



Interlake Reserves Tribal Council, Inc

Interlake Reserves Tribal Council
General Delivery
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April 06th, 2020

Environmental Approvals Branch
Manitoba Conservation and Climate
1007 Century Street
Winnipeg, MB R3H 0W4
Attn: Bruce Webb
Email: Bruce.Webb@gov.mb.ca

Re: MANITOBA INFRASTRUCTURE – LAKE MANITOBA AND LAKE ST. MARTIN OUTLET CHANNELS – FILE: 5966.00

We write this letter on behalf of the First Nation members that we represent for the purposes of the Channels Project - Lake Manitoba First Nation, Dauphin River First Nation, and Kinonjeoshtegon First Nation. This is in relation to the Public Notice issued by Manitoba Conservation and Climate on March 9, 2020 seeking Public Comments on the Summary of the Environmental Impact Statement for the Channels Project by April 23, 2020.

We respectfully request the Department suspend the processing of the EIS, including most immediately, a suspension of the deadline to provide public comments on the EIS. Our request is based on the following:

1. COVID-19 global pandemic and the related limits we are all operating under, including the diversion of staff and other resources in the IRTC and our member communities to manage this unprecedented situation; and
2. The absence from the EIS of project-specific, community led, Traditional Land Use (TLU) and Cultural Impact assessments as required by the EIS Guidelines.

COVID - 19

As Canada grapples with the ongoing impacts of COVID-19, our member First Nations have expressed serious concerns about how this will prevent us from participating in the Agency's processes with respect to the Channels Project.

The unfolding pandemic planning has significantly affected, and continues to affect, timelines, scheduled events, and meetings. As we work together to curb the spread of the virus, we have had to temporarily suspend a number of activities. It is imperative that our communities take necessary precautions to safeguard lives in Manitoba and beyond. At the moment, there are travel restrictions to our communities, which will impact the participatory inclusion this process requires.

Like the rest of Canada, we are prioritizing the health of our citizens over other matters. Without reasonable accommodations, the IRTC's ability to participate in the review of the EIS will be seriously undermined. We note that governments, courts and tribunals across the country have suspended statutory deadlines and all but the most urgent matters to deal with and accommodate the restrictions resulting from this pandemic. As well, the Impact Assessment Agency recently extended its deadline to provide comments on the March 9, 2020 EIS.

EIS missing Impact Assessments on Indigenous rights and interests

While the ongoing COVID-19 crisis is currently an urgent matter for our communities, a larger overriding concern remains: the impacts of the proposed Channels Project on our member Nations' rights and interests. The EIS is missing the studies necessary to predict the

Project's impacts Indigenous rights and interests. Without this information it will be impossible to meaningfully consult on the Project plans or develop effective mitigation measures. It puts communities in an impossible position of having to undertake a technical review of the EIS in the absence of the very information that is most important to us.

Manitoba is well aware these studies are missing and, with respect, it is entirely the fault of the Province that they are not yet done. The IRTC has always been willing to share our land use information and fully understands the need to do so in order to have our rights taken into account. Since the EIS Guidelines were approved in spring 2018, we have repeatedly requested resources from the Province to undertake the necessary TLU studies mandated by the Guidelines. We consistently advised the Province that these studies would take six months to a year to complete. Nevertheless, Manitoba chose stonewall our requests for a year and a half.

As Manitoba is aware, on January 2020, the IRTC executed a consultation/Traditional Knowledge studies workplan, the purpose of which was to obtain studies to include in the EIS. It is disappointing that Manitoba chose to file the EIS shortly thereafter, without any notice to us while it knew the studies were in progress. This falls short of the transparency needed to reconcile the party's divergent interests.

Other than the January 2020 workplan, we are aware of no steps taken by Manitoba to fill the conformity gaps listed in Annex 1, of the Agency's October 22nd, 2019 letter that would require it to engage or work with Indigenous communities. These gaps have not been filled, so it is clear that the EIS filed March 9th, 2020 does not comply with the EIS Guidelines. Further, the EIS does not comply with the law on consultation, which requires that impacts on Treaty and Aboriginal rights be included in project impact assessments.

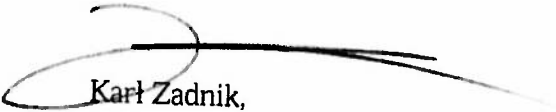
Accordingly, we respectfully request that the Department suspend the deadline for public comments until project-specific, Traditional Land Use and Cultural Impact Assessment studies

are included from those potentially affected Indigenous communities willing to share their information.

This letter should not be taken as the entirety of the IRTC's public comments in relation to the EIS filed March 9, 2020

Even as we continue to deal with COVID-19, our lines of communication will always remain open and we invite you to contact us if you would like to discuss this letter. We thank you for your time and understanding regarding this matter and your timely response.

Sincerely,



Karl Zadnik,
CEO, Interlake Reserves Tribal Council

cc. Matthew Dairon
Impact Assessment Agency
matthew.dairon@canada.ca



LITTLE SASKATCHEWAN FIRST NATION

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May 25, 2020

SENT BY EMAIL

Matthew Dairon
Project Manager, Prairie and Northern Region
Impact Assessment Agency of Canada
Email: matthew.dairon@canada.ca

Re: Lake Manitoba and Lake St. Martin Outlet Channels Project - Comments on Detailed Technical Review of the EIS (Sufficiency Review)

Dear Mr. Dairon,

Please accept this letter and attached table of comments on behalf of Little Saskatchewan First Nation ("LSFN") in response to your request for comments for the technical review of the Environmental Impact Statement ("EIS") for the Lake Manitoba and Lake St. Martin Outlet Channel Project ("the Project"). LSFN requests that the Impact Assessment Agency of Canada ("Agency") direct Manitoba Infrastructure ("the Proponent") to address all of the information gaps and deficiencies that we have identified in this letter and the attached table.

LSFN is submitting these comments only under duress and with the full expectation that any of our rights-based concerns that are excluded from the scope of this EA will have to be addressed by the Crown through a supplementary consultation, justification and accommodation process. We reserve all our rights and remedies for any breach by the Crown throughout this process. The onus is on the Agency, as federal Crown Consultation Coordinator for this EA, to provide a meaningful consultation process that is accessible, fair, transparent and predictable, and founded in respect and good faith.

Please note that the absence of comment on any particular section of the EIS cannot be read as lack of concern with the sufficiency of the EIS in relation to that section. Given limited time and resources, LSFN has been forced to focus on sections of the EIS that stand out as particularly deficient or entirely missing. We note that our inability to review the whole EIS in detail, as well as real risks to our ability to maintain a meaningful level of participation in this EA, flows from a critical and prejudicial inadequacy of funding from the Proponent. As per our forthcoming letter to the federal Minister of Infrastructure and Communities Canada ("ICC"), the Province's refusal to provide funds to support LSFN's involvement in technical reviews and technical meetings associated with federal and provincial EAs poses a substantial and unacceptable constraint on LSFN's access to the very processes that are central to the Crown's consultation efforts. **Therefore, we request that the Agency work with ICC, a key funding partner on the Project, to take immediate steps to remedy the unnecessary consultation risk being created by this funding shortfall.**

Key issues related to gaps and deficiencies in the Application

LSFN has conducted our initial time- and resource-constrained review of the EIS for its sufficiency in assessing the potential effects of the Project on the environment and our rights. Please see the attached table of comments for the majority of our comments and related information requests. We expect that each of the issues flagged in this letter and each of our comments in the attached table will be dealt with substantively in response, including through direct engagement with LSFN's technical team.

Below we highlight several key themes and issues that are central to many of our concerns with the EIS. Note, some of these gaps were previously identified during the Completeness Review of the draft EIS (i.e., screening) in September 2019, and continue to be serious deficiencies in the final version of the EIS.

1. ***Lack of Baseline and Project Effects Analysis for assessment of Current Use of Lands and Resources for Traditional Purposes ("CULRTP") for LSFN:*** The assessment of effects on LSFN's CULRTP in the EIS is entirely deficient due to lack of any nation-specific baseline information or effects analysis. **The Agency should require the Proponent to develop a supplementary submission, in collaboration with LSFN, to adequately characterize historical baseline conditions (see Issue #2 below), current baseline conditions, and potential adverse effects of the project on CULRTP, for each affected Indigenous group.** Alternatively, the Agency should enter into a collaborative process with LSFN to assess impacts on LSFN CULRTP within the context of the EA process, in keeping with new Agency policy and guidance for Rights Impact Assessment ("RIA"). ***If neither of these requirements are adopted, this will leave this assessment with an inadequate information base for the Ministers to make critical decisions in relation to impacts on LSFN's CULRTP.***
2. ***Lack of historical context for assessment of Current Use of Lands and Resources for Traditional Purposes ("CULRTP") for LSFN:*** The EIS lacks any meaningful discussion of the historical context for CULRTP that would illustrate changes in conditions over time experienced by LSFN members, especially in relation to alienation of and impacts within LSFN traditional territory resulting from past and present agricultural and industrial development, including effects of provincial flood control infrastructure systems. A critical "elephant in the room", virtually ignored in this EIS in the evaluation of impacts on CULRTP and Rights, is the long-standing (over 50 years) adverse effects suffered by LSFN (and neighbouring First Nations) resulting from the provincial flood control systems on the Fairford and Assiniboine Rivers. **The Agency must require the Proponent, in collaboration with LSFN, to develop a supplementary submission to characterize the historical context of LSFN rights-based activities within its territory for the purpose of assessing the significance and severity of project impacts on LSFN CULRTP in keeping with current Agency policy and guidance.**
3. ***Fundamental Information Components Missing from Assessment of LSFN Aboriginal and Treaty Rights:*** This section of the EIS is entirely inadequate due to substantial information gaps including, but not limited to, a lack of:
 - historical context for LSFN;
 - baseline information for LSFN regarding current conditions, including trajectories of change in respect to key indicators;

- identified project-LSFN rights interaction pathways or supporting rationales;
- information on desired future use by LSFN;
- information regarding LSFN thresholds, including sufficiency of resources, reasonable access and opportunity for meaningful exercise of rights by LSFN;
- information on potential effects on LSFN's preferred locations, timing and means of exercise of rights;
- consideration of effects of reasonably foreseeable projects and activities, in combination with the effects of the project on LSFN rights;
- analysis of potential effectiveness of proposed mitigations, including LSFN perspectives on same;
- analysis of net residual project-specific and cumulative effects on LSFN rights, after mitigation; and
- consideration of LSFN views of severity of potential impacts of the project on LSFN rights, after mitigation.

The Agency should require the Proponent to develop a supplemental submission, in collaboration with LSFN, to adequately characterize historical baseline conditions, current baseline conditions, and potential adverse effects of the project on LSFN Aboriginal and treaty rights. Alternatively, the Agency should enter into a collaborative process with LSFN to assess impacts on LSFN Aboriginal and treaty rights within the context of the EA process, in keeping with new Agency policy and guidance for Rights Impact Assessment ("RIA"). (See, IAAC, Interim Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples, 2020). *If neither of these requirements are adopted, this will leave this assessment with an inadequate information base for the Ministers to make critical decisions in relation to impacts on LSFN's rights and interests.*

4. **Missing Nation-specific baseline information for Indigenous VCs under Subsections 5(c)(i) of the Canadian Environmental Assessment Act, 2012 ("CEAA 2012"):** The EIS does not provide disaggregated baseline socio-economic and health information for each "individual Indigenous group" affected by the Project, as required in the EIS Guidelines. Baseline information used by the EIS is inadequate to assess effects on LSFN socio-economic conditions. Individual Indigenous communities experience distinct socio-economic and health circumstances, and by lumping together distinct Indigenous populations in the RAA, these differences are masked rather than reflected. Robust and accurate assessment requires that effects on distinct Indigenous communities are profiled and assessed separately. The failure of the EIS to undertake Nation-specific assessments in respect to health and socio-economic conditions as set out in the EISG represents a significant gap that could have been avoided had the Proponent heeded LSFN's previous request (see comments submitted by LSFN to the Agency, September 16, 2019) for Nation-specific assessments in respect to CEAA 5(1)(c) factors. **The Agency should require the Proponent to provide nation-specific supplementary submissions using a proper interpretation of section 5(1)(c) of CEAA 2012 in accordance with the EISG and appropriate best practices and methodological guidance. Further, we request the Proponent consult with**

LSFN in advance of preparing submissions specific to our community, and engage us meaningfully in the development of any submission purporting to understand our lived experience.

5. ***Intangible cultural heritage:*** The EIS does not assess potential effects on LSFN's intangible cultural heritage, as required under section 5(1)(c)(ii) and set out under the Agency's *Technical Guidance for Assessing Physical and Cultural Heritage or any Structure, Site or Thing that is of Historical, Archeological, Paleontological or Architectural Significance under the Canadian Environmental Assessment Act, 2012*. **The Agency should require the Proponent to provide a supplemental submission analysing potential project effects on LSFN intangible culture (including both potential impacts, as well as opportunities for project-related beneficitation). This analysis should include, but not be limited to LSFN connection to place, cultural landscape (e.g., Lake St. Martin and surrounding territory) and transmission of cultural knowledge (including, but not limited to, land- and water-based harvesting and navigation activities).**
6. ***Purpose of the Project (Project justification and alternatives to the Project):*** This EIS has not examined, in any meaningful fashion, alternative means to address the problem of Winnipeg flood risk resulting from spring flood water in the Assiniboine River system. This includes alternatives to using the Portland Diversion and the Fairford water channel system to divert flood waters from the Assiniboine River, away from Winnipeg and into Lake Ontario and Lake St. Martin.

Given the historical context, and the potential of the Project to cause severe impacts on LSFN's treaty rights, a much more robust analysis and discussion is required in respect to project justification, including but not limited to consideration of:

- the historical context of flooding in Lake Manitoba and Lake St. Martin;
- the severe consequences of the current flood management system since 1961 on Indigenous and non-Indigenous communities along Lake Manitoba and Lake St. Martin;
- potential alternative means to large-scale, water diversion infrastructures for addressing long-term flood control in Manitoba;
- LSFN perspectives on past and current impacts of the current flood management system since 1961 on LSFN rights, interests and well-being; and
- an analysis of impact equity, including the relative distribution of benefits and impacts from the Project in relation to potentially adversely and beneficially affected communities and land-users, i.e., at minimum, consideration of the City of Winnipeg, farmers and cottage owners of Lake Ontario and Lake St. Martin, commercial fishers, and Indigenous communities, such as LSFN, located on Lake St. Martin.

The Agency should require the Proponent to provide a supplemental filing identifying the historical context, factors and contemporary policy considerations and decisions in respect to Manitoba's existing integrated water control and flood mitigation system, and providing a broad, expanded consideration of project alternatives and justification in view of the constitutional imperative of the Crown to take into consideration and balance the potential impacts and benefits of a project on the respective rights, interest and well-being of

Indigenous Nations against any benefits that may accrue to the larger Canadian society. The supplemental filing should also describe, as required by the EISG under Section 2.1, the predicted environmental, economic and social costs and benefits of the Project, as well as the distribution of costs and benefits (impact equity) amongst potentially affected communities, including LSFN.

7. *Gaps in the Reference Concept (Project Description):* The EIS does not provide adequate detail for the following project components:

- ancillary and temporary Project components as requested by both IAAC and LSFN. Estimated locations for construction camps, temporary laydown areas, borrow pits etc. have not been provided in this EIS. This information is essential for assessing potential impacts to LSFN rights.

The Agency should require the Proponent to provide a supplementary filing providing,

- i) **the estimated location and timing of all project-related construction-related ancillary facilities, including construction camps, temporary laydown areas, borrow pits etc., particularly those likely to be associated with shoreline and in-stream construction works; and**
- ii) **an assessment of potential effects associated with such facilities and structures.**

8. *Inappropriate characterization of the Outlet Channels as "habitat offsetting":* The EIS (Section 7.2.4.2) inappropriately concludes that changes in fish habitat in Fairford and Dauphin rivers, Watchorn Bay, Birch Bay, Lake St. Martin and Sturgeon Bay, will be offset by habitats created in the new LMOC and LSMOC channels, or changed at the inlets and outlets of the channels. These channels do not represent appropriate (i.e., like-for-like) compensation for the loss or alteration of fish habitat associated with the Project. A variety of evidence exists that shows that man-made structures do not have the same ecological values as natural environments, that there is a serious time deficit between damage to natural structures and any sort of near-equivalent ecological conditions being developed at "offset" locations, and that much greater than 1:1 offsets must be in place in order to account for these deficits. Furthermore, new habitat created within the channels (while gates are open) may contribute to changes in the structure and composition of fish communities, as has been reported for the Lake St. Martin EOC. **The Agency must require the Proponent to provide a supplementary filing to reconsider mitigation measures to provide like-for-like compensation for lost and altered fish habitat, in consideration of Indigenous values and best practices associated with offsetting losses to fish habitat.**

9. *Mitigation measures:* The absence of information that provides a rationale for, and assessment of the confidence of success of, many of the proposed mitigation measures stands out as a critical information gap in the EIS. These gaps apply equally for the assessment of effects on biophysical VCs in volumes 2 and 3, and on Indigenous-related VCs in chapter 10 in volume 2. On critical topics, such as for the proposed mitigation of impacts on fish and fish habitat, substantial gaps exist. **For each mitigation measure proposed in the EIS as a means for reducing effects on biophysical and Indigenous-related VCs, the Proponent must provide, at minimum:**

- a. **A conceptual-level description outlining the proposed**

implementation of the measure;

- b. A rationale for all the selection of each measure, including why further avoidance or reduction measures for adverse effects may not be considered feasible, and
- c. An analysis of their likely effectiveness, risks and uncertainties, grounded in actual evidence from implementation in similar circumstances, with any distinguishing factors between the comparative scenarios noted.

Alternatively, for all VCs where specific mitigation measures cannot be identified during this environmental assessment due to Design-Build contracting arrangements envisioned by the Proponent (which allow substantial latitude to contractors in the design and implementation of mitigation measures), then the certainty of effectiveness of mitigations should be re-assessed as low and the estimation of potential adverse effects revised appropriately.

Closure


LSFN is a priority-rights holder within the Project-affected area, and as such, is strongly committed to ensuring that the EIS contains all the information necessary to ensure that the potential impacts of the Project on the environment and our rights and interests are properly considered and assessed through the course of this EA. We urge the Agency to require the Proponent to provide supplementary information to address all of the information gaps and deficiencies in the EIS that we have identified in this letter and the attached table. This is especially important given that the Proponent has been unresponsive to our initial requests for improvements to its EIS.

LSFN seeks to engage with the Crown in a constructive and collaborative manner. However, to date, the process initiated by the Proponent has made this a challenge. We are committed to working with the Agency to develop a more reasonable path forward that ensures that our rights and interests are protected in the context of this EA. As a starting point, Canada and the Proponent must provide LSFN with sufficient capacity funding to support our meaningful involvement in this process.

LSFN has been forced in the past to protect its rights via the courts; we hope that the future holds a more constructive path to reconciliation with the Crown. We look forward to turning a corner on the past and beginning to build an enhanced, collaborative EA process that properly reflects our status as a priority rights holder in the project area, and Canada's ongoing commitment to reconciliation with Indigenous peoples.

If you have any questions, please contact Dwayne Blackbird, LSFN EA Coordinator at (204) 210-1242 or by email at sonnyblb@icloud.com.

Sincerely,


Chief Hector Shorting
Little Saskatchewan First Nation

Attachment: *LSFN Table of Comments for Detailed Technical Review of the EIS (Sufficiency Review) for the Lake Manitoba and Lake St. Martin Outlet Channels Project*

cc. Dwayne Blackbird, LSFN EA Coordinator - sonnyblb@icloud.com
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