

PROGRAM EVALUATION

DEPARTMENT OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT

INTERVENTIONS

IN SUPPORT OF

INDIAN AND INUIT PEOPLE

BAND TRAINING & ADVISORY SERVICES
INDIAN & NORTHERN AFFAIRS CANADA

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Indian and Northern Affairs
Indian and Inuit Affairs Program
Program Evaluation Branch

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AND NORTHERN DEVELOPMENT

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DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

INTERVENTIONS

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INDIAN AND INUIT PEOPLE

November 1979

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EXECUTIVE SUMMARY

The aim of the study is to define a role for the Department with respect to interventions in support of Indian and Inuit people, particularly in the area outside the mandate of the Office of Native Claims. The report describes how a system could be built up within the Indian and Inuit Affairs Program at headquarters and in the Regional Offices to deal with interventions in the context of both development planning and damage situations.

In order to examine the process of how an intervention could be dealt with by the Department, the Manitoba Northern Flood Agreement is used for illustrative purposes. (The Northern Flood Agreement is already in place and there is no intention to reopen the case.)

Following a review of the Northern Flood Agreement in the first part of the report, recommendations are offered on how a process to settle departmental interventions might be developed.

The recommendations in brief are listed below.

- . A separate policy for dealing with and funding Indian and Inuit Affairs Program interventions in the context of both development planning and damage situations should be drawn up. Interventions are not claims (i.e., Specific or Comprehensive Claims) and should not be considered as part of the general claims policy.
- . A list of priority projects for potential intervention funding based on regional information should be prepared annually and budgeted for separately.
- . In the first stage of building a case for intervention it would be preferable that, with the acknowledged limitation to

departmental funding resources, a close examination be made of the opportunities to provide bands and native organizations with technical or other research and analysis resources by soliciting the advice and expertise of other federal departments or agencies.

- . A registry of suitably qualified and motivated people that could be drawn upon at various times to provide bands and native organizations with factfinding support should be identified.
- . The process of building a case for intervention should begin at the regional level.
- . Indian consultations are a central part of this process. The Regional Office must ensure that local Indian organizations and the communities affected have access to the information necessary for the development of a strong case. They must have full partnership in any process designed to assist in resolving their problems. It is essential that Indian representatives have adequate resources to represent their constituent groups in the process.
- . Other federal departments likely to be involved in a DIAND intervention aimed at reaching a settlement in support of Indian and Inuit people must be alerted to the situation early in the process and must be kept informed of the intervention's developments.
- . If mediation is to be an effective tool for problem resolution DIAND must take the necessary steps to ensure that all other parties to the mediation process accept Indian representation as a full and equal party to the discussions.
- . The mediation process should be initiated at headquarters with the full agreement of the Regional Office and the Indians involved.

- . The chief federal negotiator should be selected from the Tripartite Branch, if that Branch is given the mandate to take the lead in mediations of the type discussed here, or he might be contracted from outside the Department.
- . The Regional Office must designate an official representative to the mediations. He should act in an advisory capacity and as a contact point in the preparation of the federal position for the region, headquarters, the Indians, and other government departments and agencies in the field who share an interest in issues which are the subject of mediation.
- . An implementation plan, including budget, timetable, and allocation of financial and human resources, should be part of the settlement signed by each party.
- . The Regional Office should be responsible for implementation, with the necessary support from headquarters and other departments involved, and should be accountable for carrying out DIAND's commitments.

RESUME

La présente étude a pour but de déterminer le genre d'intervention que le Ministère pourrait faire pour aider les Indiens et les Inuit dans les cas qui dépassent les attributions du Bureau de revendications des autochtones. Le rapport indique comment élaborer un mécanisme d'intervention dans le cadre du programme des Affaires indiennes et inuit tant à l'Administration centrale que dans les bureaux régionaux dans les situations d'urgence et dans le contexte de la planification de projets d'aménagement.

Afin d'étudier le processus d'intervention qui pourrait être mis sur pied par le Ministère, on utilisera le cas de l'Entente sur les inondations du nord du Manitoba à titre d'exemple. (L'Entente sur les inondations du nord du Manitoba a cependant été ratifiée et il n'est pas question de rouvrir ce dossier).

En premier lieu, le rapport passe en revue les principales dispositions de l'Entente sur les inondations du nord et, par la suite, il présente des recommandations sur la façon de procéder pour déterminer la teneur des interventions du Ministère.

Voici un résumé des recommandations:

- . Il faudrait élaborer une politique distincte pour déterminer le genre d'interventions que le Programme des affaires indiennes et inuit devrait financer dans les situations d'urgence et dans le cadre des processus de planification de projets d'aménagement. Les interventions ne constituent pas des revendications en tant que telle (comme

des revendications particulières ou globales) et il ne faut les rattacher d'aucune façon à la politique générale de revendications.

- . Chaque année, il faudrait préparer une liste des projets prioritaires de financement d'intervention, en se fondant sur les données des régions et il faudrait prévoir un budget bien distinct à cette fin.
- . Au cours de la première étape d'élaboration de l'intervention, il serait souhaitable, compte tenu des limites de financement du Ministère, d'étudier attentivement toutes les situations où l'in pourrait fournir des ressources aux bandes et aux associations autochtones, qu'ils s'agissent d'aide technique ou d'aide à la recherche et l'analyse, en sollicitant l'appui d'autres ministères ou organismes gouvernementaux.
- . Il faudrait établir à intervalles réguliers une liste de personnes-ressources motivées et qualifiées qui pourraient fournir aux bandes et aux organismes autochtones les données nécessaires.
- . Le processus d'élaboration de l'intervention devrait commencer au niveau général.
- . La consultation des Indiens constituerait un élément clef du processus. Le bureau régional doit s'assurer que les associations et les collectivités locales indiennes concernées disposent des renseignements nécessaires à l'élaboration d'un dossier complet. Elles doivent participer à part entière à tout

processus conçu afin de les aider à résoudre leurs problèmes. Il est primordial que les représentants indiens possèdent les ressources suffisantes pour représenter leur groupe dans le cadre de ce processus.

- . Les autres ministères fédéraux, susceptibles de participer d'une façon quelconque à une intervention du MAINC visant à conclure une entente pour aider les Indiens et les Inuit, doivent être informés de la situation dès le début du processus et ils doivent être tenus au courant de l'évolution de l'intervention.
- . Si l'on a recours à la médiation pour résoudre les problèmes du moment, le MAINC doit prendre les mesures nécessaires pour que les autres parties intéressées par la médiation reconnaissent les représentants indiens comme partie à part entière des pourparlers.
- . Le processus de médiation devrait s'amorcer à l'Administration centrale et recevoir l'assentissement du bureau régional et des Indiens concernés.
- . Le principal négociateur du gouvernement fédéral devrait être choisi au sein de la Direction des consultations tripartites, si cette Direction reçoit le mandat de mener les médiations dont il est fait mention précédemment; il pourrait également être engagé, par contrat, à l'extérieur du Ministère.
- . Le bureau régional doit désigner un représentant officiel pour les séances de médiation. Il devra jouer le rôle d'expert-conseil et d'agent de liaison dans le cadre de l'élaboration de la position

fédéral pour la région, l'Administration centrale, les Indiens et d'autres ministères et organismes qui partagent un certain intérêt dans les questions qui font l'objet des médiations.

- . L'entente, paraphée par toutes les parties en cause, devrait comporter un plan de mise en oeuvre précisant le budget, l'échéancier et la répartition des ressources humaines et financières.
- . Le bureau régional devrait avoir la responsabilité de la mise en oeuvre et il devrait recevoir l'appui de l'Administration centrale et des autres ministères concernés; en outre, il devrait être responsable du respect des engagements du MAINC à cet égard.

INTRODUCTION

The responsibility of the Department of Indian Affairs and Northern Development (DIAND) to Indian and Inuit people includes both protecting their rights and lands and supporting their social and economic progress. The latter role is becoming increasingly important.

Indian and Inuit peoples are preparing to defend their lifestyle from the encroachment of development in the north. Court battles over land ownership rights, where Federal Government and Indian or Inuit stand opposed, may not always prove to be the route to take. The goal of government, in particular of Indian and Northern Affairs, should be to support Indian and Inuit people in gaining some control over major developments, and the resultant changes to their environment, in order to allow them a say in how development is imposed on their traditional way of life. If damage has already occurred, DIAND should be prepared to intervene in support of Indian and Inuit demands for compensation from the developer.

The Office of Native Claims (ONC), set up in July 1974, in response to the need for a departmental focus for land claims issues, handles two kinds of claims. These are labelled Specific and Comprehensive.¹ Operational responsibility and funding criteria for the Specific and Comprehensive claims process have been established within the Department.

¹ See Appendix A for a detailed definition of each type.

Any claim or settlement process that is not defined as Specific or Comprehensive may be handled by the Indian and Inuit Affairs (IIA) Program, particularly if it is, or has the potential of being, a high visibility issue. The problem then is that the Program's definition of the interventions it deals with is "anything the ONC does not". The result has frequently been an ad hoc process, with no designated responsibility centre, no funding criteria, and no annual budget submission based on settlement priorities. The IIA Program should decide where its responsibilities lie with respect to claims and interventions. It should:

- . establish a definition of the extent and nature of the interventions it will undertake;
- . formalize the process that will be used to resolve the issues identified as part of the Program's responsibilities; and
- . designate responsibility for the process (which will be separate from the ONC claims process).

The second part of this report offers some recommendations on these areas of need.

DEFINING AN INTERVENTION

This is not the first time there has been an attempt to define new areas of responsibility for the Program. The growing number of large-scale industrial, energy, and other natural resource exploitation development projects has, on previous occasions, led to the suggestion that it might be a good idea to offer funding to bands or associations for the purpose of developing interventions in respect of projects which could have major consequences for Indian and Inuit people.

On October 20, 1977, the Treasury Board approved DIAND's request (Treasury Board Minute 751361) for expenditure up to \$986,000 for the purposes of providing contributions to Indians to intervene against third parties. Accountable contributions were to be made available to Indians to meet the costs of research and development and negotiation of interventions. Treasury Board did not, however, approve the request for a Supplementary Estimate 1977-78, but directed the Department to absorb an amount up to \$986,000 within its current base. The Third Party Intervention policy has since lapsed (March 31, 1979). Authority to fund activities of this type is available from Contributions although the principle of Third Party Interventions may still be utilized as the basis for requesting funds. However, the policy was limited in that litigation as a type of intervention was not covered.

The term "DIAND interventions", with its broader implications, including the option of litigation, is used throughout this report to describe the type of activity recommended and the process to be followed.¹

¹ The term "claim" is generally avoided because it has come to have a specialized meaning, i.e., Specific and Comprehensive Claims, within the Department. The term is not applied to the kinds of activities the IIA Program might handle; these have been termed "interventions".

Development and its intrusion on native lifestyle is ever increasing; the Department of Indian Affairs and Northern Development (DIAND) has a responsibility to intervene in the early stages of development planning for the purpose of advising Indian communities that will be affected by development on how to derive the greatest benefit from proposed projects, while avoiding as many of the harmful effects as possible.

If this is not accomplished, and development proceeds with adverse effects on native lifestyle, DIAND has a responsibility to support interventions planned by the Indians and Inuit for the purpose of obtaining compensation for damages from the developer.

Therefore the nature and extent of a DIAND intervention, as it pertains to development problems, will be largely determined by whether it is initiated at the pre-development stage where alternative plans can still be considered, or at a stage where damage has already occurred. In the latter case the only option open to the Indian or Inuit community is to negotiate with the developer for compensation. Two types of interventions could thus be defined depending on when they occur; but, at either stage, the process for developing and conducting an intervention is essentially the same.

Since the ONC has the mandate to handle claims in which the major conflict is over land ownership and traditional rights of use, the IIA Program might assume responsibility for interventions where the principal issues relate to the social and economic growth and development of native communities to allow them to adapt smoothly to a lifestyle in transition.

Involvement in these issues cannot be totally separated from rights to land use and protection of treaty lands, but the difference is that the main orientation would be negotiated settlements based on social, economic and environmental needs, rather than on the legal aspects of land claims. Close communication with the ONC would be maintained in areas of mutual involvement and interest.

The report which follows is divided into two parts. In the first part the process used to reach a settlement in the Manitoba Northern Flood situation is described. It serves as one example of how the Department has handled an intervention in a case where damage resulting from a major development project had already occurred.

In the second part a number of recommendations are made. They are drawn not only from the Department's experience in working out the Manitoba Northern Flood Agreement, but also from its current involvement in other interventions involving negotiation and mediation.

PART ONE

MANITOBA NORTHERN FLOOD AGREEMENT A REVIEW OF THE PROCESS

The purpose of this section of the report is to review the process used to arrive at the Manitoba Northern Flood Agreement. Attention is given to identifying problem areas and examining departmental roles and responsibilities in the context of negotiation and mediation.

The objective is to provide a background against which to discuss the role of the Indian and Inuit Affairs (IIA) Program in government interventions, particularly in the area outside the mandate of the Office of Native Claims (ONC), and to offer recommendations on how such a settlement process might be developed differently in the future.

The report will not comment directly on the contents of the Northern Flood Agreement. The Agreement is in place and currently being implemented; it is not the intention of the study to reopen the settlement for discussion.

Part One of the report has two major headings:

A History of the Settlement Process,

which describes briefly what occurred, from the early days of data collection through the negotiation process, to the current implementation activities; and

Problems with the Process,

which retrospectively attempts to analyse the principal problems of the settlement process.

A HISTORY OF THE NORTHERN FLOOD SETTLEMENT PROCESS

In reviewing what happened, the intent has been to focus on events that represent highlights in the lengthy and complex story of how the Manitoba Northern Flood Agreement was arrived at.

The second section of Part One will concentrate on analysing the major problem areas revealed by the history.

Among the major issues that coloured the viewpoints and directed the activities of the four parties¹ engaged in the process of reaching a settlement on the adverse effects of the Churchill-Nelson Hydro project were the following: aboriginal land use rights, socio-economic planning for Indian communities, preservation of lifestyle and culture in the face of resource developments encroaching on traditional Indian hunting, trapping and fishing territories, and politics, particularly vis à vis federal-provincial cooperation.

In the early 1960's Canada and Manitoba agreed to share equally in the costs of investigating power potential and power sites in northern Manitoba. On February 15, 1966, they signed an agreement to implement a massive hydro development project. Canada was to build high voltage transmission lines as its contribution.

Manitoba undertook, under the terms of the agreement and at its own expense, "to design, conduct, and place in service the electricity generating facilities" according to a schedule which called for the station to be placed in initial service on or before the 30th day of

¹ A list of the four parties who were signatories to the Agreement and their representatives during the negotiations and mediation process is appended to the report.

November 1972. This included the station at Kettle Rapids, a control dam on the Churchill River at the outlet of South Indian Lake, a diversion structure and auxiliary works for storing and releasing water from the Churchill at South Indian Lake into the Nelson River, and a control dam, spillway and flood control works to regulate outflows from Lake Winnipeg. Construction commenced on the transmission line and the Kettle Rapids Station during 1966.¹

As a result of this shared venture, the Department of Indian Affairs and Northern Development (DIAND) ultimately found itself at the negotiating table in a rather contradictory position. On the one hand, it had to ensure that Canada's constitutional obligations and responsibilities to the Indians under Treaties, the Indian Act and other Acts and Agreements, were met, and that it was assisting in the environmental protection of Indian communities and lands. On the other hand, by virtue of the early agreement, it found itself inadvertently supporting the antagonist, Manitoba Hydro, whose works were threatening to flood treaty lands and destroy the traditional life style of five northern Manitoba Indian communities.

The fact that in situations of this kind DIAND has to represent the interests of Canada as a whole, as well as its departmental responsibilities, is often not well understood.

In January 1969, the implications of the hydro project in terms of flooding, variable water levels, and blocking of traditional navigation routes, were addressed publicly for the first time at a hearing in Winnipeg. The particular issue at stake was the possible effect of a control dam and auxiliary works on South Indian Lake, a community with a white, Metis, and status Indian population. The water level was to be raised thirty-five to forty feet. The reaction from the community was strong. Support came from church, environmental and university groups.

¹ Northern Power Development Schematic included in Appendix C.

Dr. Robert Newbury, Professor of Civil Engineering at the University of Manitoba and a former employee of the Manitoba Water Commission, was an outspoken critic of the diversion scheme. He challenged the assumptions of the Crown-owned Manitoba Hydro that the province's hydro needs would continue to grow at seven per cent a year and that its sole responsibility was to fill that need using the cheapest power resources available:

Nowhere is the cost of the loss of the Churchill River calculated. Its existence, aesthetics, native community options, ecology, and unique role of creating a liveable environment in an otherwise harsh land are considered to be worthless in the energy budget.

Not diverting the Churchill River does not affect the use of the Nelson River plants or transmission facilities. Nor does it significantly affect the cost¹ of power, economic development, or employment for 17 years.

Strong public reaction in South Indian Lake, coupled with the change in government in Manitoba in June 1969, ultimately caused Manitoba Hydro to make a number of alterations to its construction plans and to compensate the community for damages suffered as a result of flooding. This experience might have resulted in better preparation for the northern Manitoba situation, but in the early 1970's there was little knowledge of what was already happening to the environment or was likely to occur as construction continued. Federal government experience in this area of intervention was very limited. Neither DIAND's head office nor the Regional Office in Winnipeg had identified itself as having the responsibility to initiate action in support of the Indian communities (administered by DIAND through an office in Thompson) who were likely to feel the affects of Hydro flooding next. The Indian people were not in a position to initiate action on their own behalf.

¹R.W. Newbury, The Churchill River Diversion Controversy, St. Adolphe, Manitoba, December 1972.

In November 1970, a licence was granted by the provincial Department of Mines, Resources, and Environmental Management to Manitoba Hydro to proceed with Churchill River diversion plans announced in March 1970, which included the construction of a dam at Jenpeg on the west channel of the Nelson River above Cross Lake. Although there were attempts during this period to improve inter-departmental collaboration, the exchange of information between federal departments in areas where there might be shared interests or mutual concerns has generally been limited. In this case, there was little data available on the social and environmental effects and no information on the flooding implications of the hydro projects to be communicated to the native communities.

At a meeting at Norway House, February 11, 1971, Hydro indicated to the Indians in that community, that there would be no substantial flooding. Two weeks later Henry Spence, a member of Nelson House, acting through the Manitoba Indian Brotherhood (MIB), offered to organize legal services for the local people to help them establish bargaining strength in the struggle that was likely to ensue between Hydro and the native communities most likely to be affected. Several meetings were held during the spring with provincial and federal agencies. A Norway House/Cross Lake Planning and Development Committee was set up and contact was made with the MIB to request funding.

In an attempt to provide the information needed to determine more specifically the effects of the total hydro project on Manitoba's natural resources and the environment, the Lake Winnipeg, Churchill and Nelson Rivers Study Board was set up. A formal agreement for the \$2 million study was signed August 24, 1971 between Canada, represented by the Department of the Environment, and Manitoba, represented by the Department of Mines, Resources and Environmental Management. Reports were to be released at least once a year and the final report was due by 1974. It was originally intended that findings of the study board might offer some viable alternatives to the massive hydro development plans. Protection of the environment was to be the principal theme of the studies to be

commissioned by the Board. The socio-economic implications of the project were also to be addressed in a more limited way.

The summary report of the Lake Winnipeg, Churchill and Nelson Rivers Study Board was released in April 1975. During the intervening years the material had been held confidential despite repeated attempts by Indian Affairs and Northern Development to obtain access to the information, in particular, full disclosure of flood impact data. The Department of Transport was also refused information in November 1973, when it was conducting investigations prior to granting Hydro a permit under the Navigable Waters Protection Act.

The Norway House/Cross Lake Planning and Development Committee continued to meet intermittently; at a meeting on July 1, 1972, band leaders wanted reassurance from DIAND that there would be compensation if there were flooding. On September 12, 1972, Chief McKay of Cross Lake wrote to the Honourable Jean Chretien, then Minister of Indian and Northern Affairs, enclosing a Band Council Resolution requesting the Department to act on the Band's behalf in respect of compensation should the need arise.

From 1970 to 1974 there were a number of attempts by the federal and provincial governments to set up planning and coordinating committees as well as observer teams, but little concrete information seemed to be available and no one assumed formal responsibility either for collecting and analysing the data that did exist (new material was surfacing continuously) or for funding research. Neither was there any strong initiative from the Indian communities that might be affected. Continued reassurances came from Manitoba that everything was under control.

Construction began in earnest in the summer of 1973, and by 1974 considerable damage to the environment was already visible. Up until this time most of the publicity seems to have been centered around South Indian Lake; little attention was focussed on the federal treaty lands that were likely to be affected. Neither the DIAND Regional Office nor the Indian people were being involved by the province or Hydro in consultations.

Prior to August 8, 1973, when the Honourable Jean Chrétien presented his statement on Claims of Indian and Inuit people, there was no government policy on native claims. Release of the policy statement at that time was to some extent the result of the Supreme Court of Canada's decision in 1973 on the Nishga land claim (the Calder case). The Nishgas had sought a declaration "that the aboriginal title, otherwise known as the Indian title, of the Plaintiffs to their ancient tribal territories... has never been lawfully extinguished".¹ Although the claim was rejected on the basis of a technicality, the Court split three to three on the substantive issue of whether the native title had or had not been lawfully extinguished.

The Office of Native Claims, operating within the Department of Indian and Northern Development, was set up in July 1974 to deal with the increasing number of claims which were being prepared for submission to the federal government. But during the early stages of awareness that northern Manitoba communities would be flooded, there was no identified responsibility either at head office or in the regions to enter into discussions and negotiations with native groups and associations concerning their claims. Nor was there any focus for communication and liaison with other government departments and agencies which might have been involved such as Justice, Environment, Energy, Mines and Resources, and Finance.

At a meeting of the bands and Hydro in Thompson on April 23, 1974, Nelson House, Split Lake, Cross Lake, Norway House, South Indian Lake and York Landing formed a Flood Committee. Henry Spence was to act as chairman. The Churchill-Nelson-Lake Winnipeg flood committee initially included the Indian and Métis inhabitants of the communities. It eventually came to represent only the five Treaty Indian settlements. As a committee speaking on behalf of all the inhabitants that would suffer flood damage, with funding shared by provincial and federal governments, it might have had a stronger lobby affect, particularly since South Indian Lake had already had some experience in dealing with compensation demands.

¹ Marion C. Brown, Native Claims: Policy, Processes and Perspectives, January, 1978.

Throughout the negotiations and the mediation process, Manitoba was reluctant to acknowledge the Indians' representative, the Northern Flood Committee. In the final discussions on settlement the province refused to include in the Agreement repayment of any of the loans made to the Committee by DIAND, a figure which finally totalled approximately \$1.6 million.

DIAND's suggestion, in reply to requests from Henry Spence and the MIB for support, was that the communities select a flood coordinator. The Department would fund his salary and expenses to work with the Indians to collect the data, and locate the legal and technical advice that was required to compile a strong case for compensation.

In May 1974, DIAND also agreed to consider funding the Northern Flood Committee (NFC) on the basis of a budget to be prepared by the committee. DIAND funds would be available to permit the NFC to undertake effective operation; negotiations were commenced to obtain legal counsel. Support in the form of contributions was initially offered. Four months later this was changed to loan funds with the expectation the money would be repaid out of the settlement. Arrangements for an ongoing funding program with specific objectives were not established at the time of the initial payments.

One of the first activities planned by the NFC was an information workshop in Winnipeg early in July 1974, attended by representatives from all the communities affected, native organizations, two levels of government, James Bay Cree and the media. The NFC established its position; neither the Manitoba Government nor Manitoba Hydro was entitled to flood Treaty Indian lands without the permission of the communities and the federal government. Reserve lands, however, represented only a small portion of the total lands to be flooded. No position on hunting, fishing and trapping rights on other lands, traditionally used by the communities and basic to the support of their lifestyle, was ever formalized. Socio-economic development plans were not discussed until much later in the negotiations for compensation.

By July 1974, the NFC had selected its own lawyer. He felt it was necessary to press for a restraining injunction against Hydro in order to force the release of all information on the impact of flooding. A declaratory judgement would be requested from the courts as to whether or not it was legal for Hydro and Manitoba to flood reserve lands. If the injunction were awarded, it would make clear the legal rights of the Indians and the strength of the NFC to act positively for the communities it represented. Manitoba countered quickly with the threat that if court action commenced the provincial government would call the federal government as a defendant.

At this time the NFC was also in need of more money since no long term funding schedule had been worked out.

The Minister of DIAND, the Honourable Judd Buchanan, met the NFC on September 18, 1974, and agreed to provide all further monies in the form of loans with the understanding these loans would be repaid out of the settlement that was to be negotiated with Hydro. The NFC received a loan of \$168,200 to cover its expenses until March 30, 1975, if it agreed to hold off court action for a 60-90 day period. DIAND felt that responsible discussion between the Committee and the province was a better route to take.

All future loan agreements between DIAND and the NFC were conditional on the understanding that no court action could be brought forward without prior permission of the Minister.

In the fall and winter of 1974-75, the NFC's lawyer commenced negotiations with the Manitoba government's legal counsel and the federal negotiator.

On February 24, 1975, the NFC met with Manitoba Premier Ed Schreyer and the General Manager of Manitoba Hydro. The Premier agreed to recognize the NFC as the sole negotiating body for the Indians, to provide a statement of remedial principles and alternatives within two weeks, and to meet with the NFC in one week to mutually prepare a detailed Memorandum of Understanding.

On March 3, 1975, the NFC met with the Advisory Committee to the Cabinet and were told that the province had rejected the understandings agreed to by Premier Schreyer. As a result, neither a Manitoba government statement of recognition of the NFC, nor a statement of remedial principles was forthcoming. In mid-summer 1975 the Minister of DIAND made a trip to Manitoba. He told the province it could face legal action if it did not seriously address the negotiations with the Flood committee and the Department. It was this action which largely precipitated the subsequent discussions about arbitration and mediation.

DIAND submitted a proposal to arbitrate the issues of the Churchill-Nelson River project to the NFC for endorsement. When the proposal for arbitration was rejected by the chiefs of the five communities affected, a proposal for mediation of the issues was submitted to the NFC by DIAND. The NFC studied the submission and communicated to DIAND a number of changes it felt would strengthen the mediation process, while generally accepting the principle of mediation. Manitoba Hydro rejected the changes and DIAND acquiesced.

A mediation agreement was signed February 13, 1976. The anticipated mediation period was three months, from February to April. Agreement was reached to appoint Leon Mitchell, Q.C., as mediator. At the suggestion of the NFC's legal counsel, the mediator visited the five reserves in April with the NFC executive, three NFC lawyers, the Chairman of the NFC Board, Alan Ross, technical consultants to the NFC, and two DIAND and two Manitoba government officials.

A workshop concept was proposed as an approach for involving the people of the five communities in the formulation of proposals for mediation. Each community was to develop its own plan for post-flood reconstruction based on a claim for damage compensation. The five plans would comprise a master plan which would be utilized by the mediator in drafting an agreement-in-principle. This would be reviewed by the other three parties and a final agreement-in-principle would be drawn up.

In the months that followed additional research was undertaken. A major weakness in the negotiations continued to be evident. No specific proposals for remedial works, compensation and mitigative measures had been received from the NFC. Even with much of the information in hand, the NFC had difficulty in transmitting the data to the scattered bands. It also lacked experience in the development of a position for mediation.

In addition there was criticism by the MIB and chiefs of other northern bands, not represented by the NFC, of the extent of DIAND funding to the NFC given the apparent lack of any concrete achievement. In June 1976, the Minister of DIAND requested that substantive proposals for compensation, mitigation and remedial measures for Nelson House be provided by September 15, 1976, as a condition of further loan funding to the NFC. A draft agreement-in-principle was presented to the mediator on the required date. It was to be used as a model for the other communities' proposals. The expectation was that negotiations would be conducted on the basis of the proposals contained in the document and followed by second stage negotiations culminating in a final agreement by September 15, 1977.

The four principal clauses in the September 16, 1976 draft agreement-in-principle were:

- . substitution of provincial crown lands for the 2000-3000 acres likely to be flooded under a 5 for 1 formula;
- . continuing compensation to be paid through an economic development corporation as a royalty on generating capacity or production from Hydro projects;
- . hunting and fishing rights in specified off-reserve areas;
- . compensation of all costs incurred by the NFC.

Although DIAND had requested submission of the document on an urgent basis, by December 1976 the Department had taken no position on the proposals. In February 1977, the Board of the NFC threatened to end the mediation process and go to court. The NFC had not received a reply to their request for protection under Section 35 of the Indian Act on the flooding of reserve lands and were concerned that if no strong stand were taken Hydro would continue to delay negotiations.

The mediator's response was to present what became known as the Mediator's Proposal, which was sent to the four parties. The responses to his proposal were used to prepare a draft agreement by early June 1977, which was then reviewed by all parties. The NFC agreed with the basic principles, but felt the agreement did not go far enough. Money would be needed for community economic development. The Honourable Warren Allmand, who had become Minister of DIAND in 1976, agreed with the concept of an economic development corporation.

The province was by now feeling other pressures. The Churchill diversion was completed and the power was needed. Manitoba stated that if there was no agreement by the end of July the water level at Nelson House would be raised regardless.¹ During the last week in July intense negotiations were held. On July 31, 1977, a Memorandum of Understanding was signed by the negotiators of the four parties.

The Manitoba Government continued to hold back, however, because of an article referring to the Arbitrator's power to dictate government policy. On September 11, 1977, there was a provincial election; the Conservative party led by Sterling Lyon came to power.

On December 16, 1977, the Agreement was signed by all parties. Voting to ratify the Agreement took place in each of the five communities on March 15, 1978.

The Agreement is now in place and implementation continues.

The Regional Office of Indian and Northern Affairs hired a Northern Flood Agreement Coordinator in September 1978. His first task was to conduct an analysis of the Agreement from which the Regional Director General and Program Managers could begin to discuss in detail all of the articles and to deal with the financial commitments the federal government had made.

The obligations of the Government of Canada pursuant to the Agreement involved a number of departments: Indian Affairs and Northern Development, National Health and Welfare, Regional Economic Expansion, Transport Canada, Environment Canada, and Canada Immigration and Employment. An Interdepartmental Committee was struck for the purpose of discussing the

¹ It should be noted that there was flooding at Nelson House throughout the fall of 1976 although the Department did not determine legally through the courts that flooding occurred during this period.

implementation process to ensure a coordinated government approach in fulfilling its obligations.

One of the major difficulties has perhaps been the fact that other departments do not fully understand that DIAND represents the interests of Canada as a whole in a settlement of this kind. They may have found themselves implicated in the final document and having to play a role in implementation without having participated actively in the process of reaching an agreement.

Canada and Manitoba also have to plan shared obligations. They are required, by an article of the Agreement which deals with Environmental Impact Policy, to jointly implement those recommendations of the Lake Winnipeg, Churchill and Nelson Rivers Study Board that fall within their jurisdiction. Manitoba seems to evidence only slight interest in Canada's chief concern, the monitoring of ecological effects of the diversion.

In addition, the Northern Flood Committee's continued existence is uncertain. DIAND loan funding terminated officially with the signing of the Ratification Agreement.

This concise history is intended to provide an overview of what happened. It is based on a search of the files kept by various parties who participated in the negotiations and on interviews with the mediator and representatives from DIAND's Regional Offices in Winnipeg and Edmonton, DIAND headquarters, the Department of Justice, and the Northern Flood Committee.

Further details of the Department's continuing efforts to implement the Agreement fit more appropriately into the next section which deals with major problem areas in the whole settlement process.

PROBLEMS WITH THE NORTHERN FLOOD AGREEMENT PROCESS

This section will attempt to analyze the major problem areas in the settlement process.

The chronology of events can be roughly divided into four stages:

- . building a case for negotiation,
- . developing a mediation process,
- . reaching an agreement, and
- . implementation.

Analysis of the problem is organized under these four headings. Part Two of the report attempts to draw conclusions from this experience and makes recommendations on how the process might be improved.

Within each stage three themes are addressed in the attempt to identify the main areas in which problems occurred:

- . substantive elements: general claims policy, claims funding policy, including funding for research, negotiation, and implementation of claims, and resource provision - money, people, advice;
- . organization and the mechanisms for bringing people, information, and financial resources together;
- . people: the roles and responsibilities of the key players and the experience, skills and personality brought to the negotiations.

BUILDING A CASE

This covers the period from the early 1970's to the signing of the Mediation Agreement in 1976.

(a) Policy and Funding

Problem:

There was no policy respecting damage claims.

On August 8, 1973, the Honourable Jean Chrétien, then Minister of Indian Affairs and Northern Development, released a general policy statement on claims of Indian and Inuit people. The statement signified government recognition of its continuing responsibility for Indians and lands reserved for Indians.

However, it did not refer to government acceptance of its responsibilities in the area of socio-economic development and non-treaty lands traditionally used by Indians and Inuit to support their economic base and lifestyle. Neither was there any policy respecting the kind of action DIAND would take to intervene on behalf of Indian people when their traditional lifestyle was threatened or had already suffered from the adverse effects of development projects.¹ The kind of intervention the Northern Flood settlement represented had not been defined in any policy statement.

Problem:

There was no policy respecting the funding of non-ONC type claims². Specifically, there was no policy on funding for federal government interventions to stop or alter development likely to have an adverse effect on native lifestyle, or to support Indian claims for damage that had already occurred.

¹The Third Party Intervention policy was developed in late 1977, too late to have much influence on the Northern Flood situation.

²The Office of Native Claims, established in July 1974, had the mandate to handle Specific and Comprehensive claims, both essentially oriented to treaty land rights and the legal problems these entail.

Early funding (pre-1974) to the communities that were going to feel the effects of the Hydro flooding came out of the budget of DIAND'S Regional Office in Winnipeg. Arrangements to share the salary and expenses of a flood co-ordinator were made between the Regional Office and headquarters in May 1974. The Manitoba Indian Brotherhood also provided some funding to the Nelson House/Cross Lake Planning and Development Committee, prior to the establishment of the Northern Flood Committee (NFC).

In June 1974 DIAND agreed to fund the NFC. A later decision decreed funding should be in the form of loans, the rationale being that the money would be recovered as part of the final settlement.¹

(b) Organization and Communication

Problem:

There was no obvious Indian and Inuit Affairs Program focus for dealing with the kinds of issues that were emerging in the Northern Flood situation.

There was no identified contact point within the Program to develop the badly needed information exchanges between DIAND and other federal departments, that could have lent assistance in the field of environmental assessment, especially in the context of socio-economic and cultural changes resulting from resource development projects.

For example, the 1971 Agreement between Manitoba and the federal Department of the Environment, which established the Lake Winnipeg, Churchill and Nelson Rivers Study Board, required that

¹None of the \$1.6 million that had been loaned to the NFC was recovered, principally because Manitoba never fully recognized the group as the official Indian representative.

reports of the Board be held confidential until release of the Summary Report. Yet the analyses of the research findings were critical to the development of clearly defined issues by DIAND and the NFC for negotiation with Manitoba and Hydro.

Problem:

Links between DIAND headquarters and the Regional Office were undergoing a process of transition toward greater decentralization.

At any time during the long data gathering and negotiation stage, the Regional Office might have "grabbed the ball and run with it", to use a common turn of phrase, yet headquarters was still being looked to to provide a framework for action.

Problem:

The five communities are isolated from each other and from regular and close contact with the DIAND office in Thompson.

The problem of communicating news of the extent of damage, of clearly formulating the issues that would have to be confronted in such a way as to reflect each community's perception, and of deciding jointly on the forms of compensation and mitigative measures that should be requested, remained a handicap throughout the process.

(c) People, Roles and Responsibilities

Problem:

The roles and responsibilities of the federal negotiator were not well defined.

Until 1974 when the Office of Native Claims was set up, the federal negotiator reported through the Indian and Inuit Affairs Program. When he moved to the ONC his relationship to the Regional Office and Program Officers involved was no longer clear. It was the role of the Claims Policy Committee, on which the Program was represented, to coordinate the negotiator's proposals.

Problem:

The region's role in initiating interventions in support of Indian claims for compensation was not defined.

Regional officers' roles with respect to how to proceed in negotiations with the province and Hydro, and on how to involve the program managers in the regional offices of other federal departments in the data gathering and environmental monitoring process, were not planned out.

The Regional Planner and the Operational Planner in the Program Support Branch involved themselves in activities related to Hydro flooding and the potential adverse effects to Indian communities early in the process because of their interest and responsibilities in the field of environmental assessment and community planning. However, their role in either negotiations or mediation was never delineated. These two contact points, in headquarters and in the region, were removed from involvement in the process on two occasions.

Problem:

Within the five Indian communities, political leadership changed frequently. There was no strong central figure to act as leader throughout the long struggle for a settlement.

Better relationships between the Manitoba Indian Brotherhood and the Northern Flood Committee would probably have been of joint benefit. Legal and technical advice and financial management skills might have been provided by or administered and evaluated by the MIB. Other Indian bands, such as the James Bay Cree, who had experience in dealing with governments and industry, might have played a role as external advisors.

DEVELOPING A MEDIATION PROCESS

The Mediation Agreement was signed February 13, 1976; Mediation continued until December 1977. When mediation was proposed it appeared the only alternative left to finding a solution. Negotiation had failed and litigation had been rejected as an alternative by Canada.

(a) Policy and Funding

Problem:

The Mediation Agreement did not include an agreement to support the Indians' factfinding team.

While the Mediation Agreement defined the powers of the mediator and outlined a plan for all parties to share the expenses of the mediator and other costs of mediation, it did not include arrangements to support the Indians' factfinders. The loan funds which the Northern Flood Committee was receiving from DIAND did not form part of any joint agreement with Manitoba.

Mediation was to go on for about three months, until April 30, 1976, according to the Agreement. Any decision to prolong the process beyond this date was to be agreed to by all parties; but no new date for completion of mediation was set. Mediation continued for more than another year, yet none of the arrangements had been made with such a lengthy period in mind.

Mediation requires the fulfilment of a number of responsibilities by the parties involved: preparation of position papers, with clearly defined issues to be mediated; early development of an agreement-in-principle; and preparation of an operational plan, timetable and budget for implementing the settlement.

During the process of mediation a claimants' operational plan for the construction of remedial works and the disbursement of compensation should have been developed with a timetable and budget for completion of all projects contained within the final agreement. The final agreement should have included acceptance of the implementation plan.

(b) Organization and Communication

Problem:

Other federal departments were not actively involved in supporting DIAND's efforts as Canada's representative at the mediations. .

Stronger inter-departmental collaboration would have assisted the federal negotiator in compiling the information required to establish the federal position, and in assessing the implications of changes made during the mediation process to that position, in terms of both the human and financial resources required to meet the obligations of DIAND and other federal departments.

(c) People, Roles and Responsibilities

Problem:

The federal government, represented in the mediations by DIAND, had no clear position and no well-developed bargaining strategy.

The federal negotiator had no team of experts able to match the skills and experience of the Manitoba Hydro team to support his role. What precisely was entailed by his responsibility to obtain simultaneously the best settlement for the Canadian Government generally and for the Indians themselves never seems to have been clearly spelled out.

REACHING AN AGREEMENT

While the whole process of mediation has as its goal attainment of an agreement, this section focusses on the nature of the agreement itself.

(a) Policy and Funding

Problem:

The Agreement did not describe with sufficient precision or detail who was responsible for implementing the agreement, how it was to be implemented, how long it should take to fulfill each obligation, how much it would cost each party, and who was responsible for monitoring implementation. While some sections of the Agreement were straightforward, for example, Articles 5,6,7 and 8, in others it was unclear as to whether a particular clause was an obligation or discretionary.

There was no set of program guidelines to direct what an agreement of this type should look like and little previous departmental experience to help advise on what it should contain.

How much the Agreement would cost DIAND, and whether the Department could afford its obligations were not determined before the Agreement was signed. Therefore, none of the costs, in either manpower or financial terms, were budgeted for in advance.

(b) Organization and Communication

Problem:

The Agreement did not make it clear as to whether the focus, and hence the costs of implementation, were to be centred in the region or at headquarters.

Although a number of briefing sessions were held with federal departments, including Environment Canada, Health and Welfare, Justice, Regional Economic Expansion, Transport Canada, Manpower and Immigration, and Energy, Mines and Resources, many of the departments did not seem to be fully aware of what they had committed themselves to or what responsibilities they shared in implementing the Agreement.

The Office of Native Claims has a well defined mechanism for dealing with its claims; but the Northern Flood situation did not fall within its mandate. The IIA Program does not have a process for dealing with interventions in support of Indian claims for damages. It has to deal with such interventions in an ad hoc manner. The problem was compounded by the fact that by the time the Agreement was signed, the federal negotiator had been transferred to the ONC.

There was no structure for liaising with other federal departments to plan how each could best contribute its resources to the settlement process.

(c) People, Roles and Responsibilities

Problem:

The federal negotiator should have been advising and consulting on an ongoing basis with the Program people, at headquarters and in the regions, and with the officers in the other federal departments whose interests he was also representing, in order to keep them informed on precisely what responsibilities they might be committed to in arriving at an agreement.

4. IMPLEMENTATION

Implementation commenced after the signing of the Agreement in December 1977 and is still ongoing.

(a) Policy and Funding

Problem:

How the Agreement was to be implemented and how the administration of implementation was to be funded was not planned.

The first step in implementing the Agreement was to have it ratified by the five communities by means of a process that was outlined in Article 2 of the Agreement. (Explaining the benefits of the settlement and obtaining the Indians' acceptance of them should have been done before the signing.)

Arbitration of individual claims within the total settlement is to be allowed; in August 1979, an Arbitrator still had not been selected.

The plan and timeframe for disbursing money and benefits have now been worked out; but, there are still some funding problems to be resolved. It is not completely certain how much the Department's obligations will cost, not all expenditures have been budgeted for, there is little new money available to cover the costs, and no previous Program commitments may be prejudiced by the Agreement.

(b) Organization and Roles and Responsibilities

Problem:

It is still not entirely clear who is organizing the implementation from DIAND's viewpoint.

As stated earlier, the ONC does not feel that the Northern Flood Agreement falls within its mandate. It has continued to play a role in analyzing the implications and obligations of the settlement through its participation at the request of the Program on the Steering Committee for evaluating the implementation.

If it falls within the mandate of the Indian and Inuit Affairs Program, primary responsibility for implementation should rest with the Region with support provided from headquarters where required and requested by the Region.

Committees have been struck both in DIAND and other federal departments to decide on various aspects of implementation, but the total process remains without a central focus for communication and coordination of efforts.

The Regional Office tried to hire an Implementation Coordinator to oversee its responsibilities in this area. He would have served to coordinate and monitor all the separate activities comprising the total settlement, and would have required the seniority to bring pressure to bear on parties who were not living up to their commitments in a timely and effective manner.

Problem:

It is also not clear who is to oversee implementation from the Indians' viewpoint.

The Northern Flood Committee's objective was to obtain a settlement and it was for that purpose that they received funding; loan funding from DIAND terminated with ratification of the Agreement. The five bands who were represented by the NFC were given some funding for the period June 22, 1978 to February 16, 1979 to monitor the implementation process.

In reviewing the NFC's mandate DIAND decided not to continue funding the organization for the purpose of conducting or monitoring the implementation process.

The Neyanun Economic Development Corporation now has responsibility for managing the compensation monies. The notion of self-determination supports the idea that the Corporation should be the sole body responsible for deciding how the money is spent, for the "good of the community", and for monitoring its spending.

Both sections of Part One of the report are intended to provide an overview of what happened in the process of reaching an agreement in the Northern Flood situation. They are based on an extensive reading of the department's official files and other files kept by various people who participated in the process, and on interviews with departmental officers at headquarters and in the region, the mediator, and representatives of the Northern Flood Committee.

PART TWO

RECOMMENDATIONS FOR THE FUTURE

To define the nature and extent of DIAND interventions in support of Indians and Inuit requires the establishment of program policy to deal with these issues, along with the priority setting mechanisms and funding criteria needed to prepare adequate budgets to meet the demands of such a program undertaking.

So noted in the Introduction, DIAND interventions may be defined according to when they occur: at a pre-development stage, or after damage has occurred, but the process for reaching a settlement will be basically the same. A few examples are offered of the type of interventions the Department is currently, or has recently been, involved in, in order to establish a context for the recommendations which follow.

PRE-DEVELOPMENT INTERVENTIONS

An intervention planned and developed on the basis of socio-economic or environmental assessments conducted before a development project has begun is a future oriented activity. Its value is based on the fact that Indian and Inuit people have a better chance to adapt a development project to provide some benefits to their lifestyle, or at least to modify its potential adverse effects, while it is still in the planning stage than after it has become an unalterable reality.

The position that DIAND's Regional Office in Alberta has taken on the Cold Lake Heavy Oil Development project and the Shell Alsands project is an example of this kind of activity and the impact it can have in controlling change. DIAND is particularly concerned that the project will not provide Indians with many opportunities for improved incomes.

The Department has prepared a submission in two parts, socio-economic and environmental, that strongly criticizes Esso's project application and recommends that the Alberta government enact "special program" legislation to increase the opportunity for Indian bands and individuals to participate in major industrial projects. Native people will get little benefit from the project if Esso refuses to offer natives more than an equal opportunity for employment.

Environment Canada, at the request of DIAND, is insisting on more data concerning the likely effectiveness of environmental protection methods proposed by Esso. Both federal departments are demanding that Esso's final environment impact assessment, which is required as part of its application for construction by the Energy Resources Conservation Board, be subjected to a thorough public review by Alberta Environment before the project is allowed to proceed.

An important aspect of DIAND's interventions in Alberta, both in connection with the Cold Lake Heavy Oil hearings in January and May of 1979 and the Shell Alsands hearings in June 1979, has been the strong support provided by the Regional Office of Environment Canada and the Regional Office of the federal Department of Justice. Without this strong co-ordinated support, it is not likely that DIAND's interventions would have been as effective.

However, the key element in this process, both in the case of the Esso Cold Lake intervention and the Shell Alsands intervention, has been the existence of strong Indian groups that have assumed the lead roles. These groups include the Northeast Tribal Chiefs Association, the Cold Lake Band and the Athabasca Tribal Chiefs Association.

The Department's role has been to provide support and to coordinate other federal inputs from Environment Canada, Justice and the Provincial Relations office. The Indian Association of Alberta has also provided reinforcement to the affected bands in the public hearing process.

This experience proves the need for an open and frank working relationship between Indian leaders and departmental staff if the Indian benefits from intervention are to be realized.

INTERVENTIONS WHEN DAMAGE HAS OCCURRED

When damage to Indian or Inuit land and lifestyle has already occurred, planning and negotiating compensation arrangements for the native communities adversely affected by development could be part of Indian and Inuit Affairs Program responsibilities as well.

The Northern Flood Agreement, the current tripartite mediations to compensate the Grassy Narrows and Whitedog communities for damage from flooding, mercury pollution, fluctuating water levels, and forced resettlement, and the studies being undertaken at St. Regis to determine what effect fluoride emissions have on human and animal health, are each examples of activities which fall into this category.

The problem is that the Program has engaged in many activities like these without a clearcut program framework within which responsibilities could be designated. Interventions of this type can be initiated without waiting for land claims to be settled because they are based on a different concept - departmental responsibility to monitor and control socio-economic progress and environmental change as it affects Indian and Inuit peoples regardless of who actually owns the land on which the development project may be planned or already situated.

RESPONSIBILITY FOR INTERVENTION

The IIA Program's internal organization has continued to change since the days when the Northern Flood Settlement was being worked out. For example, in addition to the development of Third Party Intervention policy, described in the Introduction, a Tripartite Branch was set up in November 1978. The concept of the two levels of

government working in partnership with Indian and Inuit bands and organizations to resolve the problems of change created by development is a more accepted occurrence today.

Tripartite mechanisms at all levels: national, regional, and at the individual band level, provide an opportunity for addressing more effectively many of the priority issues facing Indian communities because all parties to be affected by the resolution of particular problems are fully involved.

The first mediation handled by the Tripartite Branch is a case presented in support of compensation for the Grassy Narrows and Whitedog communities. These two Indian communities have suffered from the affects of extensive environmental damage to reserve land and unoccupied federal and provincial crown land and disruption of their traditional lifestyle.

The serious health problems among Indians at St. Regis is another issue that has the potential of being resolved through a Program intervention based on a tripartite process

Many of the problems associated with the Northern Flood Agreement process resulted from the lack of defined responsibilities and accountabilities at DIAND headquarters and in the Regional Office. The establishment of the Tripartite Branch offers another potential headquarter's focus for program activity in this area. However, the group is a new one and its links with internal headquarter's branches, the regions, other federal departments, the provincial governments, and the native Indian groups are still being shaped by experience. Policy, Research and Evaluation and Operational Planning also share strong interests in this area of Program activity.

The Program Support group has suggested an Environmental Review and Program Liaison division as part of its Operational Planning Branch which, if followed up, would also focus the responsibility of a particular group at headquarters and in the regions on issues related to interventions in the context of socio-economic progress and environmental change.

At the Regional level, responsibility for dealing with these issues should be lodged with a specific unit, probably one with a planning rather than an operational function. Such a unit should report directly to the Regional Director General.

THE INTERVENTION PROCESS

For the purpose of discussing the intervention process and offering recommendations on how it might be developed, the process¹ is divided into three chronological stages:

Stage One: Building a Case

Stage Two: Resolution Through the Mediation Process

Stage Three: Implementation

Identification of the nature of the process and designation of responsibility for the process serve as subheadings as each stage is described.

STAGE ONE: BUILDING A CASE

(a) Identification of the Process

Recommendation 1

A separate policy for dealing with and funding interventions in the context of both development planning and actual damage situations should be drawn up. Interventions are not claims (that is, Specific or Comprehensive claims) and should not be considered as part of the general claims policy; in addition there are no uncommitted Indian and Inuit Affairs Program funds available.

The use of the term "intervention" would have to be based on clear cut policy. It would include interventions arising out of pre-development socio-economic and environmental assessments and

¹ A flow chart outlining the process is included in Appendix D.

interventions for the purpose of giving compensation to Indian and Inuit peoples for damage caused by development projects.

Timing is of the first importance. Indians and Inuit, working hand-in-hand with government, must have knowledge of development plans and a forum in which to discuss the implications of these plans before the projects are begun. This is necessary if they are to have the opportunity to direct change in a manner that allows them a choice in how their lifestyles will be affected by development projects, both on aboriginal hunting and fishing territories and off reserve. Indian and Inuit people and the IIA Program have two choices. They may participate at the front end of development planning, at the stage where environmental assessments can be conducted to discover the true extent and nature of change, in order to exercise some control over how a project will proceed. Or they may wait until later to negotiate for compensation after the damage has occurred.

Recommendation 2

For each fiscal year a list of priority projects for intervention funding, based on regional information, should be prepared and budgeted for separately through regular program forecasts.

In December 1977, the Manitoba Regional Office submitted to the Program's Assistant Deputy Minister, a list of major Manitoba projects which were having, or might have, socio-economic consequences for Indian people and their lands. Other regional planners are also in a position to draw up such lists, which might then be used to determine priorities for funding and basic funding criteria for the support of such interventions.

Recommendation 3

In the first stage of building a case for intervention it would be preferable that, with the acknowledged limitation to departmental funding resources, a close examination be made of the opportunities to provide bands and native organizations with technical or other research and analysis resources by soliciting the advice and expertise of other federal departments or agencies.

The objective of the intervention and, to some extent, the process will depend on when the intervention is initiated. If the project is still in its planning stages, the objective of intervention would be to stop the project, offer alternatives for development, or help the Indians likely to be affected to take advantage of the benefits and prepare to face the adverse effects of the project.

If the development project has already had an impact on the Indians' lifestyle, the objective of the intervention would be to stop, control, or clean-up the harmful effects, and to plan compensation and mitigatory measures for the people affected.

In either case, the first need would be for basic reliable information on the social, economic and environmental consequences of the project. Financial and technical resources would have to be provided for the preparation of submissions to environmental assessment review boards, if the project is in its planning stage, and for documented claims outlining the extent and nature of the harmful effects of the project, if development is ongoing.

Recommendation 4

A registry of suitably qualified and motivated people that could be drawn upon at various times to provide bands and native organizations with factfinding support should be identified.

These groups would support the development of an IIA Program case, which would ultimately serve as the federal government position, through:

- . social, economic, technical, and legal research and analysis;
- . direct involvement with band members who are, or are likely to be, affected;
- . consultation with other organizations, groups, and agencies both in the private and public sector; and
- . preparation of position papers, briefs and submissions in full consultation with local Indians or Inuit.

The focus of this activity would be resolution of the problem through negotiation; the parties to the negotiations would depend on the type of intervention. Negotiations would be with:

- . provincial government(s)¹, and other federal departments who might be involved, to alter or stop proposed actions, or to provide compensation; and/or
- . a third party, probably the corporation planning or operating the development project, to alter plans or stop the project, or to provide compensation.

If negotiation fails then the more formal process of a mediated settlement would be initiated in what is here labelled Stage Two.

(b) Designation of Responsibility

What has been described as the first stage in the development of an intervention includes aspects of both the Third Party Intervention policy (Policy, Research and Evaluation Branch responsibility) and the Tripartite Branch's mandate to resolve problems through joint discussions with the provincial government, federal departments, and Indians involved.

Recommendation 5

The process of building a case should begin at the regional level.

The Regional Director General should be responsible for flagging the issues that might lead to an intervention in consultation with local and regional Indian groups. Such issues should be brought to his attention through systematic monitoring of potential issues by his Regional staff and the field offices. He and his officers should then prioritize these issues according to criteria, such as the timing for commencement of development plans, the nature and extent of damage which has already occurred, or is likely to occur, and the Indians' capacity to act on their own behalf.

¹Development projects, like Polar Gas, will affect more than one province.

The Regional Director General should designate one of his officers to serve as the contact point in the field for all communications pertaining to the problem. He would be responsible for collecting information on the case from internal departmental sources, other federal departments, the provincial government, other agencies, and, most importantly, the Indians being affected or likely to be affected.

A contact point at headquarters should also be identified (probably someone within Program Support or the Policy, Research and Evaluation Branch). He would be responsible for putting the region's representative in touch with other resource persons who could assist him in data collection and position preparation.

The region's representative would also be responsible for analyzing and assessing the extent of the socio-economic and environmental impact the development project would have, and for advising on what action to take.

Prior to the establishment of a formal mediation process, or if it was decided that was unlikely to be necessary, the regional contact might serve as the federal negotiator in any negotiations that took place with the Indians involved and either or both the provincial government and corporation responsible for the development project against which action was being brought. In any case, selection of the negotiator should be determined by experience, personality and knowledge of the situation, rather than simply by position.

The kind of data gathering activity required to determine the nature of an intervention might be undertaken each year for a number of development projects in each region which are, or might become, the subject of a program intervention. It is foreseeable, in the not too distant future, that DIAND will simply be unable to afford, either in terms of human or financial resources, to deal with all the issues that are brought to its attention for support. National and regional Indian and Inuit organizations will have to play a larger role. Each region will have to select annually the interventions it can afford to handle and it will have to budget for each negotiation process a year in advance. Whether the Program decides to do the work in-house or

contracts outside services, it will require funds for travel and meetings, and for social, economic, legal and environmental research projects which will have to be carried out to fill information gaps and permit a realistic assessment of the impact of the development project.

Recommendation 6

Indian consultations are a central part of this process; the Regional Office must ensure that local Indian organizations and the communities affected have access to all relevant information. They must have full partnership in all negotiations and mediations and must be involved in all aspects of decisions taken to resolve their problems. It is essential that Indian representatives have adequate resources to represent their constituent groups in the process.

Recommendation 7

Other federal departments likely to be involved in a DIAND intervention aimed at reaching a settlement in support of Indian or Inuit people must be alerted to the situation early in the process and must be kept informed of the intervention's developments.

All federal departments must recognize that in a case of this type DIAND represents Canada's view and is responsible for formulating the federal position. Other departments may be implicated in the settlement and should therefore be actively involved in the process as it develops. The establishment of the roles and responsibilities of other departments should occur at the Deputy Ministers' level. Including discussion of a potential DIAND intervention on the agenda of the Interdepartmental Committee on Indian Affairs would initiate involvement. DIAND would take the lead role in coordinating other departments' participation.

STAGE TWO: RESOLUTION THROUGH THE MEDIATION PROCESS

If negotiation fails to bring about a resolution that is acceptable to the Indians and to Indian and Inuit Affairs, then mediation becomes the alternative.

The mediation process presumes that the other parties, whether government or corporate, recognize DIAND's responsibility to intervene to protect Indians' rights to land and lifestyle.

Recommendation 8

If mediation is to be an effective tool for problem resolution DIAND must take steps to ensure that all other parties to the mediation process accept Indian representation as a full and equal party to the discussions.

While such a recommendation may seem self-evident, in the Northern Flood case the Government of Manitoba and Manitoba Hydro were reluctant at the outset to acknowledge the Indians' representative, the Northern Flood Committee, as a party to the mediations. The result was that these two parties refused to pay any of the costs associated with the Northern Flood Committee's activities and DIAND had to cover all the costs.

(a) Identifying the Process

To initiate mediation and to ensure the smooth development of a mediated settlement process, there are several principles which must be agreed to at the outset. (Recommendations relating to the mediation process derive in part from an examination of the Whitedog-Grassy Narrows mediations currently being conducted under the close scrutiny of the Tripartite Branch.)

- as noted earlier, each party must recognize and accord status to the presence of every other party involved in the mediations;

- . in signing the mediation agreement, the governments, and any other parties involved, must recognize that the Indians are experiencing, or may experience, by reason of the nature of potential development, adverse effects to their well being as a result of damage to their resources and lifestyle;
- . each party must be committed to arriving at a mutually agreeable settlement (mediation is not an exercise in apportioning blame); and each party must agree to the selection of a mediator and arrangements to share the costs of mediation;
- . care must be taken in selecting the mediator to ensure that he has a good understanding of and is sensitive to Indian lifestyle, culture and thinking, and that he has sufficient time to fully handle his responsibilities throughout the long period of time the mediations may require.

The actual process of mediation is likely to go through a number of steps.

First Step in the Mediation Process

A Mediation Agreement or Memorandum of Understanding must be drawn up and signed.

Such an agreement would list the parties involved and set up the organizational structure required to administer the process and disburse and monitor the required funding.

One possibility would be the establishment of a Tripartite Council, which would include Canada, represented by Indian and Northern Affairs, the province, likely to be represented by a ministry of resource development or some related field, and an Indian representative, either from a recognized native organization or from the community involved.

A Tripartite Council or tripartite discussions may seem to exclude the actual adversary from mediation. Two alternatives to this concept are possible: establishment of a four, or five, etc., party council; or the Tripartite Council must have from the public or private corporation planning or operating the development project¹ a commitment to the basic principles of mediation and to participation in the process as decided jointly.

Criteria for funding, a budget, and disbursement and auditing procedures would be included in the Agreement. The name of the mediator and the extent of his powers should also be agreed to. Most importantly, the agreement must state the issues to be resolved through the mediation process.

This is perhaps one of the most difficult, and may become the most costly, activity in the mediation process. A Royal Commission, an Indian organization or committee, an outside consultant, or inter-government team of experts may provide the first outline of what the issues are likely to be from the Indians' point of view.

The method successfully used by the Ontario Tripartite Council, in the context of the Grassy Narrows-Whitedog case, was to approve a budget to govern the mediation process and within this approved budget to share the costs and expenses of two factfinders, each appointed by the band he would be working with, to enable the Indians to participate effectively in the mediation process.

¹If someone, with particular reference to the developer, has a substantive role to play, he should be part of the process.

The expenses included agreement on per diem compensation for each factfinder and other incidental expenses required by each of them at rates approved by the funding parties.

The mediation agreement should also attempt to define the nature and extent of the resolution or settlement being sought through intervention.

Second Step in the Mediation Process

Each party must develop a position from which to mediate early in the proceedings.

One of the first tasks for the mediator is to ensure that each party has prepared a formal position paper, or to assist the parties in preparing one. Position papers should be ready for presentation at the opening session of the mediation process.

The presentation from the Indian representative should be oriented toward proposing alternatives to development, forms of settlement, or remedial measures for consideration by the other parties. The nature of historical grievances is important as background to the problem, but it should not take precedence over recommendations for a solution.

Key documents, reports, and submissions prepared for or relevant to the mediation process should be included.

For the purpose of preparing the position papers each party must undertake, at the request of the mediator, to make available experts within its employ and any document relevant to any issues that are the subject of mediation. It has happened that studies crucial to the identification of the issues were not accessible to the Indians or to DIAND because they had been categorized as confidential. Every effort should be made, particularly within government agencies, to cooperate in the release of relevant information.

In agreeing to participate in the mediation process each party agrees to address the issues in good faith with a view to achieving a mutually acceptable resolution as quickly as may be practicable. If any party withdraws from the process, or, if after a reasonable time has elapsed, no progress is being made, the mediator should have the right to submit a report outlining the issues resolved, and yet to be resolved, and his comments on how the problems might be resolved.

Third Step in the Mediation Process

The mediator will assist the parties in formulating the understandings reached through the mediation process; this will usually take the form of an agreement signed by all parties involved in the process.

The substantive elements of every resolution will vary according to the nature of the problem. However, given the type of interventions being dealt with here the settlement will probably take one of two forms:

- . a plan to alter or control a development project in order to bring the greatest benefit and create the least damage to the Indians affected; or
- . an agreement to compensate the Indians for adverse effects to their lifestyle caused by development.

In either case, there are a number of principles every settlement should reflect:

- . the language of the Agreement should be precise and factual;
- . each issue identified in the position papers as part of the total problem should be addressed in a separate clause, so that the settlement as a whole represents a resolution of all the issues;

- . care should be taken either to make a clear distinction between contractual obligations and desirable but discretionary activities, or to avoid the latter entirely;
- . each settlement clause should describe not only the nature and extent of the settlement, but how it is to be carried out;
- . it should make clear:
 - who is responsible for providing each component of the settlement, whether it is money, goods or services,
 - who has responsibility for monitoring implementation of the settlement,
 - the timeframe for fulfilment of the obligations of each component of the settlement,
 - how much each component will cost,
 - who pays, or completes what activities, over a defined period of time, and possibly even,
 - how the settlement money, goods, or services are to be utilized by the native recipients;
- . the total bill for each party should be calculated;
- . each party's representative should ensure that his party is capable of paying the bill, or providing the goods and services committed, without prejudicing any previous commitments;
- . an implementation plan with a specified time frame for the fulfillment of each item in the Agreement and an estimate of the cost should be prepared and signed as an annex to the Agreement;
- . from the native viewpoint, the details of the settlement and all that is implied should be made clear in a general band meeting, and approved by band council, before the agreement is signed.

(b) Designation of Responsibility

Recommendation 9

The mediation process should be initiated at headquarters through the Tripartite Branch with the full agreement and involvement of the Regional Office and the Indians involved.

The Regional Office with the full participation of the local Indians or Inuit involved would play the lead role in initiating the intervention process (Stage One: Building A Case) and would actively solicit the support of other federal departments in the region, as well as developing its contacts at headquarters.

As the process developed, the lead role would shift. During mediations it would probably reside at headquarters within the Tripartite Branch, Policy, Research and Evaluation, or Program Support. The Tripartite Branch has recently been established at headquarters with the basic mandate to support, coordinate and conduct tripartite discussions involving the federal and provincial governments and Indian people, in collaboration with Regional Office staff involved in inter-governmental affairs.

The Tripartite process establishes the basic principles for the kind of interaction required for effective mediation. Consideration should be given to including responsibility for taking the lead role in the mediation of non-ONC type interventions within the mandate of the Tripartite Branch. This Branch seems to be developing the skills, experience, and contacts with other departments required for the type of interventions being described.

The Tripartite Branch might also consider preplanning the establishment of a tripartite council, similar to the one in Ontario, in each province, in advance of the actual need for a mediation process. Preplanning activity might include the dissemination of information or briefing sessions on the objectives of a tripartite mediation process, and how it might work, to DIAND's Regional Offices,

appropriate provincial ministries, and provincial and national Indian organizations. When the need arose the parties likely to be involved would be prepared to respond quickly. A list of experienced mediators might be drawn up for each province as well.

Recommendation 10

The chief federal negotiator should be selected from the Tripartite Branch, if the Branch is given the mandate to take the lead in mediations of the type discussed here or he might be contracted from outside the Department.

Other Program Branches have considerable knowledge and experience that is essential input to mediations and settlements. However, the mediation process is time consuming, often highly political, and one in which much time may be spent at the bargaining table.

The demands of the mediation process on a Program administrator could lose out to the pressure of competing demands of the ongoing operational requirements of his position, and perhaps to a temperament ill suited to bargaining.

The chief federal negotiator, and thus Indian and Northern Affairs, should be held accountable for finding the resolution that best serves to protect Indian rights to lifestyle and to advance social and economic progress in the community.

The objective of benefitting social and economic progress among Indians may be best served by providing Indian people with the tools for self-development - the basic factors of production: land, a skilled, well educated labour force, and capital in the form of endowments, representing compensation for the sum total of economic losses sustained by the entire community. Bands particularly impacted might receive resources to develop their own short and long term community planning strategies.

The federal negotiator is also responsible for maintaining regular communication with the representative of the Regional Office and any other Program Managers who are likely to have a role in implementation.

Recommendation 11

The Regional Office must designate an official representative to the mediations. He should act in an advisory capacity and as a contact point in the preparation of the federal position for the region, headquarters, the Indians, and other government departments and agencies in the field who share an interest in the issues which are the subject of mediation.

Whichever branch of the Program the chief federal negotiator has come from, Tripartite or other, he will have enjoyed the luxury of negotiating an agreement without having to live with its consequences. The region's representative and any other Program officials who are likely to play a role in implementation, must be fully involved in the development and presentation of formal offers, and in the drafting of the agreement.

The region's representative should be responsible for ensuring that a realistic cost analysis of the anticipated settlement is prepared. He must advise the Regional Director General of the cost to the region so that a disbursement schedule and implementation plan can be drawn up and budgeted for as a separate intervention program cost. The money, goods or services required should not be drawn from other Program budgets.

The mediator is clearly the focal point. His qualifications, experience and personality will probably be the determining factor in whether or not a satisfactory resolution is found. His selection must be agreed to by all parties, and his responsibilities, the powers ascribed to him,¹ and the budget for his activities stated in the Mediation Agreement.

¹A list of the powers that might be ascribed to the mediator appears in Appendix E. Similar provisions are included in the Northern Flood Mediation Agreement. Additions and subtractions would be agreed to by all parties.

It is DIAND's responsibility as well to ensure that the Indians know what is happening at all times during the mediations, particularly in the final discussions.

If a ratification process is decided upon, DIAND, the Indian negotiator, and the mediator must make certain that the Indian communities, and particularly the chiefs, know what the ratification process is intended to achieve. They must know, especially, that they have the right to make changes in the terms of the agreement even at this late date if it does not seem to be in their best interests.

STAGE THREE: IMPLEMENTATION

(a) Identification of the Process

Recommendation 12

An implementation plan, including budget, timetable, and allocation of financial and human resources, should be part of the settlement signed by each party.

Treasury Board approval should be obtained in advance of signing an agreement in order to ensure that funding will be available.

The Indians and DIAND, in particular, must preplan how to manage the implementation process effectively. The implementation plan might include the establishment of an Implementation Committee, with representatives from each party involved, to serve as a forum for conflict resolution. If it becomes necessary, the Committee might decide to hire an arbitrator, but if the settlement is clearly worked out and understood by all parties, arbitration of individual claims should not be required.

Provision for funding the services of an outside advisor to act in the role of implementation manager might also be part of the implementation plan.

In concluding the report, it is appropriate to summarize the major points made:

- . DIAND should identify the major development projects likely to create problems now;
- . DIAND should not always wait to get involved until the disaster has occurred; it should try to preplan activities and be there at the beginning;
- . DIAND should be able to assist Indians and Inuit who bring forward potential issues for intervention with advice, research funding, and access to information;
- . the Department of Indian and Northern Affairs needs a mechanism for fast and effective settlement of interventions; it is not able to afford the time, personnel, and money required for long dragged-out and highly political affairs.

Any pre-agreement arrangements for funding an Indian negotiator or negotiating committee should be reviewed and new criteria for funding drawn up if financial support is to continue.

(b) Designation of Responsibility

Recommendation 13

The Regional Office should be responsible for implementation, with the necessary support from headquarters and other departments, and should be accountable for carrying out DIAND's own departmental commitments.

The manpower resources required must be made available without jeopardizing other services to be provided to the rest of the Indian population.

A separate budget for implementation of the settlement must be submitted by the region, and revised and updated throughout the implementation process.

At headquarters, liaison responsibilities for implementation should reside with the Operational Planner in the Program Support Branch.

Immediately after a settlement is reached the chief federal negotiator, regardless of whether he is from the Tripartite Branch or another Program group, should take the lead in briefing all federal agencies with interests affected by the settlement. However, the principal responsibility for implementing the settlement should be in the field. The regional representative at the mediations would be responsible for briefing the local Program Managers (i.e. Economic Development, Planning, Lands, Memberships and Estates, Employment, Local Government, Education).

There would also be a need for interpreting provisions of the agreement in order to incorporate them in operational plans and within the constraints of the budget. The regional representative should work with the other Program Managers to clarify and budget for these items in consultation with the Regional Director General.

The implementation plan, agreed to as part of the total settlement, should be reviewed and have an approved budget for a minimum period of one fiscal year.

Someone in the region must then be designated as the contact point for all implementation activities. If not the person who served as regional representative during the mediation process, or another Program Officer, then an outside consultant with extensive knowledge of the culture of the Indians affected. He must be able to communicate effectively with the Band Councils, staff and membership. If the Regional Office decided it did not have the human resources to oversee implementation, it is hoped it will have advised the federal negotiator to include funding for an implementation coordinator in the agreement.

The implementation coordinator's responsibilities, under the general direction of the Regional Director General, might include:

- . planning and coordination of the implementation of the Department's responsibilities under the agreement;
- . coordination of the activities of other departments in fulfilling their obligations;
- . review and assessment of the impact and implications of subsidiary agreements for development of concern to the Indians involved in the settlement, for example, a Socio-Economic Development Agreement that might have been part of the main agreement; and
- . acting as the local departmental representative at, Implementation Committee meetings, Band Council meetings and so on.

APPENDIX A

OFFICE OF NATIVE CLAIMS

APPENDIX A

OFFICE OF NATIVE CLAIMS

A. "SPECIFIC" CLAIMS

Policy reaffirmed longstanding government policy that lawful obligations to Indian people must be met:

- . government would negotiate settlement of claims that Indian people might have about government administration of Indian lands and other assets under the various Indian acts and regulations
- . government would negotiate settlement of claims regarding actual fulfillment or interpretation of Indian treaties
- . claims made on basis of these grievances are termed "Specific Claims"

B. "COMPREHENSIVE" CLAIMS

Policy stated that claims made by native people on basis of loss of "native interest" in those areas of Canada where it had not been extinguished by treaty or superseded by law must be settled. Areas included Northern Quebec, Yukon, most of B.C. and N.W.T.

- . claims made on this basis are termed "Comprehensive Claims"
- . "native" or "aboriginal" interest has never been definitively expressed in Canadian law but it relates to traditional use and occupancy of land by native people in these areas

- . policy recognized that non-native occupancy of land in these areas had not taken this interest into account, had not provided compensation for its gradual erosion, and had generally excluded native people from benefiting in developments that might have taken place as result of non-native settlement
- . because "native interest" has never been defined in Canadian law, policy anticipated that most promising way of reaching settlement would be through negotiation. One of main functions of negotiation process would be to translate "native interest" into concrete and lasting benefits in context of contemporary society
- . in this context, settlement could consist of many elements such as lands, cash, hunting, fishing and trapping rights; resource revenue sharing, and native participation in local and regional structures of government
- . purpose of final settlement was to confirm these benefits in federal legislation in order to give them binding force of law.

APPENDIX B

**THE FOUR PARTIES INVOLVED IN NEGOTIATION
AND MEDIATION AND THEIR REPRESENTATIVES**

APPENDIX B

THE FOUR PARTIES INVOLVED IN NEGOTIATION AND MEDIATION AND THEIR REPRESENTATIVES

GOVERNMENT OF CANADA

Department of Indian Affairs and Northern Development

The Honourable Jean Chrétien, Minister, 1972-74
The Honourable Judd Buchanan, Minister, 1974-76
The Honourable Warren Allmand, Minister, 1976-77
Indian and Inuit Affairs Program
Vern Boulton
Rod Brown, August 1974-September 1977
Fred Glynn
Brian Hartley
Duncan Marshall
Nancy Mitchell
Oliver Nelson
Dave Nicholson, Feb 1976-Nov 1977
Betty Nowicki
Sharron Lee Smith
Mike Sullivan
Bill Thomas, 1972-June 1974

Department of Justice

Brad Smith
Jill Wallace

Department of the Environment

The Honourable Jack Davis, Minister
The Honourable Monique Bégin

NORTHERN FLOOD COMMITTEE

Represented the five Indian communities of Cross Lake, Nelson House, Norway House, Split Lake, and York Landing.

The Chiefs of these five communities served on the Board of Directors.

Henry Spence, Chairman, May 1974 - October 1974

Walter Monias, Chairman

Alan Ross, Chairman, Oct 1974-Feb 1977

Joe Keeper, Feb. 1975-Feb 1977

Ken Young, Oct 1974-Feb 1977

Charlie Huband, Legal Counsel, May 1974-Feb 1975

D'Arcy McCaffrey, Legal Counsel, Feb 1975-Feb 1977

Manfred Rehbock, Technical Advisor

Collin Gillespie, Technical Advisor

PROVINCE OF MANITOBA

Premier Duff Roblin, Conservative, 1966-69

Premier Ed Schreyer, NDP, 1969-77

Premier Sterling Lyon, Conservative, 1977

The Honourable Sidney Green, Minister of Mines, Resources and Environmental Management

J. Crawley, Deputy Minister of Mines, Resources and Environmental Management

Nick Carter, Deputy Minister of Northern Affairs, 1973-76

Steward Martin, Q.C., Provincial Legal Counsel

MANITOBA HYDRO

Len Bateman, General Manager

J. Funnell, Legal Counsel

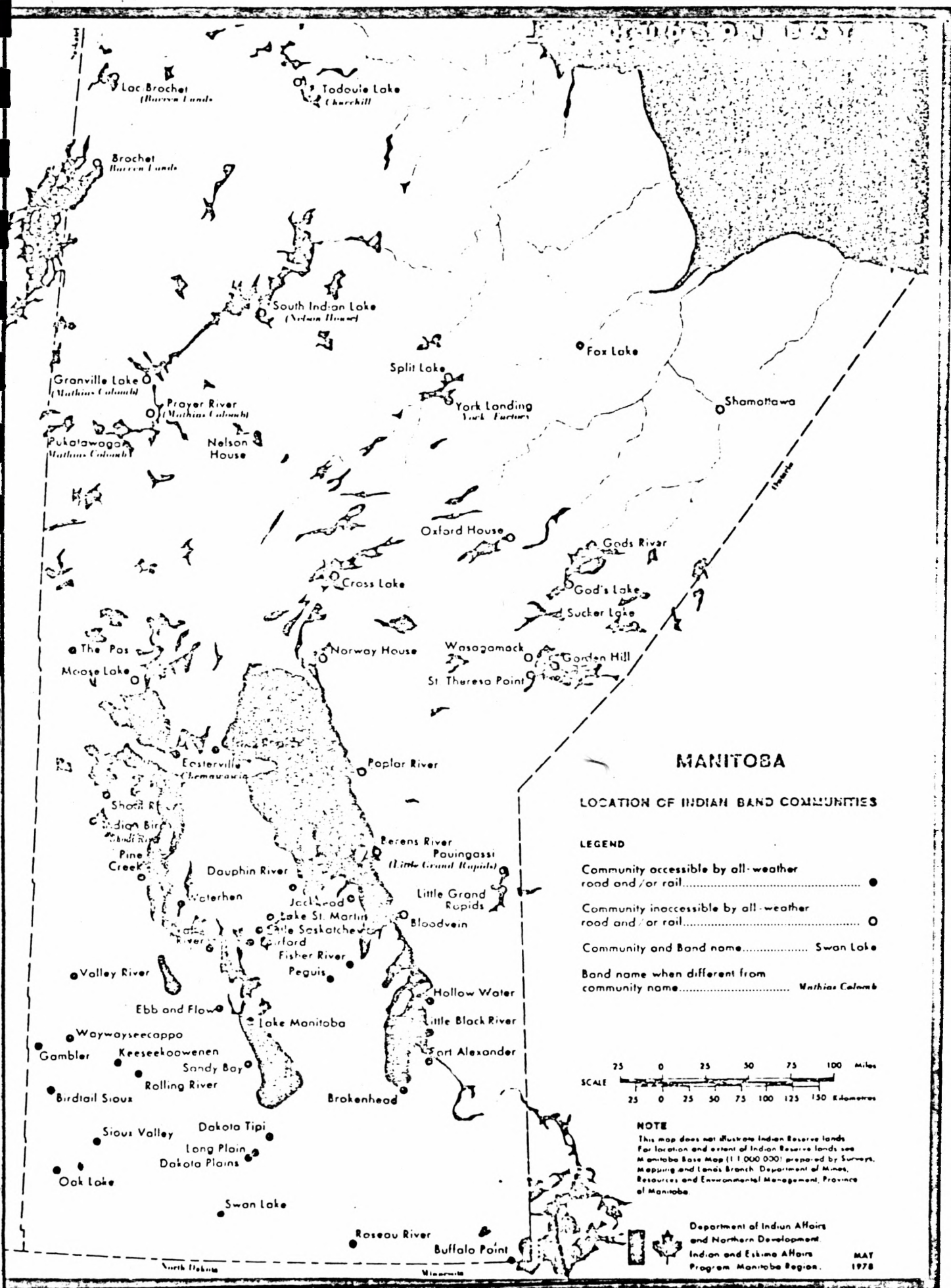
APPENDIX C

LOCATION OF INDIAN BAND COMMUNITIES AND
NORTHERN POWER DEVELOPMENT SCHEMATIC

APPENDIX C
NORTHERN POWER
DEVELOPMENT
SCHEMATIC

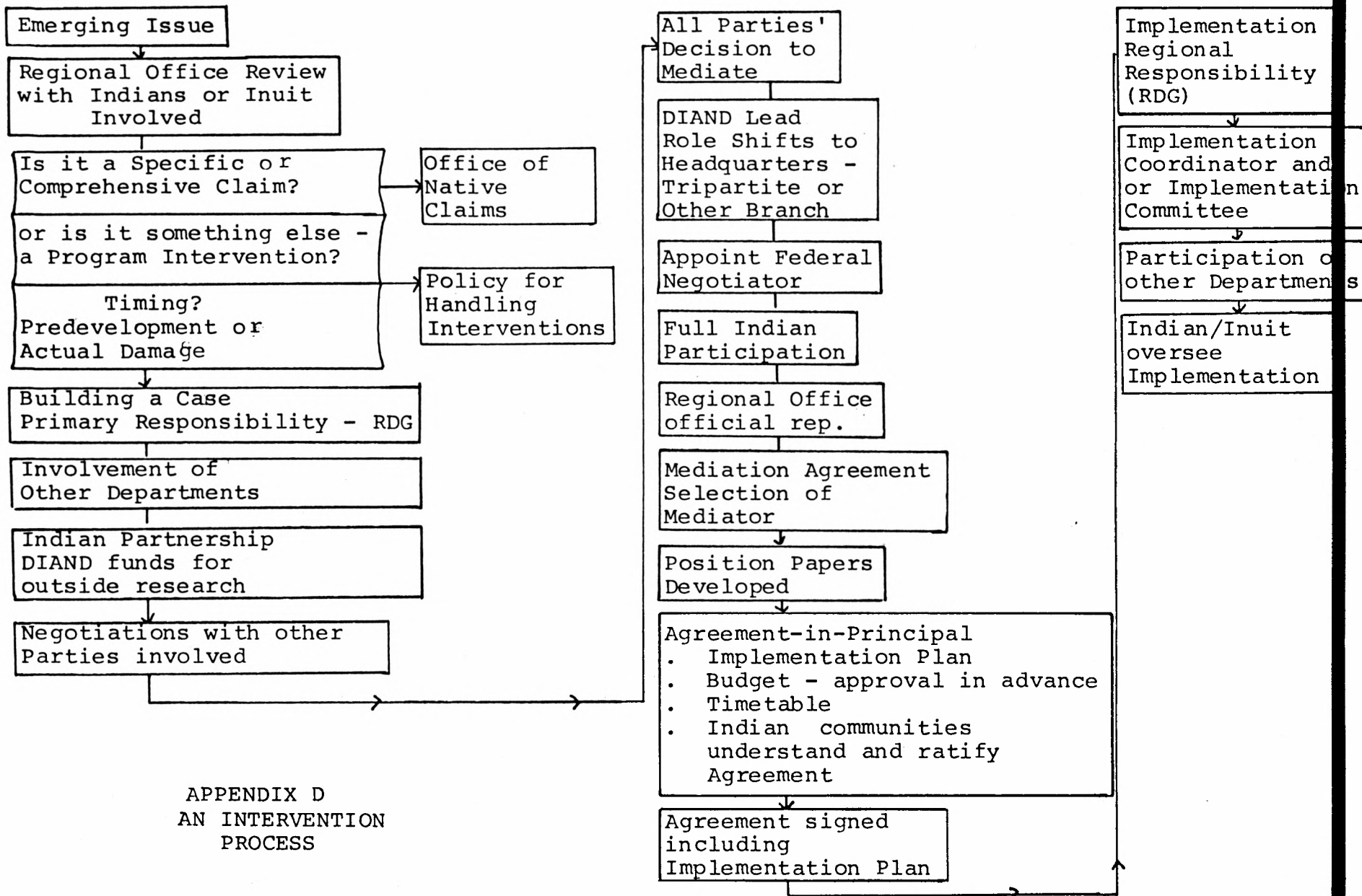
Churchill River
Nissi Falls
Southern Indian Lake
South Bay Channel
Nelligan
Thompson
First Rapids
Kelsoy
Bladder
Tenpeg
Nelson River
Upper Gull
Lower Gull
Kettle
Long Spruce
Limestone
Conawapa
Gilliam Island
Hudson Bay

Scale: 0 to 350 miles
Elevation: 0 to 700 feet above sea level



APPENDIX D

AN INTERVENTION PROCESS



APPENDIX D
AN INTERVENTION
PROCESS

STAGE ONE
BUILDING A CASE

STAGE TWO
MEDIATION

STAGE THREE

APPENDIX E

MEDIATOR'S POWERS

2/1/6

APPENDIX E

MEDIATOR'S POWERS ¹

The power to convene meetings of all parties to the Memorandum of Understanding at his sole discretion following a minimum notice of forty-eight hours;

The mediator may present verbally or in writing at his discretion, to any or all of the parties, suggestions for their consideration and response, with a view to alleviating adverse effects and with a view to arriving at a mutually acceptable resolution of any issue which is the subject of mediation;

To meet, at his discretion, with any one or more of the parties for a discussion of their position regarding any issue;

To determine the place of meetings to be held if the parties cannot agree on a mutually acceptable place of meeting; and

To adjourn or postpone any meetings he has convened.

¹ The list is taken from the Memorandum of Understanding between Canada, Ontario, the Grassy Narrows Band and the Islington Band, dated December 15, 1978.

Text of Northern Flood Mediation Agreement, dated February 13, 1976, is similar. Differences are in funding of Indian factfinder