Birtle Transmission Project

Metis Land Use and Occupancy Study
Baseline Information

Prepared For:

Manitoba Hydro
Winnipeg, MB

Manitoba Sustainable Development
Winnipeg, MB

Prepared By:

MNP LLP
Calgary, AB

On Behalf of:

Manitoba Metis Federation
Information collected for the *Birtle Transmission Project Metis Land Use and Occupancy Study: Baseline Information* remains the sole property of the Manitoba Metis Federation. The information contained within this document is meant for a single application only: the fulfillment of requirements set out in the Contribution Agreement for Manitoba Metis Federation Engagement on the Birtle Transmission Project. Citation, use or reproduction of the information contained in this document for any other purpose is permissible only with the written consent from the Manitoba Metis Federation.

For further information, please contact:

**Manitoba Metis Federation Inc.**
300-150 Henry Avenue
Winnipeg, Manitoba R3B 0J7
204-586-8474
[www.mmf.mb.ca](http://www.mmf.mb.ca)

Prepared by: MNP LLP, Calgary, AB
Authorship

Report Authors:
Adena Vanderjagt (MNP LLP)

Contributors:
Pape Salter Teillet LLP Barristers and Solicitors

Survey Interviews:
Adena Vanderjagt (MNP LLP)
Shauna McGarvey (MNP LLP)

Data Entry:
Adena Vanderjagt (MNP LLP)

Data Analysis:
Adena Vanderjagt (MNP LLP)

Transcription:
Shauna McGarvey (MNP LLP)

GIS Mapping:
Leslie Sarapu (Metis N4 Construction)
Adena Vanderjagt (MNP LLP)

Senior Review:
Tracy Campbell (MNP LLP)
Germaine Conacher (MNP LLP)

Legal Review:
Pape Salter Teillet LLP Barristers and Solicitors

Manitoba Metis Federation Coordinators:
Marc Riel, Director, Energy and Infrastructure
Jasmine Langhan, Consultation and Engagement Coordinator

Manitoba Metis Federation Political Contributors:
David Chartrand, President
Jack Park, Minister, Energy and Infrastructure
Alfred Anderson, Minister Natural Resources
Leah LaPlante, Minister, Economic Development
John Fleury, Minister, Metis Employment & Training
Jean Desrosiers, Minister, Environment and Mining
Executive Summary

The following Report, *Metis Land Use and Occupancy Study: Baseline Information* is intended to provide information about the Manitoba Metis Community’s use of the area surrounding the proposed Birtle Project route. The Report also provides an overview of the Ste. Madeleine historic Metis community, a description of Available Land in the Project vicinity and an overview of Use and Occupancy information specifically related to harvesting and the exercise of Metis rights. For the purposes of this Report, the Study Team conducted one focus group session with approximately 30 MMF citizens which resulted in 16 questionnaire Respondents, and 7 surveys with interview Participants in the summer of 2017. The Study Team also reviewed existing Use and Occupancy data that the MMF had previously collected.

During the focus groups and interviews, Participants and Respondents spoke of the importance of Ste. Madeleine to the Metis community. This area was, and continues to be a cultural touchstone for the Metis in the region. It was noted that the connection extends far beyond the boundary of the existing cemetery and reaches into the traditional harvesting territory throughout the Spy-Hill Ellice Community Pasture.
# Table of Contents

Authorship .................................................................................................................................. 3
Executive Summary ................................................................................................................... 4
Definitions .................................................................................................................................. 8
Abbreviations and Acronyms ................................................................................................. 9
1 Introduction ........................................................................................................................10
   1.1 Project Description ......................................................................................................10
   1.2 Regulatory Framework ...............................................................................................12
   1.3 Purpose of the Report .................................................................................................12
2 Scope of Report and Methods ............................................................................................13
   2.1 Metis Land Use and Occupancy Studies (“MLUOS”) ..................................................13
   2.2 Selection of Valued Components ................................................................................14
   2.3 Valued Component Guidelines and Regulations ........................................................15
   2.4 Metis Valued Component Selection Rationale ............................................................15
3 Data Collection Methodology .............................................................................................16
   3.1 Study Area ..................................................................................................................16
   3.2 Review of Existing Information ....................................................................................18
   3.3 Development of Interview Survey and Focus Group Questions ................................18
   3.4 Informed Consent .......................................................................................................19
   3.5 Interview and Focus Group Execution ...........................................................................19
   3.6 Data Collection ...........................................................................................................20
   3.7 Field Visit ....................................................................................................................20
   3.8 Data Entry ...................................................................................................................21
   3.9 Mapping ......................................................................................................................21
   3.10 Map Digitization ..........................................................................................................21
   3.11 Diminished Preference Zone Maps .............................................................................22
   3.12 Verification ..................................................................................................................22
   3.13 Limitations ..................................................................................................................24
       Sample Size ....................................................................................................................24
       Land and Resource Use Data ........................................................................................24
       Time and Budget ............................................................................................................24
       Data Limitations ............................................................................................................25
Data Access.......................................................................................................................25

4 Manitoba Metis Federation................................................................................................26

4.1 Origins ........................................................................................................................26
4.2 The Birth of a Nation ...................................................................................................27
4.3 The Promise of Confederation ....................................................................................30
4.4 Terror and Dishonor ....................................................................................................32
4.5 Ste. Madeleine ............................................................................................................37

Metis Expulsion from Ste. Madeleine .................................................................................40
4.6 Aftermath and Resurgence .........................................................................................42
4.7 The Manitoba Metis Federation...................................................................................43
4.8 Claims.........................................................................................................................45
4.9 Rights & Interests........................................................................................................47

5 Ste. Madeleine Today ........................................................................................................49

5.1 Site Visit......................................................................................................................49
5.2 Focus Group ...............................................................................................................50
5.3 Metis Perspectives on the History of Ste. Madeleine...................................................51
5.4 Outlooks and Attitudes ...............................................................................................52
5.5 Family Connections ....................................................................................................54
5.6 Importance ..................................................................................................................55
5.7 Contemporary Continuity ............................................................................................56
5.8 Suggestions for Reparation .........................................................................................56
5.9 The Project and Ste. Madeleine ..................................................................................57
5.10 Conclusion ..................................................................................................................58

6 Land Available for Metis Use..........................................................................................59

6.1 Land Types ..................................................................................................................59
6.1.1 Restricted Land(s).....................................................................................................59
6.2 The Amount of Land Available for Metis Use ..............................................................60
6.3 Changes in the Physical Attributes of the Land .........................................................63
6.4 Changes in Access .......................................................................................................65
6.5 Conclusion ..................................................................................................................65

7 Harvesting........................................................................................................................66

7.1 Previously Collect Use Information ..............................................................................66
7.2 Interview Results .........................................................................................................74
### Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contributors</strong></td>
<td>An amalgamation of Manitoba Metis Federation citizens who participated in both the interviews and the focus group</td>
</tr>
<tr>
<td><strong>Interview Survey Participants</strong></td>
<td>Manitoba Metis Federation citizens who participated in the interviews</td>
</tr>
<tr>
<td><strong>Focus Group Respondents</strong></td>
<td>Manitoba Metis Federation citizens who participated in the focus group</td>
</tr>
<tr>
<td><strong>Restricted Land(s)</strong></td>
<td>Crown lands that are subject to a regulatory restriction(s) related to at least one kind of harvesting activity (e.g., hunting, trapping, fishing) and lands that are privately owned (and therefore cannot generally be accessed for harvesting purposes without permission of the land owner)</td>
</tr>
<tr>
<td><strong>Study Team</strong></td>
<td>MNP LLP</td>
</tr>
<tr>
<td><strong>The Project or Birtle</strong></td>
<td>Birtle Transmission Project</td>
</tr>
<tr>
<td><strong>The Report</strong></td>
<td>Metis Land Use and Occupancy Report: Baseline Information</td>
</tr>
<tr>
<td><strong>Unoccupied Land</strong></td>
<td>Crown lands to which Metis have a right of access and no permission must be sought from a third party</td>
</tr>
</tbody>
</table>
## Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMCP</td>
<td>Association of Manitoba Community Pastures</td>
</tr>
<tr>
<td>EA</td>
<td>Environmental Assessment</td>
</tr>
<tr>
<td>GIS</td>
<td>Geographic Information Systems</td>
</tr>
<tr>
<td>kV</td>
<td>Kilovolt</td>
</tr>
<tr>
<td>LAA</td>
<td>Local Assessment Area</td>
</tr>
<tr>
<td>LUOS</td>
<td>Land Use and Occupancy Study</td>
</tr>
<tr>
<td>MSD</td>
<td>Manitoba Sustainable Development</td>
</tr>
<tr>
<td>MKB</td>
<td>Metis Knowledge Base</td>
</tr>
<tr>
<td>MLUOS</td>
<td>Metis Land Use and Occupancy Study</td>
</tr>
<tr>
<td>MMF</td>
<td>Manitoba Metis Federation</td>
</tr>
<tr>
<td>PDA</td>
<td>Project Development Area</td>
</tr>
<tr>
<td>RAA</td>
<td>Regional Assessment Area</td>
</tr>
<tr>
<td>TAC</td>
<td>Technical Advisory Committee</td>
</tr>
<tr>
<td>TSN</td>
<td>Tripartite Self-Government Negotiations</td>
</tr>
<tr>
<td>VCs</td>
<td>Valued Components</td>
</tr>
</tbody>
</table>
1 Introduction

The proposed Birtle Transmission Project is in an area of key importance to the citizens of the Manitoba Metis Federation. It intersects an area where the Manitoba Metis Community hold rights protected by s. 35 of the Constitution Act, 1982 that have been recognized by the Crown through the Manitoba Metis Federation-Manitoba Harvesting Agreement (2012) (section A, sub-section 2).

These recognized rights include “hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, Metis harvesting includes the harvest of timber for domestic purposes” (Manitoba Metis Federation-Manitoba Harvesting Agreement 2012). These collectively held rights have also been recognized by the Manitoba courts in R. v. Goodon, 2008 MBPC 59, where the court found a historic, rights-bearing Metis community to have existed in “all of the area within the present boundaries of southern Manitoba from the present-day City of Winnipeg and extending south to the United States and northwest to the Province of Saskatchewan” (para. 48). Throughout the proposed Birtle Transmission Project area and throughout the Province of Manitoba, the rights-bearing Manitoba Metis Community also have strong, credible assertions to Metis rights, including commercial and trade related rights.

The preferred route of the Manitoba Hydro Birtle Transmission Project (“the Project”) is identified to pass in the vicinity of (5.9 kilometres south of the cemetery) the historic Ste. Madeleine Community (see Figure 1). Therefore, this Report has also collected baseline information for the assessment of potential effects to Metis rights and interests in and around Ste. Madeleine (see Section 5).

1.1 Project Description

The Project is a 230 kilovolt (“kV”) transmission line from Birtle Station, south of the community of Birtle, to the Manitoba-Saskatchewan border (Manitoba Hydro 2017). Depending on the terrain and the location of the final preferred route, either self-supporting suspension lattice steel structures or typical tubular steel structures will be used (Manitoba Hydro 2017).

Once the final preferred route is selected, Manitoba Hydro will notify the MMF (Manitoba Hydro 2017).
1.2 Regulatory Framework
The Project is subject to review under The Environment Act C.C.S.M. c. E125 (Manitoba) as the Project is considered a “development” pursuant to the Classes of Development Regulation (M.R. 164/88). Transmission lines 230 kV or less are considered a “Class 2 Development” consistent with the Classes of Development Regulation.

As part of this regulatory process, Manitoba Hydro is responsible for submitting an Environmental Assessment (“EA”) Report. Following submission to Manitoba Sustainable Development, the EA Report will be advertised for public comment for anyone likely to be affected by the operation of the Project; Technical Advisory Comments (“TAC”) will be submitted and requests for additional information filed. Following satisfactory response, the Project will be issued a license and a summary will be posted to thePublic Registry site.

1.3 Purpose of the Report
The following Metis Land Use and Occupancy Study: Baseline Information (“the Report”) was prepared to provide Manitoba Hydro with information to assist in completing their Environmental Assessment on the Project. This Report includes information related to Metis land use and connection to the Ste. Madeleine site and area, Land Available for Metis Use and Harvesting in the vicinity of the Project. This Report is intended to facilitate Manitoba Hydro’s and MMF’s collaborative identification of positive and negative effects to Metis rights that may result from the approval of the Project.

The Report included a desktop mapping exercise, the completion of 7 interviews with Manitoba Metis citizens and a focus group with approximately 30 Metis citizens and political representatives which included dissemination of surveys, 16 of which were completed and returned.
2 Scope of Report and Methods

The following sections outline the methods used to prepare this Report. They are derived from a variety of previously completed use and occupancy studies, environmental assessments of similar scope as well as the Study Team’s professional judgment. Each method described has been designed to meet *The Environment Act* requirements, where appropriate.

2.1 Metis Land Use and Occupancy Studies (“MLUOS”)

There is much confusion of what Land Use and Occupancy Studies are and conversely, are not. Land Use and Occupancy Studies ("LUOS") (sometimes called “Traditional Land Use Studies” “Land Use and Occupancy Study”, “Traditional Knowledge Study”, “Traditional Use Study” or “Aboriginal Traditional Knowledge Study”) should provide baseline data on the exercise of Aboriginal rights in a project-specific study area within an Aboriginal group’s traditional harvesting territory. Project-specific LUOS should focus on the question, “what Aboriginal rights were, are and are going to be practiced in the area that may be potentially affected by this project?”

Information should be collected in relation to a variety of biophysical (natural) and socioeconomic (human) components from an Aboriginal group about past, present and future exercise of Aboriginal rights in the area affected by a project. This information should be documented spatially (maps) and in narrative formats. Optimally, the LUOS should also include a description of the conditions necessary for continued practice of those rights. This baseline information can then be integrated into the environmental assessment process by the proponent and their consultants at numerous junctures of the assessment, and used to assist in the identification of potential adverse effects to the use of land, water and resources, as well as effects to the biophysical and socio-economic environment for the exercise of Aboriginal rights for each Aboriginal group potentially affected by the project.

LUOS can also document issues and concerns from an Aboriginal group about the intended use of the project area for the purposes of exercising Aboriginal rights. While project-specific LUOS can be the mechanism to tell an Aboriginal group’s ‘story,’ they are not proxies for the identification of changes to Aboriginal rights. A project-specific TLUS, by design, does not attempt to identify on its own (either qualitatively or quantitatively) project effects on the data collected. A LUOS is a baseline information collection exercise only. A land use and occupancy study is not a stand-alone environmental assessment, which is defined as a prediction of changes resulting from a proposed decision. As the Birtle Project has not yet released details of their environmental assessment, no integration of results has been completed as part of this Report.

The conduct of a LUOS must adhere to basic scientific research principles, for obvious reasons, as “science is a necessary ally when trying to convince others that information is credible” (Tobias 2009). Others have cautioned against the practice of not using defendable methodologies in the
documentation of traditional use information; for example, Peter Usher notes “there is a risk that any knowledge, taken out of context in which it was generated can be misinterpreted or even deliberately misused” (2000).

For many years, anthropological or qualitative social science research involving Aboriginal peoples was conducted without their consent or active participation (Castellano 2004). This practice is changing; social scientists now acknowledge that “documentation and communication of TEK, regardless of who does it, requires the support, cooperation and involvement of the community involved” (Usher 2000).

As LUO studies are the collection of baseline information from an Aboriginal group, the conduct of the LUOS generally should occur after the selection of biophysical and socio-economic valued components. Information informing each valued component should be collected during the conduct of the LUOS. This baseline information should then be assessed by the proponent using standard environmental assessment methodology. The resulting identification of changes to the baseline of each selected valued component will inform how a project will negatively or positively affect the exercise of rights for that Aboriginal group.

However, in this case, no identified valued components were available to the MMF at time of writing, therefore the MMF has identified three components of study (Metis use of and connection to the Ste. Madeleine site, Available Land and Harvesting in the vicinity of the Project) where baseline information was collected. It is the intention of this Report that all provided information will be fully integrated by Manitoba Hydro into their assessment upon completion.

### 2.2 Selection of Valued Components

Environmental assessment methodology necessitates the compartmentalization of the human and biophysical environments into manageable units appropriate for scientific study; often referred to as valued components (“VCs”).

A fundamental principle for the conduct of an environment assessment is that not all aspects of the biophysical and human environments can or should be examined in the context of a single application. It is important to ensure all potentially affected components of the environment (including human and biophysical components) are considered for inclusion; however, only those components likely to change through interaction with the project at hand should be ultimately included.

As VCs provide the ‘building blocks’ or the foundation for the entire assessment, appropriate criteria selection is an important step in ensuring a complete assessment is conducted. As stated, an environmental assessment process is often the primary vehicle for gathering information about matters of importance to Metis, their rights, and the prediction of changes resulting from a
proposed project. Therefore, ensuring that the criteria selected allow for the identification of predicted effects to the exercise of Metis rights are critical. The information gathered for this Report can inform the selection of VCs for the upcoming Environmental Assessment and then should be used as baseline information in the assessment of those VCs.

2.3 Valued Component Guidelines and Regulations
The Birtle Transmission Project is subject to the Manitoba Sustainable Development Environmental Act Proposal under The Environment Act. The Environment Act does not include specific definitions for the selection or assessment of Valued Components; however, there are some definitions of terms commonly used and specific to Manitoba that allow for the identification of overall meaning of that process.

Section 1(2) of The Environment Act defines environment to mean:

a) Air, land and water, or

b) Plant and animal life including humans.

Adverse effect is further defined in section 1(2) of The Environment Act as the “…impairment of or damage to the environment, including a negative effect on human health or safety.” Manitoba Sustainable Development (“MSD”) does not have specific regulations or guidelines which necessitate the inclusion of valued components in the identification of potential effects to the environment. However, the Manitoba’s Information Bulletin – Environmental Act Proposal Report Guidelines (Accessed August 2017) requires a description of the environmental and human health effects of the proposed development, but leaves the methodology by which the proponent arrives at these effects at the discretion and professional judgment of the proponent and their consultants.

2.4 Metis Valued Component Selection Rationale
In the case of this Report, valued components for the Environmental Assessment were not selected prior to the Report execution; therefore, the MMF has identified three components of study which could readily translate into VCs in the upcoming assessment. These components of study are:

- Metis use of and connection to the Ste. Madeleine site;
- Available Land in the vicinity of the Project; and
- Harvesting in the vicinity of the Project.
3 Data Collection Methodology

To ensure adequate consideration of the Manitoba Metis Community’s rights, claims and interests in the Environmental Assessment, collection of baseline information to inform the assessment was necessary. A focus group and interviews were completed with:

- 16 Survey Respondents ("Respondents"); and
- 7 Survey Participants ("Participants").

Baseline information was collected and amalgamated from the Respondents and Participants to help facilitate development of the Report.

3.1 Study Area

Normally, spatial parameters or study areas for the conduct of a project-specific Land Use and Occupancy study are areas delineated within an Aboriginal group’s traditional harvesting territory that can potentially be affected (either by direct or indirect effect) by the project under review. The spatial parameters for a LUO Study Area are normally set by the biophysical or socio-economic discipline with the largest area for study of potential impact. At time of writing, Manitoba Hydro has not yet formally selected VGs so no formal local or regional boundaries were available. To facilitate spatial representation of the information collected from Metis citizens, this Report used the following criteria to delineate the spatial parameters used.

The Project Development Area ("PDA") was assumed to be the right-of-way width which varied between 24 and 60 metres (Manitoba Hydro Pers. Comm. 2017) on-centre of the transmission line. For conservative representation of baseline information, 60 metres was used. Manitoba Hydro specified that the Project would most likely use a 1 mile (1.60934 kilometres) on-centre area for the Local Assessment Area ("LAA"). However, upon review of the Manitoba Hydro St. Vital Transmission Complex Environmental Assessment Report (2014), which was a transmission line of similar kilovolts, the Study Team noted the LAA for the St. Vital project was identified as 3 kilometres on-centre for both the land and resource use LAA, as well as the LAA defined for the atmospheric environment. Therefore, the LAA for this Report was defined by the Study Team as 3 kilometres to allow for a conservative assessment. A Regional Assessment Area ("RAA") was not described by Manitoba Hydro. However, in consulting the St. Vital Transmission Complex Environmental Assessment Report (2014) a 10-kilometre-wide on-centre corridor was defined as the RAA for Natural Vegetation, Birds, Mammals, Species of Conservation Concern and Lands and Resource Use. Therefore, this RAA was adopted for use in this Report.

The PDA, LAA and RAA can be seen in Figure 2.
3.2 Review of Existing Information
As this Report was completed under an abbreviated budget and work plan, it was necessary to review all existing land use and occupancy information collected by the MMF. Land use and occupancy sites that fell within a broadly identified Route Planning Area (Manitoba Hydro Pers. Comm. 2017) were incorporated into maps and are described in Section 7.1.

The Study Team also reviewed various published and unpublished material for relevant historical and cultural information to assist in the development and execution of this Report. A full listing of references can be found in Section 9 of this Report.

3.3 Development of Interview Survey and Focus Group Questions
Surveys and focus group questionnaires were developed collaboratively between the Study Team and the MMF based on the surveys originally completed for the Manitoba-Minnesota Transmission Project. Throughout June and July 2017, survey questions were edited internally by the Study Team based on comments and suggestions made by the MMF. On July 31, 2017, the MMF provided a copy of the focus group questionnaire and interview survey to Manitoba Hydro for review. Manitoba Hydro responded with edits on August 4th, 2017 and MMF responded to the suggested edits on August 16, 2017. Following this response, the focus group questionnaire and interview survey were finalized for delivery to MMF citizens.

Personal interviews with a questionnaire was deemed by the Study Team as the most appropriate method of eliciting interview Participant information. The personal interviews used a questionnaire with a clear plan for prompting responses without constraining the interview too narrowly; many questions were open-ended and allowed for Participants and Respondents to provide information as they saw fit. At the same time, this type of interview gave the interviewer control over the direction of the proceedings while obtaining an appropriate level of detail from the Participant and Respondents, who were also free to raise points, emphasize key concerns, and add information (Bernard 2006). Semi-structured interviewing is used when there is limited opportunity to conduct follow-up or clarification interviews. The interview protocol or categories for this Report were designed by the Study Team. The interview categories outline themes for the conduct of interviews.

A copy of the interview survey is attached as Appendix A and the Focus Group questionnaire is attached as Appendix B.

The categories for the survey included:

- Specific questions about Participant demographics;
- Open ended questions about Ste. Madeleine;
- Specific questions about Participant land use, including:
  - Hunting
  - Trapping
  - Fishing
  - Gathering
    - Berry and berry plant gathering
    - Plant, mushroom and medicine gathering
• Tree and tree product gathering
• Rock and mineral gathering
• Specific questions about Participant preferences and avoidance behaviors in relation to each type of identified land use; and
• Specific and open-ended questions about Participant Project concerns.

The focus group questionnaire included identical questions, without the specific questions about Respondents land use, as map collection of this data was impractical in the time frame and circumstances identified for focus group execution.

The recall interval (the period for which Participants’ provided data) for land use information for the Report was set at a ‘lifetime’, which is defined as “anytime within the respondent’s life” or “within living memory” (Tobias 2009). Any use activity recorded for this recall interval was marked in the Geographic Information System (“GIS”) database as “current”. Where interview Participants recalled activities of former generations data would be coded as “past”; however, no quantitative past land use sites were identified or mapped from survey responses specifically related to harvesting and land use for this Report.

3.4 Informed Consent
All MMF citizens involved in the focus group questionnaire and interview survey were asked to sign consent forms requesting permission for their participation and use of the knowledge shared. At the outset, the Study Team member went through the details contained in the consent form to ensure understanding.

The consent form also explained that all Respondents and Participants would remain anonymous. Prior to data entry, the Study Team assigned each Participant a number (MIS01 – MIS07 for interview Participants; and MFG01 – MFG16 for focus group Respondents). All quotes and observations taken from Participants or Respondents were attributed to the assigned number.

A copy of the consent form used is attached as Appendix C. The consent form outlined several details including:

• All data collected is the property of the MMF;
• The Report can be used by Manitoba Hydro; and
• All Participants and Respondents will remain anonymous.

3.5 Interview and Focus Group Execution
Structured and semi-structured interview questions were designed using Survey Monkey®, a web-based survey platform, and was used to collect and analyze data with an emphasis on the exercise of Metis rights and interests, including:

• Hunting
• Trapping
• Fishing
• Gathering
  o Berry and berry plant gathering
The Report methodology sought those MMF citizens with subject matter expertise, including those with experience harvesting in the Project vicinity and those with knowledge of the Metis community of Ste. Madeleine. This Report is not designed to be representative of all members of the MMF; rather, the non-random sample is representative of the Metis citizens and knowledge holders who participated in the research for this Report.

Interview and focus group methods use purposive sampling and solicited participation by invitation which generates a non-random (non-probability) sample. This type of sample is the preferred method of sampling when a study is labour intensive, requires critical or key information and experiences, and participants are from a hard to find or hard to identify population (Bernard 2006).

Interview Participants and focus group Respondents were invited to participate by MMF staff, including the Director of Energy and Infrastructure, and Minister of Economic Development. 7 MMF citizens participated in the interviews and 16 completed and submitted the focus group questionnaire.

### 3.6 Data Collection

The focus group questionnaire was administered in-person by the Study Team at a community meeting held on August 21, 2017 in Brandon, Manitoba. The Study Team presented on the content and purpose of the questionnaire, provided it to Respondents and were available throughout the filling out of the questionnaire to answer any questions Respondents had. Many focus group Respondents expressed that they were uncomfortable completing and submitting the questionnaire without further review of the contents. Therefore, they were permitted by the Study Team to take the survey home, fill it out and provide it to the MMF office in Brandon or Binscarth by August 31, 2017.

The interview survey was also administered in-person by the Study Team through individual interviews with Participants on August 22 and 23, 2017. The interview survey also collected data on Project-specific concerns.

### 3.7 Field Visit

A field visit to the Ste. Madeleine cemetery was completed on August 21, 2017 to familiarize the Study Team with the area and document accounts of the area from MMF staff and political representatives.
The Study Team took field notes of the observations, photos were taken to capture observations and document features of interest and the Study Team also took GPS points of interests and recorded the route to provide context to the accounts.

3.8 Data Entry
The interview surveys and focus group questionnaires were entered manually into an online version of the Survey using data streaming and question logic built into the Survey Monkey® platform. Where the survey Participant indicated they would prefer not to answer a question, or where a survey error was present, the missed responses were documented as ‘non-response’ and not entered into the survey results. Data was then tabulated and analyzed using Microsoft Excel.

Audio files of 6 of the 7 interviews were completed and partial transcription was carried out to allow for identification of key quotes and to supplement the interview survey responses, where applicable. One Participant declined audio recording and detailed notes were compiled instead.

3.9 Mapping
Composite basemaps created by the Study Team were used during interviews. These basemaps were set at a scale of 1:150,000.

During the interviews, information that could be represented spatially was captured on these maps. Study Team members physically controlled documentation of mapped information, primarily for consistency. Mapped information was confirmed with Participants during the interview, as each site or area was recorded. Fixed sites and areas are given a feature number at the time they are recorded, which corresponds to the survey entries taken throughout the interview.

The Study Team’s experience is that the use of polygons is best suited to represent an Aboriginal harvester’s life experiences related to land use and occupancy. Polygons, although not exact, afford the Study Participants a way to represent a lifetime of experience in a single, two-hour interview format. Polygons also allow for the representation of movement over large territories used for harvesting. The use areas identified on the maps contained within this Report should be considered approximate as field verification was not completed as part of this study.

The Study Team also utilized polylines as part of the study, where applicable, to document animal migration routes.

3.10 Map Digitization
Map digitization for this Report was conducted using ArcGIS 10, ArcMap Version 10.1 (developed by ESRI, 2013) Geographic Information System (“GIS”) software. In order to ensure consistency, two digital shapefiles that were previously created for Manitoba Metis Federation Use and Occupancy Studies were used. All map digitization was entered into these files. The files created included:

- A polyline file to document linear features (migration routes); and
- A polygon file to document use areas.
The polygon and polyline files contained an associated attribute table which was used to document information specific to each mapped site. The fields contained in each file were:

- Object ID (generated by GIS software);
- Shape (generated by GIS software);
- Interview Number (Trip/Day/Interview);
- Date (MMDDYYYY);
- Project (Project Name);
- Site ID (Map Number Assigned to Site during Interview);
- Lead and Assist (Names);
- Species;
- Participant Code (Generated Number);
- General Label (Hunting, Trapping, Fishing, etc.);
- Season (Spring, Summer, Fall, Winter, Year-Round);
- Activity Type (Spawning Area, etc.);
- Site Type (Subsistence, Sharing, etc.);
- Location (Geographic Description);
- Info (Additional Site Information);
- Use Time (Past, Current, Future);
- Spec Label (A Specific Label for Mapping, e.g., Goldeye Fishing).

The records made using the mark-up map during the interview and survey notes were entered into the GIS database.

Areas and linear features were digitized into the above-mentioned shapefiles using the Editor tools in ArcGIS and the digital versions of the basemaps used in the interviews. If an area or feature was further described in the survey notes, this was also incorporated into the maps. For example, if a shape was around a river and the Participant indicated they fished within that river, the polygon was adjusted to conform to the description. Additionally, if a Participant indicated an activity at a location not correctly represented on the mark-up maps, the boundaries were corrected to the specified location via the description in the text.

Once digitization of the mark-up maps was completed, the information was represented using the symbology available within ArcGIS 10, ArcMap Version 10.1 and was labeled using the ‘Spec Label’ field from the attribute table.

### 3.11 Diminished Preference Zone Maps
In addition to Use and Occupancy maps, maps of diminished preference zones were also completed. Please see Appendix F for map methodology.

### 3.12 Verification
The results of the Survey and Questionnaire were presented to the MMF on September 22, 2017. Following provision, edits were provided to the Study Team on September 28, 2017. The updated draft was returned to the MMF on September 29, 2017.
The key findings of this Report were presented to Contributors on October 18, 2017. This was completed to ensure that the information contained in the Report was reflective of MMF citizens perspectives, was accurate and fully respected MMF confidentiality concerns. The verification meeting consisted of introductory remarks from MMF political representatives and staff, a PowerPoint presentation by a Study Team representative, questions and the opportunity for participants to add concerns, clarification or mitigation suggestions (paper hand outs were provided to solicit comments).

The verification meeting confirmed many of the concepts contained in the Report. Specifically, those related to Ste. Madeleine. In addition to confirmation of the results, the following issues and concerns were raised by verification Contributors:

- A Contributor felt that the historic homesteads south of cemetery must be mapped to identify their precise locations;
- A Contributor felt that the timing windows to be used for construction may conflict with MMF harvesting timing windows;
- A Contributor believed that traditional land use information must be collected more broadly as there may be citizens outside the immediate area that come to the community pasture to exercise their rights;
- A Contributor felt that the consultation undertaken with the public was in stark contrast with the consultation undertaken with the MMF. They felt that there was not enough consultation with MMF and asked for additional details of how and when public consultation occurred;
- A Contributor explained that hunting restrictions from other pieces of legislation (e.g., the Wildlife Act or the Manitoba Hunting Regulations) may result in Metis being displaced and that these need to be taken into account when considering loss of available land for the Metis to exercise their rights on;
- A Contributor added that there is little hunting in the area. There was some discussion of this and it was noted that there is berry, plant and medicine gathering that occurs in the Project area;
- A Contributor stated that the line will affect MMF citizens and that they felt the land was stolen; and
- A Contributor indicated that there should be ongoing monitoring of traditional use activities to ensure minimal impact.

Additionally, two written statements were provided by MMF citizens during the verification process. The first statement explained:

“In the area the transmission line runs through, are there any restrictions to Metis people crossing the lands the line use; other than to make way for construction or maintenance of the line? What legal rights do we, as a Metis population, have in regards of using the lands if Hydro decides to restrict our use of the area? Will the land used to run this line be allowed to regrow? The brush and the tree cover? Or will it continue to be restricted to grassland?”
My concerns about losing even a little bit of land base we use for harvesting is it may impact us directly; and our future generations from using the favorite or traditional land base that we will bring our children and grandchildren to the area.”

The second written statement explained that:

“As a Metis, the Government has a fiduciary obligation, also the courts have determined Metis are rights bearing…

…Therefore, I believe the people of ‘Ste. Madeleine’ were subjected to the most deplorable of acts. The Metis deserve opportunity for reclamation and compensation. Once, my aunt bought a car; it turned out to be stolen; she lost her car and money too. Now I can empathize with the people affected by correcting Ste Madeleine’s past … Ste. Madeleine is worth saving.”

These written statements provide further insight into the feelings of Contributors. Participants and Respondents expressed concerns related to the Project’s routing in terms of both Ste. Madeleine as well as effects to their harvesting rights, practices, and preferences. While many Contributors are used to some level of restriction on their access of the community pasture, there is perception that this will be increased through construction, and potentially maintenance, of the Project. These, and the concerns listed in Sections 5, 6 and 7, must be considered and addressed by Manitoba Hydro in their Environmental Assessment report.

3.13 Limitations
There are several specific limitations which apply to the data provided in this Report.

Sample Size
The Survey was conducted with 7 MMF citizens through interviews and 16 focus group questionnaires were returned. While survey Participants and focus group Respondents represent a broad spectrum of MMF citizens, the results can only been seen as a ‘snapshot’ of MMF land use, avoidance and preference behavior; this Report cannot be seen as a representative sample of the entire MMF population due to its small sample size. The Report utilizes a non-random sample, and is only representative of the citizens and cultural practitioners who participated in the Report.

Land and Resource Use Data
Project-specific land use and occupancy information is not the totality of information about the exercise of Aboriginal rights in a particular area by an Aboriginal Nation. It is impossible to fully represent the extent of knowledge or areas of use learned over a lifetime during a standard interview format. A representative map of traditional use will identify ‘used’ and ‘unused’ areas which may not accurately reflect the totality of a lifetime of cultural knowledge and practices.

Time and Budget
The Surveys were completed under an agreed to workplan and budget developed in partnership with Manitoba Hydro. However, as it was identified as a single application Report, the budget did not allow for a larger sample size.
**Data Limitations**
The spatial data is limited to information that is publicly available through the following: Natural Resources Canada, Manitoba Department of Conservation, Statistics Canada, Protected Areas Initiative – Parks and Protected Spaces Branch – Manitoba Sustainable Development, Government of Manitoba, Manitoba Conservation – Forest Resources Management, Manitoba Mineral Resources, Municipality of Russell-Binscarth, Prairie View Municipality, Regional Municipality of Ellice-Archie and Regional Municipality of Riding Mountain West.

**Data Access**
The creation of buffers was dependent on data sets that were available to the Study Team for the Project area.
4 Manitoba Metis Federation

4.1 Origins

The Metis Nation in general, and in southern Manitoba, finds its earliest roots in the fur trade. In the eighteenth century, both the Hudson Bay Company and the Northwest Company created a series of trading posts that stretched across the upper Great Lakes, through the western plains, and into the northern boreal forest. Inevitably, unions between European men—explorers, fur traders, and pioneers—and indigenous women were consummated. More remarkably, however, was that “[w]ithin a few generations the descendants of these unions developed a culture distinct from their European and Indian forebears” and the Metis Nation was born—a new people, indigenous to the western territories.

The Metis led a mixed way of life. “In early times, the Metis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture.” The Metis were employed by both of the fur trades major players, the Hudson’s Bay and Northwest companies. By the early 19th century, they had become a major component of both firms’ workforces. At the same time, however, the Metis became extensively involved in the buffalo hunt. As a people, their economy was diverse; combining as it did, living off the land in the Aboriginal fashion with wage labour.

Some of the earliest Metis settlements were found on the Red River, beginning perhaps in 1810 with the establishment of Fort Gibraltar, a Northwest Company Post. In these years, the Metis developed both a sense of pride in their origins and proprietorship in the lands that would become southern Manitoba. William McGillivray, a Northwest Company Partner, described the Metis in 1815:

…the Half Breed Indians, a daring and now numerous race sprung from the intercourse of the Canadian Voyageurs who consider themselves the Possessors or the Country and Lords of the soil.

---

1 The following section (with the exception of subsection 4.5) was developed by Pape, Salter, Teillet LLP Barristers and Solicitors and is used to provide historical and modern context for the Report. Therefore, citation style varies throughout from Chicago Manual of Style which is commonly used for citation in social science reports, to footnotes for Uniform legal Citation.


7 R. v. Goodon, 2008 MBPC 59 at para. 68.

4.2 The Birth of a Nation

It was on the Red River, in reaction to a new wave of European immigration, that the Metis Nation first came into its own. In 1811, hoping to establish a Scottish settlement, Lord Selkirk purchased 116,000 acres of territory from Hudson Bay Company in the Red and Assiniboine River basins. They arrived at the Forks—the junction of the Red and Assiniboine Rivers—in 1813. River lots were surveyed, and a fort was constructed.\(^9\)

To wrest control of land and resources from the Metis, the new settlement tried to restrict the hunting of buffalo on horseback. But, with the support of the North West Company and under the leadership of Cuthbert Grant, the Metis resisted the imposition of any control by the new settlement. In 1816, the Metis captured Fort Brandon, a Hudson Bay Company post, and then in what became known as the Battle of Seven Oaks drove the settlers from the Forks.\(^10\)

The Battle of Seven Oaks victory had a catalyzing effect and was a pivotal event in the history of the Metis Nation:

It was the largest and most significant military encounter in which they had ever participated and their overwhelming victory sent a clear message to outsiders that they were a force to be reckoned with. In addition to boosting their confidence and assertiveness, the battle also provided mixed European-Indian ancestry people with some of the trappings or symbols of nationalism. The flag presented to them by the North West Company was apparently unfurled during the encounter. Moreover, the exploits of mixed European-Indian ancestry warriors at Seven Oaks were later immortalized in song composed in 1817 by Pierre Falcon, Cuthbert Grant’s brother-in-law and comrade in arms.\(^11\)

Lord Selkirk and his settlers returned to the Forks in 1817, peace was made with the Metis, and no further evacuations were necessary. The Metis, for their part, appeared to be glad for the market the settlement provided for their goods—so long as their practices and customs were not


In 1821, The Hudson Bay and North West Companies merged. This had a significant effect on the Metis of the Northwest. A number of trading posts were closed, and many Metis lost their jobs. There was a flood of Metis settlers to lands around the confluence of the Red and Assiniboine Rivers. Cuthbert Grant himself settled at St. Francois Xavier, just west of the Forks on the Assiniboine River. Indeed, in the years that followed, generations of Metis employed in the fur trade would follow this example and settle in region.

In this burgeoning settlement, the Metis Nation took root and flourished. The Metis abided by their own rules and continued to resist the imposition of European control through the mid-19th century. In 1834, for example, when Antoine Laroque—a Metis tripman—was assaulted by Thomas Simpson—an English born Hudson’s Bay Company clerk—the Metis community demanded justice on their own terms. “[T]he entire Metis community in the settlement took up arms in Laroque’s defence [sic]” and surrounded the seat of the Council of Assiniboia at Upper Fort Garry. An agreement was brokered between the Company and the Metis community in which restitution was paid not only to Mr. Laroque, but also to the Metis assembled in his defense. From this incident was born the collective realization of the Metis that “if they stood united, the company would have to gain at least their tacit assent to govern the colony.”

Never was the Metis Nation’s independence more apparent than during the trial of William Sayer, a Metis man who, in 1849, was charged with illegally trading furs in Rupert’s Land. As the proceedings were held, a large group of Metis surrounded the courthouse. Though Sayer was convicted, he was not punished. The assembled crowd celebrated, chanting as a rallying cry, “le commerce est libre!” The Hudson Bay Company could no longer use the courts to enforce its

---

14 Letter from Archibald to Secretary of State (27 December 1870), as cited in Manitoba Métis Federation et. al. v. Canada (No. C. 81-01-01010), Plaintiffs’ Written Argument, para. 329, Document 122.
supposed trade monopoly. “The Metis treated this as a victory and continued to trade freely, ignoring any law prohibiting such action.”

In the mid-1800s, Hudson Bay Company employee Alexander Ross articulated the Metis’ commitment to freedom, which was put on such public display as a result of events such as the Sayer trial:

“[The Metis believed] all men were born to be free … they [were] marvelously tenacious of their own original habits. They cherished freedom as they cherish life.”

It was perhaps during the waning days of the Hudson Bay Company’s administration in Rupert’s Land that the Metis Nation was most powerful and influential. George Simpson, governor of the Hudson Bay Company, stated in 1846 that “the half-breeds … believe … that the fact of their being natives of the soil gives them the unquestionable right of trading [and] hunting within the H.B. Territory which cannot be affected by the Company’s Charter.”

A decade later, in 1856, the situation was much the same. Simpson observed that:

To a man the rising generation of Half-breeds may be set down as opposed to the Company’s rule, which they consider adverse to their best interests...feeling that the soil, the trade and the Government of the country are their birth rights.

This proud independent Metis population constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed “all of the area within the present boundaries of southern Manitoba from the present day City of Winnipeg and extending south to the United States.”

The heart of the historic rights-bearing Metis community in southern Manitoba was the Red River Settlement, which the Supreme Court of Canada described in Manitoba Metis Federation:

---

In 1869, the Red River Settlement was a vibrant community, with a free enterprise system and established judicial and civic institutions, centred on the retail stores, hotels, trading undertakings and saloons of what is now downtown Winnipeg. The Metis were the dominant demographic group in the Settlement, comprising around 85 percent of the population, and held leadership positions in business, church and government.\textsuperscript{22}

\section*{4.3 The Promise of Confederation}

In 1867, Canada was created. “The historical and legislative evidence shows that expanding the country across the West was one of the primary goals of Confederation.”\textsuperscript{23} Indeed, one of the first priorities of Canada’s first Prime Minister—Sir John A. Macdonald—was to secure the transfer of Rupert’s Land from the Hudson’s Bay Company to the new Dominion.

In the Red River Settlement, the rumor that Canada would annex Rupert’s Land was confirmed by the arrival of a surveying party in 1869. The surveyors were met with armed resistance and, at a location now part of the City of Winnipeg, were enjoined not to survey land that was “the property of French half-breeds.”\textsuperscript{24} Shortly thereafter, on November 2, 1869, William McDougall—Canada’s proposed Lieutenant Governor of the new territory—was turned back at the border by a mounted Metis patrol. The same day, a group of Metis led by Louis Riel seized Upper Fort Garry, now downtown Winnipeg. In the weeks that followed, the Metis formed a provisional government and drew up a list of demands for Canada to satisfy before the Red River Metis would accept Canadian control.\textsuperscript{25} Riel issued a Declaration of the People of Rupert’s Land, which proclaimed the provisional government and stated that:

…”a people which has no government is free to adopt one form of government rather than another … the sole legitimate authority today in Rupert’s Land and the North-West is the authority accorded provisionally by the people to us their representatives … we

\textsuperscript{22} Manitoba Metis Federation Inc. v. Canada (Attorney General), [2013] 1 SCR 623 at para. 23.

\textsuperscript{23} Daniels v. Canada (Indian Affairs and Northern Development), 2016 SCC 12 at para. 4.


refuse to recognize the authority of Canada which comes to impose on us a form of
government still more contrary to our rights and our interests...  

Canada had little choice but to negotiate. It had neither the legal authority nor the military capacity
to send in troops to quell the uprising. Macdonald, however, found some of the demands of “the
insurgent Half-breeds” to be “altogether inadmissible.” To settle the dispute, he invited a
delegation to visit Ottawa for the purpose of representing the claims and interests of Rupert’s
Land, and he offered his assurances that the Metis’ claims would “be equitably settled.”  

Riel nominated a delegation of three—a priest, Father Ritchot, a judge, Judge Black, and a local
businessman named Alfred Scott—which arrived in Ottawa on April 11, 1870. They met with
Prime Minister Macdonald and the Minister of Militia and Defence, George-Étienne Cartier. These
men negotiated what would become the key provisions of Manitoba Act, 1870, including a grant
to Metis children of 1.4 million acres of land (s. 31), a guarantee of legislative and judicial
bilingualism (s. 23), and protection for catholic schools (s. 22).  

The delegation returned home and, on June 24, 1870, proposed the arrangement to the
Legislative Assembly of Assiniboia—the legislature for the provisional government: 

The Assembly was read a letter from Minister Cartier which promised that any existing
land interest contemplated in s. 32 of the Manitoba Act could be converted to title without
payment. Minister Cartier guaranteed that the s. 31 children’s grants would “be of a
nature to meet the wishes of the half-breed residents” and the division of grant land
would be done “in the most effectual and equitable manner.”

The agreement was accepted on the basis of these promises. Finally, Metis land tenure appeared
to be secure. Given the importance that the Metis placed on their lands, it is hard to overestimate
what this must have meant to the Metis. As Louis Riel would explain later in his life:


27 Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al., 2007 MBQB 293 at para. 78,

28 Letter from John A. Macdonald to Donald A. Smith (3 January 1870), as cited in Manitoba Metis
Federation Inc. et al. v. Attorney General of Canada et al., 2007 MBQB 293 at para. 87.

29 Letter from John A. Macdonald to Donald A. Smith (3 January 1870), as cited in Manitoba Metis
Federation Inc. et al. v. Attorney General of Canada et al., 2007 MBQB 293 at para. 87.


The lands that they owned…belonged to them once by the Indian title, twice for having defended them with their blood, and thrice for having built and lived on them…\textsuperscript{34}

On July 15, 1870, Manitoba became a province, with the name “Manitoba” having been suggested by Riel himself.\textsuperscript{35}

### 4.4 Terror and Dishonor

It is worth asking whether Canada’s promises were ever meant to be kept. Historian Douglas Sprague explains:

> In the midst of the negotiations with Ritchot, Macdonald made plain to Sir Clinton Murdoch and the Governor General that local control of land was as “inadmissible” as the amnesty [for Riel and his followers]. At the same time, “for the sake of peace,” the delegates were led to believe that their accord with Canada included a pattern of self-government extending to the administration of the Metis homeland in the District of Assiniboia.\textsuperscript{36}

Indeed, Macdonald made little secret of his disdain for the Metis and of his prescription for dealing with them. In February, 1870 he had written that “these impulsive half breeds have got spoilt by their emeute [riot], and must be kept down by a strong hand until they are swamped by the influx of settlers.”\textsuperscript{37} That, in so many words, is more of less what happened.

Canada’s efforts to set aside the 1.4 million acres and divide the land among eligible recipients were plagued errors and delays,\textsuperscript{38} which the Supreme Court of Canada summarized in *Manitoba Metis Federation*:

---


\textsuperscript{36} Douglas N. Sprague, *Canada and the Métis, 1869-1885*, (Waterloo: Wilfred Laurier University Press, 1988) at p. 89.


\textsuperscript{38} *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 32.
The first problem was the erroneous inclusion of all Metis, including heads of families, in the allotment, contrary to the terms of s. 31, which clearly provided the lands were to be divided among the children of the Metis heads of families. On March 1, 1871, Parliament passed an Order in Council declaring that all Metis had a right to a share in the 1.4 million acres promised in s. 31 of the *Manitoba Act*. This order, which would have created more grants of smaller acreage, was made over the objections raised by McDougall, then the former Lieutenant Governor of Rupert’s Land, in the House of Commons. Nevertheless, the federal government began planning townships based on 140-acre lots, dividing the 1.4 million acres among approximately 10,000 recipients. This was the first allotment.

In 1873, the federal government changed its position, and decided that only Metis children would be entitled to s. 31 grants. The government also decided that lands traditionally used for haying by the Red River settlers could not be used to satisfy the children’s land grant, as was originally planned, requiring additional land to be set aside to constitute the 1.4 million acres. The 1873 decision was clearly the correct decision. The problem is that it took the government over three years to arrive at that position. This gave rise to the second allotment.

In November 1873, the government of Sir John A. Macdonald was defeated and a new Liberal government formed in early 1874. The new government, without explanation, did not move forward on the allotments until early 1875. The Liberal government finally, after questions in Parliament about the delay and petitions from several parishes, appointed John Machar and Matthew Ryan to verify claimants entitled to the s. 31 grants. The process of verifying those entitled to grants commenced five years after the *Manitoba Act* was passed.

The next set of problems concerned the Machar/Ryan Commission’s estimate of the number of eligible Metis children. Though a census taken in 1870 estimated 7,000 Metis children, Machar and Ryan concluded the number was lower, at 5,088, which was eventually rounded up to 5,833 to allow for even 240-acre plots. This necessitated a third and final allotment, which began in 1876, but was not completed until 1880.

... 

Eventually, it became apparent that the Acting Agent of Dominion Lands, Donald Codd had underestimated the number of eligible Metis children — 993 more Metis children were entitled to land than Codd had counted on. In 1885, rather than start the allotment yet a fourth time, the Canadian government provided by Order in Council that the children for whom there was no land would be issued with $240 worth of scrip redeemable for land. Fifteen years after the passage of the *Manitoba Act*, the process was finally complete.\(^{39}\)

---

Had circumstances allowed the Metis to benefit from the grants made to them, they would have enjoyed a privileged place in the heart of the new province, as is apparent from the map of the lands these grants covered. While waiting for the land grants to be executed in an “equitable manner,” however, the Metis had the control and governance of their homeland torn from their grasp.

As soon possible after Manitoba joined confederation, 1,200 soldiers—the Red River Expeditionary Force—were sent from Ontario to assert Ottawa’s control over the fledgling province. When the soldiers entered Fort Gary on August 24, 1870, Riel watched on anxiously from the steps of Bishop Taché’s cathedral on the river’s far bank:

He stood there with the Bishop watching the troops race into the empty fort, whooping for blood and finding no one to hang or to shoot. Feeling disappointment and anger of his own, Riel turned to Taché and said, “It appears that we have been deceived.”

This was the beginning of what the New York Times would later label Manitoba’s “reign of terror.” Historian Fred Shore elaborates:

Since the militia was stationed in Fort Garry along with the Dominion Lands Office, the first Provincial Legislature and other government offices, Métis attempts at being part of the new power system were fraught with danger. Assaults, ‘outrages,’ [rapes] murder, arson and assorted acts of mayhem were practiced on the Métis anytime they came near Fort Garry, while the situation in the rest of the Settlement Belt was not much better.

There is no room here for a full account of the violence that the Metis of southern Manitoba were made to suffer. Some of the most outrageous examples, however, cannot be ignored.

On September 6, 1870, John Christian Shultz—who would go on to become Manitoba’s fifth Lieutenant Governor—and a number of other men invaded the home of Thomas Spence, editor of the *New Nation*. At gunpoint, they horsewhipped him. They then moved on to his office, disabled his printing press, and trashed his supplies.

On September 13, 1870, Elzéar Goulet—a Metis leader and supporter of Riel and the provisional government—was murdered. Soldiers with the Red River Expeditionary Force chased Mr. Goulet

---


43 The *New Nation* was published weekly from January 7, 1870 to September 3, 1870. Formed by the merger of the Red River Pioneer with the Nor’Wester, it was friendly to the provisional government headed by Louis Riel, the debates and discussions of which it reported in great detail.

44 Lawrence Barkwell, *The Reign of Terror Against the Metis of Red River* (Louis Riel Institute) at p. 4.
out of a saloon and into the river. While Mr. Goulet tried to swim to the opposite shore, the soldiers stoned him. He drowned.\textsuperscript{45} No charges are laid against the soldiers.

On October 6, 1870, the St. Paul \textit{Daily Pioneer} reported on the reign of terror:

\begin{quote}
Its purpose was to drive out by threats or actual violence all the French Half-Breed population, all American citizens, the Hudson's By Company, and [Lt.] Governor Archibald.\textsuperscript{46}
\end{quote}

On December 16, 1870, a Metis man—David Tait—and two of his companions were beaten and left for dead. A soldier's kepi with a regimental number was recovered at the scene of the assault.\textsuperscript{47}

In February 1871, André Nault—a prominent Metis leader—was attacked by volunteers for the Red River Expeditionary Force while visiting a hotel in Pembina. He fled across the border, but was caught, bayonettet, and left for dead. He carried a scar from the assault until his death.\textsuperscript{48}

On April 19, 1871, Fredrick Bird, a Metis man and the MLA for Portage la Prairie, was kicked and thrown into the mud by John Christian Shultz's supporters, who did not like the way he voted in the legislature.\textsuperscript{49}

On December 8, 1871, soldiers attacked Louis Riel's home. Pierre Parenteau described the incident in a letter written the following day:

\begin{quote}
December 8, 1871, when a party of armed men, led by William Buchanan, raided Riel's house in St. Vital, claiming to hold warrants for his arrest. Riel was away, and the raiders could only threaten the women of the household to vow bitterly that the Metis leader would be killed before the night had ended.\textsuperscript{50}
\end{quote}

The violence was stifling, as Lieutenant Governor Archibald explained in a letter to John A. Macdonald:

\begin{quote}
\textsuperscript{45} Lawrence Barkwell, \textit{The Reign of Terror Against the Metis of Red River} (Louis Riel Institute) at p. 4.
\textsuperscript{46} As cited in Lawrence Barkwell, \textit{The Reign of Terror Against the Metis of Red River} (Louis Riel Institute) at p. 5.
\textsuperscript{47} Lawrence Barkwell, \textit{The Reign of Terror Against the Metis of Red River} (Louis Riel Institute) at p. 6.
\textsuperscript{48} Lawrence Barkwell, \textit{The Reign of Terror Against the Metis of Red River} (Louis Riel Institute) at p. 7; Ruth Swan and Janelle Reynolds, \textit{Dictionary Canadian Biography}, s.v., André Nault.
\textsuperscript{49} Lawrence Barkwell, \textit{The Reign of Terror Against the Metis of Red River} (Louis Riel Institute) at p. 7.
\textsuperscript{50} Public Archives of Manitoba \textit{Lieutenant Governor's Papers}, Letter Parenteau et al., December 9, 1871, as cited in Lawrence Barkwell, \textit{The Reign of Terror Against the Metis of Red River} (Louis Riel Institute) at p. 5.
Many of them [the French half-breeds] actually have been so beaten and outraged that they feel as if they were living in a state of slavery.\textsuperscript{51}

In the decades that followed, the animosity suffered by the Metis in southern Manitoba remained intense. There is little doubt that it eroded their foothold in the province:

The future of the Metis in the new province was, to a large extent, decided in the two decades following the creation of Manitoba. These were hard years for the Red River Metis. Not only were the hunting and trading economies in rapid decline, but commercial grain farming was not viable before the 1880s. This produced subsistence crises that led to significantly higher Metis mortality rates in the province. Delays in gaining possession of the land grants promised in the Manitoba Act led to further insecurity as immigrants from Ontario sometimes squatted on land the Metis claimed as their own. Adaptation to the new political and social climate of Manitoba was further complicated by the introduction of a representative government unfamiliar to the Metis. Given these factors, it should not be surprising that many Metis ceased to see Red River as a Metis homeland, sold their lands, and left the province for lands further west, south, and north.\textsuperscript{52}

Faced with unrelenting social pressures, on the one hand, and the glacial pace of the land grant process, on the other, many Metis felt that their only choice was to sell their claims—often at unconscionably low prices—and leave:

While the allotment process lagged, speculators began acquiring the Metis children’s yet-to-be granted interests in the s. 31 lands, aided by a range of legal devices. Initially, the Manitoba legislature moved to block sales of the children’s interests to speculators, but, in 1877, it passed legislation authorizing sales of s. 31 interests once the child obtained the age of majority, whether or not the child had received his or her allotment, or even knew of its location. In 1878, Manitoba adopted further legislation which allowed children between 18 and 21 to sell their interests, so long as the transaction was approved by a judicial officer and the child’s parents. Dr. Thomas Flanagan, an expert who testified at trial, found returns on judicial sales were the poorest of any type of s. 31 sale.\textsuperscript{53}

The central purpose of the land promised in s. 31 of the Manitoba Act was to give “families of the Metis through their children a head start in the new country in anticipation of the probable and

\textsuperscript{51} Letter from Archibald to Macdonald (9 October 1871) as cited in as cited in Manitoba Métis Federation et. al. v. Canada (No. C. 81-01-01010), Plaintiffs’ Written Argument, para. 362, Document 122.
\textsuperscript{52} Gerhard J. Ens, Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century (Toronto: University of Toronto Press, 1996) at p. 139.
\textsuperscript{53} Manitoba Metis Federation Inc. v. Canada (Attorney General), [2013] 1 SCR 623 at para. 37 (internal citations omitted).
expected influx of immigrants.” Through its inaction and delay, the government failed to give effect to this purpose:

The honour of the Crown required the Crown to interpret s. 31 in a purposive manner and to diligently pursue fulfillment of the purposes of the obligation. This was not done. The Metis were promised implementation of the s. 31 land grants in “the most effectual and equitable manner”. Instead, the implementation was ineffectual and inequitable. This was not a matter of occasional negligence, but of repeated mistakes and inaction that persisted for more than a decade. A government sincerely intent on fulfilling the duty that its honour demanded could and should have done better.

It is not surprising that throughout this period many Metis families fled from their homes in the original Red River Settlement seeking safety in other areas of Manitoba and beyond. They sought refuge in places they knew, where there were already other Metis individuals and where their relatives had established homes and villages. One such place was Ste. Madeleine.

4.5 Ste. Madeleine
The historic community of Ste. Madeleine was originally settled by a collection of intrepid Metis homesteaders in the late 1800s. In 1872, the first Dominion Lands Act was implemented. This Act set out free quarter-section homestead grants. Even numbered sections would be granted as homesteads, while odd-numbered sections were to be reserved as Railway Lands (later public lands). In addition, certain sections of each township were to be set aside for schools. To secure a 160-acre homestead, “…the applicant had to make an entry in person at the Dominion Lands Office, and pay ten dollars. To earn a patent for the homestead, there was a residence requirement of three years, during which time a house must be built, 30 acres of land must be broken and 20 acres cropped.” Many Metis families, frustrated with the delay in receiving their land grants under the Manitoba Act, 1870, took advantage of these homestead opportunities.

At first only a small settlement, Ste. Madeleine quickly grew as Metis families, many of which were displaced from the Red River Settlement, came and settled in the area. With the delay in receiving their promised lands in the new province, and facing threats, violence and persecution, many Metis families left the Red River Settlement in search of a place where they could put down roots and raise their children. Ste. Madeleine offered such a promised community where the Metis

---

57 Ibid.
58 Ibid.
59 Ibid.
could live safely and work on lands that were their own. By the early 1900s there were over 250 Metis individuals living there.\(^{60}\)

Ste. Madeline was a vibrant community that its members took pride in belonging to. In 1902, an auxiliary mission was set up, which led to the community officially being recognized on a map. In 1913 a log chapel was constructed by the community members (see Figure 3) and a priest would attend once or twice a month to conduct mass. Following this, a one-bedroom school was constructed in 1922 where grades 1 through 8 were taught for the community children.\(^{61}\)

The times were not easy for the Metis. Homesteading was difficult work; in the 1930s there was extensive drought across the prairies, resulting in limited farming ability and people often had to seek employment off their lands, and away from their families and homes. Men and boys would frequently leave the settlement for long periods at a time, taking only limited supplies and their dogs to go in search of work, but Ste. Madeleine was always the place that they returned home to.


\(^{61}\) Ibid.
Metis Expulsion from Ste. Madeleine

In 1935, the Prairie Farm Rehabilitation Act (“PFRA”) was enacted by the Government of Canada in response to severe drought which was causing hardship and dislocation of many farm families in Saskatchewan and Manitoba (Phillips 2015). A number of policies and programs were put in place through this Act, which aimed to address drought challenges and support agriculture on the prairies. One such program was the establishment of Community Pastures.

In 1939, the Government of Manitoba began establishing community pastures which were to be operated by the Prairie Farm Rehabilitation Administration and were initially meant to conserve fragile ecosystems or land that had been subject to drought or erosion (Phillips 2015). While the main stated purpose of these community pastures was the conservation of these identified ecosystems, there was also an underlying economic component; it was hoped that the establishment of these pasture lands would lead to a diversification of economy in the prairie provinces through increased grazing of livestock, particularly on lands that were ill suited to crop farming (Kulshreshtha et al. 2008). By 2006 there were a total of 85 community pastures throughout the prairies with a combined area in Manitoba of 718,000 hectares (Phillips 2015).

AESB Community Pastures Map for Manitoba, Saskatchewan and Alberta
In order to establish these community pastures there needed to be great swaths of land able to be set aside as pasture land.

Ste. Madeleine, and the surrounding area, was one such location that was identified to be used for the Community Pasture program. However, there was a side of the *Prairie Farm Rehabilitation Act* and Community Pastures which was less desirable; homesteaders—and the presence of people on the pasture lands—was incompatible with their purpose of conservation and cattle grazing. This resulted in the forcible removal of the Metis from the lands where they had homesteaded for many years to make room for these conservation and economic efforts.62 Bluntly, the people had to go to make room for the cows.

There was some compensation available under the *PFRA*, but only to those individuals that had paid all their property taxes on the land. For the Metis families in Ste. Madeleine, this was a nearly impossible requirement. The majority of Metis in Ste. Madeleine struggled to feed themselves and their families, and were unable to afford to pay property taxes on the lands that they had settled on and maintained.63 Because of this, they were not guaranteed compensation or fair trade of land when their homes were designated as Community Pasture lands.

In 1937 “…two representatives of the Rural Municipality of St. Lazare, John Selby and Ben Fouillard, came to Ste. Madeleine and began telling people that they would all have to leave…” their homes (Herriot 2016). The Metis were informed that the land was being claimed by the federal government to create a community pasture, and space for cows to graze. They were told that anyone who tried to stay would be removed by force (Herriot 2016).

Having already fled their homes and violence in Red River, these Metis individuals and families had settled in Ste. Madeleine and built a home and community there for over 50 years. There was no compensation available to them, and no alternative lands provided where they could go to.

With their lands claimed by the government, the Metis who remained were identified as squatters. There are recollections from Metis elders and community members that they returned home from work to find their houses burnt to the ground, their church dismantled, and their valuable working dogs shot.64 All that remained of their homes was the metal bedframes, or iron stoves that would not burn. A once vibrant and thriving Metis community was erased and over 250 Metis homesteaders who had tended that land were expelled.

There was an account from Harry Pelletier of when he returned to the town in 1938. When he came back, he found no one left:

“…everything was lost ‘cause my place where I was raised was gone. And I couldn’t find the people. They were scatted all over the country … We made our living there. We had gardens.

---

64 Ibid.
We had everything we needed there … They pushed us out of our homes and they burned our houses and shot our dogs.⁶⁵

Expelled from their land, and with their homes destroyed, the Metis were left with nowhere to go. Their town was gone, but their connection to Ste. Madeleine remained. Many Metis families chose to stay as close to the Ste. Madeleine area as they could; often putting up tents or living under wagons on the road allowances near Binscarth. These areas where they settled were sardonically renamed for the municipal men who had ordered them to leave: Selby Town and Fouillard Corner. Some Ste. Madeleine towns-people were squatting elsewhere, and some were missing altogether.

4.6 Aftermath and Resurgence

Some Metis stayed in, or returned to, southern Manitoba but their survival demanded that they remain all but invisible. In the years following confederation the dangers of publicly identifying as Metis were made obvious. This established a pattern of behavior that would last almost a century:

Another element that contributes to the invisibility of the Metis is that following the Metis uprisings at Red River in 1870 and in Saskatchewan in 1885 it became impolitic and sometimes dangerous for Metis to self-identify publicly. In 1872, the Ontario legislature passed a $5,000 bounty on the head of Louis Riel [and others involved in the execution of Thomas Scott]. The atmosphere in Winnipeg after 1870 has been called a “reign of terror” which was designed to discourage public identification as Metis. This disinclination to publicly identify as Metis only increased following the events of 1885. Many Metis grew ashamed to identify in public. In this way, the Metis survived […] by being invisible. This survival mechanism served the Metis until the 1960s, when the Metis, along with other aboriginal peoples in North America began to reclaim their identity and rights in an increasingly public manner.⁶⁶

In the past decades, however, the Metis have been resurgent. In 1967, the Manitoba Metis Federation was founded to promote and advocate for the rights and interests of Metis in the province. The constitutional amendments of 1982—which recognized the Metis as one of the “aboriginal people of Canada”—signaled that the time had “finally come for recognition of the Metis as a unique and distinct people.”⁶⁷

⁶⁵ Ibid.
More recently, the Metis cause has been buoyed by a series of major legal victories. In 2008, in *R. v. Goodon*, the Provincial Court of Manitoba affirmed the existence of constitutionally protected Metis harvesting rights in the province. In 2013, in *Manitoba Metis Federation Inc. v. Canada*, the Supreme Court of Canada held that the federal government had “failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.” In that decision, the Court took pains to highlight that “[t]he unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import.” The Manitoba Metis are ready to do their part in resolving this unfinished business. They are prepared to reclaim their rightful place in the heart of the province and their fair share of the wealth generated by their homeland. Just as the Manitoba Metis were willing partners in confederation, they will be willing partners in reconciliation.

### 4.7 The Manitoba Metis Federation

While the MMF was initially formed in 1967, its origins lie in the 18th century with the birth of the Manitoba Metis Community and in the legal and political structures that developed with it.

The MMF is the official democratic and self-governing political representative for the Metis Nation’s Manitoba Metis community. The MMF promotes the political, social, cultural and economic interests and rights of the Metis in Manitoba.

The Supreme Court of Canada, in *Manitoba Metis Federation Inc. v. Canada*, recognized that the MMF as the only body in the litigation to have standing to represent the collective interests of the Manitoba Metis in relation to the outstanding claim against the Crown flowing from s. 31 of the *Manitoba Act, 1870* (para. 44). Further, the Provincial Court of Manitoba, in *R. v. Goodon*, recognized that the MMF is the governing body of Metis people in Manitoba (para. 52).

The MMF is also recognized by other levels of government as the representative body of the Manitoba Metis Community. It receives limited annual funding from the federal government and the Manitoba government to represent Manitoba Metis Community. It has also negotiated many agreements and arrangements on behalf of the Manitoba Metis Community with other levels of government.

The objectives of the MMF, as set out in the MMF Constitution, are as follows:

---


i. To promote and instill pride in the history and culture of the Metis people.

ii. To educate members with respect to their legal, political, social and other rights.

iii. To promote the participation and representation of the Metis people in key political and economic bodies and organizations.

iv. To promote the political, legal, social and economic interests and rights of its members.

v. To provide responsible and accountable governance on behalf of the Manitoba Metis community using the constitutional authorities delegated by its members.

In fulfillment of these objectives, the MMF delivers programs and services to the Manitoba Metis Community, including services relating to children and families, justice, housing, youth, education, human resources, economic development, natural resources, and healthcare.

Importantly, and based on the mandate derived from the MMF citizenship registry, the MMF’s province-wide ballot box election, the MMF Constitution and the collective will of the Manitoba Metis, the MMF is authorized to deal with the collective rights, interests and claims of the Manitoba Metis Community.

In order to discharge its representative role on behalf of the Manitoba Metis Community, the MMF is organized and operated based on democratic principles. The MMF President is its Chief Executive Officer, leader and spokesperson. The President is elected in a province-wide election every four years and is responsible for overseeing the MMF’s day-to-day operations. In addition, the MMF has a Board of Directors that leads, manages and guides the policies, objectives and strategic direction of the MMF and its subsidiaries. All 23 members of the Board of Directors are democratically elected by the membership.

The MMF is also organized into seven Regions throughout the province. Each Region is administered by a vice-president and two executive officers, all of whom sit on the MMF’s Board of Directors. These Regions deliver programs and services to their specific geographic area. The seven Regions of the MMF are depicted in the map attached as Appendix D.

Within each Region are various settlements, villages or area-specific “Locals,” which are administered by a chairperson, a vice-chairperson and a secretary-treasurer. There are approximately 140 MMF Locals in the province. A Local must have a minimum of nine members and meet at least four times a year. Every member of the MMF belongs to a Local. The purpose of a Local is for members to have local-based representation though local governance and communication channels and to exchange information upward to higher levels of MMF governance concerning local issues, values and interests. This structure allows the MMF to centralize and use resources efficiently, while at the same time remaining in tune with and responsive to regional and local needs and concerns while representing the Manitoba Metis Community as a whole.

In keeping with the respective roles of the central, regional, and local branches of the MMF, the Manitoba Metis Community has appointed the MMF Home Office as its authorized representative.
for the purposes of Crown consultation and accommodation. The MMF Annual General Assembly unanimously adopted Resolution 8 in 2007, which reads in part as follows:

…this assembly continue[s] to give the direction to the Provincial Home Office to take the lead and be the main contact on all consultations affecting the Metis community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Metis…

4.8 Claims
The MMF’s first unresolved claim related to land flows from the 1.4 million acres of land promised to the children of the Metis living in the Red River Valley, a promise enshrined in s. 31 of the *Manitoba Act, 1870*. This promise was a key element of a nation-building, constitutional compact that was meant to secure a “lasting place in the new province [of Manitoba]” for future generations of the Metis people. This “lasting place” was to have been achieved by providing the Manitoba Metis Community a “head start” in securing lands in the heart of the new province. Instead, the federal Crown was not diligent in its implementation of s. 31, which effectively defeated the purpose of the constitutional compact.

In March 2013, the Supreme Court of Canada found that the federal Crown failed to implement diligently and purposefully the Metis land grant provision set out in s. 31 of the *Manitoba Act, 1870*. This constituted a breach of the honour of the Crown. In arriving at this legal conclusion, the Court wrote:

What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Charter* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import.

The Supreme Court of Canada granted the MMF the following declaratory relief (the “MMF Declaration”):

That the federal Crown failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.

---

70 *MMF*, supra, para 154.
71 *MMF*, supra, para 5.
72 *MMF*, supra, paras 5-6.
73 *MMF*, supra, para 154.
74 *MMF*, supra, para 140.
75 *MMF*, supra, para. 154.
This constitutional breach—this unfinished business of nation building and reconciliation—constitutes an unresolved Metis claim flowing from a judicially recognized constitutional obligation, which burdens the federal Crown.\(^\text{76}\) It can only be resolved through good faith negotiations and a just settlement with the MMF.\(^\text{77}\) Lands, including those areas where the Manitoba Metis Community has a historic and ongoing connection to—such as Ste. Madeleine—may need to be considered as a part of any future negotiations and settlement in fulfillment of the promise of 1.4 million acres.

On May 27, 2016, the Government of Canada, represented by Carolyn Bennett, the Minister of Indian Affairs and Northern Development (“Canada”), and the MMF, represented by David Chartrand, the MMF’s President, executed a Memorandum of Understanding (“MOU”) on advancing reconciliation. The MOU established an exploratory discussion process aimed at developing a framework agreement based on which negotiations for the resolution of the MMF’s claim could proceed. The MOU acknowledges the importance of the Province of Manitoba’s eventual participation in this reconciliatory process and includes an agreement that the Canada and the MMF will “when and where appropriate, encourage the Province of Manitoba to contribute to the exploratory discussion table’s discussions as an active participant.”\(^\text{78}\) Eileen Clarke, Manitoba’s Minister of Indigenous and Municipal Relations, signed the MOU as a witness.

On November 15, 2016, Canada and the MMF executed a Framework Agreement for Advancing Reconciliation that formalized a negotiation process between Canada and the MMF to “jointly develop a renewed nation-to-nation, government-to-government relationship” and aims “to arrive at a shared solution that advances reconciliation between the Parties consistent with the purpose of section 35 of the Constitution Act, 1982 and the Supreme Court of Canada’s decision in Manitoba Metis Federation Inc. v. Canada (AG).”\(^\text{79}\) These negotiations are now underway.

The Supreme Court of Canada has made clear that “as the claim strength increases, the required level of consultation and accommodation correspondingly increases.”\(^\text{80}\) That is to say that as the assertion of an Aboriginal right or interest advances through the stages of claim, proof, and negotiation the Crown’s duty to consult and accommodate the Aboriginal group in question with

---

\(^{76}\) MMF, supra, paras 156, 212.


\(^{78}\) Memorandum of Understanding on Advancing Reconciliation between Manitoba Metis Federation Inc. and Her Majesty the Queen in Right of Canada (May 27, 2016). Online: https://www.aadnc-aandc.gc.ca/eng/1467055681745/1467055869159.

\(^{79}\) Framework Agreement for Advancing Reconciliation between the MMF and Canada, 2016, sections 1.1.1 and 1.1.2. Online: https://www.aadnc-aandc.gc.ca/eng/1502395273330/1502395339312.

respect to their assertion increases. Tom Isaac, in a recent report he wrote in his capacity as the Minister’s Special Representative on Reconciliation with Metis, emphasized just how far advanced the MMF is in this process:

The MMF Declaration is not a claim. The MMF Declaration is also not a settlement of litigation. The litigation is complete. The MMF Declaration is about the implementation of declaratory relief from the highest court in Canada, and more broadly about implementing in practical terms the honour of the Crown and achieving reconciliation with the Metis of Manitoba. *This is an important step in the overall objective of reconciliation and one upon which Canada should act immediately without any further delay.*

Given this context, there is no doubt that Crown decisions that might adversely affect the ongoing reconciliatory process being undertaken by Canada and the MMF with respect to the MMF Declaration would attract a deep duty to consult and require meaningful, appropriate accommodation.

### 4.9 Rights & Interests

The Manitoba Metis Community possesses Aboriginal rights, including, pre-existing Aboriginal collective interests in lands protected by section 35 of the *Constitution Act, 1982*, throughout the territory where the Birtle Transmission Project is proposed. Indeed, Manitoba courts recognized these pre-existing, collectively-held Metis rights in *R. v. Goodon*:

> I conclude that there remains a contemporary community in southwest Manitoba that continues many of the traditional practices and customs of the Metis people. [...] I have determined that the rights-bearing community is an area of southwestern Manitoba that includes the City of Winnipeg south to the U.S. border and west to the Saskatchewan border.

As affirmed by the Supreme Court of Canada, such rights are “recognize[d] as part of the special aboriginal relationship to the land” and are grounded on a “communal Aboriginal interest in the land that is integral to the nature of the Metis distinctive community and their relationship to the land.” Importantly, courts have also recognized that Metis harvesting rights may not be limited to Unoccupied Crown Lands.

The Crown, as represented by the Manitoba government, has recognized some aspects of the Manitoba Metis Community’s rights through a negotiated agreement. In 2012 the MMF and

---


82 *R. v. Goodon*, 2008 MBPC 58 [*Goodon*], paras. 58; 75.


84 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623, para. 5 [*MMF*].

Manitoba government concluded the MMF-Manitoba Harvesting Agreement which recognizes Metis rights to “hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, the ability to harvest timber for domestic purposes” throughout an area spanning approximately 800,000 km² (the “Metis Recognized Harvesting Area”). As outlined in the following sections of the report, MMF citizens exercise these rights in the vicinity of the proposed Project and preferred route. See Appendix E for a map of the Metis Recognized Harvesting Area.

Beyond those rights already established through litigation and recognized by agreements, the Manitoba Metis Community claims commercial and trade related rights. Courts have noted that Metis claims to commercial rights remain outstanding. These claims are strong and well-founded, and it is incumbent on the Crown and Manitoba Hydro to take them seriously.

The Manitoba Metis Community has its roots in the western fur trade. The Metis in Manitoba are descendants of early unions between Aboriginal women and European traders. As a distinct Metis culture developed, the Metis took up trade as a key aspect of their way of life. Many Metis became independent traders, acting as middlemen between First Nations and Europeans. Others ensured their subsistence and prosperity by trading resources they themselves hunted and gathered. By the mid-19th century, the Metis in Manitoba had developed the collective feeling that “the soil, the trade and the Government of the country [were] their birth rights.”

Commerce and trade is and always has been integral to the distinctive culture of the Manitoba Metis Community. Today, the Manitoba Metis have an Aboriginal, constitutionally protected right to continue this trading tradition in modern ways to ensure that their distinct community will not only survive but also flourish.

Unlike First Nations in Manitoba, whose commercial rights were converted and modified by treaties and the Natural Resources Transfer Agreement (“NRTA”), the Manitoba Metis Community’s pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the NRTA and continue to exist and be protected as Aboriginal rights.

86 Ibid.
88 MMF, supra, para. 21.
89 Powley, supra at para. 10.
90 Goodon, supra at para. 30.
91 Goodon, supra at para. 31, 33, & 71.
92 Goodon, supra at para. 69(f).
5 Ste. Madeleine Today

5.1 Site Visit

On August 21, 2017, the Study Team conducted a site visit to the Ste. Madeleine cemetery. The Study Team was guided by political and administrative representatives from the MMF. The Study Team followed the guides through the community pasture, passing many cattle, and arrived at the Ste. Madeleine cemetery gates. There were about 50+ visible graves and a memorial structure constructed on the historic location of the Church (see Figure 3). The site was mainly open grasses, punctuated by sages, bushes and willow trees. MMF political representative noted that there are berries (saskatoons, chokecherries and raspberries) located on the periphery of the cemetery and that the remains of the school and historic homesteads (cellars) were also beyond the edge of the cemetery.

Also noted was that MMF citizens independently come to the cemetery to care for the graves (see Figure 3). Many of the original wooden crosses have been replaced, the grass is kept cut and the flowers on many graves refreshed. The connection of the Manitoba Metis Community to Ste. Madeleine remains strong and endures.

During the walk-through, it was explained that families were drawn to this area in the early 1900’s. Some families came directly from the Red River Settlement, where they had recently been expelled. As these families came, they drew other family members from around Manitoba to settle here and create a vibrant community. At the peak, there were between 30 – 40 families living in Ste. Madeleine.

It was explained to the Study Team that the Manitoba Metis Community must technically ask for permission to visit the burials at Ste. Madeline, to attend and care for the graves of their ancestors and relatives. People expressed that it is frustrating to ask for permission to be able to visit an important part of the Manitoba Metis Community’s past and ‘homeland’.. It was explained “Metis still believe they own this land. You will never break the tie that brings them out there” “…to many generations buried out here”.

---

95 For the purposes of Section 5, 6 and 7 focus group and interview results have been amalgamated, unless otherwise specified. Therefore, Participants and Respondents will be referred to as Contributors collectively.
The bellowing, snorting and grunting from the cattle in the background was observed by the MMF staff and political representatives as being unsettling. It was explained to the Study Team that “…families were displaced so the cattle can roam free.” It was noted that, in the past, cattle have broken through the fence and gotten into the graveyard.

It is believed that there are more burials in the bushes (see Figure 3) and potential beyond the fenced boundary of the graveyard. Many of these graves are now unmarked, with the stones or markers eroding or lost by use of land for pastures. Specialized machinery would be required to confirm this and locate the specific gravesites. The preference of the MMF staff and representatives accompanying the Study Team was that a wall plaque or other commemorative marker be installed to identify those families with headstones that have been lost to time.

The continuity and continued connection of the Manitoba Metis Community to Ste. Madeleine is maintained through annual Ste. Madeleine Metis Days, where Metis families gather at the site of the former Metis settlement. Community picnic’s and celebrations are held where grandparents tell the stories of their lives at Ste. Madeleine, and pass on the history of their ancestors and community to future generations. Mothers bring their babies and the babies roam the landscape, learning and experiencing. It was explained to the Study Team that Ste. Madeleine is not just a symbol of the past but a marker of the future of the Metis in this area. After walking the site, MMF political representatives stated that the “…freedom of it all [Ste. Madeleine] is remarkable” and that the ties the Metis have for Ste. Madeline can never be broken.

5.2 Focus Group

Following the site visit, the Study Team proceeded to Brandon, MB for a community focus group. Approximately 30 MMF citizens attended the meeting, as well as MMF political representatives and MMF staff. Some key expressions from citizens included:

- There are cows grazing on our land
- Concerned about hunting, gathering, cultural activities
- The expropriation is unresolved. They want to take the land away again
- Concerned about the location of the line. They are taking part of our pasture
- What happens if MMF gets the land back and the [transmission] line is approved or built?
- We have no permit. No rights. We need to ask permission
• They [Manitoba Government] know we are trying to get our land back. They are trying to get this project approved so they don’t have to deal with us
• Manitoba Hydro is trying to steal this land from us again. As soon as it became available - they are trying to snatch the land away from us again
• Tell them to go through St. Lazare and leave us alone
• Important to hear Metis voices

And some citizens were quoted as saying:

• “We want Ste. Madeleine back! That’s our heritage!”
• “What is left of our Metis culture is out there. We have no title, we have no rights, we have no name; we are fighting for air, fighting for dust.”

Following the presentation, questionnaires were distributed. Many people requested additional time to fill out the questionnaires and opted to take them home for further consideration. Respondents were given until August 31, 2017 to return their questionnaires to the MMF offices in Brandon and Binscarth.

5.3 Metis Perspectives on the History of Ste. Madeleine
Contributors were asked ‘What have you heard about the Metis history in Ste. Madeleine?’.
Contributor MIS05 explained their firsthand account of living at Ste. Madeleine:

“I remember. I remember the good parts. When I was little, playing around with other kids. But the sad part is that, when we returned home from being out [away for work] out of the community for a couple of weeks, I guess it was, to come home to find that our homes were burnt out. Burned down. We had nothing left. No home. No nothing. So, but in spite of all that hardship, my parents managed to keep us alive. It was harsh times. It was hard.”

“When I think about it now, it really disturbs me. At the time, I was only four years old when we got home - supposedly our home – to find out our houses had been burned down. I didn’t realize what was taking place. Too young to understand what was happening. But as years go on, went on, I realized by hearing stories what had happened.”

“It was confusing more than scared. I didn’t know what was going on. I still remember coming to our area where the house was a finding that there was nothing there. Only kitchen ranges sticking out of the ashes and bed rails sticking out. And my mother crying. My father’s shoulders shaking. He was crying too. But what can you do?”

“We went from there. Come east. Come across the Assiniboine River and settled in the community called Fouillard Town. And that’s where I grew up a little for a couple of years.”

“…we pitched tent in the road allowance and that is where we slept and the older kids slept under the wagon to find shelter until such time that my father was able to build a house.”
Contributor MIS05 further elaborated on the shooting of the dogs. It was noted that dogs were a vital part of the Metis livelihood. The Metis took dogs with them to work and were part of their revenue source:

“Dogs were an asset. They were used as a resource. They were taught to hunt in the winter; they would bring home a sack of flour from town. They were well trained dogs … there was a bounty on the dogs; the culprits were people from St. Lazare. They did all the damage. House burners and the dog killers.

There were some rumors that they used to laugh about the Metis people.”

Contributor MIS04 also provided details on the history of Ste. Madeleine in terms of stories they had heard from relatives:

“I have heard about Ste. Madeleine all my life because my dad was born and raised there. He got married there … he started raising four kids there before PFRA came in.

I heard about it all the time, where they homestead[ed]... He would show where the plants were, where the berries were. He told us the history of how they came to be out of the there. He told us all about how they came in and because of people couldn’t read or write back … they figured they had to pay one-time fee then it was theirs.”

“…back then times were hard, my dad said, they had to go out and work and when they did that they would have to take their whole families and come back in the fall. It was a place where they always came home to.”

“My dad was a hunter and a trapper, but in the summer, he would take contracts and he would hire men to go work … So, the year that the PFRA came in … He said his home was burnt down already … his dog was shot when he came back. So that is his story. That is how he told it.”

“And it was in the fall, so it was a hard time. People already were living in the area, south of town, Fouillard, where I was born and raised. People were there already, so he stayed with this family for a little bit. Him and my mom and my brothers, they stayed with his family for a little bit and then he came to that area, Fouillard town, they called it and they built a little shack there for the winter because already it was … November. He built a little shack made of small logs and he stayed there for the winter and then in January my sister was born … And then he bought logs and built a permanent home there down on the corner. That is what he told us about Ste. Madeleine.”

13 out of 23 Contributors reiterated the story that people were forcibly removed, their dogs shot, and their houses burnt when speaking about Ste. Madelene.

5.4 Outlooks and Attitudes
When asked how they felt about what happened at Ste. Madeleine, Contributors were clear. Many of the words used to describe the situation were: sad, angry, cheated, wronged, hurt, upset,
disgraced, dishonored and despicable. The below word cloud represents the words of the Contributors in relation to this question response.

Word Cloud from Question: ‘How do you feel about what happened at Ste. Madeleine?’

Specifically, Contributor MIS01 indicated that they felt “Angry. Frustrated. Hurt” and MFG14 explained that they are “…very upset with what happened and how the Metis were treated”. They felt like “…they were cheated out of their land and it should be given back to the Metis people”. Contributor MFG12 explained that “[i]t was and still is unforgiveable offense, needs to be righted”.

Many Contributors also expressed a deep level of sympathy for their ancestors and what they would have went through in this situation. MFG10 expressed that they are “[s]ad for my ancestors…” and “[s]ad how a government could do this to our ancestors that many years ago and have the nerve to try to do this with the hydro line…”. This Contributor explained that “[i]t [the land] was taken for cattle then, so many years ago. Now a hydro line”.

Contributor MIS04 added:

“It is very – for me – it’s very sad and very emotional when I think about it because anybody has to have someplace to belong; and that is where we are from. That is where we belong … that is our history. Our ancestors are there. So, for me, that land is almost like coming home. Although I was born and raised on the corner or Fouillard’s Corner –
still, this is where my heart is … I think for a lot of the people … it’s the same for them because they can trace their roots back there.”

5.5 Family Connections
Most Contributors (20 of 23) had a family connection to the Ste. Madeleine Metis community. One Contributor directly experienced the removal of Metis from the area, many other Contributors were children of those who were removed, and some were grandchildren.

Contributor MIS03 father originally came from Lestock, Saskatchewan and settled in Ste. Madeleine, where they had family connections. They didn’t have an original homestead but because of the relationship between their father and the families in Ste. Madeleine they chose to settle in the community.

Contributor MIS04 explained that they completed a genealogy and traced their family history. It showed their family coming from France to Montreal, Trois Rivières, and then traced their ongoing journey to the Red River Settlement. From there, their ancestors travelled onward to Ste. Madeleine and settled there. Their grandfather and three of his brothers all settled there and made their lives. Following the settlement in Ste. Madeleine, their father was born. It was on Section 20; he was born, raised and got married in that area.

Where Contributor MIS04’s father was born (Map Source: Zeilig 1987)
Contributor MIS07’s parents and an uncle came to Ste. Madeleine from the Red River Settlement as well around 1914. Their grandparents followed in 1919. Contributors MIS01 and MIS02’s mother was born in Ste. Madeleine and their parents before them lived there as well.

MFG16, MFG14, MFG09, MFG10, MFG11, MFG08, MFG06, and MFG05 all had parents and grandparents who lived in Ste. Madeleine. The rest had relatives or parents that lived there. The contemporary connection is still intact as many of the people one generation removed from the expulsion are still alive.

5.6 Importance

When Contributors were asked if the Ste. Madeleine area was important to them, they clearly articulated an ongoing importance and connection to the site. Contributor MIS01 explained:

“It is [important] to me. That’s where my mother was born … we got chased out of there just so the cows could live there. That’s the thing that hurts … they had to leave and let the cows take over. That’s not right.”

Contributor MIS05 added further context and explained:

Yeah, this area is important. It’s very important because I have my relatives there. My parents are buried there and I feel that I should do what I can [to] preserve what they had left behind; because they believed in all that in spite of all the hardships that they endured.”

Contributor MIS07 indicated that Ste. Madeleine is important for contemporary reasons as well as historic connection:

“Yeah it is [important] … because of the history that is there. The serenity. I enjoy the outdoors. I love to hunt there. I like to ride my horse there. I can ride for miles without seeing anybody. Well not anybody, but, just very good riding trails.”

Contributors MIS03 and MIS04 also added to the contemporary reasons Ste. Madeleine is important. MIS04 explained:

“It is very much [important] … because we still go back; as much as we can. I still harvest there … I still harvest my berries there and I still harvest some plants from there.”

Contributor MIS03 indicated that there are people out at Ste. Madeleine every weekend. MIS04 further elaborated that:
“It is very important to a lot of the descendants … when I go back home there, it’s like coming home … I collect berries and I still make my jam for the toast and the bannock in the morning … It’s a get-away from here … it gives you peace to go home.”

Contributor MIS06 also felt the area was important and explained that, not only the historic Ste. Madeleine area is important, but the traditional hunting grounds as well which extend south to Ste. Lazare and north to the cemetery. Contributor MFG09 stated that “[i]t is our homeland, where our ancestors lived and settled”. The importance cannot be overstated.

Key themes of why Ste. Madeleine is important in the comment responses for this question were the family connection or connection to ancestry, the importance of the area as it is part of the culture and history of the Metis, and continuity of practice with people still frequenting the area for hunting, trapping, fishing and gathering today. Overall, the importance of this area was apparent in the responses

5.7 Contemporary Continuity
Contemporary continuity is an important aspect of Use and Occupancy studies as it shows use of areas, not only in the past, but illustrates the ongoing connection of these sites now and into the future. This aspect was highlighted when Contributors were asked about visiting the Ste. Madeleine area. Contributors indicated that they still visit the Ste. Madeleine cemetery for:

- The Ste. Madeleine Metis Days
- General visits to the cemetery
- Cleaning and maintaining the cemetery
- Camping
- Funerals

Contributors also indicated they visit the area surrounding the Ste. Madeleine cemetery for:

- Hunting
- Fishing
- Berry and berry plant gathering
- Plant and medicine gathering

5.8 Suggestions for Reparation
When Contributors were asked what they thought should be done with the Ste. Madeleine site, many expressed that the site should be returned to the Metis in some fashion. Contributor MIS02 explained:

“That is an easy one. It should be given back to us…”

Contributor MIS01 elaborated:

“Some of it should, for sure [be given back] … we call it our place now, but we get told by lots that it is not our place…”

Contributor MIS07 further added:
“…if we could buy those two sections of land [where the cemetery and school are] …”

Contributor MIS05 was emphatic in stating:

“It should be given back to the Metis. The whole, all the land that was taken away from the Metis…”

Some Contributors wanted the Ste. Madeleine cemetery taken care of better. Contributor MIS07 explained that:

“I would like to see cairns erected. It should be kept up to date. Cairns for where the church was and, if possible, a replica of the church, and if possible, of where the school was.”

All 23 Contributors wanted to see the land returned to the Metis and/or the MMF in some way; whether, a smaller symbolic amount or the full land base.

5.9 The Project and Ste. Madeleine

Many of the Contributors expressed the concern that the Project should not go through the community pasture. While the visual markers of Ste. Madeleine today may be the cemetery and remains of the settlement there, Metis recollections of Ste. Madeleine as communal lands is interspersed throughout the Spy-Hill Ellice community pasture. Many Contributors were concerned that the Project may affect historic homesteads not yet identified or could affect the traditional harvesting activities and territory which Contributors felt was within the Spy-Hill Ellice Community Pasture. Contributor MIS05 asked “[c]an they [Manitoba Hydro] go around the pasture?”

Contributors described the layout of the Ste. Madeleine site, the church, the school and the homesteads and suggested that the Project take an alternative route, preferably south through St. Lazare to avoid the importance of this area to the Metis and preserve historic sites; this sentiment was echoed by many Contributors (MIS01, MIS07, MIS03, and MIS04). MIS05 felt that this would “…make everybody happy in the long run because this is a sacred place; you can’t get away from it” “I think, the history part of this cemetery and the homes where people used to live should remain as is right now; that is what I would suggest.”
This response was echoed by Contributor MIS04 explained “I would not like to see it go through there [the Community Pasture], it’s my thing. It’s just the idea that it’s going to cut through – I know it doesn’t belong to us; at the same time, when I think about Ste. Madeleine, I think about all of the homesteads that were at one time, ours … my ancestors, the people that were there...” The reason given for Contributor MIS04’s position was one of sentimentality: “I guess what it is – is sentimental value … ‘cause it’s going to cut through some of the homesteads that were there originally.”

Contributor MIS07 summed this up by wondering why Manitoba Hydro would not just construct through the Ellice-Archie Community Pasture. MIS07 stated: “I still don’t understand … then they don’t have to go to all the hassle of leasing the land from farmers … or follow the rail line because it is already accessed.”

5.10 Conclusion
The stories shared by Contributors acknowledge the historic connection of the Manitoba Metis Community to the area of Ste. Madeleine, and that this connection is ongoing and maintained to this day. The importance of Ste. Madeleine is not bound by the confines of the cemetery – which, while a critical component of the Metis connection to this place and their ancestors, does not reflect the broader land use and connection that Contributors spoke of. Contributors provided information about cultural values as well as harvesting and other ongoing land and resource uses taking place at and around Ste. Madeleine, and throughout the community pasture lands. Contributor MIS05 expressed this best when they stated, “I hope we can preserve it [Ste. Madeleine] to keep things as they are and then can give us back what is really ours.”
6 Land Available for Metis Use

Throughout the focus group and the interviews, there was concern from Contributors about the availability of land. The available land for the exercise of Metis rights in the vicinity of the Project is almost exclusively within the Spy Hill – Ellice Community Pasture. This is an area of historical importance to the MMF and its citizens and is a continuing flashpoint for contemporary dispute. Many Participants exclusively harvest on the Spy Hill – Ellice Community Pasture as it is one of the few areas where Metis citizens understand they have an unimpeded right to exercise their Metis rights. However, the Study Team notes that permission is required to access the pasture.

Community Pastures were originally managed under the Prairie Farm Rehabilitation Act, however since the divestiture, a private user organization, the Association of Manitoba Community Pastures, will take over the land management responsibilities. However, currently Metis Contributors indicated that they must seek permission from the pasture manager in Saskatchewan to access and use the Spy-Hill Ellice community pasture during this transitional phase.

The requirement for Metis citizens to seek permission prior to entering the Spy Hill – Ellice Community Pasture was met with varying levels of aversion by the Contributors to this study.

6.1 Land Types

The first step in understanding the Land Available for Metis Use in the Project area is to understand how Metis rights may be restricted on other land types already, for example, through private ownership or government regulation.

6.1.1 Restricted Land(s)

In this Report, Restricted Land(s) refers to a general category of land that includes both Crown lands subject to a regulatory restriction(s) related to a harvesting activity (e.g., hunting, trapping or fishing) (known as Occupied Land) or land that is privately owned and cannot be accessed for harvesting without permission of the landowner (known as Private Land).

In deciding on which Crown lands in the Project RAA were subject to regulatory restriction(s) the following legislation, regulations and Manitoba Government-produced guides were consulted:

- Declaration of Provincial Roads (Access Roads) Regulation, Man Reg 414/88 R
- Highways and Transportation Act, CCSM c H40
- General Hunting Regulations, Man Reg 351/87
- Trapping of Wild Animals Regulation, Man Reg 245/90
- 2017-2018 Trapping Guide

Based on the nature of the statues and regulations, no additional lands (e.g. Wildlife Management Units) were identified to have increased hunting or trapping restriction96.

96 The reader should note that this Report is not meant to, and does not express, the legal position, argument, or opinion of the MMF. The Study Team's assessment of Restricted Land(s) is not a legal analysis and is not meant as an assessment of the Aboriginal rights, claims, or interests of the Manitoba
6.1.1.1 Occupied Lands
Within the Study Areas there is:

- 678 hectares (100%) of occupied land within the PDA
- 12,080 hectares (85%) of occupied land within the LAA
- 40,648 hectares (78%) of occupied land within the RAA

6.1.1.2 Unoccupied Crown Land
Unoccupied Crown Land is Crown land that is not currently subject to a regulatory restriction on any kind of harvesting activity.

Within the Study Areas, the total amount of Unoccupied Crown Land is:

- 0 hectares (0%) of Unoccupied land within the PDA
- 2,198 hectares (15%) of Unoccupied land within the LAA
- 11,631 hectares (22%) Unoccupied land within the RAA

6.2 The Amount of Land Available for Metis Use
The total amount of Unoccupied Crown Land converted to Occupied Land in the Study Areas which will experience an increase in restriction to hunting, trapping, fishing and gathering will be (see Figure 10):

<table>
<thead>
<tr>
<th>Study Area</th>
<th>Number of Hectares of Unoccupied Crown land Prior to the Project</th>
<th>Number of Hectares of Unoccupied Crown Land Post Project Approval</th>
<th>Amount of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Development Area</td>
<td>0 ha</td>
<td>0 ha</td>
<td>0 ha</td>
</tr>
<tr>
<td>Local Assessment Area</td>
<td>2,198 ha</td>
<td>2,156 ha</td>
<td>42 ha</td>
</tr>
<tr>
<td>Regional Assessment Area</td>
<td>11,631 ha</td>
<td>11,589 ha</td>
<td>42 ha</td>
</tr>
</tbody>
</table>

Illustrating the amount of available land for the exercise of Metis rights is important as it shows that there is extremely limited land available for the Metis to exercise their rights prior to the Project development. The Spy Hill – Ellice Community Pasture is typically the only preferred area where Metis can conduct their harvesting activities somewhat unimpeded, and this area still requires permission of the Pasture Manager. Further, should the Metis desire harvesting off the Community Pasture, Metis require permission of private land holders as private land is the dominate land type in the vicinity of the Project. This already limited harvesting area will experience an increase in restriction for Metis harvesters because of the Project. The PDA of the Project, if approved would include an easement agreement which conveys priority rights to Manitoba Hydro. These priority rights could grant Manitoba Hydro the right to ‘…enter upon the Metis Community, or of the locations and conditions in which they can be exercised. Rather, this Report relies on what the legislation and regulations provide for on a plain reading, when read in conjunction with the interpretation offered by the Province of Manitoba in the 2017 Hunting Guide and 2017-2018 Trapping Guide. The Report assumes, based on a lack of certainty regarding Manitoba’s interpretation of these laws and regulations and their application to Metis citizens, that they do, or at least can, apply to Metis citizens.
right-of-way and use, construct, place, operate, maintain, repair, alter, add to and remove, on, under, across, along, over, though, or from the right-of-way overhead and/or underground…” and “…the right of free an unimpeded ingress and egress to and from the right-of-way…”97.

A priority right means that Manitoba Hydro’s rights are, for all intents and purposes, placed above Metis rights if rights are considered in a hierarchy. It does not mean that MMF citizens’ rights are extinguished; it does not mean that the MMF citizens’ rights are not as important as rights conveyed to Manitoba Hydro in the event of a conflict. It does mean that if Manitoba Hydro, for any reason, needs to access the PDA for construction, operations and maintenance activities, they have the right to displace MMF citizens from the PDA for the duration of those activities, entirely at their discretion.

---

97 Statutory Easement for Bipole I, Bipole II and Bipole III.
This removes the guarantee that the area will be available for the exercise of Metis rights without restriction at any time.

Manitoba Hydro will be authorized to prohibit Metis access to the PDA during the construction of the Project. Additionally, Metis access to the PDA for exercising their rights could be disrupted because of operations and maintenance activities. The *Wildlife Act*, for example, prohibits hunting “…in a manner that is dangerous to other persons…” or “…without due regard for safety of other persons”. Manitoba Hydro personnel will be present during construction, as well as periodically throughout operation and maintenance activities.

The exercise of Aboriginal rights can be subject to limitations necessary to protect public safety, including by not engaging in unsafe or dangerous hunting. In a variety of circumstances, it could be unsafe or dangerous to hunt in portions of the PDA where operation and maintenance activities are underway. As a result, Metis citizens could lose the guarantee of consistently available Unoccupied Crown Land that they currently have. MMF citizens can be prohibited from accessing the area of the PDA through construction of the Project and, at select times at Manitoba Hydro’s discretion, for operations and maintenance activities. As already noted by one survey Participant, there are concerns with the restrictions imposed on Metis rights when the timing of the exercise of those rights conflicts with Manitoba Hydro’s construction or maintenance of the Project.

Contributor MIS04 explained that, technically, the Metis need permission, already, to access the Spy Hill – Ellice Community Pasture. The requirement to seek for permission was not viewed favorably by Contributors. Contributor MIS05 explained that when they have to ask for permission: “I feel degraded. Very degraded. Like I don’t belong anywhere.” There were fears that the requirement to ask for permission may occur on to the transmission line as well.

Results show that the majority\(^\text{98}\) of Contributors would avoid transmission lines for harvesting activities by at least 100 metres.

**6.3 Changes in the Physical Attributes of the Land**

Being on the land has distinct physical attributes that make the experience of land use for Metis citizens unique. The approval of this Project has the potential to change these distinctive conditions. Direct changes to physical attributes can occur through changes to air quality, noise and visual quality near the Project.

Contributors indicated that they would not harvest\(^\text{99}\) where they could smell industrial development (except for rock and mineral gatherers). Also, the perceived risk of industrial odor must also be considered as Contributors may avoid the PDA and surrounding area throughout construction and maintenance activities due to a *perceived* risk of increased industrial odor.

---

\(^{\text{98}}\) 62\% (n=13) for hunting, 88\% (n=8) for trapping, 64\% (n=14) for fishing, 54\% (n=13) for berry and berry plant gathering, 78\% (n=9) for plant and medicine gathering, 54\% (n=13) for tree gathering, and 57\% (n=7) for rock and mineral gathering

\(^{\text{99}}\) 78\% (n=18) for hunting, 100\% (n=11) for trapping, 83\% (n=18) for fishing, 93\% (n=14) for berry and berry plant gathering, 100\% (n=11) for plant and medicine gathering, 71\% (n=14) for tree and tree product gathering, 38\% (n=8) for rock and mineral gathering
While the Environmental Assessment for this Project has not yet been filed, Study Team experience with other transmission line developments as well as the St. Vital Transmission Complex Assessment Report list potential changes in air quality from similar project’s activities as:

- Emissions from internal combustion engine operation from construction vehicles and support vehicles in the construction fleet;
- Dusts generated by construction vehicle movements, movement of materials and clearing efforts;
- Emissions of products of complete and incomplete combustion, generated as a result of disposal by burning of cleared materials within ROW.
- Emissions related to vehicular traffic resulting from operation and maintenance programs.
- Emissions, dust generation and potential odour concerns stemming from vegetation management programs and related products, equipment and traffic and personnel movements (Manitoba Hydro 2014, pp. 9-4 – 9-5).

These considerations were raised in surveys and questionnaires. Contributors also indicated that they would not harvest\(^{100}\) where they could hear industrial developments.

Again, while the EA for this Project is still pending, potential changes to the acoustic environment can be inferred from the changes identified in the St. Vital Transmission Complex Environmental Assessment Report as the project is similar in nature to the Birtle Transmission Line:

- Construction noise (Manitoba Hydro 2014, pp. 9-2)
- Noise and Vibration from Activities (Manitoba Hydro 2014, pp. 9-26)
- Drilling Activities (Manitoba Hydro 2014, pp. 9-57)
- Noise during clearing activities including mowing, cutting and/or removal of vegetation in the ROW (Manitoba Hydro 2014, pp. 9-72)
- Noise during maintenance activities from machines and equipment used to maintain infrastructure and ROW vegetation (Manitoba Hydro 2014, pp. 9-73)

Further, Contributors expressed some concern with potential sources of noise including line hum. Contributor MIS04 explained that “…my concern is … the humming sound.”

Finally, Contributors indicated that they would not harvest\(^{101}\) where they could see industrial development. This is important as the Project has the potential to change the visual quality of the landscape in areas of importance to MMF citizens. Contributor MFG08 indicated that they have concerns that the Project could “…spoil the landscape, the air around it, the water, hunting, gathering of berries, trees surrounding it” and Contributor MFG02 explained that this “[t]ransmission line just adds another piece to overcome and deal with”.

\(^{100}\) 89% (n=18) for hunting, 91% (n=11) for trapping, 78% (n=18) for fishing, 79% (n=14) for berry and berry plant gathering, 91% (n=11) for plant and medicine gathering, 64% (n=14) for tree and tree product gathering, 50% (n=8) for rock and mineral gathering

\(^{101}\) 78% (n=18) for hunting, 91% (n=11) for trapping, 83% (n=18) for fishing, 79% (n=14) for berry and berry plant gathering, 91% (n=11) for plant and medicine gathering, 64% (n=14) for tree and tree product gathering, 50% (n=8) for rock and mineral gathering
The St. Vital Transmission Complex EA did acknowledge that construction activities would be expected to result “...in disturbance to the existing visual landscape...” (Manitoba Hydro 2014, pp. 9-249); however, as the EA for this Project is not complete yet, the effects on Metis specific viewsheds cannot be quantified. Participants did, however, raise concerns with the potential for visual landscape effects in relation to the Birtle transmission project.

Changes in Physical Attributes have the potential for negative effects on MMF citizens exercising their Metis rights. A specific identification of effects to Metis rights and interests must be completed as part of the Project Environmental Assessment. Following this identification, mitigation must be developed in partnership with the MMF to ensure the effects are adequately reduced.

6.4 Changes in Access

77% (n=17) of Contributors responded to the question:

“Do you believe the Project will change the access to harvesting areas or important areas?”

Of those Contributors:

- 71% (n=14) believed it would change for rock and mineral gathering
- 75% (n=16) believed it would change for berry and berry plant gathering
- 75% (n=16) believed it would change for tree and tree product gathering
- 76% (n=17) believed it would change for hunting
- 77% (n=13) believed it would change for trapping
- 80% (n=15) believed it would change for plant and medicine gathering

This is important as, generally, accessibility via the transmission corridor and more intensive public use are typical effects looked at for transmission lines. Access is generally restricted to the area of the transmission line PDA during active construction. It is noted by the Study Team that these access restrictions may be present at select times during maintenance activities as well.

Changes in Access has the potential for negative effects on MMF citizens exercising their Metis rights. A specific identification of effects to Metis rights and interests must be completed as part of the Project Environmental Assessment. Following this identification, mitigation must be developed in partnership with the MMF to ensure the effects are adequately reduced.

6.5 Conclusion

The upcoming Environmental Assessment for the Birtle Transmission Project must consider changes to the Land Available for Metis use. The information provided above can be used in the EA as baseline information to inform the assessment of potential effects. Following this, mitigation must be collaboratively developed to ensure residual effects do not occur.
7 Harvesting

‘Harvesting’ is a recognized Metis right in the MMF-Manitoba Harvesting Agreement (2012). Contributor MIS04 explained that “[i]t [harvesting] makes you feel a connection to the land. A connection to ancestors … to be able to use all that is my connection back to the land and usually when I am harvesting, I don’t harvest everything in that area. I save some and always thank Mother Earth for providing for me.” It was noted that harvesting is important because it is the Metis way of living and feeding themselves (MFG09); a traditional way of living that allows for self-sufficiency (MFG08).

Harvesting for Metis is not just a recreational activity. There are cultural, economic and subsistence components which encompass these exercises which are important for Metis identity and pride.

7.1 Previously Collect Use Information

The MMF has undertaken previous data collection processes and existing Use and Occupancy data was available for the Project Study Areas. The information used identified that within the PDA sites included:

- Trapping Sites for Personal Use, for:
  - Coyote
  - Mink
  - Muskrat
  - Rabbit
  - Weasel
- Seasonal Habitat for Moose
- Important Habitat for Deer and Unspecified Species
- Hunting for White-Tailed Deer and Deer
- Fishing for Unspecified Species
- Migration Route for Metis people
- Historic Sturgeon Fishing site
- 9 Unspecified Polygon sites
- 1 Unspecified Polyline site

Added to that for the LAA were:

- A deer killsite

And added to that for the RAA were:

- Trapping Sites for:
  - Beaver
  - Mink
  - Muskrat
  - Weasel
- Fishing for
• Northern Pike/Jackfish (x2)
• Pickerel
• Goldeye
• Catfish
• Sturgeon
• Suckers
• Hunting for Deer (x6)
• Two areas of ‘Changes’
• Plants and Natural Materials Gathering, including:
  • Cranberry
  • Raspberry
  • Saskatoon Berry
• A Cart Trail
• 1 Unspecified Polygon site
• 2 Unspecific Polyline sites
• 2 Unspecified Point sites
• A Cultural Site (Fort)
• A Burial Site
• A Historically Significant Metis Site
• A Trading Post

Please see Figures 5 through 10 for previously collected Use and Occupancy information.
7.2 Interview Results

Information collected for this Report included preferred species of harvest, what the species or type of item was used for, the best season for harvesting that species/type as well as frequency and success rate.

A total of 109 Project specific use and occupancy sites were identified through the interviews – 37 of which directly intersected the PDA. Of those sites intersecting the PDA, the following attributes were defined:

<table>
<thead>
<tr>
<th>Participant Code</th>
<th>Species</th>
<th>Activity Type</th>
<th>Season</th>
<th>What is it used for?</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>MIS03</td>
<td>Pin Cherry</td>
<td>Berry Gathering</td>
<td>Summer</td>
<td>Subsistence</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS03</td>
<td>Raspberry</td>
<td>Berry Gathering</td>
<td>Summer</td>
<td>Subsistence</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS03</td>
<td>Strawberry</td>
<td>Berry Gathering</td>
<td>Summer, Spring</td>
<td>Subsistence</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS04</td>
<td>Pin Cherry</td>
<td>Berry Gathering</td>
<td>Spring, Summer</td>
<td>Subsistence</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS04</td>
<td>Raspberry</td>
<td>Berry Gathering</td>
<td>Spring, Summer</td>
<td>Subsistence, Medicinal</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS06</td>
<td>Channel Catfish</td>
<td>Fishing</td>
<td>Year Round</td>
<td>Subsistence, Sharing</td>
<td>The Assiniboine River and Qu’Appelle River</td>
</tr>
<tr>
<td>MIS06</td>
<td>Northern Pike/Jackfish</td>
<td>Fishing</td>
<td>Year Round</td>
<td>Subsistence, Sharing</td>
<td>The Assiniboine River and Qu’Appelle River</td>
</tr>
<tr>
<td>MIS06</td>
<td>Goldeye</td>
<td>Fishing</td>
<td>Year Round</td>
<td>Subsistence, Sharing</td>
<td>The Assiniboine River and Qu’Appelle River</td>
</tr>
<tr>
<td>MIS06</td>
<td>Walleye/Pickerel</td>
<td>Fishing</td>
<td>Year Round</td>
<td>Subsistence, Sharing</td>
<td>The Assiniboine River and Qu’Appelle River</td>
</tr>
<tr>
<td>MIS03</td>
<td>Deer</td>
<td>Hunting</td>
<td>Winter, Fall, Spring</td>
<td>Subsistence, Selling</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS03</td>
<td>Rabbit</td>
<td>Hunting</td>
<td>Winter, Spring, Fall</td>
<td>Subsistence, Selling</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS04</td>
<td>Deer</td>
<td>Hunting</td>
<td>Fall, Spring</td>
<td>Subsistence, Trade/Sell, Clothing/Crafts</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Snowshoe Hare</td>
<td>Hunting</td>
<td>Fall, Winter, Spring</td>
<td>Subsistence, Trade/Sell</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS04</td>
<td>Cotton Tail Rabbit</td>
<td>Hunting</td>
<td>Fall, Winter, Spring</td>
<td>Subsistence, Trade/Sell</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS04</td>
<td>Common Sweet Clover</td>
<td>Plant and Medicine Gathering</td>
<td>Summer</td>
<td>Crafts</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Dandelion</td>
<td>Plant and Medicine Gathering</td>
<td>Spring</td>
<td>Subsistence, Crafts</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>-------</td>
<td>-----------</td>
<td>-------------------------------</td>
<td>--------</td>
<td>---------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>MIS04</td>
<td>Prairie Turnip</td>
<td>Plant and Medicine Gathering</td>
<td>Spring</td>
<td>Subsistence, Medicinal</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Rat Root</td>
<td>Plant and Medicine Gathering</td>
<td>Summer</td>
<td>Medicinal</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Seneca Root</td>
<td>Plant and Medicine Gathering</td>
<td>Summer</td>
<td>Medicinal</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Stinging Nettle</td>
<td>Plant and Medicine Gathering</td>
<td>Fall</td>
<td>Medicinal</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Thistle</td>
<td>Plant and Medicine Gathering</td>
<td>Fall</td>
<td>Medicinal</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Wild Mint</td>
<td>Plant and Medicine Gathering</td>
<td>Summer</td>
<td>Medicinal</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Wild Onion</td>
<td>Plant and Medicine Gathering</td>
<td>-</td>
<td>Subsistence</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Wild rose, rose hips &amp; rose buds</td>
<td>Plant and Medicine Gathering</td>
<td>Fall</td>
<td>Subsistence, Medicinal</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS03</td>
<td>-</td>
<td>TEK</td>
<td>-</td>
<td>Feeding Area</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS03</td>
<td>-</td>
<td>TEK</td>
<td>-</td>
<td>Migration Area</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS03</td>
<td>Moose</td>
<td>TEK</td>
<td>-</td>
<td>Seasonal habitat</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>-</td>
<td>TEK</td>
<td>-</td>
<td>Feeding Area</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>-</td>
<td>TEK</td>
<td>-</td>
<td>Migration Area</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Moose</td>
<td>TEK</td>
<td>Summer</td>
<td>Seasonal Habitat</td>
<td>South of Deerhorn Creek</td>
</tr>
<tr>
<td>MIS06</td>
<td>-</td>
<td>TEK</td>
<td>-</td>
<td>Spawning Area</td>
<td>The Assiniboine River and</td>
</tr>
<tr>
<td>MIS03</td>
<td>Bur Oak (Scrub Oak)</td>
<td>Tree Gathering</td>
<td>Winter, Fall</td>
<td>Firewood, Selling</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>-------</td>
<td>---------------------</td>
<td>----------------</td>
<td>-------------</td>
<td>------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>MIS03</td>
<td>White Poplar</td>
<td>Tree Gathering</td>
<td>Winter, Fall</td>
<td>Firewood, Selling</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>Bur Oak (Scrub Oak)</td>
<td>Tree Gathering</td>
<td>Winter, Fall</td>
<td>Firewood, Trade/Sell</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
<tr>
<td>MIS04</td>
<td>White Poplar</td>
<td>Tree Gathering</td>
<td>Summer</td>
<td>Firewood</td>
<td>The Spy-Hill Ellice Community Pasture</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>POLYLINE</th>
<th>Moose</th>
<th>TEK</th>
<th>Migration Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>MIS06</td>
<td></td>
<td></td>
<td>Riding Mountain National Park to the Assiniboine River</td>
</tr>
<tr>
<td>MIS06</td>
<td>Moose</td>
<td>TEK</td>
<td>Migration Route</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Riding Mountain National Park to the Assiniboine River</td>
</tr>
</tbody>
</table>

The Project specific Use and Occupancy data collected identifies most of use on Occupied Crown Land, specifically, the Community Pastures. Please see Figures 11 through 17 for illustration of this trend through data collected within the RAA.