

ISSUES AND OBLIGATIONS

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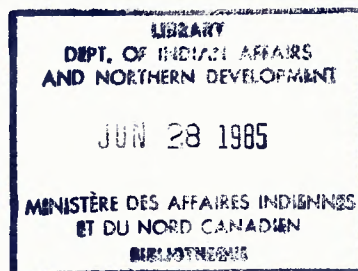
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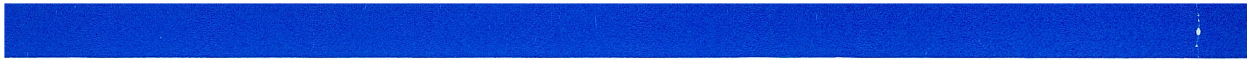
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NORTHERN FLOOD AGREEMENT
ISSUES AND OBLIGATIONS

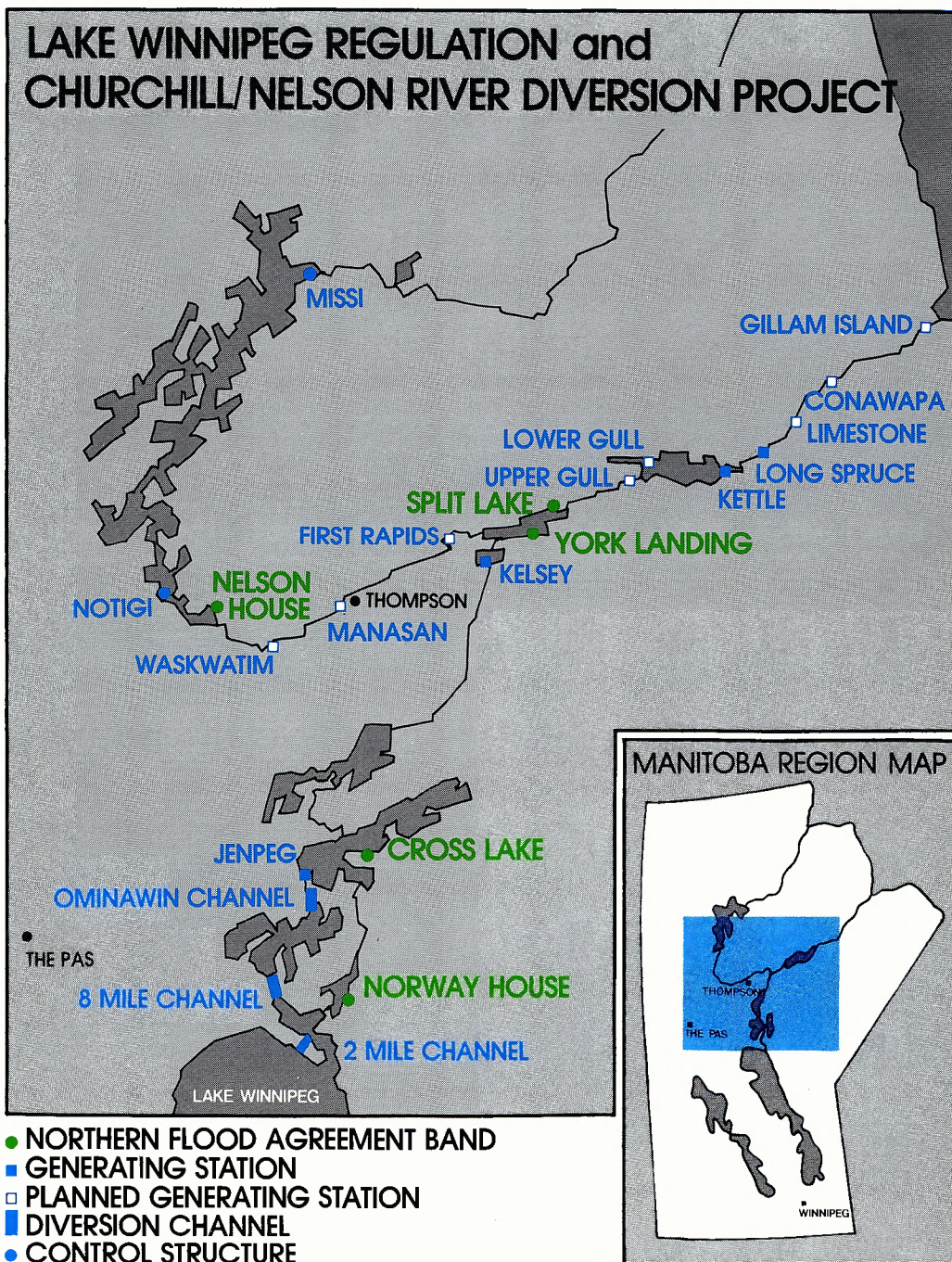
A
SUMMARY
OF THE
AGREEMENT





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During the 1960's, the need to increase the availability of hydro-electric power in Manitoba became evident to both Manitoba Hydro and the Province. To generate additional power, a large-scale project was undertaken — the Lake Winnipeg Regulation and Churchill/Nelson River Diversion Project. Basically, this project provided for the diversion of water from the Churchill River into the Nelson River watershed and the regulation of water flowing out of Lake Winnipeg.

As a result of the Project, about 528,000 acres of land in northern Manitoba were flooded. Approximately 11,681 of the flooded acreage affected Reserve lands at Cross Lake, Nelson House, Norway House, Split Lake, and York Landing. The Reserve area flooded represented 19 percent of the total lands of these five Reserves.

The Project also effected changes to the water levels of several northern Manitoba rivers, lakes, and streams situated either within the Reserves or areas traditionally used by residents for fishing, hunting, and recreation. These environmental changes continue to have serious effects on the way of life of the 7,560 native people (1982 population) living on

the Reserves and surrounding Crown lands.

To ensure those residents living on Reserves adversely affected by the Project would be dealt with equitably, the Northern Flood Agreement was signed (December, 1977) by the Province of Manitoba, Manitoba Hydro, Canada, and the Northern Flood Committee (representing the Indian Bands of Cross Lake, Nelson House, Norway House, Split Lake and York Factory).

The Northern Flood Agreement, ratified by the Bands in 1978, sets out specific and general obligations and undertakings for all the signatories. In addition, it provides for the appointment of an Arbitrator who is responsible for hearing any claim or dispute among the signatories over matters either attributable to the Project or the implementation of the Agreement.

By virtue of its responsibility for Status Indians and because Reserve lands are affected by the Project, the Government of Canada is committed to assisting the Bands obtain their entitlements under the Northern Flood Agreement and to facilitating cooperation among the signatories so that improved social and economic conditions are achieved in the Bands' communities.

The Northern Flood Agreement addresses a number of specific, yet interrelated, issues in areas such as environmental impacts, traditional pursuits, land entitlement, community infrastructure, community planning and employment development.

These issues, and the obligations of the signatories related to these issues, are the subject of the 25 Articles and 8 Schedules of the Northern Flood Agreement.

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Article 1

Article 1

Definitions *

This section describes the meaning to be given to words or terms used in the Northern Flood Agreement. There are technical terms which may not be familiar to the general reader, or common words which have a specific meaning in the Agreement.

Resident - Any individual person who is a member of one of the 5 Bands and whose principal residence is on the Reserve.

Person - Someone who is a member of one of the 5 Bands or any group, unincorporated association, or corporation whose membership is wholly or substantially made up of Band members.

Community - All persons resident on a Reserve; (non-treaty Indians and Métis whose residences are adjacent to a Reserve are not included in this definition).

Settlement - This includes "community" (Reserve residents) as well as non-treaty Indians and Métis whose residences are adjacent.

Severance Line - The Hydro Project has caused some Reserve lands to be flooded. Generally,

the change to water levels has differed for each Reserve. The height of the water has varied depending on Hydro operations, the time of year, wind, and other factors. There is, however, a height of land on each Reserve beyond which the waters are not expected to rise. This upland boundary is referred to as a "severance line". As a general rule, no new building is to be constructed below the severance line because of the possibility of flooding, and owners of buildings constructed below the line before the signing of the Agreement are to be compensated should they be adversely affected.

Static Inundation Level - The height to which the water may rise, with wind effects eliminated; this is lower than the severance line.

Easement Land - This is the land between the severance line and the shoreline and therefore subject to flooding.

Affected Lands - This is another term for "easement land".

Easement - The Agreement requires that, for every acre of land subject to flooding ("easement land"), the Province is to transfer 4 acres of land to Canada, to be set aside as

Reserve land. When this transfer of land to the Reserve takes place, Canada will grant to Hydro a legal "easement" which allows Hydro to flood the "easement land" without being liable for any loss or damage to the land caused by this flooding. The "easement" will also authorize Hydro to enter the Reserve to access the "easement land" in order to carry out bank protection and maintenance, etc.

Mitigatory Measure - This refers to any action taken to prevent, reduce, or ameliorate an adverse effect of the Hydro Project.

Remedial Measure - This refers to any action taken to enhance, preserve or replace property, land, or land use activity adversely affected by the Hydro Project.

* Where more precise wording or further detail is of interest, please refer to the Northern Flood Agreement itself.

Articles 2 - 3

Article 2

General Provisions

— Canada and Manitoba are to take appropriate steps necessary to implement the Agreement.

— Canada's obligations under

this Agreement are limited to Status Indians.

— The Programs of Canada and/or Manitoba to the NFA Bands are not to be reduced by entitlements under the Agreement.

— Any claims by the York Factory Band at York Landing will not be prejudiced by the fact that Reserve boundaries have not been established.

Article 3

Land Exchange

— Manitoba is to prepare, for the Parties' review/approval, reports showing the location of the proposed severance lines.

— Hydro is to use practical means to control the level and flow of water to prevent any flooding of Reserve lands lying between the static inundation level and the severance line.

— Generally there is to be no construction on the easement land because of the possibility of flooding.

— For every acre of affected land the Province of Manitoba is to transfer 4 acres of Provincial Crown Land to Canada for the use of the Bands.

— Each Band is to identify the parcel(s) of land it wishes to have transferred. These land parcels

Articles 4 - 5

are to be selected from Provincial Crown lands which are not otherwise occupied, allocated or encumbered and which are within the area commonly used by the Band in its traditional pursuits.

- The Band may exchange lands initially selected for other lands within 5 years of the date of the Agreement.

- Manitoba is to undertake all legal surveys required.

- Canada is to grant an easement to Manitoba Hydro on all lands below the severance line established for each Reserve.

Article 4

Land Use

- Manitoba is to withhold from any other use for a period of 5 years, and to set aside for each Band, a "hold area". While not explicitly defined in the Agreement, a "hold area" is generally considered to be a large tract of land from within which a Band may elect to use one or more parcels. The Agreement does not state for what kind of uses the Band may select land parcels, but examples of prudent use would be logging or gravel extraction.

- Manitoba is to issue a permit

to allow the Band to have exclusive use of the land selected without a fee of any kind. The Band may ask to have the permit revoked if it no longer requires the land and may select other land from within the "hold area" to replace it.

- Bands are to ensure that the land is used prudently, and Manitoba may revoke the permit where the land parcel is no longer being used by the Band.

Article 5

Navigation

- Reserve residents are to enjoy free and normal navigation of the waterways.

- Manitoba and Hydro are to remove obstructions to navigation caused by the construction of the Footprint and Minago River Causeways; construct and maintain a portage facility at Notigi Dam; clear standing trees, remove debris; and maximize free and normal use of navigable waters.

Articles 6 - 9

Article 6

Quality of Water

— Canada is to ensure the continuous availability of potable water on each Reserve. The quality of the water is to meet health and safety standards.

— Hydro is to reimburse Canada 50% for expenditures incurred in providing potable water to any Reserve, where such expenditures are attributable to adverse effects of the Project.

Article 7

Cemeteries and Objects of Cultural Significance

— Hydro is to make available money and/or equipment and supplies to protect the remaining cemeteries from flooding.

— Each Band Council is responsible for the nature, quality and performance of the works required.

— Hydro is to make every reasonable effort to preserve objects of cultural significance, such as the Footprint and Chair at Nelson House.

Article 8

Maps

— Hydro is to provide to each

Band Council:

- Maps of each community showing the affected lands, including the static inundation level of each Reserve, and
- A map or maps indicating areas which may occasionally be unsafe for travel as a result of the Project.

Article 9

Notice to Parties

— Hydro is to notify each Band Council and Indian Affairs of its plans, and of its intention to prepare plans for future developments affecting the Rat, Burntwood, Lower Churchill, or Nelson Rivers, where such development could affect the residents of the Reserves.

— Hydro is not to make any decisions regarding such future developments before having undertaken meaningful consultation with the communities.

— Hydro is to notify the Bands affected, and Indian Affairs, at least 2 weeks before making any operating changes affecting water levels and/or flows. Notice is to be written, and communicated by radio in English and Cree.

Articles 10 - 12

Article 10

Minimization of Damages

— To minimize wildlife destruction Manitoba is to control water levels and flows, to the extent practical.

— Hydro is to consider constructing a control structure near the outlet of Cross Lake to restore the pre-Project pattern of seasonal changes in lake levels.

Article 11

Accident, Disability and Life Insurance

— A group life, disability and accident insurance policy to cover the residents of the community is to be considered; the Arbitrator is to determine the practicability of such insurance and determine who would bear the cost of the premiums.

Article 12

Community Infrastructure

— Hydro is to pay for works to protect or restore community infrastructure, shorelines and/or residents' property which may be adversely affected by the Project. The works are to conform to the physical development plan adopted by the community; if

urgency requires interim works, these may be modified at Hydro's expense where the works are detrimental to the physical development plan.

— Examples of works are:

- shoreline protection
- restoration of eroded or slumped shorelines
- construction of new beaches
- replacement of docks
- shoreline clearing
- protection and/or relocation of roads, houses, other structures
- alternate recreation opportunities or facilities
- alternate transportation facilities.

— Canada and Manitoba are to provide assistance and training as necessary so that work is done by Reserve residents to the extent practical.

— A capital grant is to be paid by Hydro and/or Manitoba to the Bands. The interest is to pay for costs of maintenance, depreciation, operation, repair or replacement of the works. The Bands are to report annually regarding the amount expended and the balance remaining. The adequacy of the capital is to be reviewed annually.

Articles 13 - 15

Article 13

Additional Clearing

— Hydro is to arrange for clearing of trees where inundated or damaged trees in the vicinity of a community are adversely affecting the residents' use of the shoreline.

Article 14

Policy Matters

— Recognition that certain Articles (15, 16, 17, 18) involve government policy.

— The Arbitrator is not empowered to order implementation of government policy or to prevent government from changing its policy. He may fix damages where a dispute arises concerning the implementation, or timeliness of implementation, of Articles 15, 16, 17, 18.

— However, the Arbitrator may award damages only to the extent that the full and timely implementation of Articles 15, 16, 17, 18 constitutes compensation attributable to the Project. If a claim arises by virtue of a policy change, then the amount of damages to be awarded is dependent on the resultant diminution in compensation.

Article 15

Wildlife Resources Policy

— Manitoba is to grant to Reserve residents first priority to all wildlife resources within their Resource Area (i.e. in their Trapline Zones and in the rivers and lakes traditionally used as a source of food supply, income-in-kind and income).

— Where Resource Areas are adversely affected, Manitoba is to use its best efforts to make available new Resource Areas.

— Manitoba is to prohibit hunting, trapping and fishing in the Resource Area by non-residents who did not have the previous legal right to do so. The exceptions are that:

- a controlled season may be permitted where there is an overabundance of a species;
- interests of individuals permanently resident in or near a Resource Area and who have habitually hunted, trapped or fished in the Area, will be taken into account.

— Manitoba is to establish a Wildlife Advisory and Planning Board (WAPB).

— Residents of the Reserves are to have majority representation on the WAPB.

— The WAPB is to consider and

recommend on all matters affecting wildlife within the Resource Area, including:

- monitoring wildlife resources
- advising on overabundance of species and maximum kill
- promoting effective wildlife management practices
- formulating and recommending programs consistent with the perpetuation of wildlife or with the continuation of harvesting of wildlife resources.

— Manitoba is to provide Reserve residents with training opportunities for employment as Conservation Officers.

— Manitoba, Canada, Hydro and the Bands are to facilitate and encourage the functions served by the community traplines. Community traplines provide a food supply and income supplement for the elderly or infirm, the opportunity for youth to learn wildlife harvesting skills, and recreational activities.

— Manitoba and/or Hydro are to implement a program to facilitate the contribution made by the community traplines.

to the five Bands for the formulation of Community Development Plans.

— Canada agrees to provide professional planning assistance to the five Bands, within the limits of the community planning budget of the Manitoba Regional Office of Indian Affairs and Northern Development.

— Canada and Manitoba are to implement any Plan recommendations they deem to be practical.

— Canada and Manitoba are to coordinate such Plans with government plans as provided for in Schedule "E" of the Agreement.

Article 17

Environmental Impact Policy

— Hydro, Canada and Manitoba are to implement those recommendations of the Lake Winnipeg, Churchill and Nelson River Study Board Report (LWCNRSB) which affect the Reserves and fall within their jurisdictions.

— Manitoba and Canada are to advise the Band Councils of relevant recommendations and which government(s) will implement each recommendation.

Articles 16 - 17

Article 16

Planning Policy

— Canada and Manitoba are to cooperate to provide resources

— Hydro, Manitoba and Canada are to report annually on implementation.

— Federal-Provincial Agreements related to LWCNRSB recommendations are to be reported to Band Councils.

— Hydro, Manitoba and Canada are to plan and implement a program to monitor adverse effects of the Project.

for employment, to the maximum possible extent, in all works and operations related to the Project.

— Manitoba is to report to the Bands every three months on the steps taken and the results achieved.

Article 19

Registered Trapline Program and Fishing Program

— Trappers adversely affected by the Project are to be compensated under Hydro's Registered Trapline Program (RTP) of November 7, 1975 (NFA Appendix "D"). This is an interim program and a trapper who receives benefits under the RTP does so on a "without prejudice" basis.

— The RTP is to be reviewed, and amended if necessary, to provide for equitable compensation regarding all adverse Project effects on trapping activities within the Resource Areas and to encourage community trappers to continue to trap.

— Retroactive compensation is to be paid if the amended Trapline Program provides for greater compensation than does the 1975 Program.

Articles 18 - 19

Article 18

Miscellaneous Policy

— Canada and Manitoba are concerned that any damage to the interests, opportunities, lifestyles and assets of resource users be compensated appropriately and justly.

— Canada and Manitoba are to try to avoid creating inequities within any settlement that would adversely affect the relationship between a community and other residents of a settlement.

— Hydro, Manitoba and Canada are to use their best efforts to make potential benefits of the Project available to Reserve residents.

— Canada, Manitoba and Hydro are to provide opportunities for education, training, and particularly on-the-job training, to Reserve residents to prepare them

— The Parties are to negotiate, and Manitoba and/or Hydro are to fund and implement, a program with regard to adverse Project effects on fishing activities. The program is to provide compensation, encourage continuation of fishing activities, and provide for retroactive payment for adverse Project effects pre-dating the Agreement.

Articles 20 - 22

Article 20

Community Liaison Committee

— Hydro and Manitoba are to establish the "Community Liaison Committee" (CLC). The CLC is to consist of 2 members from each Band, 2 from Manitoba, and 2 from Hydro.

— Information concerning Hydro plans and operations is to be made available to the CLC who are to consider how information can best be made available to Reserve residents.

— A specific action program is to be developed. The program could include local workshops, local liaison officers, radio, TV, film, or publications in native languages.

— Parties acknowledge that effective implementation of the Article requires their support.

Article 21

Employment Task Force

— The Parties are to establish an Employment Task Force (ETF) with a representative from each Band, the NFC, Hydro, Manitoba and Canada, to advise on the employment of Reserve residents in works related to the Project.

Article 22

Remedial Works

— Some remedial works at Cross Lake and Nelson House (NFA Schedule "F") are essential engineering requirements for the operation of the system and are to be completed by Hydro with the maximum possible involvement of Reserve residents.

— Other remedial works (NFA Schedule "G") are to be undertaken at the discretion of the Cross Lake and Nelson House Bands and Neyanun. Hydro is to make available to Indian and Northern Affairs Canada (INAC), in trust on behalf of Neyanun, funding set forth in Schedule "G".

— Hydro is to capitalize a fund to provide for maintenance, depreciation, operation, repair and replacement of the Schedule "G" remedial works at Cross Lake

Articles 23 - 25

and Nelson House.

— Other remedial works necessary in the five Reserves are to be similarly funded, unless the works are essential hydro operation requirements.

— Hydro is to provide engineering advice or assistance.

— The Bands, Neyanun and Canada are to release Hydro and Manitoba, and the Bands are to release Canada, from any liability with respect to the remedial works.

Article 23

Other Matters

— No community is to be compelled to relocate to escape Project effects. If any community or portion chooses to relocate, NFA entitlements are not to be diminished by such relocation.

— Where any claim arises by virtue of an actual or purported adverse effect of the Project, the onus shall be on Hydro to establish that the Project did not cause nor contribute to the adverse effect.

— Disputes between Canada, Manitoba and/or Hydro concerning the apportionment of liability or of costs attributable to the effects of the Project are not to cause delay in implementing any programs or projects ordered pursuant to this Agreement or

which arise as a result of government policy.

Article 24

Arbitration

— The Article encompasses 37 sections and numerous sub-sections dealing with the selection and powers of the Arbitrator, Arbitration procedures, admissibility of evidence, time limitations for claim submission, the Parties' obligations to make information available, and the Parties' implementation of Arbitration Orders.

Article 25

Duration and Successors

— The Agreement, with the exception of Article 24, is to remain in force and be binding on the Parties for the lifetime of the Project, including any substantially similar redevelopment thereof.

— Wherever this Agreement gives the Northern Flood Committee any rights, powers or obligations as a Party, in the event that the Committee ceases to represent the Bands, then these rights, powers and obligations shall devolve on the Bands or on any new entity designated by them as their representative.

Schedules A - E

Schedule A

Northern Power Development Schematic Drawing

Schedule consists of a drawing of the planned development of the Hydro project.

Schedule B

Registered Trapline Zones

Schedule consists of 5 maps identifying the boundaries of each of the registered traplines allocated to the Bands of Cross Lake, Nelson House, Southern Indian (where part of the Nelson House Band is located), Norway House, and Split Lake. There is no Resource Area shown for the York Factory Band at York Landing as they did not have a Resource Area at the time the Agreement was signed.

Schedule C

Nelson House Protected Severance Lines

Maps of the Nelson House area showing the location of the protected severance line and proposed remedial measures, particularly shore protection.

Schedule D

Hydro's Registered Trapline Program

Schedule is a copy of the Registered Trapline Program (RTP) as of 1975. The RTP is to provide compensation for loss of fur production and to encourage efficient use of existing fur resources. The Program provides for income assistance, support payments, and other benefits and applies to all trappers whose trapping activities are affected by Manitoba Hydro operations in Northern Manitoba.

Schedule E

Community Development Planning

Schedule is companioned to NFA Article 16. It provides that the Parties will work together, coordinating their departmental programs and financial resources to prepare, for each of the communities, a comprehensive Community Development Plan. Non-treaty residents may participate equally and benefit equally from the community planning process. The Community Development Plan is to set forth

the best case community development scenario and joint action program for the improvement of physical, social and economic conditions in the communities.

settlement, as well as a listing of prior commitments against these lands which are to be considered in any final settlement.

Schedules F - H

Schedule F

Identified Remedial Works

Schedule indicates costs of certain construction and other works to be completed by Manitoba Hydro on the Nelson House Reserve.

Schedule G

Funding of Remedial Works to be Done by Nelson House and Cross Lake Bands

A list of works (building relocation, shoreline protection, dock improvement, etc.) to be completed by Cross Lake and Nelson House residents and the cost/payment of each.

Schedule H

Map of "Hold Area"

A map showing the Provincial Crown land reserved for the Nelson House Band pending final

The Economic Development Agreement is a separate, but companion, agreement to the Northern Flood Agreement. It was signed on September 1, 1977, by the Province of Manitoba, Manitoba Hydro, the Northern Flood Committee, and Canada. It is referenced in the Northern Flood Agreement and forms a part of the compensation negotiated by the Northern Flood Committee on the Bands' behalf.

The Economic Development Agreement establishes an economic development program through the creation of a Development Corporation.

There are 10 major provisions of the Economic Development Agreement:

- 1) The Development Corporation is to be established within 6 months of the Agreement.
- 2) The Development Corporation objectives are to promote and encourage the creation, diversification, or development of business, resources, properties, and industries for the purpose of stimulating maximum economic opportunities for the Bands and their members and of contributing to their general economic well being, including:

- providing funds for the establishment of business enterprises,
- engaging in enterprises consistent with its objectives,
- acting as a financial resource and fostering and/or interacting with local financial services such as credit unions.

- 3) The Development Corporation is to be owned by the Bands and managed by a Board of Directors, with representation by each Band, Canada, and Manitoba. Canada and Manitoba are to constitute a minority representation on the Board.
- 4) Canada and Manitoba are each to contribute the sum of \$1,600,000.00. Payment is to be over a 4 year period.

Hydro is to make available to the Department of Indian Affairs and Northern Development, in trust for and on behalf of the Corporation, the remedial works funding as set forth in Article 22 of the Northern Flood Agreement.

All of the funds are to come under the control of the Development Corporation.

- 5) The Development Corporation may, in accordance with lending criteria determined by its Directors, make funds

- available to the Bands and/or their members (or organizations, the majority of which are Band members) consistent with the objectives of the Development Corporation and, to the extent possible, in a manner recognizing the population distribution of the Bands.
- 6) The administration and overhead of the Development Corporation is to be in accordance with accepted business practices.
 - 7) The creation and funding of the Development Corporation is not to prejudice the Bands or their members in respect of any rights to benefits that they may be entitled to receive under existing federal or provincial programs. Such federal and provincial programs are to be administered so as to maximize the effectiveness of funds made available by the Development Corporation.
 - 8) The Parties' initial goal, in creating the Corporation, is to establish 1,000 jobs within five years.
 - 9) Canada and Manitoba recognize the special and essential requirements of the Corporation with regard to the

training of management and operational personnel and undertake to make available the training and other resources from on-going governmental programs to fulfill the requirements.

- 10) The Parties agree that the articles of incorporation and the organization framework of the Corporation is to be determined by the Bands subject to the laws of Canada and/or Manitoba.

Any dispute as to the meaning, intent, or application of any provision of the Agreement may be referred to the Arbitrator constituted pursuant to the Northern Flood Agreement.

The Development Corporation was formally incorporated on April 21, 1978 and is known as the Neyanun Development Corporation.

The Northern Flood Agreement was negotiated by the Province of Manitoba, Manitoba Hydro, the Northern Flood Committee, and Canada before either the hydro-electric Project became fully operational or the Project was fully constructed. The signatories realized it was not possible to foresee all the possible impacts of the Project nor all consequent remedial measures and compensation that would be appropriate.

Therefore, while the Northern Flood Agreement describes the general and specific obligations accepted by the signatories at that time, it does not always detail the precise activities to be undertaken by each of the Parties. The process of determining these impacts and of negotiating fair and equitable compensation continues.