

Webb, Bruce (SD)

From: Pat Hoyes
Sent: June-15-18 5:30 PM
To: Webb, Bruce (SD)
Subject: Fw: Environmental Impact Study/outlet channel

----- Forwarded message -----

Date: 06/15/2018, at 05:26 PM

To: Bruce Webb <outletchannel@gov.mb.ca>

From: Pat Hoyes
Subject: Environmental Impact Study

June 15,2018

The Province of Manitoba along with the Government of Canada are undertaking an Environmental Impact Study concerning the proposed outlet channels draining Lake Manitoba and Lake St Martin. With the high levels on these lakes in recent years there is not question of the need and benefit of this project. It is not our intention to delay or stop these channels from being built, however stake holders around Lake Manitoba and along the Portage Diversion want to remind the Government that there are issues stemming from the continued use(overuse) of the Portage Diversion to divert water from the Assiniboine River through these lakes.

The environmental impact will not only be felt by the area around the new proposed channel but will also affect areas along the Portage Diversion and Lake Manitoba. Since the Portage Diversion has been a major contributor to the high lake level would it not be prudent to include all of these areas in the Environmental Impact Study.

Thank you for this opportunity to share our concerns.

Stephen and Patricia Hoyes

Portage la Prairie, Mb

Dear Bruce,

I farm (or better said: "use to farm") along the Portage Diversion. Like other land owners along the Diversion I have seen the land deteriorating over the years. The increased use of the Diversion resulted in strong elevated salt levels of the soil. This resulted in lower yields and the disappearing of specialty crops. All the idle irrigation systems along the diversion are clearly an indication. My veris soil testing that I started in 2010 indicates what happened. As a result of these test KGS recommended the province of Manitoba to underwent a salinity study of the Diversion. So far no results from this study, which is conducted by the Province them self has come forward.

I can see that an extra out let from Lake Manitoba to Lake Winnipeg will have a huge benefit for residents around the lake in regards the lake level and chances of overland flooding, but I am greatly concerned it will increase the use of the diversion even more. The Diversion takes more than 66% of the total flow coming to Portage, bringing silt, debris and nutrients with it into the lake.

Listening to various engineers from the Government of Manitoba at different meetings it is clear there isn't a plan to increase the river flow to Winnipeg from Portage (what KGS strongly recommended). I also heard from an engineer that the diversion is slated for dike improvement in coming years. What tells you that!!!

Therefor I believe the Portage Diversion and Lake Manitoba has to be part of the environment study. And may the Government finally admit what kind of damage and how much some people have to endure to safeguard others.

Sincerely

Bert Rutbeek,

Rutbeek Farms Ltd.
P.O. Box 1408
Portage La Prairie, MB
R1N 3N9



Myers LLP

Barristers & Solicitors

June 19, 2018

Reply to: Alex J. Nisbet
File No. 26349-064 JBH
anisbet@myersfirm.com
Writer's Direct Line: 204 926 1528

Via Email

Environmental Approvals Branch
Manitoba Sustainable Development
1007 Century Street
Winnipeg, MB R3H 0W4

Attention: Bruce Webb

Dear Sir:

**RE: Manitoba Infrastructure - Lake Manitoba and Lake St. Martin Outlet
Channels – File: 5966.00**

Please be advised that we represent Pinaymootang First Nation ("PFN") regarding the Lake Manitoba and Lake St. Martin Outlet Channels Project (the "Project"). This letter is a response to the Notice of Environment Act Proposal seeking comments from "anyone likely to be affected" by the Project. These comments are outside the consultation process. However, we feel it is important to utilize this comment period to once again express concerns with the Project and the lack of consultation that has occurred to date to protect the rights and interests of PFN.

Environment Act Proposal and EIS Guidelines

The March 2018 Lake Manitoba and Lake St. Martin Outlet Channels Project Scoping Document (the "Scoping Document") states at page 15 that the Project triggers both federal and provincial requirements for EA and that Manitoba Infrastructure ("MI") will submit a single document that is to address all requirements for consideration by Manitoba and the Canadian Environmental Assessment Agency ("CEAA").

The May 15, 2018 Project Guidelines for the Preparation of an Environmental Impact Statement issued by CEAA ("EIS Guidelines") provide for an effects assessment that includes project setting and baseline conditions, predicted changes to the physical

environment, predicted effects on valued components, mitigation measures, significance of residual effects, and other effects to consider. The EIS Guidelines identify to the proponent the minimum information requirements for the preparation of an EIS for the Project to be assessed pursuant to the Canadian Environmental Assessment Act, 2012 ("CEAA 2012").

If done properly, the environmental documentation produced by MI will be a valuable decision-making tool that details impacts associated with the construction and operation of the Project. It must be noted that CEAA applies the precautionary approach which is described on page 3 of the EIS Guidelines as follows:

In documenting the analyses included in the EIS, the proponent will demonstrate that all aspects of the project have been examined and planned in a careful and precautionary manner in order to avoid significant adverse environmental effects and any impacts to Aboriginal or Treaty rights. (emphasis added)

The Project is a massive undertaking that will create a boundary that extends from Lake Manitoba to Lake Winnipeg, isolating PFN from the southern Interlake region and impeding the free flow of wildlife. It is also likely that the Project will adversely impact fish and fish habitat, impact water quality and affect groundwater input and flow regime.

The PFN community will experience economic hardship throughout the construction phase as it will most likely impede traffic and the free flow of goods and consumers to the region. Traditional hunting grounds will be exposed to increased traffic during the construction phase and untold impacts will occur to aquatic and semi-aquatic species in the region throughout the construction and operation of the channels. The effect of a channel that is to be permanently watered will likely have numerous impacts on the region and the Aboriginal and Treaty Rights of PFN members for generations to come. The proponent must take an ecosystem approach that considers both scientific and Aboriginal traditional knowledge and perspectives regarding ecosystem health and integrity.

Many water control projects have been imposed upon the Interlake region and the traditional lands and Reserve of PFN dating back to the 1800's which have greatly shaped and transformed the region. The construction of the Fairford River Water Control Structure and other provincial water control works have a synergistic effect on each other and cannot be viewed in isolation. In the same vein, the Project cannot be viewed as an isolated construction project with impacts only in the immediate vicinity. Flood control measures in the region will be used with greater frequency in

the future due to the proposed increase of flow capacity at the Portage Diversion and strengthening of other flood protection infrastructure.

Manitoba and Canada must assess the regional cumulative effects of the Project in conjunction with prior and future water control works on the regional water regime as part of a robust environmental assessment process. Page 42 of the EIS Guidelines states as follows with respect to the cumulative effects assessment:

The proponent is encouraged to consult with key stakeholders and Indigenous groups prior to finalizing the choice of VCs and the appropriate boundaries to assess cumulative effects. This engagement should address, but not be limited to, concerns raised to date regarding cumulative effects that are associated with water management in Manitoba, for flood protection, hydroelectric, and other purposes, and the current and future regulation of flows through water control structures upstream and downstream of the Project.

At this time, PFN does not have adequate information to further comment on environmental effects and their impact on potential or established Aboriginal or Treaty Rights. This must be rectified immediately as set out below.

Consultation Workplan

We submit that to date inadequate consultation has occurred and PFN has therefore been prevented from providing informed and meaningful comments on the Project. Page 3 of the EIS Guidelines state the following regarding engagement with Indigenous groups:

The proponent is expected to engage with potentially affected Indigenous groups starting as early as possible in the project planning process in order to:

- *Fulfil the statutory obligations of CEAA, 2012 to assess environmental effects of the proposed Project on Aboriginal peoples; and*
- *Assist the Agency fulfilling the Crown's constitutional obligations to consult with potentially impacted Indigenous groups on potential impacts to potential or established Aboriginal or Treaty rights.*

The proponent is expected to work with potentially affected Indigenous groups to establish an engagement approach. The proponent will make reasonable efforts to integrate Indigenous knowledge into the

assessment of environmental effects. The EIS will document these efforts and the validation process with affected Indigenous groups regarding reasonable efforts to integrate Indigenous knowledge.

As you may know, consultation was originally alleged to be through the Interlake Reserves Tribal Council ("IRTC"). PFN's putative participation in the IRTC consultation was not authorized by a resolution of the Band Council and on February 2, 2018 PFN confirmed that any and all consultation with PFN concerning the Project must be directly with PFN as indeed the law requires.

MI provided PFN with a proposed consultation plan on March 9, 2018 that merges the objectives of consultation with the environmental licensing process. We have found that the proposed consultation plan is deficient in its approach, timing and funding. The Project is highly technical, complex and will impact PFN indefinitely and in ways which are not yet understood. PFN must have the sufficient information and technical advice in order to have the capacity to understand the Project before it can provide meaningful comments regarding its concerns to the Crown.

Technical expertise from hydrologists, biologists, and engineers will be crucial to Interlake communities and their ability to understand the effects of the Project. A meaningful consultation process must, at a minimum, provide PFN with sufficient information about the Project to allow it to prepare its views on how it may impact PFN's Aboriginal and Treaty rights. PFN must have a reasonable amount of time to prepare its views and an opportunity to present those views to the Crown. The Crown must fully and fairly consider PFN's views before making a decision regarding the Project and must accommodate PFN for any adverse effects on its Aboriginal and Treaty rights from the Project.

PFN and an independent expert put forth a reasonable consultation budget proposal to MI in a letter dated May 3, 2018 attached for your convenience. As of today's date the courtesy of a substantive response has not been received to the letter, greatly delaying consultation with PFN.

Moving Forward

It has been stated by various news sources that Premier Brian Pallister wrote to Prime Minister Justin Trudeau in April 2018 asking the federal government to designate the Project as an "emergency" to "speed up" the environmental review. This "speeding up" of the review process would greatly weaken the environmental assessment and would likely prevent meaningful consultation. We stress that Manitoba and Canada must fully discharge their duty to consult and accommodate PFN in good faith prior

to the approval of any project affecting the Aboriginal and Treaty rights of PFN's members.

PFN must receive the support necessary to understand how the Project will affect the way of life and future of its members. As stated above, a response to the draft consultation budget as provided in the May 3, 2018 letter has not yet been received. The May 3, 2018 letter also contained a request regarding environmental approval documentation and consultation record for the construction of the access road which has allegedly already commenced. We once again request a response to the draft budget as provided and the information sought regarding the access road.

We ask that MI contact us at their convenience to set up a date and time to discuss the consultation work plan as detailed in the May 3, 2018 letter.

Failure to respond to this request may result in PFN commencing legal action without further notice.

Trusting this is satisfactory.

Yours truly,

MYERS LLP

Per:



ALEX J. NISBET

Enclosure



Myers LLP

Barristers & Solicitors

May 3, 2018

Reply to: John B. Harvie
File No. 26349-064 JBH
jharvie@myersfirm.com
Writer's Direct Line: 204 926 1505

Via Email

Manitoba Infrastructure
94 Hoka St.
Winnipeg, MB R2C 3N2

Attention: Lyle Campbell and Christine Baljko

Dear Sir and Madam:

RE: Proposed Lake Manitoba and Lake St. Martin Outlet Channels Project

This letter is to serve as follow up to the meeting between you and PFN legal counsel on March 8, 2018 regarding the Lake Manitoba and Lake St. Martin Outlet Channels Project (the "Project"). We would like to address the consultation workplan for the Project and seek clarification regarding environmental approval and Aboriginal consultation requirements for the construction of the access road.

Consultation Workplan

The draft consultation plan as provided by Manitoba Infrastructure ("MI") on March 9, 2018 via email correspondence merges the objectives of consultation with the environmental licensing process. We have found that the proposed consultation plan is deficient in its approach, timing and funding. The Project is highly technical, complex and will affect PFN indefinitely and in ways which are not yet understood. PFN must have the sufficient information and technical advice to have the capacity to understand the Project.

PFN and an independent expert have reviewed the January 2018 Project Description Summary submitted by MI to the Canadian Environmental Assessment Agency (the "Project Summary") and the Phase 1 Traditional Land Use and Traditional Knowledge

Report drafted by Golder Associates (the "Golder Report") to determine the process necessary for the Crown and PFN to engage in meaningful consultation.

The draft budget as provided by MI contained a professional/technical fee budget of \$5,000 to obtain independent advice through the "review of the Environmental reporting documents, EIS, and preparation of a plain language report for the community". The budget also provides a sum of \$5,130 for 18 hours of "legal review of documents". The environmental review of the Project and Aboriginal consultation will take months or years and requires the review of voluminous reports, studies, maps, and plans. The expert interpretation of all documents and the legal review of same cannot possibly occur for the sum of \$10,130.

Technical expertise from hydrologists, biologists, and engineers will be crucial to Interlake communities and their ability to understand the effects of the Project. The draft budget states that the community coordinator will prepare the draft and final consultation reports. A community coordinator must have the expertise necessary to understand, interpret, and disseminate Project information to PFN members and then prepare a final consultation report upon the informed input of PFN members. Neither the draft budget provided to PFN nor budgets put forth by the Interlake Reserves Tribal Council Inc. ("IRTC") have the technical or legal capacity to adequately identify potential impacts to Treaty and Aboriginal Rights in a final consultation report.

A meaningful consultation process must, at a minimum, provide PFN with sufficient information about the Project to allow it to prepare its views on how it may impact PFN's Aboriginal and Treaty rights. PFN must have a reasonable amount of time to prepare its views and an opportunity to present those views to the Crown. The Crown must fully and fairly consider PFN's views before making a decision regarding the Project and must accommodate PFN for any adverse effects on its Aboriginal and Treaty rights from the Project.

For consultation to be meaningful, PFN must:

1. Undertake a Traditional Land Use and Knowledge Study. The study would document how PFN members exercise their Treaty and Aboriginal rights within appropriate temporal and spatial contexts. This will require a community coordinator, an administrator, adequate methods for member participation, and technical expertise. This is estimated to cost between \$100,000 and \$170,000.
2. Review and comment on MI's Detailed Project Description, pending Environmental Impact Statements, and other environmental documentation

as necessary. This review will allow PFN to understand how the construction and operation of the Project, in conjunction with the operation of the Fairford River Water Control Structure ("FRWCS"), will impact those components of the environment upon which the exercise of their Aboriginal and Treaty rights is dependent.

Technical resources from a variety of environmental and engineering disciplines will be required. A hydrologist familiar with the history of Lake Manitoba and Lake St. Martin water regulation will be essential.

3. Integrate the knowledge and information gained from points 1 and 2 above into draft and final consultation reports to describe how the Project, in conjunction with past flood control measures in the region, will impact PFN's Aboriginal and Treaty rights and identify appropriate accommodations to avoid or minimize those impacts. This will require community and technical resources comparable to those identified in points 1 and 2.

The combined cost of points 2 and 3 is estimated at between \$125,000 and \$250,000.

4. Ensure the Crown meets its legal obligations with respect to consultation and accommodation. Legal fees for this point are estimated at approximately \$50,000.

The above listed budget is not required for all Interlake communities. The information obtained through independent biologists, hydrologists, and engineers would be freely distributed to IRTC members and other surrounding communities potentially impacted by the Project.

A meaningful consultation process requires the Crown to provide reasonable funding to PFN to participate in consultation. It is not the sole responsibility of Manitoba to provide funding for the completion of Crown consultations. We would recommend that MI discuss the above noted plan with the responsible authorities from Canada so that adequate funding can be obtained and meaningful consultation can occur.

Environmental Approval for Access Road Construction

Page 2 of the Golder Report states that the access road will be approximately 80 km in length and will allow for the construction, operation and maintenance of the Lake St. Martin outlet channel. Approximately 61 km of the access road already exists but

will need to be upgraded and/or realigned. Therefore, we must assume that approximately 19 km of new roadway will be constructed on Treaty 2 lands.

The access road would be heavily used throughout the Project construction phase by trucks for both delivering construction materials and hauling large equipment. The existing roadway alignment is adjacent to important hunting grounds and other environmentally sensitive areas that could be adversely affected absent adequate study and mitigation efforts.

The 'Environmental Authorization' page of the Project website¹ states that approval must be obtained from Manitoba Sustainable Development Environmental Approvals Branch for the "Environment Act Proposal for construction of the all-season road that will provide access to the Lake St. Martin outlet channel."

The Environment Act Proposal ("EAP") for the access road cannot be found on Manitoba's Public Registry.² **We please ask that you immediately provide us with the EAP for the construction of the access road and all other documentation or permits that have been produced or obtained to satisfy regulatory requirements. We also ask for an explanation as to how the construction of the access road can be separated from the overall federal and provincial environmental assessment of the Project.**

Access Road Construction Consultation

PFN is of the position that the meeting held on December 14, 2017 in Pinaymootang was not consultation. Section 4.2 "Indigenous Engagement and Consultation" of the January 2018 Project Summary states that "MI and INR are finalizing consultation agreements, workplans and budgets for 6 First Nations (FN) communities within the Interlake Region...".

As stated above, the access road required for the construction and operation of the Project will necessitate the upgrading/realignment/new construction of approximately 80 km of roadway. This construction will occur on lands which PFN has the right to hunt, trap, and exercise all other Aboriginal and Treaty Rights.

It is rather concerning that consultation on the Project is in its infancy while construction of a major portion of the Project, the access road, has already

¹ <https://www.gov.mb.ca/mit/wms/lmbismoutlets/environmental.html>

² <https://www.gov.mb.ca/sd/eal/registries/index.html>

commenced. If it is the position that adequate consultation with PFN and surrounding communities has occurred with respect to construction of the access road, we would ask that you provide us with the record and supporting documentation detailing all consultation activities that have occurred.

Moving Forward

Manitoba and Canada must fully discharge their duty to consult and accommodate PFN in good faith prior to the approval of any project affecting the Aboriginal and Treaty rights of PFN's members. PFN must receive the support necessary to understand how the Project will affect the way of life and future of its members.

Please provide us with the above requested environmental approval documentation and consultation record for the construction of the access road on a rush basis.

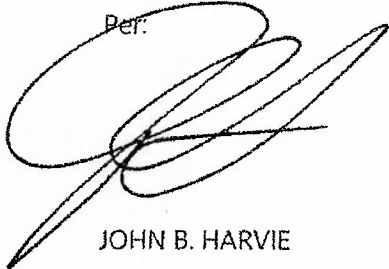
Contact us at your earliest convenience to set up a date and time to discuss the consultation workplan as detailed above.

Trusting this is satisfactory.

Yours truly,

MYERS LLP

Per:

A handwritten signature in black ink, appearing to read 'John B. Harvie', written over the 'Per:' label.

JOHN B. HARVIE