

Let Justice Flow

Report of the Interchurch Inquiry into Northern Hydro Development

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*The Interchurch Inquiry into Northern Hydro Development was held:
June 21-23 in Winnipeg, Manitoba
June 24-25 in Cross Lake, Manitoba*

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Executive Summary

Hydroelectric development has sidelined Aboriginal peoples from the sustenance and beauty of the lands and waters given to them by the Creator. It is now time they re-assume their rightful place in caring for and restoring their homeland. Perhaps then, those lands and waters will bring much-needed healing to the people.

Hydroelectric development on northern Manitoba rivers in the past three decades has re-engineered watersheds that were entrusted to Aboriginal peoples by the Creator. Such development, which generates 75% of the electricity produced in Manitoba, has impacted those Aboriginal peoples in ways that cut to the very heart of their existence.¹

It is a tragic irony that the same region that supplies Manitoba with billions of dollars in hydroelectric wealth is also home to Aboriginal peoples caught in a quagmire of poverty and social despair. The Churchill-Nelson Hydroelectric Project (the “Project”) has brought opportunity and prosperity to society at large, while bringing considerable environmental and cultural disruption to those living at its heart. The panel of inquiry commissioners sees an urgent need to move from a situation in which the Project is the source of problems for Aboriginal peoples to a situation in which it is the source of solutions. The wrongs of the past must be addressed with generosity and unwavering justice if an ever-deepening northern crisis is to be averted.

The ongoing suffering of Cree and Métis peoples as a result of hydroelectric dams is both unnecessary and avoidable. The future can, and must, look different and it is up to the governments of Manitoba and Canada, Manitoba Hydro (the “Crown parties”), and the customers of Manitoba Hydro to ensure that the opportunity for a much better future is not missed.

Environmental and Socio-economic Impacts

Numerous presenters spoke about the environmental harm and social trauma attributable to the dams. Watersheds that were once safe, beautiful, and intimately known gifts from the Creator are now dangerous and despoiled. This damage-outlined in Part II of the report-has undermined tradi-

tional economies, cultural vitality, and spiritual wholeness. A sense of exclusion, betrayal, and delayed justice compounds the human suffering.

This report outlines efforts undertaken by the Crown parties to address adverse impacts, but recommends that immediate and concerted efforts are needed on their part to address the ongoing crisis. The report's intent is to apply the lessons of history in order to offer constructive, forward-looking suggestions. (See Appendix 1 for a summary of recommendations.)

Currently, the environmental and social costs of hydro production are being off-loaded on the peoples of the north, while the balance of benefits accrue to society at large. This accumulating socio-ecological deficit, like any deficit, will haunt the province if not rectified.

Different Views, Clear Responsibilities

The presentations by the governments of Canada and Manitoba, and Manitoba Hydro differed sharply from all other presenters. One difference concerned the question of whether adverse conditions in the communities result from the Project or whether these conditions are merely a continuation of poverty and unemployment that existed prior to development. While recognizing a multiplicity of contributing factors, the panel considers it irresponsible to minimize the link between adverse social conditions and the Project. The existence of poverty that predated the project, or poverty caused by factors unrelated to the dams, serves to increase, rather than decrease, the responsibility of the Crown parties to ensure that the Project and all future development benefit the peoples in the north to the greatest possible extent.

The Northern Flood Agreement

Part III of the report is devoted to the 1977 Northern Flood Agreement (NFA). With the signing of the NFA, the Crown parties obtained an after-the-fact right to use the lands of the five First Nations which signed the agreement. In exchange, the First Nations were granted entitlements to a range of provisions designed to ensure fair and equitable treatment.

With emphasis on Pimicikamak Cree Nation (PCN)-one of the NFA signatories-this report details the provisions of the NFA, what the Crown parties have done to implement them, where they have failed, and the benefits that true implementation would bring.

Though in the case of PCN the NFA is largely unfulfilled, it remains a source of hope that the Project can still contribute to the recovery of the land and people of PCN. The panel shares the view that NFA implementation could, and should, put Aboriginal peoples on "a course of increasing social and economic independence," and contribute to healing and reconciliation.²

This report regards the NFA as a treaty and interprets it as a covenant among peoples. The conditions experienced by PCN demonstrate that the NFA's promised fairness and equity still lie only in the future. With sufficient political will, creativity, and public support, fulfillment of the NFA can restore a treaty relationship that has been broken for much too long.

Four other First Nations which signed the NFA have subsequently entered into Master Implementation Agreements with the Crown parties. Part IV of this report acknowledges the resources and hopes invested in these agreements by all parties while also reflecting concerns raised about them. The expressed hope is that these agreements may dramatically improve conditions in those communities. The report also affirms PCN's decision to rely on the original NFA.

South Indian Lake and Fox Lake First Nation

Two of the most severely affected communities-South Indian Lake and Fox Lake First Nation-were not included in the NFA. Part V addresses the situation of those communities, as well as the affected Métis, non-treaty and off-reserve status people who were likewise excluded from the NFA.

The Fox Lake Cree, who live in the shadow of Manitoba's three largest dams, spoke of the invasion of their homeland which was undertaken with almost complete disregard for their most basic rights. Their story is an unimaginable tragedy that could have been prevented. The people of South Indian Lake were similarly helpless to prevent the flooding and dislocation that profoundly altered their lives. Self-reliance was replaced by dependency; dignity by hopelessness. Their situation is also largely unresolved.

This report recommends that the rights and benefits comparable to those in the NFA be granted to South Indian Lake, Fox Lake First Nation and other Métis, non-treaty and off-reserve status people. Crown parties have little right to boast of their efforts to address adverse impacts until fairness and equity have been achieved by all impacted peoples.

This report places primary responsibility at the feet of the Canadian federal government. The conditions experienced by the Aboriginal presenters have failed to trigger effective government actions to end the tragedy.

Conclusion: Shared Success

The untalied cost of electricity production in northern Manitoba has been two decades of extensive environmental destruction, violation of human rights, and even the loss of life. For Manitoba Hydro, the governments, and consumers the Project is a success, but in northern Manitoba it constitutes an ongoing ecological, social, and moral catastrophe. These imbalances must be redressed.

Opportunities to extend the success of the hydroelectric project to all include the restoration of damaged ecosystems and the socio-economic recovery of affected communities. This report asserts that self-sufficiency is attainable. Viability depends upon ensuring that Aboriginal peoples have access to the abundant resources-in both traditional and modern forms-that surround them.

Finally, this report invites citizens, businesses, non-governmental organizations, and religious institutions to consider whether their use of electricity produced under the present conditions in northern Manitoba is fair. The ultimate responsibility for ensuring fairness lies with all of us. This is a sacred responsibility given us by the One who created the lands and waters.

-Winnipeg, Manitoba 2001

Let there at long last be equity, justice, fairness, generosity, real sharing, and honour in the Crown's dealings with Aboriginal peoples. Let present generations of Aboriginal peoples begin to hope that there will be a future for those that follow, a future of political, economic, social, and environmental justice.

Grand Chief Matthew Coon Come, Grand Council of the Crees (of Quebec)³

Part I: Introduction

Sacred Responsibility

Northern Manitoba is a land of uncounted wealth. For the indigenous peoples it is a land rich in spiritual and physical sustenance. For the people of Manitoba as a whole, resources from the north are a key to provincial prosperity. For the living beings in the forests and waters, it is home. And for the One who created it there is a unique richness in every stone, bird, person, and drop of water. This northern environment and its various inhabitants must be treated with respect. It was in the oral presentations by Cree elders that the panel glimpsed most vividly this sense of sacred respect and responsibility.

The 1970s saw a large-scale effort to tap the hydroelectric potential of northern Manitoba, and a corresponding discussion of how to manage and share its bounty. This report revisits the 25 year-old unresolved question of fairness and equity: has the God-given abundance of the Churchill and Nelson River drainage systems been used in a respectful and appropriate manner?

A summary report published in 1975 during the construction of the dams identified a central justice principle with respect to resource sharing.

Since benefits and costs from alternative resource uses may accrue to different groups in our society, it is important that the distribution of benefits and costs be examined in detail. Who are the principal recipients of benefits, and who bears the burden of the costs? Failure to identify the beneficiaries of resource allocation decisions can readily result in a transfer of benefits to one particular group in our society at a cost to another.⁴

Similarly, the 1975 predecessor to the 1999 interchurch inquiry asked:

What are the social and environmental costs of [the Churchill-Nelson] project...? To whom will go the costs and to whom will go the benefits of the project?⁵

The citizens of Canada and Manitoba, as well as the consumers of the electricity produced by the Project have both a right and responsibility to seek answers to these questions. This report hopes to add to the public dialogue in terms general enough to be helpful, and specific enough to point out the changes necessary.

While there is an obvious need for more technical and legal analyses of the current situation, relying only on specialized commentary too easily omits the public from the debate and cripples democratic process. The intent of this report, and the public inquiry from which it arises, is to facilitate thoughtful and sustained public participation.

We members of Immanuel United Church are also citizens of Manitoba and of Canada, and we expect our representatives not only to keep the word they have given on our behalf, but to do so with compassion and generosity. As was stated in the brief

of our members at the public hearings of 1975, quoting the Old Testament prophet Amos (5:24): “Let justice roll down like waters, and righteousness like a mighty stream.”

Immanuel United Church, Official Board, Winnipeg

Origins of the Inquiry

The rights of Aboriginal peoples are not simply a legal or political issue, but first and foremost, a moral issue touching the very soul and heart of Canada... Canada could become a living example, before the rest of the world, of a society that is coming to terms with the historic demands for justice affecting the descendants of its original inhabitants.

Statement by leaders of Canadian churches (1987)⁶

In 1975 the Inter-Church Task Force on Northern Flooding held a public inquiry to determine whether indigenous peoples would be severely impacted by a major hydroelectric development then under construction in northern Manitoba. The task force did so because the Manitoba and Canadian governments refused to do so. The inquiry asked who would benefit from hydroelectric development and who would pay for any social and environmental costs. The inquiry contributed to the formation of the Northern Flood Agreement, which is discussed later in this report.

In 1999, the Manitoba Aboriginal Rights Coalition-successor to the Inter-Church Task Force on Northern Flooding-recognized the need to publicly revisit questions of fairness related to the Churchill-Nelson Hydroelectric Project. Were costs and benefits being distributed equitably? Have efforts to address the harm been effective? The “Mandate of Inquiry” (see Appendix 2) called for consideration of “concerns of equity and social justice” with respect to impacts of the Churchill-Nelson Project.

Of all non-governmental institutions in Canadian society, religious institutions have perhaps the greatest potential to foster awareness and understanding between Aboriginal and non-Aboriginal people.

Report of the Royal Commission on Aboriginal Peoples (1996)⁸

The convening body for the 1999 Interchurch Inquiry into Northern Hydro Development was the Manitoba Aboriginal Rights Coalition (MARC), which acted upon the suggestion of Pimicikamak Cree Nation, one of the affected Aboriginal peoples. MARC addresses justice issues involving Aboriginal peoples in Manitoba, and is comprised of representatives from Anglican, Christian Reformed, Lutheran, Mennonite, Roman Catholic, Unitarian and United churches.

MARC’s statement issued upon the announcement of the 1999 inquiry stated:

The power lines which connect the dams... to the toasters and computers of the South have joined our destinies to the people who live beside those dams. It is the hope of the Manitoba Aboriginal Rights Coalition that this Public Inquiry will lead to

a renewed and rich dialogue between the people of the North and the people of the South.⁷

Workings of the Inquiry

MARC convened a distinguished panel of commissioners consisting of:

Reverend John Aitchison - World Council of Churches representative from South Africa

The Very Reverend Stan McKay - Former Moderator of the United Church of Canada

Helen Norrie - Lifelong Winnipegger, educator, librarian, and member of the United Church of Canada

Reverend Arie Van Eek - Long-time head of the Council of Christian Reformed Churches in Canada

The panel heard twenty-six presentations at Knox United Church in Winnipeg, Manitoba, on June 21-23, 1999; and twenty-six presentations in Cross Lake, Manitoba, on June 24-25. Six written submissions were also received. Presenters included chiefs, elders, past and present government ministers, human rights authorities, the President and CEO of Manitoba Hydro, academics, and church leaders (see Appendix 3). Invitations were issued to Manitoba Hydro, Hon. David Newman (provincial Minister of Northern Affairs), the federal Department of Indian and Northern Affairs, and affected communities. Many presentations were given in the Cree language. We regret that this report is available in English only.

This report focuses largely on the numerous presentations of PCN citizens, reflecting the fact that limited resources allowed the panel to visit only one northern community (Cross Lake, home to a majority of PCN citizens). While recognizing that many people in many places are impacted by the Project, the panel does not purport to comment on communities which were not represented at the inquiry.

References and Citations

In order to convey the information presented to the panel, this report frequently quotes directly from presentations. Where a quotation is referenced only with a name (often accompanied by the position or affiliation of the person), readers may assume the quotation is taken directly from the transcript of the inquiry. Other references are dealt with in the notes. Unless otherwise noted, all documents quoted were submitted or referred to the panel by presenters at the inquiry. The full transcript is available at <http://www.aboriginalrightscoalition.ca/english/pub.html> or by writing to MARC, 583 Gertrude Ave., Winnipeg, Manitoba, Canada R3L 0K9.

The panel gratefully acknowledges the many individuals who contributed to both the inquiry and this report.

The Churchill-Nelson Hydroelectric Project

As a context for understanding the impacts of northern hydroelectric development, it is helpful to understand how the dams and related infrastructure function. The Churchill-Nelson Hydroelectric Project—undertaken jointly by Canada, Manitoba, and Manitoba Hydro (publicly owned provincial utility)—consists of three elements: Churchill River Diversion, Lake Winnipeg Regulation, and a series of generating stations on the Nelson River.

Churchill River Diversion

The Churchill and Nelson Rivers flow in a roughly parallel direction from west to east, and empty into Hudson Bay in northern Manitoba (see map on inside back cover). The Churchill River was dammed at the eastern outlet of Southern Indian Lake, which is part of the Churchill River system. The Missi Falls Control Dam raised the level of Southern Indian Lake by approximately three meters, causing the lake to overflow southward through a man-made channel into the Rat-Burntwood Rivers system, which empties into the Nelson River. With roughly 75% of the flow of the Churchill thus diverted into the Nelson River, generating stations could be installed on one river (the Nelson) instead of two. The diversion project went into operation in 1976.

Lake Winnipeg Regulation

The Nelson River drains Lake Winnipeg, the eleventh largest freshwater lake in the world. The Jenpeg Control Structure, on the Nelson River near the northern outlet of the lake, holds back water in the lake during spring and summer months when flows are naturally highest, and releases water into the Nelson River in winter months when electricity demand is greatest. Lake Winnipeg is thus made to function as a huge storage reservoir.

Additionally, the Ominawin, Eight Mile and Two Mile Channels were constructed to bypass shallow and narrow passage ways in the water system, thus doubling the potential flow from Lake Winnipeg into the Nelson River.

Lake Winnipeg Regulation went into operation in 1976 with the completion of the Jenpeg Control Structure. Generation capacity was subsequently added to the Jenpeg facility, though its primary purpose remains the regulation of water levels on Lake Winnipeg and the Nelson River.

Dams

Since the 1960s, five major dams have been built on the Nelson River (years of construction in parentheses): Kelsey (1957-61), Kettle (1966-73), Jenpeg (1972-79), Long Spruce (1971-79), and Limestone (1985-90). With a combined capacity of 3830 MW, these dams generate three quarters of the electricity produced in Manitoba. A twin set of transmission lines, roughly 900 kilometers in length, deliver power from the Nelson River to southern Manitoba.

For the purposes of this report, the entire hydroelectric development on the Churchill, Nelson, Rat, and Burntwood River systems is referred to as the Churchill-Nelson Hydro Project, or simply “the Project.”

Part II: The Costs of Doing Business

Substantive consultation and negotiation with Aboriginal peoples occurred only after the decision to proceed with the Project had been made, after licenses to flood reserve land had been granted, and after construction had progressed beyond the point of no return. The damaging Project was imposed on Aboriginal peoples.

Although the project directly affected the lands and livelihood of five treaty communities (York Factory, Nelson House, Norway House, Cross Lake and Split Lake) and one non-treaty community (South Indian Lake), they were not consulted, nor did they give approval for the undertaking.

Reserve and community lands were either flooded or affected by dramatic changes to levels in surrounding lakes and rivers, and traditional land use areas were damaged or rendered inaccessible.

Report of the Royal Commission on Aboriginal Peoples (1996)⁹

In accordance with Treaty Five of 1875 (by which arrangement was made for peaceful co-existence and resource-sharing between Aboriginal and non-Aboriginal people in northern Manitoba) Aboriginal peoples should have been meaningfully included in the process from the earliest stages. At minimum, the NFA or a comparable agreement should have been in place before construction permits were granted. Given that the agreement was signed after the fact and that some affected peoples were excluded from its negotiations, the process of addressing the adverse impacts was flawed from the start. First Nations were, in essence, forced to negotiate an arrangement with the gun of mega-development pointed at them. As PCN stated: "It was not our first choice, or even our choice at all, to enter into the Northern Flood Agreement. We did so because we had no other choices under circumstances of extreme pressure and duress."¹⁰

The longer this project proceeds and becomes patently irreversible, the more hesitant the court would be to grant an injunction.

Stewart Martin, Counsel to Manitoba and Manitoba Hydro (1973)¹¹

Treaty Five is of further significance in that its terms were violated by the flooding of reserve lands and traditional resource use areas prior to the signing of the NFA or other due process.¹²

Aboriginal presenters made it clear that the Project, which they never wanted, is still experienced as a distinctly undesirable intrusion on their lives. The panel acknowledges the disturbing accounts of Project-related tragedy shared by many Aboriginal presenters. This is suffering that could have been prevented.

While it may not be useful to hold current governments accountable for the 'flood now, negotiate later' approach of their predecessors, it is crucial to recognize how this approach fundamentally prejudiced the Project's acceptance. Today, those who benefit from the Project must accept responsibility for redressing its impacts.

As we all know, the projects caused material damage and a number of other adverse effects for the people of five First Nations on the affected watercourses.

David Newman, Province of Manitoba

It is unfortunate that Aboriginal peoples were given inaccurate information about the Project. In January 1975 Premier Ed Schreyer sent a letter and leaflet (known as the "Lime Green Brochure") to affected First Nations, informing them of the anticipated impacts of the Project¹³. The tone of the documents was that there would be positive and negative changes but that there was no need for alarm. The Premier's letter stated: "It is, of course, hoped that conditions will be such that it will be unnecessary to pay compensation to anyone."

This failure by government parties to inform fully the affected communities was noted by the Manitoba Aboriginal Justice Inquiry in 1991:

Aboriginal people also argue that they were never told of the environmental destruction that would occur. They say that they were never told that graves would be washed away and fish habitats demolished, nor that an entire way of life for what previously had been strong communities would disappear.¹⁴

In retrospect, no one clearly delineated the nature and extent of what has occurred. The Crown parties failed to conduct complete environmental and social impact assessments, disregarding the opinions of experts who warned of potentially severe impacts.

Manitoba Hydro does not have time to wait until studies are completed. Our job is to produce electricity.

Chris Goodwin, speaking for Manitoba Hydro to the Manitoba Environment Council (1973)¹⁵

If the Aboriginal peoples who have cared for the land since time immemorial had been meaningfully involved at the beginning, the wealth of the north could today be enjoyed in a far less damaging manner.

The injustices fit the larger pattern of three centuries of relations between Aboriginal and non-Aboriginal peoples in northern Manitoba. Colonization and dispossession have left lasting physical, emotional, cultural and spiritual scars.

Environmental Costs

Extraction of resources on Aboriginal lands without the consent of the Aboriginal people affected and without adequate compensation is not only theft, but a form of social violence.

Lorraine Land, Citizens for Public Justice¹⁵

The Project affects Manitoba's largest lake, two large river basins, and numerous tributary river basins. The once-majestic Nelson River has undergone a concrete conversion, and is now more accurately termed a power corridor. Given the Project's magnitude, the monitoring, mitigation, and restoration of the affected watersheds should be of fundamental concern to Manitobans.

The community of Cross Lake-home to about 4000 of the 5000 PCN citizens-is located 19 km downstream from the Jenpeg Dam on the lake of the same name. While Cross Lake itself was not flooded, it has experienced significantly reduced water levels. Additionally, PCN's traditional land use area includes an area upstream of the Jenpeg Dam where there is considerable flooding.

Environmental impacts on PCN include:

- flooding of traditional resource use areas
- unnaturally low water levels (de-watering) downstream of the Jenpeg Dam at Cross Lake
- extensive and ongoing shoreline erosion
- disappearance of islands due to erosion
- reversal of seasonal high and low water levels on the Nelson River system
- destruction of burial grounds and cultural sites
- reduced wildlife populations, navigational dangers and inconveniences in accessing territories
- negative impacts on the traditional hunting, fishing, and trapping economy
- reduced water quality
- reduction in availability and abundance of medicinal and ceremonially significant plants

Recommendations:

- **An aggressive environmental mitigatory initiative in shoreline clean-up, shoreline restoration, debris removal, and other measures identified by PCN to be ecologically advantageous, should be implemented. PCN citizens should have primary involvement at every level of this initiative including employment. Funding should be considered by the Crown parties to be a basic cost of operating the Project.**
- **Manipulation of water levels for the purpose of supplying export markets with electricity must not take precedence over minimization of environmental impacts. The Project should be operated to maintain environmentally beneficial water levels.**

Pimicikamak People Speak About Dams:

Millions of tons of earth washes into the rivers and lakes from shoreline erosion each year; erosion of burial sites continues to take place. Historic camp sites are washed away. Entire islands disappear. Spawning grounds have been destroyed. Wildlife has become scarce. Navigation has become hazardous. Our people feel and fear the effects day after day, week after week, year after year.

Nelson Miller, PCN Executive Council Member

All forms of life depend on water. If that is destroyed, then we do not have life.

Bobby Brightnose, PCN

It's time to clean up and make atonement with Mother Nature... A young mother should not be afraid to make her baby's food with the water from our own beloved lake.

Emma Jane Crate, PCN

We took care of the land and it took care of us... I feel sad for the children that will be born in the future and will not see how beautiful our land was.

Sandy Beardy, PCN Elder and Traditional Chief

We cannot allow any more environmental devastation on our Mother Earth, we have to protect it.

Rita Monias, PCN Women's Council

Environmental Monitoring

Efforts to assess, mitigate, and minimize the environmental impacts of electricity production require accurate, thorough monitoring. People in the resource areas have a right to be informed about the dangers that exist. Public discourse also requires this data. Unfortunately, environmental impacts have not been properly tracked.

We found no evidence that a comprehensive environmental impact assessment had ever been performed. We believe that such an assessment is essential for NFA implementation...

Report of the Auditor General of Canada (1992)¹⁶

The lack of data and study continues to hamper Aboriginal peoples, complicating their efforts to document and prove damages. Crown parties need to provide information in a way that incorporates indigenous and technical knowledge.

Recommendation:

- **An independent body, mutually agreed upon by all parties and fully funded by Crown parties, should be established to study the environmental effects of the Project. The assessment should utilize scientific analysis and traditional knowledge, and be accessible to affected peoples and the public. Within two years of its establishment, the study group should report to the provincial government. This body, or a comparable one, should conduct ongoing monitoring for the duration of the Project.**

Socio-economic Costs

The Project has adverse impacts on the physical, emotional, and spiritual well-being of northern peoples, including but not limited to:

- reduced opportunities to participate in traditional economies

- reduced access to traditional foods and medicines
- injury and death due to hazardous navigation
- deterioration of natural beauty
- loss of cultural knowledge, as well as the natural contexts in which to perpetuate existing knowledge
- displacement from a homeland
- increased sense of dependency
- decline in opportunities to participate in cultural activities
- an ongoing sense of disrespectful treatment and the dishonouring of treaty relations by Crown parties

In the case of PCN, these and other such factors have left the nation in considerable distress in virtually all areas of life. Pimicikamak spokespersons reported an unemployment rate of approximately 85% in 1999, chronic welfare dependency, overwhelming health problems, alcohol-related problems, high suicide rates, inadequate educational services, inadequate roads, and substandard housing. The effects upon mental, cultural, and spiritual well-being are cumulative.

There is no way to monetize past and ongoing losses. But the fact that no price tag can be assigned to such losses in no way diminishes the need to find ways to account for these social and environmental costs. Some form of reciprocation is required, even though it will never be fully adequate.

As Aboriginal parties are doomed to live with the reality that nothing will replace adequately what they have lost, Crown parties must also accept that their responsibilities will never be settled, concluded or finalized. It is however possible to take significant steps toward the point where all parties might affirm that a greater sense of redress has been realized.

Exclusion, Betrayal, Trauma

Many Aboriginal presenters expressed their exclusion from the prosperity of the larger society. Related to this was the sense of betrayal and disrespect received at the hand of Crown parties. A World Mental Health document submitted to the panel stated that if redress for damages is seen to be “delayed, withheld, inadequate, or poorly distributed [it] leaves painful memories, exacerbates loss and feelings of impotence, fuels distress and discontent, and can haunt a project with a rankling sense of grievance.”¹⁷ For PCN, a collective sense of betrayal, exclusion and delayed fairness appear to add significantly to societal stress, and have left deep scars that will need to be acknowledged and addressed specifically by Crown parties.

Canada is a G7 country which consistently maintains the highest overall development standards in the world. In this context, a sea of overall wealth, well-being and material comfort, our people suffer under permanent and inflicted conditions of dispossession, mass poverty, unemployment and despair, in breach of our fundamental human rights.

Pimicikamak Cree Nation (1998)¹⁸

Presenter Ronald Niezen-an anthropologist living in Cross Lake at the time of the inquiry- stated that an Aboriginal sense of well-being “implies not only physical vigor and spiritual calm but extends

to the individual's social and natural environments.” Destructive effects on peoples’ traditional lands leads to the loss of a sense of home and the severing of a tie with the land that are essential for cultural viability. For example, PCN territory is no longer considered to be the safe, beautiful, and intimately known homeland it once was. Many elders who lived with the consequences of the dams have since died without realizing fair and respectful redress.

Pimicikamak Cree Nation has experienced the nightmare of Hydro development and its effects on the environment. Pimicikamak Cree Nation and its citizens are now first-hand experts in the human-rights, social and environmental impacts of such undertakings.... We have also resolved...to assume the role of the environmental and human-rights conscience that the Governments of Canada and Manitoba do not have.

Roland Robinson, PCN Chief¹⁹

The Project has even been responsible for a loss of life. Flooding of uncleared lands, and continually collapsing shorelines litter the waterways with hazardous debris that causes boating fatalities. “Hanging ice” conditions (caused when water levels are drawn down after freeze-up) also pose potentially fatal dangers to winter travelers. The fact that people have died for the sake of producing electricity is a sign that things have gone terribly wrong.

Our people are grieving, they are grieving for land, the water and a way of life that was brought to an abrupt halt. I remember going along the shoreline to pick medicine with my late grandmother only to find it flooded. My grandmother stood there crying because that was her life. Her life was the land. There is a great deal of grief that needs to be resolved and dealt with among our people in Cross Lake.

Bobby Brightnose, PCN

The cumulative results of the many forms of suffering were described as something akin to a state of perpetual communal depression; a “situation of unmitigated social crisis.”²⁰ These dire conditions have been widely recognized as the unfortunate reality for many Aboriginal people in Canada.

Gross disparity [exists] between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. There has been little or no progress in the alleviation of social and economic deprivation among Aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth in the Aboriginal communities.

United Nations Committee on Economic, Social and Cultural Rights (1998)²¹

If present trends continue, the appalling conditions in Cross Lake will be tragically multiplied. Immediate, fundamental, and comprehensive mitigation by the Crown parties must occur if an increasingly calamitous future is to be avoided.

Is the Project the Cause of the Problems?

The panel is confident that the Crown parties would not have proceeded with the Project knowing that it would contribute to endemic cultural trauma, suicide epidemics and the general conditions of social dislocation that now exist. But to what extent has the Project contributed to these conditions?

While it is not realistic in all cases to posit a direct link between social and economic maladies and the dams, the panel was troubled by repeated attempts on the part of Crown parties to minimize these links. It is inaccurate and irresponsible to suggest that there is not a decided correlation between the social problems experienced in affected communities and the accumulated effects of hydro development.²²

The Crown parties' approach to the question is summed up in the following statements:

We see today other First Nations in northern Manitoba outside NFA show high unemployment rates similar to those associated with Cross Lake. Those people who suggest that NFA is the main or sole cause of social, economic and cultural problems in Cross Lake, I submit, are overstating the impacts of the project.

David Newman, Province of Manitoba

In short, poverty and unemployment were pre-existing realities and concerns in the NFA communities when the Hydro project was developed in the 1970s.

Bob Brennan, Manitoba Hydro President and CEO

While there are other contributing factors, any suggestion that the social problems are not symptomatic of people's dispossession of their lands and way of life is problematic. If the panel were to accept the extent to which the Crown parties minimize the link between the conditions in the communities and the effects of the Project, it would have to dismiss categorically much of the Aboriginal testimony; something it is not willing to do. The Project, along with subsequent inadequacies in redressing adverse impacts, is a predominant cause of the socio-economic malaise in Cross Lake and beyond.

The implication was made by the Crown parties that PCN's demand for NFA implementation has been undermined by the fact that Aboriginal communities located far from the dams experience the same adverse living conditions. The general misery of Aboriginal peoples in northern Canada should not be the standard by which to gauge NFA implementation. Aboriginal peoples have been dispossessed by various means in various places. The intent of the NFA was to provide redress for just such dispossession, therefore NFA First Nations should be considerably better off than those without NFA benefits. Their conditions should be compared to those of society at large, not marginalized segments of society.

Manitoba Hydro sought to minimize the link between poverty and the Project by stating that poverty pre-dated the dams. The panel is of the opinion that any pre-existing poverty-and any other past or present Aboriginal disadvantages-increase rather than decrease the responsibility of Crown parties to ensure fair treatment of affected peoples.

Additionally, many non-Project related factors contributing to poverty are the result of other governmental action (or inaction) throughout post-contact history, and thus do not diminish govern-

mental responsibility. The panel acknowledges that churches have often acted in concert with governments in the historic oppression of Aboriginal peoples.

Beyond cause and effect is a fundamental governmental and societal responsibility to ameliorate the sort of conditions that presently exist in the affected communities. Democratic governments commonly assist those segments of society that experience hard times. For example, massive government expenditures were devoted to relief in the Red River Valley following the 1997 flood.

Power Rates

Crown officials have promoted the provision of electricity to Aboriginal peoples as a direct benefit of the Project. While the supply of electricity has undoubtedly brought certain benefits, the large utility bills of people in these communities, when compared to southern consumers, are not experienced as a benefit.

We are paying [Manitoba Hydro for] damaging our rivers, our land, from our own pocket.

Donald McKay, PCN

Recommendations:

- In accordance with the principles of its important Power Smart initiative, Manitoba Hydro should establish a program to retrofit homes and buildings in affected communities for greater energy efficiency. Provincial and federal governments should share the costs of training people in those communities to carry out the required work and to be involved in all levels of the program.
- As a further extension of its Power Smart initiative, Manitoba Hydro (with funding assistance from provincial and federal governments) should provide funding and training for the exploration of super-efficient housing and alternative energy sources in the north. With an abundance of wood, and the labour-intensive possibilities of harvesting firewood, the panel encourages Crown parties to cooperate with interested communities in taking innovative measures to increase the use of wood heat.
- Power rates (basic monthly charges and per kilowatt hour unit charges) in affected jurisdictions should be adjusted to reflect the true costs being borne by northerners.

Who Benefits, Who Pays?

The south is benefitting at the expense of our misery.

George M. Ross, PCN

Information presented strongly suggests that the northern environment and its indigenous peoples bear a disproportionate burden of the costs of hydroelectric production, while consumers-most of them hundreds of kilometers to the south-enjoy a disproportionately large share of Project benefits. The sizable net income of Manitoba Hydro (CDN\$100.1 million in the fiscal year ended March 31, 1999)²³ is also subsidized by externalizing (off-loading) the socio-ecological costs of production.

It is time to stop playing environmental roulette with Aboriginal communities' lives

and cultures. The burden of carrying the environmental and social costs for this project has fallen disproportionately on Aboriginal communities. Meanwhile, the balance of benefits has gone to non-Aboriginal industry and society.

Lorraine Land, Citizens for Public Justice

Application of the principle of “true cost pricing” is essential.²⁴ Simply put, the complete costs of hydroelectric production, including the costs of environmental rehabilitation and redress of all social consequences, must be shared among all beneficiaries of the Project. If the true and full costs of production are not reflected in the cost of electricity, a socio-ecological deficit results. This accumulating deficit, like any deficit, is unsustainable and will haunt the province if not rectified.

Recommendation:

- Crown parties should take the initiative, in consultation with Aboriginal parties, to establish mechanisms to monitor socio-economic impacts in the communities. Article 17.1 of the NFA endorses the recommendations of the Lake Winnipeg, Churchill and Nelson Rivers Study Board (1975), one of which calls for “monitoring and analysis of ongoing social and economic changes related to hydroelectric development.”²⁵

Hope for a Stranded Generation

Our people want to work. Our people also want... education.

Rebecca Ross, PCN

Presenters from Cross Lake spoke about generations growing up with little or no future. High school and post secondary graduates find themselves on the brink of unemployment, welfare, and hopelessness. Generations are growing up with no future.

The most significant ingredient is meaningful employment for young people. PCN Youth Chief Jason Miller spoke about his peers “trying to learn skills for jobs that don’t exist” until eventually hopes erode. Ultimately, the “skills go to waste.” In reference to a deep-rooted frustration among Pimicikamak Cree youth, anthropologist Ronald Niezen noted “anger resulting from perceptions of thwarted entitlement and injustice.”

Implementation of the NFA should include the youth of Cross Lake and the other communities who represent the greatest potential wealth and resource of the north.

When children reach their teen years they can see pretty plainly that what they’re learning in school has no relevance because there is no expectation that an education will lead to greater opportunity. Young men and women feel entitled to work, they expect jobs, but there is nothing for them. There is a sense of grievance that many of those Hydro jobs created by the project did not go to Cross Lake, as promised.

Jason Miller, PCN

Recommendation:

NFA implementation efforts should offer graduates training opportunities that lead to long-term employment opportunities. The maximum number of graduates should be given opportunities to enter training and employment programs related to the various aspects of NFA implementation and operation of the Project, such as environmental restoration and monitoring; design and construction of infrastructure, health and social programs; the NFA implementation process itself; and existing Hydro employment.

Part III: The Northern Flood Agreement: An Enduring Covenant

The parties wish to ensure that all persons... directly or indirectly, adversely affected by the Project shall be dealt with fairly and equitably.

NFA Preamble, Section D²⁶

Canada is committed to playing an active role in providing opportunity for the continued viability of the communities and, in particular and without limitation, in making available resources and expertise to the communities in planning and improving the social and economic conditions of the communities, and in ensuring that the special rights of Indians, including those arising from Treaty 5, are adequately protected.

NFA Preamble, Section G

The NFA was supposed to be the mechanism to address the negative impacts of the Project. While the scope of the 1999 inquiry was broader than the NFA, many presentations dealt with the agreement. Does the NFA constitute a treaty? To what extent has the NFA been implemented? Is it even implementable? What should now happen?

The NFA was signed in 1977 by Canada, Manitoba, Manitoba Hydro and the Northern Flood Committee which represented Cross Lake, Nelson House, Norway House, Split Lake, and York Factory First Nations. The First Nation signatories granted Canada, Manitoba, and Manitoba Hydro the after-the-fact right to flood reserve lands (Article 3.5-3.13) and thus the right to produce electricity by means of the Project. The NFA acknowledged that adverse effects on “the lands, pursuits, activities and lifestyles” of the Aboriginal peoples had already occurred (since construction of the Project was well underway by the time of signing) and would continue. The agreement is in effect “for the lifetime of the Project” (Article 25.1). In exchange for the right to produce power by use of the waters of the Churchill and Nelson River Systems, the Crown parties made comprehensive commitments to the Aboriginal signatories.

Specific NFA commitments include (applicable NFA article in parentheses):

- new reserve land in exchange for affected lands (3.1-3.4)
- compensation for damaged property such as docks, fish nets, boats, etc.
- free and normal navigation on all waterways (5)
- minimization of damages (10, 22)
- employment, training and job creation (12.3, 15.7, 18.5, 21)
- community social and economic development (16, Schedule E)
- maximum opportunity to pursue the traditional lifestyle (16.2), including first priority to wildlife resources within traditional resource use areas (15.1)
- compensation for death or injury resulting from effects of the Project (11)
- protection of culturally significant sites such as burial grounds (7)

To address disputes about implementation, the NFA makes provision for a jointly appointed arbitrator with the power to resolve conflicts (24).

Is the NFA a Treaty?

A key question is whether the NFA constitutes a treaty. Although the panel is not in a position to answer this question in a legally definitive manner, it believes that the NFA is a treaty, based on legal arguments presented, Aboriginal understandings of NFA history, and on fundamental principles of respect and honour. Even if the NFA were not technically a treaty (and there was compelling legal evidence to suggest it is), the honourable and fair thing is to treat it as such.

Numerous presenters expressed the view that the NFA is a treaty. Aboriginal presenters spoke most eloquently of the importance of this status. The manner in which the NFA was and is received and interpreted by Aboriginal parties is at least as important as the legal definitions of Euro-Canadians.

A finding and recommendation of the 1991 Aboriginal Justice Inquiry (AJI) states:

We believe... that the rights within the NFA are treaty rights within section 35(1) [of the Constitution Act, 1982]. As a treaty, the Northern Flood Agreement must be interpreted liberally from the Indian perspective so that its true spirit and intent are honoured.²⁷

Justice A.C. Hamilton, one of the AJI commissioners, explained to the panel the reasoning behind the AJI's statement. A treaty, by definition, is between nations. The so-called numbered treaties with Aboriginal peoples in Canada (such as Treaty Five which NFA First Nations signed with the Queen's representative in 1875) therefore recognized these peoples as sovereign nations. Since this nation status has never been relinquished, and the NFA signatories are parties to Treaty Five, when the Crown entered into the NFA with the Aboriginal parties, it did so on a nation-to-nation basis.

While Justice Hamilton stated that it is the contents of the NFA, more than its status, that are of ultimate importance, others pointed to the value of treaty status. Colin Gillespie, a lawyer who was involved in drafting the NFA, emphasized that the concept of 'spirit and intent' is "treaty language." He noted that "the Supreme Court of Canada has built up a body of standards that apply to treaty interpretation and treaty implementation."

If the NFA is just a contract, for example, the governments will prepare a Schedule E plan, then put it on the shelf. If it's a Treaty, that would be inconsistent with its spirit and intent. It's the difference between a piece of paper that talks about eradicating mass poverty and unemployment and actually doing it.

Colin Gillespie²⁸

The panel considers it incumbent upon Crown parties to produce formal legal opinions regarding the treaty status of the NFA as per the May 8, 1998 letter from the Crown parties to PCN:

You have asked for our legal opinion or legal opinions on the status of the NFA as a treaty. We will gladly share those with you, once ready, providing this will be a mutual obligation: any legal opinion you have will be shared with us at the same time.²⁹

Interpreting the NFA

The NFA is not merely a narrow contractual agreement in which parties agree to fulfill specified obligations. In the words of Reverend Roger Coll, who represented the United Church of Manitoba and Northwestern Ontario, the NFA is a “covenant between peoples”; an arrangement in which peoples set out a course whereby they can live together in a fair, peaceful and respectful manner. Covenant is about “right relations” among peoples, consistent with the divinely created order. The NFA says, in essence, that as long as the utility and consumers benefit from the Project, those most affected by it should have an equitable share as well.

The NFA is not a package of benefits benevolently bestowed upon Aboriginal peoples by charitable Crown parties. It is a negotiated exchange of rights and benefits. Crown parties obtained the right to use and flood reserve land without which they could not operate the Project. In exchange, Aboriginal parties were promised fair and equitable treatment. One could even say that non-Aboriginal Manitobans have treaty rights under the NFA as well because it is only by means of the NFA Treaty that Manitobans have the right to use electricity produced on the Churchill-Nelson river systems.

No legal training is required to understand the spirit and intent of the NFA. Rather, one needs to understand how the dominant society and indigenous peoples can share land and resources in a mutually beneficial manner. One also needs the ability to imagine that a collaborative approach to resource development on indigenous lands can displace the still-prevalent colonial pattern of corporate takeover and government complicity.

The NFA itself speaks to principles of sharing and including affected peoples in the development of the province:

The parties agree that it is also desirable to encourage, and to provide opportunities for residents of the Reserves, to the extent they may wish, to participate in the Project as a potential beneficial development in their midst....

Article 18.5 [emphasis added]

The NFA calls on Crown parties to “[use] their best efforts to ensure that potential benefits of the Project are made available in a practical manner to the residents of each Reserve” (18.4). According to PCN, NFA implementation therefore should “put [PCN] in a full position to cope with, address and overcome the devastation it has suffered and continues to suffer as a result of the project.”³⁰

While it offers no quick fixes to the challenges facing indigenous peoples, the NFA is a worthwhile, and potentially precedent-setting attempt to redress the societal inequities of dispossession.

In reference to PCN, Manitoba Hydro President and CEO Bob Brennan stated: “We can certainly understand that the NFA might be seized upon as a possible opportunity to move from a depressing present towards a more desired future.” Mr. Brennan added “...the NFA was designed to ensure that the benefits of hydroelectric development were not secured at the expense of peoples directly affected by having the project in their midst.”³¹

Minister Newman stated that the NFA parties need to put in place measures which “enable Cross Lake to plan and execute initiatives that will achieve sustainable prosperity and peace of mind for

current and future generations in the community.”³²

This report endorses the view that NFA implementation should lead to a “desired future”, “sustainable prosperity”, and a standard of living in line with that enjoyed by other beneficiaries of the Project.

A particularly important point of NFA interpretation relates to settlement and resolution. Understandably, Crown parties wish to bring some form of resolution, finality, and settlement to outstanding NFA issues. However, the NFA Treaty is a covenant to be honoured and implemented. Specific implementation measures do not bring anything to conclusion but are pieces of the ongoing effort to give effect to the treaty relationship.

The NFA details and formalizes certain moral and human rights. It is not possible to finalize, conclude, or extinguish these rights. No agreement or signature diminishes a person’s, or a people’s entitlement to such rights.

The panel also affirms the right of PCN to reject a 1997 CDN\$110 million “comprehensive settlement” in favour of the original terms of the NFA, a decision understood to be based largely on concern that the settlement would have substituted for PCN’s ongoing treaty rights.³³

Implementation of the NFA

NFA implementation refers specifically to implementation of the Crown parties’ obligations. The fulfillment of Aboriginal parties’ obligations (to allow the use of their land) is being fully implemented. While Crown parties (Manitoba Hydro more than the governments) have made efforts to fulfill certain NFA commitments, much of the history of NFA implementation is characterized largely by avoidance of responsibility on the part of the Crown parties. The conditions described by presenters attested to many missed opportunities to implement NFA provisions.

[NFA] history has been marked by little or no action in implementation of NFA obligations and a long, drawn-out (and continuing) process of arbitration to force governments to implement their obligations.

Report of the Royal Commission on Aboriginal Peoples (1996)³⁴

As federal Minister of Indian Affairs during negotiation of the NFA, Warren Allmand presented the NFA First Nations with a certificate commemorating their NFA “Charter of Rights and Benefits”. Having seen what has happened since that time, he told the panel that he considers the lack of NFA implementation for PCN “a case of serious betrayal.”

Of course, delays in implementation are basically in the interest of Crown parties. During delays, Aboriginal parties suffer accumulating impacts, as the same waters that erode their lands keep flowing through the turbines that create wealth for Crown parties.

Like other treaties, the NFA involves a give-and-take process among its signatories. Yet, former Norway House Chief Allan Ross noted that in these give-and-take processes the First Nations “al-

ways give first.” In the case of the NFA much of the Aboriginal giving (in the form of their lands) had occurred before the agreement was even signed. This led to an immediate and acute imbalance of power among the parties. Since Crown parties continue to receive the entirety of their NFA rights and benefits, they are in a position to ‘wait out’ First Nations.

A striking sign of the federal government’s failure to treat the NFA seriously was the evidence that the Department of Indian Affairs withheld normal program funding from NFA First Nations in the years following the signing of the NFA. A 1985 report issued over the signature of Deputy Prime Minister of Canada, Eric Nielsen states:

The NFA assured continued, undiminished levels of essential services to the Indian communities but this commitment was not kept. Internal [Department of Indian and Northern Affairs] reports indicate that from 1977-83, NFA bands received \$10,700 per capita in benefits, while other Manitoba bands received \$26,100 per capita. This pattern is commonplace in areas where bands negotiate supposedly enriched opportunity packages. The results turn out to be the reverse of what was intended.³⁵

This action took place in direct contravention of NFA Article 2.4 which says that normal program funding “shall in no way be diminished by any entitlements pursuant to this Agreement.”

Allegations that PCN still experiences this pattern of underfunding were presented to the panel, though representatives of the federal government were not present to respond to the allegations.

Recommendations:

- **Current NFA implementation efforts undertaken by the federal government must include restitution for underfunding of NFA First Nations between 1977-83.**
- **An audit must be conducted to determine whether the documented pattern of underfunding to NFA First Nations has continued with respect to PCN since 1983.**

Warren Allmand raised the issue of government use of “divide and conquer” tactics. Whether or not they constitute deliberate government policy, current divisions within and among Aboriginal communities weaken their relative bargaining power vis-à-vis Crown parties. Presenter Lorraine Land made the case that such government tactics have been repeated many times across Canada.

Several presenters referred to federal government policies and practices of “starving out” First Nations.³⁶ Putting aside questions of government intent, the panel heard vivid evidence of starvation-like effects in the form of unemployment, underfunding, cultural breakdown and severed relationship with the land.

All of the delays, underfunding and “divide and conquer” tactics over many years have undoubtedly created undue pressure upon Aboriginal peoples. Such duress has exacerbated the power imbalance among the parties.

We heard of the divide-and-conquer and starve-them-out strategies that had been used against Northern Flood communities. We recognized them, because these are the very same strategies that the Government of Canada has tried to use against us since the mid-1980s.

Grand Chief Matthew Coon Come, Grand Council of the Crees (of Quebec)

NFA Implementation for Pimicikamak Cree Nation

Focusing now on PCN, this report outlines the actions that Crown parties have taken to implement the NFA for PCN. These include:

- training and employment programs
- increasing planning capacity
- funding for land selection process
- infrastructure to provide water and sewer services
- a five-year environmental impact assessment and monitoring program initiated in 1986
- trapping programs
- commercial and domestic fishing programs
- construction of an indoor recreational arena at Cross Lake
- construction of a weir at the outlet of Cross Lake to reduce fluctuations in lake levels
- replacement of damaged property (docks, fish nets, boat motors, etc.)
- marking safe ice trails
- limited efforts to clear debris from waters and shorelines

Manitoba Hydro reported spending CDN\$36million at Cross Lake from 1977-97.³⁷ The two levels of government have each spent lesser amounts. The panel acknowledges the steps Crown parties have taken and the complexities they have faced. At the time of the inquiry a process was in place for PCN and Crown parties to discuss NFA implementation. The necessity of such a process is affirmed by the panel.

Manitoba Hydro is also very much aware that serious unresolved issues remain outstanding among the parties relating to the fifth NFA First Nation at Cross Lake.

Bob Brennan, Manitoba Hydro President and CEO

While governments and Manitoba Hydro have spent many millions of dollars in well-intentioned efforts to implement the NFA over the past 23 years, there is still an acute disparity in the distribution of the costs and benefits of the Churchill-Nelson Project.

Can Canadians be proud of the conditions in Cross Lake? ...Is the poverty and hopelessness my people experience day after day and year after year something that can make our hearts swell with pride? Because these things...are the real measure of the government's implementation of the Northern Flood Agreement.

Jason Miller, PCN

The fact that dire socio-economic conditions exist is a disturbing sign of the exploitative distribution of costs and benefits. The promised equity and fairness has not been achieved. The benefits that PCN has received as a result of the Project and NFA implementation fail to measure up to the costs the community continues to assume.

However, the Crown parties in a May 8, 1998 letter to PCN stated the following:

We are prepared to set aside the concept of comprehensive settlement with Cross Lake First Nation, and welcome the opportunity to work with you in a spirit of partnership to implement the NFA in accordance with its spirit and intent.³⁸

Mr. Brennan explained that his letter confirmed that the utility wanted to fulfil its obligation under the NFA. “I believe that in 1977, Manitoba Hydro fully intended to address the adverse effects of this project as fully and completely as possible without equivocation.”

Compensation

Because mitigatory and/or remedial measures are more likely to have a lasting beneficial effect on the viability of a community and/or on individual residents than monetary compensation, such measures shall be preferred.

NFA Article 24.8

The panel believes there is a risk in using compensation as the basic conceptual framework to redress Project impacts. The scope and nature of the NFA are broader than merely paying out financial restitution (though financial compensation for damaged property is one component of the NFA). Every effort must be made by Crown parties and PCN to ensure that the NFA itself does not become another layer of dependency. Implementation must be directed toward attaining lasting self-sufficiency.

PCN Councillor Nelson Miller noted that compensation was “the last thing on our list.” Warren Allmand, affirmed the original NFA intention that monetary compensation was not the preferred vehicle to mitigate adverse effects.

Reflecting the communal perspective that pervaded Aboriginal presentations, the panel wishes to emphasize the importance of NFA implementation contributing to social cohesion and community well-being, as opposed to just material advancement of individuals or households.

NFA as a Source of Conflict

A presenter suggested that the NFA might more accurately be termed the “Northern Flood Disagreement.”³⁹ Indeed there is much disagreement and the panel considered the various sources of conflict.

All parties to the NFA agreed that extensive use of arbitration and litigation resulted in an ineffective approach to implementation. Manitoba and Manitoba Hydro implied that adversarial approaches were brought on by all parties or were attributable to faults in the agree-

ment itself.

In its presentation to the panel, Manitoba Hydro blamed the arbitration process, saying it “[detracted] from efforts to foster the relationship of cooperation that was ultimately needed...”. However, arbitration is designed as a last resort in cases where there is a lack of agreement regarding implementation measures. A logical conclusion would be that Aboriginal parties were often forced to use arbitration as a last resort when the Crown parties were uncooperative in fulfilling their obligations.

The panel believes that the excessive use of arbitration was due largely to delays and non-cooperation on the part of Crown parties, rather than to adversarial attitudes held by Aboriginal parties. The panel also considers it unlikely that Aboriginal parties somehow brought non-implementation upon themselves.

Equally unconvincing were references by the provincial representative to “differences of opinion” as the obstacle to implementation, and the suggestion that “the interpretation of the NFA by the different parties made implementation difficult, if not impossible, to carry out.”⁴⁰ Rather than a matter of interpretational impasse, the panel believes that it is one of political will.

The province’s presentation noted that arbitration processes were “costly and time-consuming for all of the parties”, but the delays and costs would have been a greater detriment to Aboriginal parties than to Crown parties.

Healing of all kinds is needed...The implementation of the Northern Flood Agreement is part of this healing and the forgiveness necessary to stop our suffering.

Emma Jane Crate, PCN

Disagreement on the question of whether the NFA itself is implementable or is a good or bad agreement are less relevant than the fact that it was duly entered into by all parties and therefore cannot be unilaterally replaced or discarded. The general intent of the NFA is relatively obvious. Where details and specifics are lacking, one party cannot simply propose an entirely new agreement unless all parties agree.

There is an urgent need to move from a situation in which the NFA and the Project are the source of problems to one in which they become the source of solutions. Minister Newman stated that “the agreement was meant to create a win-win situation for all parties; instead, what resulted was win-lose.” Sadly, in the case of PCN one can too easily see who won and who lost.

Recommendation:

- **The Crown parties must resolve the conflict about NFA implementation as a matter of justice and reconciliation, in keeping with the Royal Commission on Aboriginal Peoples recommendation 2.2.2 which states:**

Reconciliation requires the establishment of proper principles to govern the continuing treaty relationship and to complete treaties that are incomplete because of the absence of consensus.⁴¹

Fiduciary Failure

The panel is particularly troubled by the lack of evidence that Canada has acted from its constitutionally mandated fiduciary duty to ensure that the interests of Aboriginal people be protected and promoted. Speaking of the federal government's fiduciary responsibility toward Aboriginal peoples, the written submission of researcher Martin Loney stated, "In this case the government first allowed damaging development and then failed to ensure the delivery of promised compensation and benefits."⁴²

The nation-to-nation character of the NFA points out the primary responsibility of the federal Crown with respect to the NFA. Ultimately, the federal government must be held accountable because it has the most power to establish new patterns of accountability and enforcement in disputes with Aboriginal peoples.

Recommendation:

- **The Canadian government should assist PCN in its dealings with the province and Manitoba Hydro. NFA implementation for PCN must be embraced as an opportunity to establish a national model of cooperative northern development which redresses past injustices and includes Aboriginal peoples as co-beneficiaries and co-participants in development.**

Schedule E and Article 16

PCN presenters repeatedly highlighted NFA Schedule E and its accompanying Article 16 as the core of the NFA. However, this emphasis was not shared by Crown parties. What then can one make of the oft-cited Schedule E reference to "the eradication of mass poverty and mass unemployment"; a provision that is at once daunting and full of promise? While Schedule E appears to make Crown parties uneasy, the panel believes that the NFA would be critically flawed if it failed to include a commitment to the socio-economic viability of Aboriginal parties.

Betty Nowicki and Manfred Rehbock, who were directly involved in drafting Article 16 and Schedule E, defined Schedule E as "an unprecedented social and economic development entitlement to be freed from the crippling impediment of mass poverty and mass unemployment." It also includes, they stated, "the right to...services and facilities comparable to those in non-reserve communities of similar size elsewhere" and was an "entitlement to a new beginning and, to a standard of living consistent with human dignity."⁴³

It appeared to the panel as though the Crown parties wished to narrow the scope of Schedule E to a planning process, unhitched from all goals other than the creation of written plans. According to the Government of Manitoba, "[Schedule E] deals with the framework, purpose and substance of community development plans."

The presentation of Manitoba Hydro cited “very different perspectives” regarding interpretation of Schedule E, and took exception to the PCN view-as Hydro states it-of “the NFA as setting out commitments to ensure the viability of the NFA First Nation communities and to eradicate poverty and unemployment in these five communities.” The panel however, does not accept that the intent of the NFA is merely to create plans divorced from specific, long-term change.

Manitoba Hydro characterized PCN’s interpretation of the NFA as a document through which “all of the needs of the five NFA First Nations would be satisfied forever.” However, PCN’s recorded response to an earlier statement was that “[PCN] agree[s] with this view [that the NFA should not satisfy PCN needs forever], because we reject dependence and are seeking self-sufficiency and dignity. The spirit and intent of Schedule E are intended to put us onto a course of increasing social and economic independence.”⁴⁴

We still experience mass poverty and mass unemployment, and we do not want that for our children and the future generations.

Rita Monias, PCN Women’s Council

Aboriginal peoples have the right to expect nothing less than the eradication of mass poverty and mass unemployment and indeed should expect nothing less. The dominant society in Canada has had countless public education, health care, job creation, community development, and infrastructure measures in place to alleviate poverty and unemployment. One could reasonably state that a primary goal of government is to ensure the maximum quality of life for all citizens and for the most vulnerable groups. The conditions experienced in Cross Lake would be considered entirely unacceptable elsewhere in Canada.

How can it be that after all that had been promised in the 22 year-old NFA, that Cross Lake can rank among the most impoverished, dependent, violence-prone and crisis-ridden reserves in Canada?

Ronald Niezen

The panel found little evidence that Schedule E has benefitted PCN, although the province’s presentation cited “considerable community development work on a number of fronts.” The conditions at Cross Lake in 1999 were not indicative of successful community development.

Manitoba Hydro claimed that community development was beyond its mandate. Yet, the utility’s legal and moral mandate was established when it signed the NFA. It committed to act in good faith to alleviate poverty. At the same time the panel emphasizes that responsibility for NFA Schedule E and Article 16 still lies primarily with the Government of Canada.

A Shift in Perception

From a Cree perspective, the NFA expresses a relationship. This relationship is a matter of honour. The Cree view of this relationship calls for a shift in focus:

*away from adversarial positions and toward mutual understandings;
away from categorical distinctions and toward holistic thinking;
away from problems and toward opportunities;
away from dependency and toward dignity;
away from legalistic interpretations and toward spirit and intent.*

Pimicikamak Cree Nation (1998)⁴⁵

The panel notes that Canadians generally have regarded Aboriginal peoples as standing in the way of progress. Resource development has then taken an adversarial and exclusionary approach to First Nations rather than accepting them as full partners. Principles of inclusion and sharing must be extended to Aboriginal peoples.

The Northern Flood Agreement could have served as a catalyst for creating a new developmental paradigm with resources from hydro development flowing into the communities whose lands and waterways had made the generation of electricity possible.

Martin Loney

The tremendously valuable waters and lands of PCN have been invested in the well-being of the people of Manitoba. Far from standing in the way of development, PCN has sacrificed and invested much for the benefit of the province (though not by choice). Their contribution must be acknowledged, and a return for their investment must be paid.

If Crown parties focused more on extending success and self-sufficiency to Aboriginal peoples, the lasting viability of these communities would benefit the economy and strengthen the social fabric of the province and country. Connecting Aboriginal peoples of the north with the wealth of their traditional territory is as important as maximizing electricity output. Due to the mounting liabilities arising out of unmet NFA obligations, it may well be in Canada's and Manitoba's interest to address NFA issues sooner rather than later.

Many concrete steps can be taken toward change. In providing a framework for such change, the NFA is an exemplary approach to achieving Aboriginal self-sufficiency. In the words of Ronald Niezen, it is "a great source of hope for a broader, new approach to relationships between governments and Aboriginal people."

Recommendations:

- **The Crown parties must devote their best efforts to ensure maximum NFA implementation for PCN.**
- **Implementation measures must account for something commensurate to accumulated interest on unpaid debt to PCN. This principle could be applied directly to land exchange and perhaps more generally to other NFA provisions that are more difficult to quantify.**
- **Grants and programs should be established for students from NFA First Nations to pursue research in their home communities in fields such as environmental studies, health, education, economic development, history and culture. Such grants would enable post-secondary**

students from NFA First Nations to be involved in applied studies, give First Nations information relevant to their own development efforts and addressing of Project impacts. The Crown parties would each contribute \$40,000 annually for an initial ten-year period. Monies would be administered by the Native Education Department of the Manitoba Government.

Water Usage Fees: Access to Local Resources

The matter of Cree peoples' access to their own resource base remains a fundamental and still largely unresolved issue.

Rev. Menno Wiebe⁴⁶

Many NFA provisions can be addressed by providing access to local resources. The NFA provides such access in the form of maximum opportunity to pursue traditional economic activity (Article 15.1-3). It also acknowledges that provisions must be made for development of an alternative economic base (Schedule E and Article 16). An alternative economic base requires innovative and culturally viable means of access to non-traditional local resources.

Menno Wiebe, who worked with First Nations as they negotiated the NFA, discussed the value of Aboriginal peoples gaining direct and ongoing access to the benefits of the Project. The concept is basic: if the utility and province derive billions of dollars of benefits from traditional Cree lands then some benefits should remain in the north. Economic self-sufficiency must be based on guaranteed, long term access to local resources, whatever form those resources may take. Such access would constitute earned benefits for First Nations as opposed to long distance transfer payments from governments.

The provincial government collected CDN\$50.5million in water rental fees from Manitoba Hydro in the fiscal year ended March 31, 1999.⁴⁷ Conceivably, a similar arrangement could be offered to PCN. Payment for using water passing through PCN territory could serve as a form of revenue sharing, with amounts dependent on water flows, not on utility profits.

Cross Lake is not after taxpayers' dollars, but a share in the benefits which are derived from our homeland.

Nelson Miller, PCN Executive Council Member

In the 1999 inquiry, Manitoba Hydro rejected the notion of sharing benefits. The utility asserted the principle that people affected by its development "should not be worse off than they would have been had the project not occurred", and rejected sharing of benefits that "involves payments to some group of people to improve their situation, simply as a result of having lived in the correct location...".⁴⁸ In contrast, the panel believes that maximum benefit should be provided to people who were forced to sacrifice so much "simply as a result of having lived in the correct location."

Recommendation:

- **The Manitoba government should take the initiative in offering PCN**

the option of water usage fees from Manitoba Hydro. Fee-based compensation would not replace the NFA but instead ensure a permanent funding base for implementation. NFA commitments to fairness and equity would remain the measure of implementation. Costs of water usage payments would be shared by the three Crown parties.

International Law

Numerous references were made during the inquiry to the application of international law. These legal documents are relevant because they are binding on Canada which signed them in 1976, and because they authoritatively answer questions about how Aboriginal peoples should expect to be treated. The panel received information about the following in particular: The International Covenant on Civil and Political Rights (ICCPR)⁴⁹ and The International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁵⁰

These international human rights instruments, along with two United Nations rulings assessing Canada's compliance, form the essential criteria by which to evaluate Canada's treatment of the Aboriginal peoples affected by the Project. The history of federal government involvement in the Churchill-Nelson Hydroelectric Project is a testament to non-compliance with its international commitments.

Articles 1(1) and (2) of the ICCPR and ICESCR:

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. [Emphasis added.]

ICESCR Article 6(1):

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his [or her] living by work which he [or she] freely chooses or accepts, and will take appropriate steps to safeguard this right.

ICESCR Article 7:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work....

ICESCR Article 11(1):

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions....

ICESCR Article 12(1):

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Recommendation:

- **The government of Canada, consistent with its reporting obligations under the ICCPR and ICESCR, should report fully to the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Human Rights Committee, on its treatment of PCN and other Aboriginal peoples affected by the Churchill-Nelson Project, particularly in relation to its obligations under Article 1 of the two Covenants.**

Part IV: Master Implementation Agreements

Four of the five First Nations which together signed the NFA in 1977 have signed subsequent agreements known as Master Implementation Agreements (MIAs).⁵¹ The stated purpose of these MIAs is to fulfill the NFA obligations of the Crown parties. These agreements emerged as a significant theme during the inquiry, primarily in presentations from Norway House and Crown presenters. The presentations led the panel to compare two approaches to addressing project impacts: the broad, ongoing provisions of the NFA and the detailed, compensatory approach of the MIAs.

All parties devoted vast amounts of time and resources to the MIA process. It is the hope of the panel that these agreements will increase the well-being of the First Nations to the maximum extent possible.

Though presenters from Norway House—one of the four MIA First Nations—appeared at the inquiry, elected leaders of the nation were not present (three former Norway House Cree Nation Chiefs presented). Neither were the other three MIA First Nations represented. Manitoba Hydro and the provincial government presented extensive arguments in favour of the MIAs.

Due to the lack of broader representation, the panel hesitates to comment. At the same time, it cannot disregard the presentations made. In respect of both these factors, this report will reflect key matters that did arise, comment on the role of Crown parties, and reserve final judgement. The elements of the four MIA's are outlined here:

Band	Date of Agreement	Settlement Proceeds	Land Component
Split Lake	June, 1992	\$47.4 million	34,100 acres to reserve, 2,800 acres fee simple
York Factory	December, 1995	\$25.2 million	19,000 acres to reserve, fee simple land in
		Churchill	
Nelson House	January, 1996	\$64.9 million	60,000 acres to reserve, 5 acres fee simple
Norway House	December, 1997	\$78.9 million	55,000 acres to reserve, 2,000 acres to fee simple

Figure taken from the written submission of Indian and Northern Affairs Canada

While the panel did not undertake an exhaustive analysis of the four MIAs, five significant elements of the Norway House MIA are as follows:

1. Transfer of funds to a trust account over a specified period of time to be used by the First Nation at its discretion (CDN\$42.5million of the funds in the form of Manitoba Hydro Bonds)
2. Transfer of replacement reserve lands well in excess of NFA requirements
3. A continuation of the Crown parties' NFA liabilities (as per MIA Article 12.4) for:
 - a. personal injury or death attributable to the Project
 - b. disability, illness or death resulting from methyl mercury attributable to the Project

- c. recovery and reinterment of human remains disinterred by the Project
 - d. unforeseen adverse effects “limited to chemical, biological or physical impacts causing material damage”
 - e. adverse effects resulting from water flows outside the pre-determined range of water levels
 - f. NFA Article 6 dealing with potable water, and the related May 10, 1988 agreement
4. A stated intention not to alter treaty or aboriginal rights (13.13.3)
 5. A series of releases and indemnities (12.2, 12.3, 12.5.6, Schedule 12.1).⁵²

Presenters from Norway House and Cross Lake, as well as non-Aboriginal presenters, asserted that the MIAs diminish or eliminate many NFA rights. If this is the case, it is most regrettable; if it is not, it is incumbent upon Crown parties to present convincing evidence.

Additionally, the very existence of MIAs suggests that the NFA has not been implemented as originally intended. It is conceivable that if Crown parties had demonstrated significant good will to implement the NFA, the controversial MIAs might never have come about.⁵³ Non-implementation of the NFA between 1977 and the signing of the MIAs created a situation in which the choices of Aboriginal parties were unnecessarily limited, thereby fundamentally undermining self-determination.⁵⁴ In international human rights law, self-determination consists, in part, of the free pursuit of economic, social and cultural development and the right of Aboriginal peoples to their own means of subsistence (Articles 1(1) and (2) of the ICCPR and ICESCR). Several presenters to the inquiry alleged that Crown parties took advantage of the limited options and state of crisis facing NFA First Nations.

Somewhere along the line the governments in Ottawa [and] Manitoba came to the conclusion that they didn't want [the Northern Flood] Agreement anymore and did everything possible to subvert it.

Warren Allmand, Former Minister of Indian Affairs

Warren Allmand stated his belief that the MIAs “terminate the benefits under the 1977 Northern Flood Agreement.” He outlined the need to examine the extent to which the Government-administered processes leading to the MIAs were in line with the Canadian Constitution, international treaties signed by Canada, and the federal trust responsibility of the Minister of Indian Affairs.

A particularly controversial article of Norway House MIA is 12.2.1:

Release - Canada. Norway House Cree Nation hereby releases and forever discharges Canada of and from any and all actions, causes of action, suits, claims, demands, losses or damages of any nature or kind whatsoever, at law or in equity, which Norway House Cree Nation, its successors, assigns or those it represents, have had, now have or hereafter can, shall or may have, for, or by reason of, any cause, matter or thing whatsoever to the extent attributable to Existing Development or arising out of, or under, the NFA, save and except as set forth in this Agreement...⁵⁵

Referring to that particular release clause, the provincial spokesperson insisted that the MIAs are not “treaty termination instruments” as was alleged: “The NFA 1977 agreement is not terminated by the MIAs and that release. It continues.”

Manitoba Hydro President Bob Brennan stated the following with respect to the question of whether MIAs guarantee the ongoing rights of the NFA: “There are some issues that we have an ongoing obligation on, that we have to continue to deal with.” The question follows: if there are “some” issues for which Hydro has an ongoing obligation—as is indeed the case—are there others for which they do not have an ongoing obligation? The panel can think of no scenario in which conclusion, finalization, or termination of NFA rights would be in order.

The importance of the question of extinguishment of treaty rights is further highlighted by the 1998 report of the United Nations Committee on Economic, Social and Cultural Rights:

The Committee...endorses the recommendations of the RCAP [Royal Commission on Aboriginal Peoples] that policies which violate Aboriginal treaty obligations and extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party. Certainty of treaty relations alone cannot justify such policies.⁵⁶

In 1999 the United Nations Human Rights Committee made a similar recommendation to the Canadian government: “The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with Article 1 of the Covenant.”⁵⁷ Canada’s inconsistent track record with respect to extinguishment policies further points to the need for greater clarity on the question of whether MIAs alter Canada’s legal relationship to MIA First Nations.

The panel believes that Norway House citizens are entitled to answers to the following:

- Does the intention stated in Article 13.13.3 of the Norway House MIA constitute sufficient and guaranteed protection? (“Nothing in this Agreement is intended to alter the aboriginal or treaty rights of Norway House Cree Nation.”)
- Are the words “resolve” and “settle”, as used in relation to NFA obligations in the preamble to Article 1 (and as reflected throughout the MIA), consistent with the ongoing nature of NFA rights and benefits?
- Are the first priority resource use rights in NFA Article 15.1 upheld in the MIAs?
- The Norway House MIA uses older geodetic data than does the NFA to establish measurements of altitude above sea level to define allowable flooding levels (MIA Article 1.2.1, Definitions, A.S.L., and NFA Article 3.9.1.4). Can Manitoba Hydro now raise water levels in Norway House territory above levels allowed by the NFA?⁵⁸
- Manitoba Hydro’s submissions indicated that various NFA provisions (including Schedule E) are covered or subsumed under the transfer of funds and lands that may be used at the First Nation’s discretion.⁵⁹ What assurance does Norway House have that its funding will be sufficient to cover the costs of these measures?
- Can the MIA’s emphasis on compensation be reconciled with NFA Article 24.8 which prefers remedial and mitigatory measures which are “more likely to have a lasting beneficial effect on the viability of a community”?

Give and Take

Negotiation of the NFA could be considered a give-and-take process that concluded with the signing of the Agreement. The panel is concerned that this give-and-take process was re-opened with the negotiation of the MIAs. In reference to the releases received by the Crown parties from Nor-

way House, Minister Newman stated: “You want to know you’re getting something in return for paying millions of dollars.” The MIA bargaining principle of “value for value” is evidence that Crown parties did not expect to implement the NFA without receiving something in return. The panel believes that NFA provisions must be implemented without requiring releases or indemnities.

The written submission of Grand Chief Matthew Coon Come stated the following with respect to the give-and-take process and the effects he believes the MIAs have on treaty rights:

On one hand, Aboriginal rights are now guaranteed and affirmed in the Constitution of Canada. And at the same time, the Government of Canada still insists, as a condition of reaching or ‘implementing’ agreements with our people, that these rights be extinguished or given up! This is not consistent with any civilized view of fundamental rights.

MIA Ratification Process

Norway House’s ratification of the MIA was sought at a July 29, 1997 referendum. According to information submitted by Manitoba Hydro, criteria for ratification required that: i) a majority of eligible voters voted; ii) a majority of votes approved the agreement; and iii) a majority of on-reserve voters approved the agreement (Band members living off-reserve were also eligible to vote).⁶⁰

Norway House citizens rejected the MIA, falling short on the third criterion. A federal government official then sent a letter dated August 1, 1997, to the Norway House Chief Negotiator, proposing a second referendum on September 23, 1997.⁶¹ Problems with the voters list was the stated reason. Ratification provisions in the MIA were then altered to allow for a second referendum. The third criterion for approval was not included in the revised MIA.

In both referenda the vote occurred with promises of \$1000 to every person in the community (\$1500 to everyone over 55 years of age) contingent upon majority approval of the MIA.⁶² Presenters from Norway House emphasized the significance of the amount for residents with limited income. The province’s stated position was that such payments were “not intended to...serve as an inducement to support ratification of the MIAs.” As per article 14 of the MIA, this ratification process was conducted by the government of Canada.

Other testimony from Norway House presenters included allegations of irregularities with respect to: arbitrary changes to locations and hours of polling stations, intimidation of voters, insufficient and inaccurate communication about the difference between the NFA and the MIA, lack of documentation of the voting process, withholding the per capita payments to MIA opponents, and arrests of Band members legitimately seeking to communicate their opinions. While the panel is not in a position to verify these allegations, the composite picture that unfolded caused the panel concern.

Recommendations:

- **The administration of ratification procedures in situations such as that in Norway House must be conducted by Elections Canada rather than by the Department of Indian Affairs. In the long run, it would be preferable for a body such as the Assembly of First Nations to establish a comparable organization to conduct such referenda.**
- **Every effort must be made by the parties involved to ensure that MIAs provide**

maximum benefit to the Aboriginal signatories and achieve the NFA Treaty goals of fairness, equity and viable Aboriginal nations.

Part V: Métis, Off-Reserve People, Fox Lake First Nation, South Indian Lake

The inquiry sought to include all peoples affected by the Project. The panel is grateful for presentations by representatives of South Indian Lake, Fox Lake First Nation (which are treated separately below), the Indian Council of First Nations of Manitoba (representing off-reserve status Aboriginal people) and the non-treaty community at Cross Lake.

Métis, Non-Treaty and Off-Reserve People

Métis, non-treaty, and off-reserve status people who traditionally rely on the land, lack access to the same NFA rights and benefits as on-reserve status people. (For the purpose of this report, Métis and non-treaty/non-status people are those of Aboriginal ancestry who do not qualify to register as Indians under the Indian Act of Canada.)

The Report of the Aboriginal Justice Inquiry of Manitoba (1991) states in reference to the NFA: “Many Métis and off-reserve Indians in the region still complain bitterly that their homes and trap lines were destroyed and their hunting and fishing rights violated without any consultation or compensation.”⁶³

The panel learned that Métis, non-treaty and off-reserve people suffer adverse impacts, and lack even the limited avenues of recourse available to residents of NFA reserves. Organizationally and legally they are overlooked or ignored.

Recommendations:

- **All PCN citizens, as defined by the PCN Citizenship Law, must be made fully eligible by the Crown parties for NFA benefits (NFA Article 18.3).**⁶⁴
- **Congruent with the Manitoba Aboriginal Justice Inquiry (1991) recommendation that rights equivalent to those in the NFA treaty be granted to other Aboriginal people affected by the Project, Crown parties should extend rights and benefits comparable to those in the NFA to Fox Lake First Nation, South Indian Lake, affected Métis, non-treaty, and off-reserve status people.**⁶⁵

Fox Lake First Nation

We are forgotten. We have tried many times, for many years, to be heard.

Tom Nepetaypo, Fox Lake First Nation, Former Chief

The panel heard a joint presentation from former chief Tom Nepetaypo, Franklin Arthurson, and Conway Arthurson. They described the devastating impacts of hydroelectric development on a “forgotten nation.”⁶⁶ Fox Lake First Nation is a relatively small nation (1995 population of 814) located in close proximity to the three largest dams on the Nelson River (see map on inside back cover).

When construction of Kettle Dam began in the mid-1960s, the Fox Lake Cree represented about 75% of the population of the town of Gillam. Participation in the traditional resource harvesting economy and jobs on the railway sustained a relatively healthy community. But an influx of 4000 people to the area during the height of dam construction, the “reorganization” of the 48 existing Cree homes into the newly-planned company town of Gillam, and the sharp reduction of access to familiar waterways and lands overwhelmed the Cree and contributed to a rapid shift to a state of almost complete dependency.

At the time of the 1999 inquiry-thirty years after the transformation of Gillam and its environs-the Fox Lake First Nation was still pursuing an agreement with Manitoba Hydro to address Project impacts.

The Fox Lake Cree were not consulted regarding construction projects, nor warned of their potential impacts. The presenters stated that no public meetings were held in their communities. Tom Nepetaypo stated: “Had our leadership at the time been alerted of the proposed developments, we are sure our people would have taken the time to consider the impact this would have on their living environments....We did not realize it was going to be the last time we were ever going to see the land.”

Nor were Fox Lake Cree included in the NFA, perhaps because they did not have reserve lands that were directly affected. Though Fox Lake had been promised a reserve in Gillam shortly after they became a distinct band in 1947, reserve status had not yet been granted when the NFA was being negotiated.

Fox Lake was forgotten by the federal Department of Indian Affairs which failed in its fiduciary responsibility. When their rights and interests should have been defended against the province and Manitoba Hydro, Indian Affairs instead cooperated with the utility and Manitoba.

The Fox Lake Cree assessed the way in which the benefits from the Project have accrued to newcomers in their territory. Franklin Arthurson lamented the fact that work opportunities as well as access to the land and its resources are distributed unfairly. In the late 1990s, only three Fox Lake First Nation members were employed at the three major dams in the area.

Specific Impacts for Fox Lake

The Fox Lake Cree found themselves at the very center of a colossal construction project. Not only was their place of residence, Gillam, selected to become the residential hub of the Project (to be “re-created in Hydro’s image”)⁶⁷, but the vicinity became a patchwork of thirty separate construction sites. These included three generating stations, two converter stations, several transmission lines, numerous dikes, camps, quarries, access roads, and a diverted river (the Butnau).

The Fox Lake situation was also noteworthy for the enormity of the changes and the speed with which they occurred. In 1965 there were an estimated 350 people in Gillam, predominantly Cree. By the late 1960s there were 2000 people in town and another 1500 in a nearby construction camp. After the Nelson River was completely dammed at Kettle in 1970, water levels rose up to 30 meters and almost 22,000 hectares of land were flooded.

Fox Lake Elder Franklin Arthurson spoke of the painful experiences of himself and his people during the construction phase:

I was there when they burnt the houses. I was there when they bulldozed the houses. I was there when they (Fox Lake Cree) were refused land to live on and they were classified as squatters in their own homeland. I was there when my friends died due to alcohol and drownings and murders. I was there when the women were abused. I seen it. I was there when they built the first dam and the water came up within hours. It rose 100 feet. Our traditional territory is under 100 feet of water today and has been for the past 30 years....

An elderly lady had a bundle of her belongings tied up, took a blanket and put all her belongings in there and tied the four corners together and she told me in Cree, 'I have not yet taken all the things out of my house. I'll be back.' And she put this bundle over her head and walked away. And the bulldozer came and swept her house into the bush, including the belongings she had. And she sat there and cried, and nobody gave a shit about it. That was 30 years ago and I live with that every day of my life.

Among the atrocities we heard described were allegations that Cree women were sexually abused by outside men, possibly related to the influx of outside workers during the construction stage.⁶⁸ Though the panel is not in a position to confirm the allegations, the alleged offenses are of a sufficiently disturbing nature that they cannot be ignored. If women were violated in this way, they deserve measures which will lead to their healing (though utmost sensitivity to the willingness and ability of the women in question to address these issues is required).

Current Situation

The Fox Lake Cree had not yet signed an agreement with Manitoba Hydro or the government of Manitoba, with whom they were negotiating, in 1999. Frustrations were voiced about the power imbalance in the negotiations. The panel also heard concerns about “big holes” in the information contained in various archives, and about Fox Lake First Nation’s inability to gain access to Manitoba Hydro files dated prior to 1965.

Franklin Arthurson stated that the Department of Indian Affairs would require Fox Lake First Nation to forgive all past wrongs of the government in order to finally receive lands promised to them pursuant to Treaty Five. If this is indeed the case, the panel considers the situation an utter abandonment of good faith on the part of the federal government.

When questioned about the Fox Lake situation, Manitoba Hydro President Bob Brennan referred to talks to negotiate a “quantum” of money which would “hopefully...settle an awful lot of...the issues involved with Fox Lake.” He also stated Hydro’s intentions to involve Aboriginal people to a greater extent in employment opportunities.

No Crown party presented evidence of having acted to avert these atrocities. The Fox Lake Cree people have suffered atrocities they should never have had to suffer.

Recommendations:

- **Manitoba Hydro must provide Fox Lake First Nation members access to, and funding for, training opportunities pertaining to potential employment in and around Gillam, as well as priority for job placement.**

- **Fox Lake First Nation must be granted full access to relevant information in government and Manitoba Hydro files, with governments and Hydro covering the costs of any necessary research.**
- **Outstanding reserve land entitlements must be granted to Fox Lake First Nation pursuant to Treaty Five. Reserve lands should be granted without the requirement of any releases or indemnities on the part of Fox Lake First Nation, other than the requirements outlined in Treaty Five.**

South Indian Lake

The community of South Indian Lake is located on Southern Indian Lake, part of the Churchill River system. The lake was flooded in 1976 as part of the Churchill River Diversion project (described on p. 6). After revising the original plan to flood Southern Indian Lake by 10.6 meters, Manitoba Hydro constructed the Missi Falls dam at the lake's eastern outlet, raising the water level by 3 meters. The devastating environmental and socio-economic impacts included the relocation of about half the homes in the community.

Though many of the approximately 800 people living at South Indian Lake at the time of the flooding were members of Nelson House First Nation, there was no reserve land at South Indian Lake and it was not designated as a "Band." For these reasons, it was not included in the NFA.

The written presentation of Martin Loney, who has worked as a researcher for various communities impacted by hydroelectric development in northern Manitoba, stated that "the intrusion of Manitoba Hydro was no less than an ongoing violation of everything the people of South Indian Lake held important." The dramatic decline in the traditional economy severely undermined "a way of life which embodied the very essence of being Cree." Again, both the extent and rate of the imposed changes debilitated the community. Loney stated that "Hydro development confronted Cree peoples with totally new issues for which they had little relevant experience to draw on."⁶⁹

South Indian Lake Mayor Joan Soulier recounted the fears that preceded the flooding: fear of unknown impacts entirely beyond their control, dread and helplessness. Loney stated that "the feeling of powerlessness was compounded as Manitoba Hydro failed to deal expeditiously with compensation demands and other problems arising from the project."

John Thompson, who was a United Church Minister in the community from 1975-85, observed: "When they gave up hope they had nothing to keep them going; it was like a long slow suicide, they had lost the spark of life."⁷⁰

The negative impacts mirrored the litanies of destruction recounted by other Aboriginal presenters. They included:

- declines in fish stocks and fish quality
- declines in the abundance of wildlife for trapping
- extensive and ongoing erosion of shorelines, continuous shoreline slumping
- destruction of spawning beds

- a period of unacceptable levels of mercury in fish
- poor water quality
- reduced availability of traditional foods, with resultant dependence on costly food from stores
- unemployment and subsequent dependence on social assistance
- resultant social ills such as domestic violence, family breakdown, substance abuse
- displacement of people from the community due to lack of opportunity
- a distinct sense of severed relationship with the land

From Dignity to Dependence

Mayor Soulier described the harsh realities of a people adjusting from life centered around a “thriving lake” to life in what she portrayed as a dying environment. The panel learned that local dependence on an abundant environment has been forcibly replaced with unwanted dependence on governments, courts, and other foreign entities.

“Prior to hydro regulation,” Loney stated, “the 800 residents of South Indian Lake were largely self-sufficient. Cash income was provided through the fishery and trapping; harvesting activities provided an abundant source of food.” Yude Henteleff—who spent time in the community during the construction phase and served as the community’s lawyer at the time—described the people as “self-reliant”, “vibrant”, and “fiercely independent.” Since then, South Indian Lake’s well-being has been severely diminished.

Upheaval and Relocation

Mayor Soulier recounted that Manitoba Hydro constructed sixty houses to replace half of the homes which were threatened by higher water levels. She spoke of how relocation exacerbated the sense of betrayal felt by the community. According to Mr. Loney, resettlement to these homes occurred in a highly disruptive manner:

The relocation of half the community disrupted traditional settlement and kinship patterns confirming the sense that the community had little control over its destiny....The old houses, usually purchased for nominal sums, were burned to the ground, on some occasions before the previous inhabitants had time to move all their belongings....In the frigid north the new houses were inadequately insulated, poorly constructed and lacked such basic facilities as a wood stove. Ironically one effect was to increase the outflow of money from South Indian Lake to Manitoba Hydro as hydro costs soared. Those who failed to pay the increasing charges were peremptorily cut off.

Exclusion from Redress

South Indian Lake was excluded from decisions about whether the Project would proceed. Yude Henteleff illustrated efforts on the part of Manitoba Hydro and the government of Manitoba in the early years to rush construction and consultation processes in order to limit the possibility of community resistance. He spoke of how Manitoba Hydro and government disregarded scientific evidence that an environmental disaster—such as the one that did occur—could result from the Project’s construction.

Having been left out of the NFA, the community was left with almost no legal recourse. Manitoba

Hydro and the community reached a 1994 settlement worth CDN\$18 million.⁷¹ The community's lawyer claimed a "contingency fee" alleged to be in the millions, as reported by Loney. This \$18 million settlement appears to have been small consolation for the community.

When asked about the South Indian Lake situation, Manitoba Hydro's President Bob Brennan made brief reference to the 1994 settlement as well as "outstanding fishing discussions" which were ongoing in 1999.

Reserve Status Denied

The panel was disturbed to learn that in order for South Indian Lake to obtain reserve status, Indian Affairs required the community to drop all compensation claims for damages caused by the Project.

Recommendation:

- **The Department of Indian Affairs should grant South Indian Lake the option of obtaining Band status under the Indian Act, along with significant reserve lands without requiring relinquishment of entitlement to redress of Project impacts.**

Part VI: Gender Perspectives

Empowerment of women and gender equality are prerequisites for achieving political, social, economic, cultural, and environmental security among all peoples.

Platform for Action, United Nations World Conference on Women, Beijing (1995)⁷²

The process of addressing Project impacts-and specifically NFA implementation for PCN-would benefit from significantly increased participation of women and attention to gender issues.⁷³ This holds the potential to infuse fresh perspectives that could create additional implementation possibilities. Both the unique perspectives presented by women, as well as the high caliber of their presentations, impressed upon the panel the potential benefits of maximizing women's contributions.

The panel regrets that only twenty percent of presenters were women. While this marked an improvement over the 1975 inquiry (ten percent were women), it still reflects an imbalance that works to the detriment of all parties.

Women, men, girls, and boys experience the impacts of dams in different ways. Among the themes raised in Aboriginal women's presentations were an emphasis on the fragile interplay between the environmental impacts of the dams, and community cohesion and family viability.

Presenters (men and women) spoke of how the time families used to spend out on their traplines was essential in nurturing a sense of identity and contributing to the general health of the community. Now the healing quality of the land is diminished. Damage to the land and water is also damage done to the source of nutrition, healing, education, identity, and cultural vitality.

We iskwewak [women] of Pimicikamak Cree Nation hold a vision of families without despair, depression, hopelessness and painful emotions caused by the loss of our connection to the land, the people and our Creator.

Rebecca Ross, PCN

Manitoba Hydro provided statistical analyses that argued that traditional land use activity was not diminished significantly but Aboriginal women spoke about the intangible factors that have been lost forever. The women's presentations vividly illustrated the intricate links among treaties, the environment, culture, health (physical, mental, emotional), education, economics, social well-being, etc. In assessing these impacts it is essential that a new holistic approach recognizes this interconnectedness.

Throughout the women's presentations, the concerns and interests of youth and children were in the forefront. A holistic approach to addressing impacts must include attention to current and future rights, needs, and opportunities for Aboriginal youth.

Several presenters described spousal abuse and family violence as manifestations of social breakdown (which is related to Project impacts). The majority of this violence was suffered by women and children. The sexual victimization of Aboriginal women by men who were in the north because of hydro development is yet another gender-related concern.

There is great value in increasing women's involvement in all aspects of assessing and addressing Project impacts. This process could be guided by gender-based analysis, a tool used by governments to analyse and adjust policy and practice toward the goal of achieving equality between women and men.⁷⁴ Gender equality is an essential ingredient of fair and equitable treatment. The potential for success in addressing Project impacts will be significantly improved if concerted efforts are dedicated to gender issues.

PCN's Women's Council plays a meaningful role in the nation's implementation process, a contribution made more relevant by women's traditional role as "keepers of water." That role should be maximized and perhaps emulated elsewhere.

Recommendations:

- **The parties involved in addressing Project impacts should apply gender-based analysis to NFA implementation and other efforts to address the adverse impacts of the Project.**
- **The NFA implementation process should involve a women's advisory body consisting of two PCN Women's Council representatives (plus necessary staff), and one representative each from the provincial Departments of the Status of Women and Status of Women Canada (plus necessary staff). This body would initiate implementation measures in conjunction with existing implementation processes. All implementation measures would be subject to their scrutiny, recommendations and approval. They would be involved in monitoring implementation programs. Criteria and/or guidance for these tasks could be derived from the collective oral wisdom of the PCN Women's Council, the Federal Plan for Gender Equality, the Department of Indian Affairs Policy on Gender Equality Analysis, and the Platform for Action developed at the Fourth United Nations World Conference on Women held in Beijing in 1995.⁷⁵**
- **The Department of Indian Affairs Office of the Senior Advisor on Women's Issues and Gender Equality, the Manitoba Women's Directorate, and Status of Women Canada, with possible cooperation from the Assembly of First Nations Women's Secretariat (or other Aboriginal women's organizations), should take generous action to provide resources and support for increasing the capacity of the PCN Women's Council to participate in NFA implementation.**

Part VII: The Public Context

Aboriginal nations and governmental bodies are not the only ones with a stake in northern hydroelectric development. When constructing the Project, negotiating the NFA, and addressing implementation matters, the Crown parties act on behalf of all citizens. The responsibility to uphold principles of fairness and human rights ultimately lies with society at large.

The panel is concerned that electricity customers in Manitoba and outside the province are generally ill-informed, and sometimes misinformed, about hydro development in the north. PCN's "strategy of visibility" is therefore an essential and laudable component of democratic practice and fair economics.⁷⁶

It is incumbent upon the government of Manitoba to ensure that the effects of hydroelectric development and the credibility of Aboriginal peoples are not minimized by government and utility spokespersons. Attempts to pit northern communities against taxpayers or ratepayers show disregard for the dangers of inciting negative societal responses toward Aboriginal people. Comments implying that taxpayers and hydro ratepayers should be concerned that NFA implementation will negatively affect their taxes and power rates are unacceptable.

Because Aboriginal peoples have limited resources they are at a decided disadvantage with respect to the public exchange of information. This highlights the importance of forums such as the 1975 and 1999 interchurch inquiries. Fairness and equity will not be possible unless customers have access to accurate information.

There is also the question of electricity consumer integrity. Individuals, businesses, organizations, and churches have a responsibility to consider whether the electricity produced under the present conditions in northern Manitoba is satisfactory.

Reverend Menno Wiebe pointed out to the panel that churches retain a longevity that elected governments lack. This staying power of churches puts them in a primary position to address, monitor, and provide analysis of hydroelectric development in northern Manitoba.

We view the Northern Flood Agreement as a covenant. We view ourselves as participants in that covenant. We are citizens of Canada, citizens of Manitoba, and customers of Manitoba Hydro. And so we have a stake, a significant stake in knowing whether the Northern Manitoba peoples who are also parties in this agreement, have been dealt with in a just and fair manner in accordance with the terms of the agreement.... The United Church of Canada believe[s] that we all carry a sacred responsibility to see that these agreements are carried out justly.

Rev. Roger Coll on behalf of the United Church of Manitoba and Northwestern Ontario

It is often mentioned that churches played a role in silencing our voices in the past. It is fitting that churches should now help our voices to be heard. This we can see is a path to a new relationship.

Roland Robinson, PCN Chief

Recommendations:

- Churches, students, academics, environmental organizations, human rights organizations, and other citizen groups must seek ways to provide maximum opportunities for Manitoba Hydro's consumers to hear directly from Aboriginal peoples in the Churchill-Nelson watersheds.
- The faith community within the service area of Manitoba Hydro should consider their use of hydroelectricity. Creative ways to redress substantively the unaccounted costs of power production should be pursued.
- An inter-church body with a formal mandate from its church organizations should continue to act in a monitoring role with respect to NFA implementation for PCN and the fair treatment of all affected peoples.
- Such a body should remain in contact with interested affected peoples and facilitate dialogue between the faith community and those in affected communities who wish to share their experiences.
- The faith community, based on its history of bold involvement, must speak publicly for a better future and a fair economic relationship between the south and the north.

Part VIII: Future Developments

Presenters addressed the issue of future hydroelectric development in the north. While Manitoba Hydro's presentation referred to "consultation with some of the NFA First Nations to assess opportunities for new Hydro developments in the future that could provide benefits once again for all parties...", PCN Executive Council member William Osborne stated that there should be "no more exports, no more Project expansions, no more future developments, no more destruction."

Given the substantial and unaddressed issues pertaining to existing development in northern Manitoba, any new development or expansion of existing development should occur only with the full approval and participation of affected communities. Because Manitoba Hydro already produces more electricity than Manitoba uses, the panel emphasizes that the wealth of the north needs to be made accessible to its residents before it is made available to export markets.

Recommendations:

- **Adequate reparations must be made for existing environmental and social damage as a prerequisite to expansion of the Churchill-Nelson Project.**
- **No further development ought to proceed without the consent of affected Aboriginal peoples, based on due consultation.**
- **Provisions to address all foreseen and unforeseen impacts of any nature on the environment and Aboriginal peoples should be created prior to construction, and preference should be given to ongoing benefit-sharing arrangements.**
- **The value of traditional lands invested by Aboriginal peoples over time must be recognized when establishing benefit-sharing agreements or other arrangements.**
- **Independent and comprehensive studies of the ecological and socio-economic impacts of further development on Aboriginal peoples should be undertaken and completed prior to construction. The studies must consider the composite impacts of water regime alterations, influx of construction workers, roads, camps, quarries, transmission facilities and other works related to a project.**

Part IX: Conclusion

Let there be an end to this dispossession, an end to this inequity and indignity, an end to these oppressive tactics. Let there at long last be equity, justice, fairness, generosity, real sharing, and honour in the Crown's dealings with Aboriginal peoples. Let present generations of Aboriginal peoples begin to hope that there will be a future for those that follow, a future of political, economic, social, and environmental justice.

Grand Chief Matthew Coon Come, Grand Council of the Crees (of Quebec)

The inquiry was an occasion to receive information representing a range of perspectives. The panel expresses gratitude for the valuable contributions of all. Reconciliation cannot occur until truth is spoken, and this inquiry contributed to both truth-telling and reconciliation. The lands and waters of the north, by their richness and sacredness, demand respectful treatment. The Northern Flood Agreement is a treaty containing this principle of respect. For Pimicikamak Cree Nation, the NFA is a broken treaty. At the same time, it is full of promise, the source of much hope, and an opportunity for positive change. A compelling case was made for urgent implementation of the NFA for PCN.

This is our place in the Universe. This is where the Creator put us, to live, to benefit from the plentiful resources, and to look after each other and look after this place. Since time immemorial, this is what we have done....

Pimicikamak Cree Nation (1998)⁷⁷

The Churchill-Nelson Hydroelectric Project is highly successful for Manitoba Hydro, the governments and consumers; and an ecological, social, and moral catastrophe for northern Manitoba and its Aboriginal inhabitants. The Canadian government, the Manitoba government, Manitoba Hydro, and the people who benefit from cheap Nelson River power have yet to address the extent of this catastrophe. The lucrative Project must also be successful in environmental rehabilitation, fulfillment of NFA promises for PCN, and redress of impacts in places such as Fox Lake and South Indian Lake.

We are all the results of Creation. Our respect for each other and honourable conduct bring honour to the Creator. We have a great belief in the obligations of respect and honour.

Pimicikamak Cree Nation (1998)⁷⁸

Above all, the panel expresses its hope that dramatic improvements in the quality of life for all affected peoples will be achieved. It is time for concerted and generous action on the part of Canada, Manitoba, and Manitoba Hydro. God the Creator put the Cree people along the northern waterways to care for and benefit from them. Hydroelectric development has sidelined Aboriginal peoples from the sustenance and beauty of these lands and waters. It is now time they re-assume their rightful place in caring for and restoring their homeland. Perhaps then, those lands and waters will bring much needed healing to the people.

Appendix 1

Summary of Recommendations (In the order they appear in the report.)

Environment

- An aggressive environmental mitigatory initiative in shoreline clean-up, shoreline restoration, debris removal, and other measures identified by PCN to be ecologically advantageous, should be implemented. PCN citizens should have primary involvement at every level of this initiative including employment. Funding should be considered by the Crown parties to be a basic cost of operating the Project.
- Manipulation of water levels for the purpose of supplying export markets with electricity must not take precedence over minimization of environmental impacts. The Project should be operated to maintain environmentally beneficial water levels.
- An independent body, mutually agreed upon by all parties and fully funded by Crown parties, should be established to study the environmental effects of the Project. The assessment should utilize scientific analysis and traditional knowledge, and be accessible to affected peoples and the public. Within two years of its establishment, the study group should report to the provincial government. This body, or a comparable one, should conduct ongoing monitoring for the duration of the Project.

Power Rates

- In accordance with the principles of its important Power Smart initiative, Manitoba Hydro should establish a program to retrofit homes and buildings in affected communities for greater energy efficiency. Provincial and federal governments should share the costs of training people in those communities to carry out the required work and to be involved in all levels of the program.
- As a further extension of its Power Smart initiative, Manitoba Hydro (with funding assistance from provincial and federal governments) should provide funding and training for the exploration of super-efficient housing and alternative energy sources in the north. With an abundance of wood, and the labour-intensive possibilities of harvesting firewood, the panel encourages Crown parties to cooperate with interested communities in taking innovative measures to increase the use of wood heat.
- Power rates (basic monthly charges and per kilowatt hour unit charges) in affected jurisdictions should be adjusted to reflect the true costs being borne by northerners.

Socio-economic Impacts

- Crown parties should take the initiative, in consultation with Aboriginal parties, to establish mechanisms to monitor socio-economic impacts in the communities. Article 17.1 of the NFA endorses the recommendations of the Lake Winnipeg, Churchill and Nelson Rivers Study Board (1975), one of which calls for “monitoring and analysis of ongoing social and economic changes related to hydroelectric development.”

Youth

- NFA implementation efforts should offer graduates training opportunities that lead to long-term employment opportunities. The maximum number of graduates should be given opportunities to enter training and employment programs related to the various aspects of

NFA implementation and operation of the Project, such as environmental restoration and monitoring; design and construction of infrastructure, health and social programs; the NFA implementation process itself; and existing Hydro employment.

Underfunding

- Current NFA implementation efforts undertaken by the federal government must include restitution for underfunding of NFA First Nations between 1977-83.
- An audit must be conducted to determine whether the documented pattern of underfunding to NFA First Nations has continued with respect to PCN since 1983.

Northern Flood Agreement

- The Crown parties must resolve the conflict about NFA implementation as a matter of justice and reconciliation, in keeping with the Royal Commission on Aboriginal Peoples recommendation 2.2.2 which states:

Reconciliation requires the establishment of proper principles to govern the continuing treaty relationship and to complete treaties that are incomplete because of the absence of consensus.
- The Canadian government should assist PCN in its dealings with the province and Manitoba Hydro. NFA implementation for PCN must be embraced as an opportunity to establish a national model of cooperative northern development which redresses past injustices and includes Aboriginal peoples as co-beneficiaries and co-participants in development.
- The Crown parties must devote their best efforts to ensure maximum NFA implementation for PCN.
- Implementation measures must account for something commensurate to accumulated interest on unpaid debt to PCN. This principle could be applied directly to land exchange and perhaps more generally to other NFA provisions that are more difficult to quantify.
- Grants and programs should be established for students from NFA First Nations to pursue research in their home communities in fields such as environmental studies, health, education, economic development, history and culture. Such grants would enable post-secondary students from NFA First Nations to be involved in applied studies, give First Nations information relevant to their own development efforts and addressing of Project impacts. The Crown parties would each contribute \$40,000 annually for an initial ten year period. Monies would be administered by the Native Education Department of the Manitoba Government.

Water Usage Fees

- The Manitoba government should take the initiative in offering PCN the option of water usage fees from Manitoba Hydro. Fee-based compensation would not replace the NFA but instead ensure a permanent funding base for implementation. NFA commitments to fairness and equity would remain the measure of implementation. Costs of water usage payments would be shared by the three Crown parties.

International Law

- The government of Canada, consistent with its reporting obligations under the ICCPR and ICESCR, should report fully to the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Human Rights Committee, on its treatment of PCN

and other Aboriginal peoples affected by the Churchill? Nelson Project, particularly in relation to its obligations under Article 1 of the two Covenants.

Master Implementation Agreements

- The administration of ratification procedures in situations such as that in Norway House must be conducted by Elections Canada rather than by the Department of Indian Affairs. In the long run, it would be preferable for a body such as the Assembly of First Nations to establish a comparable organization to conduct such referenda.
- Every effort must be made by the parties involved to ensure that MIAs provide maximum benefit to the Aboriginal signatories and achieve the NFA Treaty goals of fairness, equity and viable Aboriginal nations.

Métis, Off-Reserve People, Fox Lake First Nation, South Indian Lake

- All PCN citizens, as defined by the PCN Citizenship Law, must be made fully eligible by the Crown parties for NFA benefits (NFA Article 18.3).
- Congruent with the Manitoba Aboriginal Justice Inquiry (1991) recommendation that rights equivalent to those in the NFA treaty be granted to other Aboriginal people affected by the Project, Crown parties should extend rights and benefits comparable to those in the NFA to Fox Lake First Nation, South Indian Lake, affected Métis, non-treaty, and off-reserve status people.
- Manitoba Hydro must provide Fox Lake First Nation members access to, and funding for, training opportunities pertaining to potential employment in and around Gillam, as well as priority for job placement.
- Fox Lake First Nation must be granted full access to relevant information in government and Manitoba Hydro files, with governments and Hydro covering the costs of any necessary research.
- Outstanding reserve land entitlements must be granted to Fox Lake First Nation pursuant to Treaty Five. Reserve lands should be granted without the requirement of any releases or indemnities on the part of Fox Lake First Nation, other than the requirements outlined in Treaty Five.
- The Department of Indian Affairs should grant South Indian Lake the option of obtaining Band status under the Indian Act, along with significant reserve lands without requiring relinquishment of entitlement to redress of Project impacts.

Gender

- The parties involved in addressing Project impacts should apply gender-based analysis to NFA implementation and other efforts to address the adverse impacts of the Project.
- The NFA implementation process should involve a women's advisory body consisting of two PCN Women's Council representatives (plus necessary staff), and one representative each from the provincial Departments of the Status of Women and Status of Women Canada (plus necessary staff). This body would initiate implementation measures in conjunction with existing implementation processes. All implementation measures would be subject to their scrutiny, recommendations and approval. They would be involved in monitoring implementation programs. Criteria and/or guidance for these tasks could be derived from the

collective oral wisdom of the PCN Women's Council, the Federal Plan for Gender Equality, the Department of Indian Affairs Policy on Gender Equality Analysis, and the Platform for Action developed at the Fourth United Nations World Conference on Women held in Beijing in 1995.

- The Department of Indian Affairs Office of the Senior Advisor on Women's Issues and Gender Equality, the Manitoba Women's Directorate, and Status of Women Canada, with possible cooperation from the Assembly of First Nations Women's Secretariat (or other Aboriginal women's organizations), should take generous action to provide resources and support for increasing the capacity of the PCN Women's Council to participate in NFA implementation.

The Public

- Churches, students, academics, environmental organizations, human rights organizations, and other citizen groups must seek ways to provide maximum opportunities for Manitoba Hydro's consumers to hear directly from Aboriginal peoples in the Churchill-Nelson watersheds.
- The faith community within the service area of Manitoba Hydro should consider their use of hydroelectricity. Creative ways to redress substantively the unaccounted costs of power production should be pursued.
- An inter-church body with a formal mandate from its church organizations should continue to act in a monitoring role with respect to NFA implementation for PCN and the fair treatment of all affected peoples.
- Such a body should remain in contact with interested affected peoples and facilitate dialogue between the faith community and those in affected communities who wish to share their experiences.
- The faith community, based on its history of bold involvement, must speak publicly for a better future and a fair economic relationship between the south and the north.

Future Development

- Adequate reparations must be made for existing environmental and social damage as a prerequisite to expansion of the Churchill-Nelson Project.
- No further development ought to proceed without the consent of affected Aboriginal peoples, based on due consultation.
- Provisions to address all foreseen and unforeseen impacts of any nature on the environment and Aboriginal peoples should be created prior to construction, and preference should be given to ongoing benefit-sharing arrangements.
- The value of traditional lands invested by Aboriginal peoples over time must be recognized when establishing benefit-sharing agreements or other arrangements.
- Independent and comprehensive studies of the ecological and socio-economic impacts of further development on Aboriginal peoples should be undertaken and completed prior to construction. The studies must consider the composite impacts of water regime alterations, influx of construction workers, roads, camps, quarries, transmission facilities and other works related to a project.

Appendix 2

Mandate of Inquiry

WHEREAS in the 1970s the governments of Canada and Manitoba, and the Crown Corporation Manitoba Hydro Electric Board, participated in the development of the Lake Winnipeg, Churchill and Nelson Rivers Hydro-Electric Project;

WHEREAS the Manitoba faith community became aware of concerns about equity and social justice for the indigenous people of the region affected by the Hydro-Electric Project;

WHEREAS an Inter-Church Task Force on Northern Flooding was convened and conducted a public inquiry into these concerns in 1975;

WHEREAS the Hydro-Electric Project has proceeded, to the benefit of the citizens and governments of Canada and Manitoba, and Manitoba Hydro; and

WHEREAS concerns about equity and social justice have again arisen in respect of the Hydro-Electric Project;

ACCORDINGLY the Manitoba Aboriginal Rights Coalition, the successor to the Inter-Church Task Force on Northern Flooding considers it appropriate to convene and conduct a renewed public inquiry into these concerns.

Manitoba Aboriginal Rights Coalition

May 1999

Appendix 3

List of Presenters Interchurch Inquiry into Northern Hydro Development June 21-25, 1999

Presenters in Winnipeg (in order of presentation)

Reverend Menno Wiebe, Original Member, Inter-Church Task Force on Northern Flooding
The Honourable A.C. Hamilton, Retired Associate Chief Justice, Court of Queen's Bench of Manitoba

The Honourable Warren Allmand, Former Federal Minister of Indian Affairs

Allan Ross, Former Chief, Norway House Cree Nation

Joan Soulier, Community Council, South Indian Lake, Manitoba **Mayor***

Bob Brennan, President and Chief Executive Officer, Manitoba Hydro

Jean-Luc Chodkiewicz, Ph.D., President, Society for Applied Anthropology in Manitoba*

Yude Henteleff Q.C., Former Legal Counsel to the community of South Indian Lake

Reverend Roger Coll, Executive Secretary, Conference of Manitoba and Northwestern Ontario, United Church of Canada

Bryan Hart, Norway House Cree Nation

Lorraine Land, Citizens for Public Justice, Toronto, Ontario

Nelson Miller, Executive Council, Pimicikamak Cree Nation

Jason Miller, Youth Chief,* Pimicikamak Cree Nation

Emma Jane Crate (Kapapakoskwew), Pimicikamak Cree Nation

Andrew Clarke, Norway House Cree Nation

Ronald Niezen, Ph.D., Research Associate, University of Winnipeg*

Andrew J. Orkin, Human rights and Aboriginal rights lawyer, Hamilton, Ontario

Colin Gillespie, Lawyer, Winnipeg, Manitoba

Jack Brightnose, Pimicikamak Cree Nation

Grand Chief Andrew Kirkness, Indian Council of First Nations of Manitoba

Immanuel United Church Official Board, Winnipeg, Manitoba (Glenn Nicholls, spokesperson)

Grand Chief Matthew Coon Come, (read into the record in Chief Coon Come's absence) Grand Council of the Crees (of Québec)*

Leonard McKay, Norway House Cree Nation

Franklin Arthurson, Fox Lake First Nation

Tom Nepetaypo, Former Chief, Fox Lake First Nation

Conway Arthurson, Fox Lake First Nation

Presenters in Cross Lake

William Osborne, Executive Council, Pimicikamak Cree Nation

Gideon McKay, Elder, Pimicikamak Cree Nation

Albert North, Elder, Pimicikamak Cree Nation

Charlie Osborne, Elder, Pimicikamak Cree Nation

Darlene Beck, Spokesperson, Cross Lake Community Council

Stephen McKay, Elder, Pimicikamak Cree Nation

Lydia Thomas, Elder, Pimicikamak Cree Nation

Donald McKay, Elder, Pimicikamak Cree Nation

Rita F. Monias, Spokesperson, Pimicikamak Cree Nation Women's Council

David Muswaggon, Executive Council, Pimicikamak Cree Nation

Merle Scatch, Former Awasis Agency worker, Pimicikamak Cree Nation

Bobby Brightnose, Pimicikamak Cree Nation
Northern Village of Sandy Bay, Saskatchewan (Kim Weaver, spokesperson)
Myrna Gamblin, Norway House Cree Nation
Nelson Scribe Sr., Former Chief, Norway House Cree Nation
Luke Hertlein, Norway House Cree Nation
Darwin Paupanakis, Pimicikamak Cree Nation
Fabian Paupanakis, Pimicikamak Cree Nation
Sandy Beardy, Pimicikamak Cree Nation (read by Tommy Monias) Elder and Traditional Chief,*
Rebecca Ross, Director, Cross Lake Education Authority, Pimicikamak Cree Nation
Frances M. Ross, Elder and Former Chief, Pimicikamak Cree Nation
Tommy Monias, Northern Flood Implementation Manager, and Secretary to the Four Councils of Pimicikamak Cree Nation
George M. Ross, Former Chief, Pimicikamak Cree Nation
Honourable David Newman, Minister of Northern Affairs, Province of Manitoba*
John Miswagon, Pimicikamak Cree Nation, Vice Chief*
Roland Robinson, Pimicikamak Cree Nation, Chief*

Written submissions

Betty Nowicki, former Department of Indian Affairs employee; and Manfred Rehbock, Northern Flood Agreement co-author (joint submission)
Martin Loney, Ph.D., Consultant, writer and researcher, Ottawa, Ontario
Max Greenwood, Cross Lake, Manitoba
Benjamin Ross, Elder, Pimicikamak Cree Nation
Maggie Balfour, Former Chief, Norway House Cree Nation
Lorne Cochrane, Regional Director General, Indian and Northern Affairs Canada

*The positions and titles listed are as of June 25, 1999, and may have changed since then.

Appendix 4

Biographical Notes on Commissioners

Reverend John Aitchison, a citizen of South Africa, represented the World Council of Churches at the inquiry. Mr. Aitchison is Director of the Centre of Adult Education at the University of Natal at Pietermaritzburg. In addition to being a Deacon in the Anglican Church, he has extensive experience with several reputable community organizations involved in social research, human rights issues, and rural development in South Africa.

The Very Reverend Stan McKay grew up on the Fisher River Reserve in Manitoba. He is an ordained minister and served as Moderator of the United Church of Canada from 1992-1994. Rev. McKay was also Director of Spiritual Care at the Health Sciences Centre in Winnipeg. Currently, he is Co-Director of the Dr. Jessie Saulteaux Resource Centre in Beausejour.

Helen Norrie is a lifelong Winnipegger who has been active in the community in numerous ways. Mrs. Norrie has contributed many years in the education field as a teacher-librarian, lecturer at the University of Manitoba, and promoter and reviewer of children's literature. She is an active member of the United Church of Canada.

Reverend Arie Van Eek was born in the Netherlands and educated in Canada and the United States. He was ordained a Christian Reformed Minister in 1958 and served as the Executive Director of the Council of Christian Reformed Churches in Canada from 1978-1998.

Appendix 5

STATEMENT OF CHURCH REPRESENTATIVES

MARC Press Conference:

Reopening a Public Inquiry into the Effects of Northern Flooding

St. Boniface Cathedral: May 25, 1999

The Christian Churches of Canada have an historic and ongoing relationship with the Aboriginal peoples of this land. As has been recognized by the Royal Commission on Aboriginal Peoples,

“Of all non-governmental institutions in Canadian society, religious institutions have perhaps the greatest potential to foster awareness and understanding between Aboriginal and non-Aboriginal people” (Report of the Royal Commission on Aboriginal Peoples, Volume, 5, Chapter 4, Section 2.1, page 97).

For better or worse, it has often been the role of the Churches to serve as mediators between Aboriginal peoples and the dominant society. And so it was in the 1970's when Manitoba Hydro, in partnership with the Governments of Canada and Manitoba began construction of massive dams in the traditional territories of the Cree and Métis people of the North.

The public inquiry that was conducted by the Inter-Church Task Force on Northern Flooding was an historic moment in Canadian history; for the Churches it was a sacred moment. For one of the first times in the history of Canada, Aboriginal people were able to dialogue with dominant society in an effective and public way.

There is a unique history of church involvement with Aboriginal communities affected by hydro development. The faith community contributed to the NFA process, and in a sense has stood as a public guardian of the treatment of affected peoples. We believe that the churches have a moral obligation to see that there is an honourable and fair relationship between Aboriginal and non-Aboriginal peoples. By conducting the inquiry they are saying that if kilowatts of power flow between peoples at either end of the transmission lines, there should also be a flow of understanding and goodwill.

In a 1987 statement entitled A New Covenant, Canadian Church leaders from eight major religious denominations recognized “that the rights of Aboriginal peoples are not simply a legal or political issue, but first and foremost, a moral issue touching the very soul and heart of Canada.” In that statement, they expressed their profound hope that “Canada could become a living example, before the rest of the world, of a society that is coming to terms with the historic demands for justice affecting the descendants of its original inhabitants” (A New Covenant: Towards the Constitutional Recognition and Protection of Aboriginal Self-Government in Canada. A Pastoral Statement by the Leaders of the Christian Churches on Aboriginal Rights and the Canadian Constitution; Ottawa, February 5, 1987).

It is the hope of the Manitoba Aboriginal Rights Coalition and its supporting Churches that this renewed public inquiry will be a important and effective step along the road to the realization of that vision.

Rev. Raymond Baudry
Representative of the Catholic Bishops of Manitoba

Rev. Roger Coll
General Secretary, Manitoba and Northwestern Ontario Conference, United Church of Canada

Marvin Frey
Executive Director, Mennonite Central Committee, Canada

Bishop Telmor Sartison
Presiding Bishop
Evangelical Lutheran Church in Canada

Notes

1. The term “Aboriginal” is used in a broad sense to refer to those who identify themselves as being of indigenous ancestry.
2. The quotation is from: *A New Relationship: Standards and Structures* (1998), pp. 48-49 (hereafter cited as *A New Relationship*). Both full-length and condensed versions of this document have been printed. Page numbers here refer to the full-length version.
3. At the time of his written submission to the inquiry in 1999, Matthew Coon Come was the Grand Chief of the Grand Council of the Crees (of Quebec). Since that time he has become Grand Chief of the Assembly of First Nations. The titles and positions of other presenters quoted may have also changed since the time of the inquiry. Unless otherwise noted, all quotations are directly from the transcript of the inquiry, available at <http://www.aboriginalrightscoalition.ca/english/pub.html> or by writing to MARC, 583 Gertrude Ave., Winnipeg, Manitoba, Canada R3L 0K9.
4. *Summary Report of the Lake Winnipeg, Churchill & Nelson Rivers Study Board*, Manitoba (Winnipeg: 1975), p. 56.
5. *Report of the Panel of Public Inquiry into Northern Hydro Development*, C. Rhodes Smith, Chairperson (Winnipeg: Inter Church Task Force on Northern Flooding, 1976), p. 1.
6. “A New Covenant: Towards the Constitutional Recognition and Protection of Aboriginal Self-Government in Canada,” Statement by the Leaders of Christian Churches on Aboriginal Rights and the Canadian Constitution; in “Statement of Church Representatives upon Announcement of the 1999 Interchurch Inquiry into Northern Hydro Development,” Rev. Raymond Baudry, Rev. Roger Coll, Marvin Frey and Bishop Telmor Sartison; presented at a news conference, May 25, 1999, Winnipeg, Manitoba. (See Appendix 5 of this report.)
7. “Statement of the Manitoba Aboriginal Rights Coalition,” presented at a news conference, May 25, 1999, Winnipeg, p. 3.
8. The Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Canada Communication Group, 1996), vol. 5, p. 97 (hereafter cited as RCAP).
9. RCAP, Vol. 2, Part 2, p. 516.
10. *A New Relationship*, p. 9.
11. Letter of Stewart Martin (Counsel to Manitoba and Manitoba Hydro) to Manitoba Premier Ed Schreyer and Manitoba Hydro, July 1973; quoted in the presentation of the Immanuel United Church Official Board.
12. See Colin Gillespie, p. 163 of the inquiry transcript.
13. The panel heard reference to this documentation in the presentations of Ronald Niezen (pp. 141-2 of the inquiry transcript) and Colin Gillespie (p. 161).
14. A.C. Hamilton and C.M. Sinclair, Commissioners, Report of the Aboriginal Justice Inquiry of Manitoba, (Winnipeg: Province of Manitoba, 1991), Vol. 1, p.174 (hereafter cited as AJI Report).
15. Chris Goodwin speaking on behalf of Manitoba Hydro to the Manitoba Environment Council, 1973, in the written submission of Martin Loney.

16. *Report of the Auditor General of Canada*, (Ottawa: 1992), Section 15.118, p. 377.
17. Desjarlais, R.L. Eisenber, B. Good and A. Kleinman, *World Mental Health: Problems and priorities in Low-Income countries*. (Oxford: Oxford University Press, 1995), p. 138, as quoted by Ronald Niezen, p. 142 of the inquiry transcript.
18. *A New Relationship*, p. 9.
19. Robinson was PCN Chief at the time of the inquiry. His title has since changed.
20. Niezen, p. 143 of the inquiry transcript.
21. "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada - Unedited Version" (Geneva: Office of the United Nations High Commissioner for Human Rights, December 4, 1998), paragraph 17 (hereafter cited as *ICESCR Report*). The full document is available at <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/c25e6da11e56431802566d5004ec8ef2Opendocument>. (The wording of the December 10, 1998 Edited Version of this document on the website may differ slightly from the unedited version presented to the panel.)
22. Ronald Niezen provided research data supporting the correlation between the presence of hydroelectric dams and certain social ills (see pp. 147-148 of the inquiry transcript).
23. *Forty-Eighth Annual Report* (Winnipeg: The Manitoba Hydro Electric Board, 1999), p. 2 (hereafter cited as *Hydro Annual Report*). This document was not part of the inquiry proceedings.
24. For a more complete discussion of true cost pricing, see Lorraine Land, pp. 111-112 of the inquiry transcript.
25. The quoted recommendation is found in: *Summary Report of the Lake Winnipeg, Churchill & Nelson Rivers Study Board, Manitoba* (Winnipeg: 1975), Recommendation 5.(c), p. 57.
26. The NFA is available at http://www.hydro.mb.ca/mitigation/nfa/t_of_c.htm.
27. *AJI Report*, Vol. 1, p.174.
28. For Gillespie's complete consideration of the matter see p. 165 of the inquiry transcript.
29. Appended to *A New Relationship*.
30. *A New Relationship*, p. 16.
31. Brennan's discussion of this matter is found on pp. 53-54 of the inquiry transcript.
32. Newman's discussion of this matter is found on p. 359 of the inquiry transcript.
33. See Brennan, p. 49 of the inquiry transcript; Chodkiewicz, p. 73; and Miller, pp. 117-119.
34. *RCAP*, Vol. 2, Part 2, p. 516.
35. Deputy Prime Minister Eric Nielsen, *Indian and Native Programs: A Study Team Report to the Task Force on Program Review* (Ottawa: Minister of Supply and Services Canada, 1985), p. 217.
36. See especially Nelson Miller, pp. 117-120 of the inquiry transcript.
37. Background Information from Manitoba Hydro to the Inter-Church Inquiry into Northern Hydro Development, presented to the panel by Manitoba Hydro June 21, 1999 in Winnipeg; p. 3:1 (hereafter cited as *Manitoba Hydro*).
38. See note 29.
39. Gillespie, p. 163 of the inquiry transcript.

40. Newman's discussion of this matter is found on pp. 345-346 of the inquiry transcript.
41. *RCAP*, Vol. 2, Part 1, pp. 49-50.
42. The written submission of Dr. Loney - who was involved as a researcher with several communities affected by hydroelectric development in northern Manitoba - is on pp. 393-408 of the inquiry transcript.
43. The joint written submission of Nowicki and Rehbock is found on pp. 409-434 of the inquiry transcript.
44. *A New Relationship*, pp. 48- 49.
45. *A New Relationship*, p. 1.
46. Menno Wiebe, "The Northern Flood Agreement: In Whose Interest?," in Jean-Luc Chodkiewicz and Jennifer Brown, eds. *First Nations and Hydroelectric Development in Northern Manitoba* (Winnipeg: The Centre For Rupert's Land Studies, 1999), pp. 54-66.
47. *Hydro Annual Report*, pp. 71, 78.
48. Manitoba Hydro's discussion of "sharing the benefits" is found in: Manitoba Hydro, pp. 4:10 -4:14.
49. The Covenant is available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.
50. The Covenant is available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm.
51. PCN came close to signing a very similar agreement-known in their case as a "Comprehensive Implementation Agreement"-in 1997, at which time they abandoned that approach in favour of the original terms of the NFA (see references in note 33).
52. This information is from: *An Agreement Among: Canada, Manitoba, Norway House Cree Nation, and The Manitoba Hydro-Electric Board*, December 31, 1997 (commonly referred to at the inquiry as the "Norway House Master Implementation Agreement"). The Master Implementation Agreements signed by each of the four First Nations were submitted to the panel by Manitoba Hydro.
53. In a May 19, 1998 Winnipeg Free Press opinion editorial about his First Nation's MIA (included as part of Manitoba Hydro's written submission), Nelson House First Nation spokesperson Marcel Moody said his community was "tired of waiting" for implementation after being "denied their rightful benefits for close to two decades."
54. For further discussion on this topic see Lorraine Lane, pp. 111-112, 117 of the inquiry transcript.
55. See note 52.
56. *ICESCR Report*, paragraph 18.
57. "Consideration of the Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee - Canada" (Geneva: Office of the United Nations Human High Commissioner for Human Rights, April 7, 1999), paragraph 8.
58. This issue was raised by Myrna Gamblin of Norway House. For a more detailed discussion see p. 291 of the inquiry transcript.
59. *Manitoba Hydro*, pp. 2:6-2:18.

60. *Manitoba Hydro*, p. 2:22.
61. Letter of Sandra Jackson, Federal NFA Negotiator, to Mr. Robert F. Roddick, Norway House Cree Nation Senior Negotiator, August 1, 1997.
62. *Manitoba Hydro*, p. 2:23.
63. *AJI Report*, pp. 173-174.
64. Reference to the formation of a PCN Citizenship Law is found in *A New Relationship*, p. 38. The panel understands that between the time of the Inquiry and the printing of this report, this law has been established by PCN.
65. *AJI Report*, Vol. 1, p. 174.
66. Much of the information about Fox Lake in the report is from: Fox Lake First Nation, "Forgotten Nation in the Shadow of the Dams: Grievance Statement" (April 1997) and Michael Anderson, "Review of Manitoba Hydro Files Additional Analysis of Findings", (Winnipeg: Manitoba Keewatinowi Okimakanak Inc., August 28, 1998).
67. "Forgotten Nation in the Shadow of the Dams: Grievance Statement" (Fox Lake First Nation, April 1997), p. 44.
68. Franklin Arthurson, pp. 218, 220 of the inquiry transcript.
69. See note 42.
70. As quoted by E.E. Hobbs and Associates, "Churchill River Diversion and the Community of South Indian Lake: Social Community and Family Impacts" (Winnipeg: 1990) in Martin Loney's written submission.
71. Soulier, p. 41 of the inquiry transcript
72. "United Nations Fourth World Conference on Women: Platform for Action" (New York: The United Nations Division for the Advancement of Women, 1995), available at <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>. This document was not part of the inquiry proceedings.
73. Arising out of presentations by women, the panel considered it appropriate that research be conducted into how the governments of Manitoba and Canada address gender inequality, and how their approaches could be applied to the situations under consideration in this report.
74. Further information on gender-based analysis is available at <http://www.swc?cfc.gc.ca/gba?acs/index.html>.
75. The three documents mentioned are: "Setting the Stage for the Next Century: The Federal Plan for Gender Equality" (Ottawa: Status of Women Canada, August, 1995), available at <http://www.swc-cfc.gc.ca/publish/fedpln-e.html>; "Gender Equality Analysis Policy" (Ottawa: Indian and Northern Affairs Canada, 1999), available at http://www.ainc-inac.gc.ca/pr/pub/eql/eql_e.html; and "Platform for Action" (see note 72).
76. The PCN "strategy of visibility" is discussed on p. 5 of *A New Relationship*.
77. *A New Relationship*, p. 70.
78. *A New Relationship*, p. 24.

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