Lake Diefenbaker Development area are within and surrounded by lands historically and currently relied upon by Whitecap Dakota First Nation (WDFN) for traditional purposes, including hunting, trapping, gathering, fishing, sacred use sites, and associated cultural and livelihood practices. Additionally, the designated project areas include sites of physical and cultural heritage significance to WDFN.

Based on the data collected by WDFN for previous Traditional Knowledge and Land Use Studies, conditions exist for significant adverse impact on the traditional use sites of WDFN in the identified project areas. The project has the ability to impact plant, animal, and aquatic species on reserve and off reserve within our traditional territory.

WDFN Elders and members continue to use the areas identified as the proposed Phases 1 & 2 of the Lake Diefenbaker Development area for traditional use activities. Previous WDFN Traditional Knowledge and Land Use (TKLU) studies show that priority activities for WDFN in the areas within Phases 1 & 2 include hunting, trapping, fishing, gathering, settlement, travel, water, agriculture and cultural activities. From the late nineteenth century through to the recent past, the local land use area for the WDFN community extended north to Beaver Creek, south to Elbow (particularly along the South Saskatchewan River, including the Lake Diefenbaker area), east to the Blackstrap reservoir, and west to the South Saskatchewan River. The South Saskatchewan River has importance as a main subsistence area.

Many cultural sites significant to WDFN have been recorded in this area, including meeting, gathering, ceremony, building, burial, and death sites. Specifically, as it relates to hunting and fishing rights, the proximity of the project has potential impacts on the movement of fish and animal species and the population of fish and game and/or the movement of animal species on or through the reserve. There are concerns that Phases 1 & 2 would have additional adverse impacts on lands and habitat for wildlife and migratory birds; adverse affects on harvesting traditional medicines and game; adverse impacts to soils, waters, and fish habitat; long-term cumulative impacts of water withdrawals and agrochemical inputs; and impacts to Whitecap Dakota First Nations' cultural and traditional lands, including sacred sites and other cultural and heritage-sensitive areas. Additionally, areas within Phase 3 continue to be used primarily for cultural and harvesting activities, including the Assiniboine River and the Qu'Appelle valley watershed areas.

It is also important to note that this will add to cumulative adverse impacts to WDFN Indigenous rights cause by the development of Lake Diefenbaker. Significant changes to the Whitecap community landscape came with the construction of Lake Diefenbaker dam in the

late 1950s. Alterations to water flow meant that portions of the WDFN lands that flooded annually stayed dry year-round. While this ensured year-round access to these lands, it also all but eradicated the wetlands that were a significant subsistence area for plants, herbs, waterfowl and eggs. This also decreased the numbers of small fur bearing animals on-reserve and affected the amount of fish in the river bordering the Whitecap Reserve lands. The increased contamination of the South Saskatchewan River from run-off from agricultural practices, potash and chemical plants, oil and gas wells, and pulp and paper mills located along the river, and an increase in recreation watercraft have had adverse effects on the quality of wild foods, water, and other resources derived from the river.

Based on WDFN's past experience with disruptions to the South Saskatchewan River within our reserve lands as a result of development related to Lake Diefenbaker, as well as evidence provided through our Traditional Knowledge and Land Use Study research, it is likely the proposed development will have an adverse impact on WDFN's physical and cultural heritage and current use of lands and resources for traditional purposes in our traditional territory.

2. Please describe whether and how the Project may result in changes to your community's health, social or economic conditions (e.g. employment opportunities, access to goods and services, economic development, access to health-care services).

The proposed project at Lake Diefenbaker raises questions regarding the impacts or effects it will have on the South Saskatchewan River and to the water supply to the WDFN community as WDFN Reserve #94 and fee simple lands owned by WDFN abut the South Saskatchewan River. WDFN has undertaken extensive planning initiatives including a comprehensive community plan, capital and strategic plans and tourism master planning to identify the goals and objectives for the future of the Whitecap community. These plans outline future needs in terms of infrastructure, facilities, projects, and land base. Stable water and wastewater systems will be essential to maintain the various current residential, community and business needs and accommodate the planned growth of Whitecap and their economy. Without having information on the scope of the proposed project, the following are specific examples of potential impacts from the proposed irrigation project:

Water Security: WDFN is a growing community and in recent years completed an expansion to its water supply, treatment plant and constructed two new lagoons for expanded wastewater treatment to support future residential and commercial growth. Continued access to safe drinking water and sanitary water systems is crucial to enabling sustainable residential and economic development in our community.

Community Development: As per the WDFN Tourism Masterplan, Whitecap is planning to develop a large scale, multi-phase development of the riverbank area in the northwest portion of the community. This development is intended to include amenities such as: a trails system to accommodate walking, cycling, and equestrian uses; camping and beach areas; long term residential leased lots, boat launches and marinas.

Loss of Lands: WDFN has experienced significant erosion of its reserve lands along the South Saskatchewan River. To date it is estimated that approximately 160 acres of reserve land has eroded and been deposited downstream. The erosion area is assumed to be approximately 3.5 kms long with erosion severity varying across the length and can be attributed to the initial development of the Gardiner Dam and Lake Diefenbaker.

WDFN has a comprehensive economic development strategy to create its own source revenues and employment opportunities for its community members. The strategy includes a Whitecap Industrial Services division that currently has 6 businesses that provide scopes of work that could be utilized in the development and on-going operation and maintenance of the irrigation project. The close proximity of Phases 1 and 2 provides an opportunity to provide economic benefits and positively impact the quality of life for the WDFN community through inclusion of Whitecap Industrial Services in the procurement process.

3. Please describe whether and how the Project may impact your community's rights as protected under section 35 of the Constitution Act, 1982.

WDFN, as a Dakota people that has used and occupied territories in south Saskatchewan since time immemorial, holds and exercises inherent rights within its traditional territories, protected by section 35 of *The Constitution Act, 1982*. These rights include fishing, hunting, trapping and other harvesting activities, and other practices, traditions and customs integral to WDFN's distinctive culture, practised prior to contact and to this day. (See question #1) WDFN is not a party to any of the numbered treaties covering the Prairie provinces. As a result, the Crown has not reconciled its assertion of sovereignty with the pre-existing occupation and rights of the Dakota within the Project area. Specifically, the Crown has not secured from the Dakota a right to "take up" lands within Dakota traditional territory, for any purpose, without their consent. Accordingly, any Crown use of such lands resulting in anything beyond a trivial interference with Dakota rights has the potential to give rise to an infringement of Dakota rights. In addition, and/or alternatively, Dakota rights to hunt, fish and trap within the area are protected pursuant to section 12 of *The Saskatchewan Natural Resources Transfer Agreement (Treaty Land Entitlement) Act*.

Given the nature of the Project and its location within WDFN's traditional territories, the Project is likely to impact these rights.

The Project area overlaps and is adjacent to WDFN's traditional territories, and in particular the South Saskatchewan River and Lake Diefenbaker. As described in response to question #1, the Project may have potential adverse effects on WDFN's use of the lands for traditional purposes. Any impact of the Project on lands, waters, habitats, wildlife, cultural areas, etc has the potential to affect and infringe WDFN's ability to exercise its rights in these territories (and indeed, previous water management projects in the region, such as the Lake Diefenbaker Dam, have already impacted WDFN's ability to exercise its inherent rights).

WDFN and the Crown (through the Minister of Crown Indigenous Affairs) is currently engaged in an exploratory process towards establishing a Whitecap Dakota-Canada Treaty to achieve reconciliation on the issues set out above. The parties continue to work under a Framework Agreement for a Whitecap Dakota Treaty to Advance Dakota Reconciliation signed in January 2018 (attached).

The significant scope of the estimated \$4 billion investment over a 10-year construction period of the multi-decade operations of the LDIP demands that appropriate reviews, studies and assessments be completed. WDFN has identified numerous areas of concern regarding the project that require additional

research and study to determine not only the extent of potential project impacts but also cumulative impacts to WDFN lands with the Gardiner Dam project and creation of Lake Diefenbaker in the late 1950s. This work will require investment of WDFN resources that include both staff time and considerable financial resources required for technical services of expert third-party consultants.

WDFN requests that the Minister of Environment and Climate Change designate all phases of the proposed Lake Diefenbaker Irrigation Project under subsection 9(1) of the *Impact Assessment Act* to allow WDFN, and all communities impacted by the LDIP, the opportunity to evaluate the impacts of this project.

Sincerely,

<Original signed by>

Chief Darcy Bear 
Whitecap Dakota First Nation

cc: Whitecap Dakota First Nation Council

Attachment:

Framework Agreement for a Whitecap Dakota Treaty to Advance Dakota Reconciliation