

**E78**

**.M25**

**C3741**

**1984**

**c. 1**

**Northern Flood Agreement issues :  
background**

/ Indian and Northern Affairs Canada

Ottawa : Indian and Northern Affairs Canada., [1984]

F  
78  
.M25  
C3741  
1984

**nfa**

**northern  
flood  
agreement**



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

Canada 


**nfa**

**northern  
flood  
agreement**



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

Canada 

# BACKGROUND

**1966** Canada/Manitoba Agreement  
Northern Manitoba  
Hydro potential.

**1970** Construction starts

**1971** LWCNR Study Board vis  
possible impacts.

**1974-75** Negotiations

**1975** LWCNR report  
47 recommendations

**1976** Mediation

**1977, Dec.** NFA Signed

**1984 June** Federal decision  
to meet specific obligations

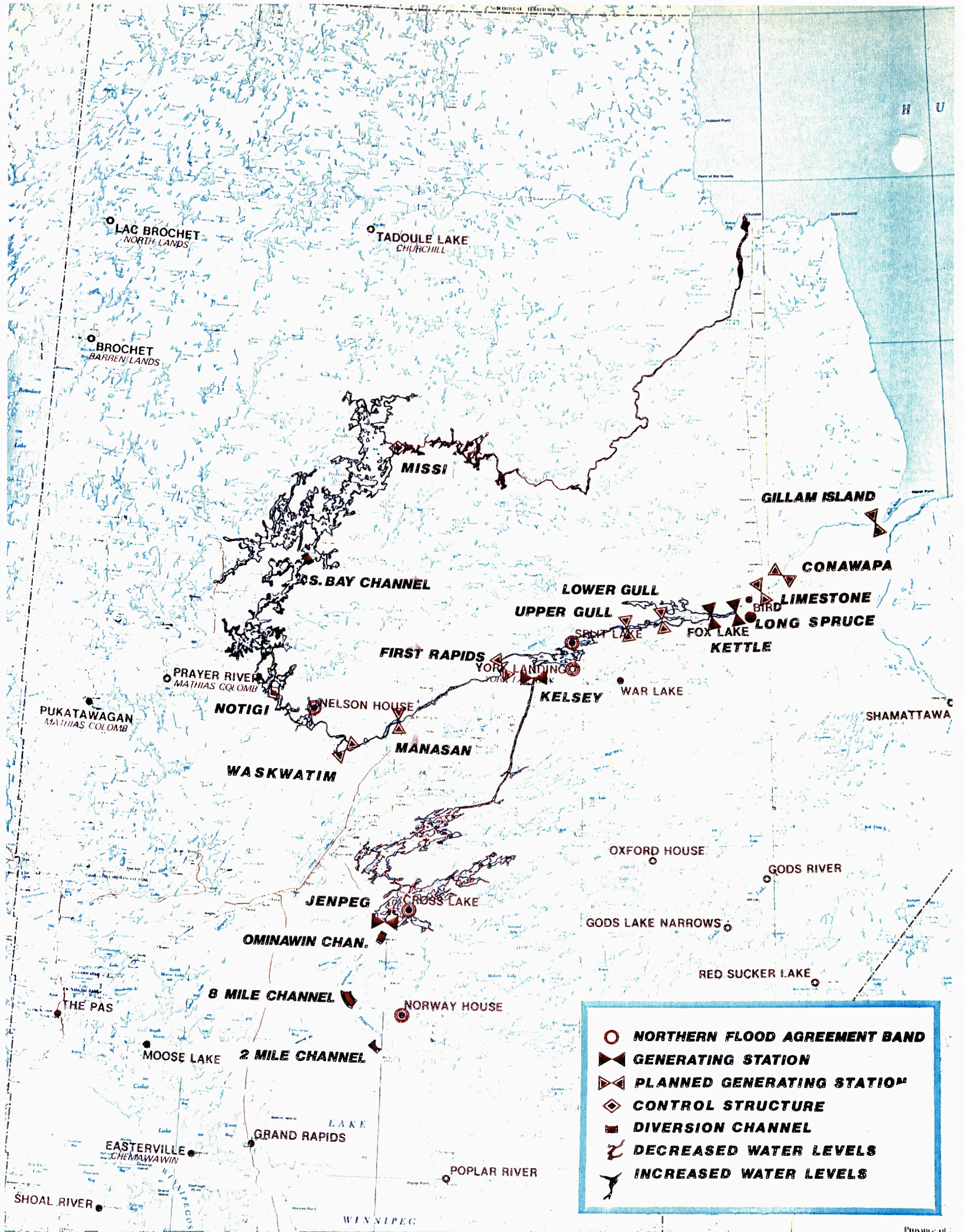
**1984**

4-party negotiations  
on selected issues

# ISSUE ...

- ● ● initiatives required to address failures to implement the financial, socio-economic and political commitments contained in the Northern Flood Agreement (NFA) to which Canada is a signatory.

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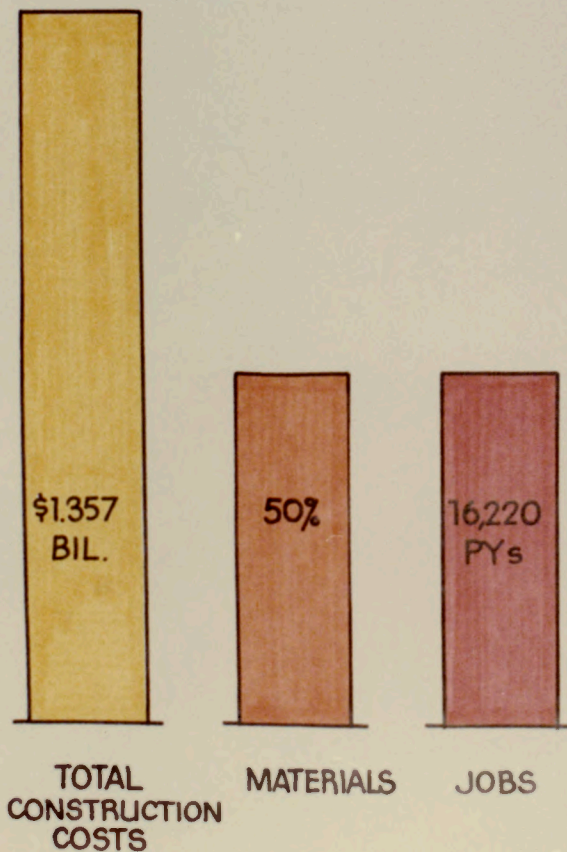


	<b>NORTHERN FLOOD AGREEMENT BAND</b>
	<b>GENERATING STATION</b>
	<b>PLANNED GENERATING STATION</b>
	<b>CONTROL STRUCTURE</b>
	<b>DIVERSION CHANNEL</b>
	<b>DECREASED WATER LEVELS</b>
	<b>INCREASED WATER LEVELS</b>

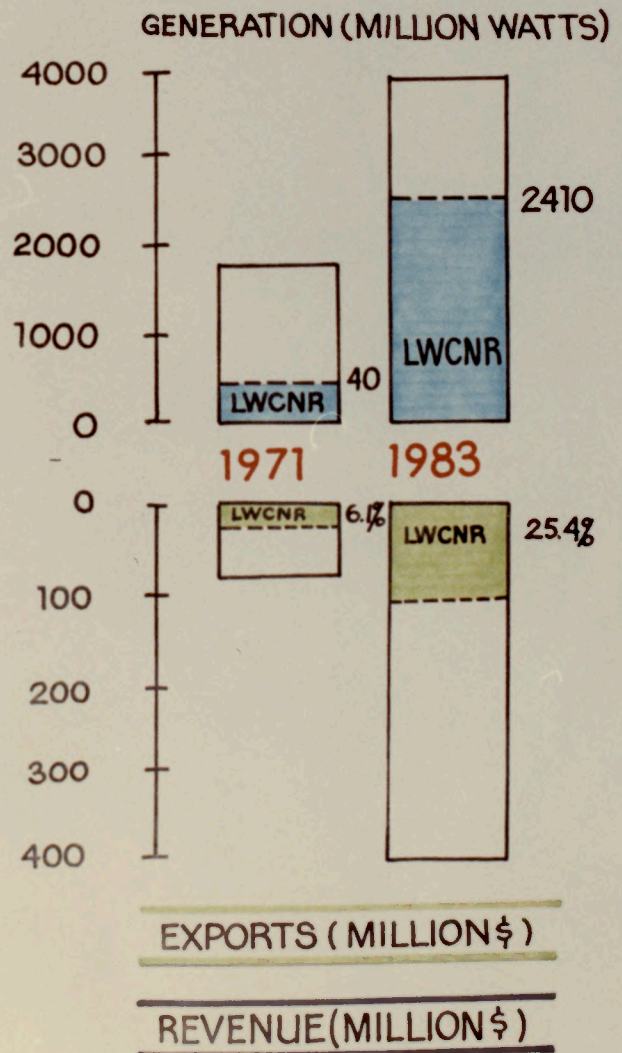
# Financial/Political GAINS

## LWCNR PROJECT

Provincial expenditure  
on Canadian goods and  
services.



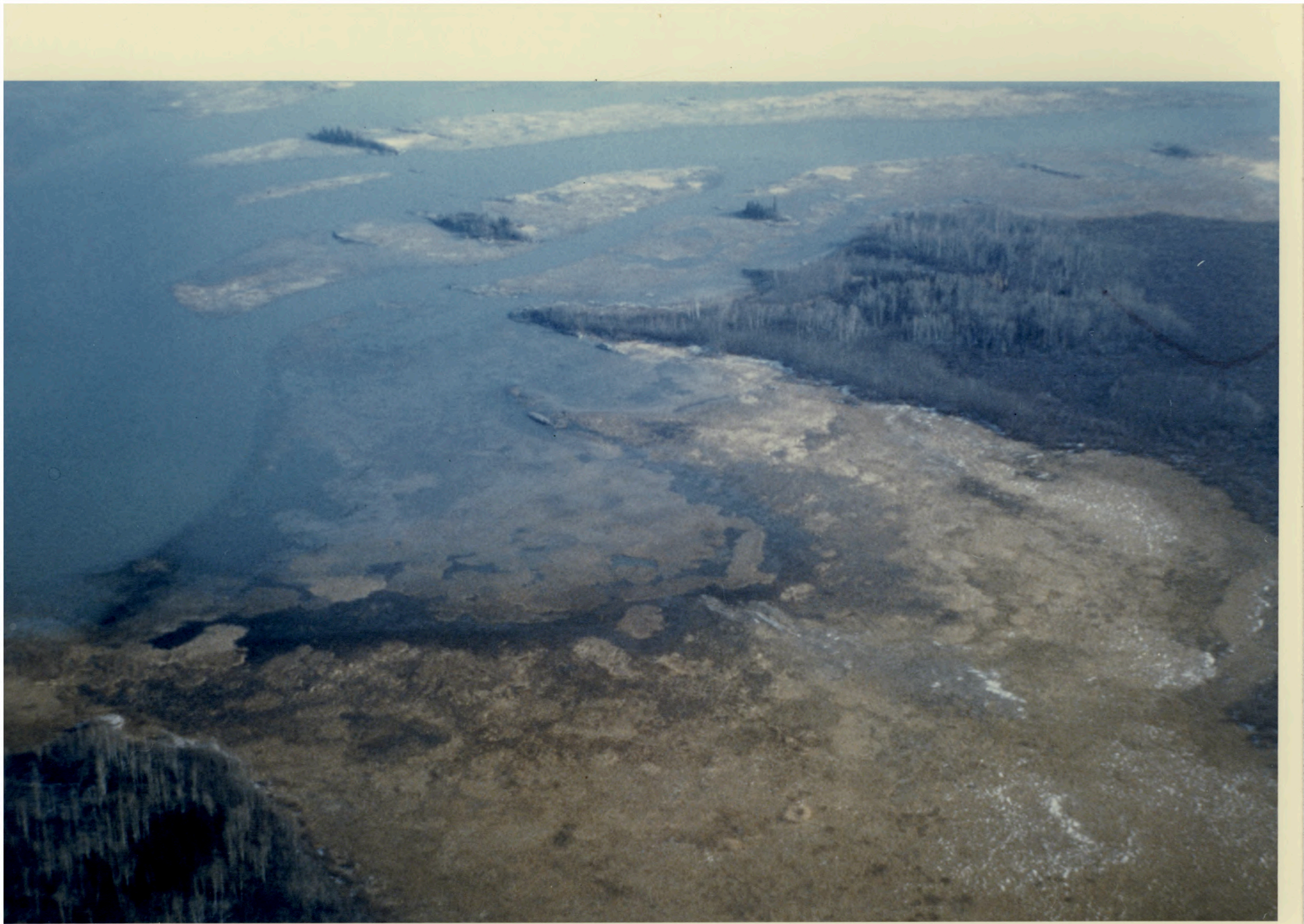
Increased renewable  
energy production  
and export revenues.















# NFA Provisions

## OVERVIEW

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Recognized damages not foreseeable.  
Provisions general and flexible.  
Specifics to be subsequently negotiated / discussed.

## SPECIFIC

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- Land exchange and rights   ● navigation rights
- Fishing / trapping income compensation
- Remedial measures   priority use of wildlife
- Contingent liabilities / remedies
- \* ● Economic development and employment / training.
- Access to information and decision-making  
involvement vis environmental matters and  
future Hydro projects.
- \* ● Federal-Provincial-Indian Comprehensive Community Planning.
- Mercury pollution.
- Damages-in-lieu-of past performance.
- \* ● LWCNR recommendations.  
ecological / socio-economic monitoring .
- Disputed liabilities and costs... "not cause for delay"  
(requiring "front-end" mechanism and cost recovery)
- Continued access to government programs,  
services and benefits.
- Potable water.

## SUPPORTIVE

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- Support Funding (NFC)
- Consultative.

## KEY :

- = Residual Involvement   ● = Canada's Obligations
- = Shared   \* Lead Federal Role

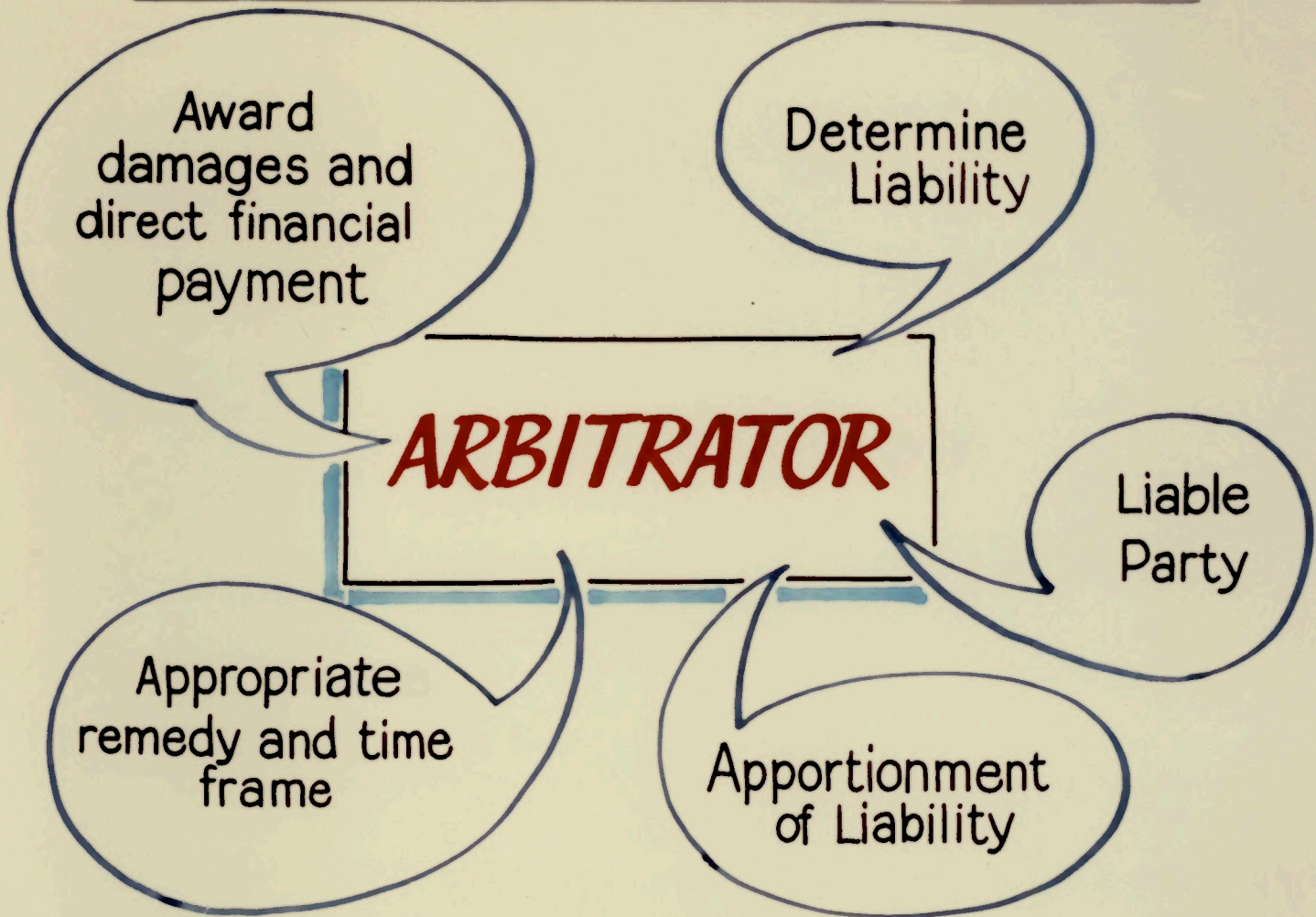
# INDIAN ALLEGATIONS

- Legal, moral and trust obligations to implement NFA not fulfilled by Canada, Manitoba or Manitoba Hydro.
- Failure to fulfill Agreement has worsened Band environmental, social and economic conditions.

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# ARBITRATOR

## POWERS



Impact VIS  
"Government Policy"  
and "Financial/Policy  
Decisions of Ministers  
and Parliament"

### ***PRESENT STATUS***

- ...145 CLAIMS FILED
- ... 55 WHERE CANADA INVOLVED
- ... 10 CLAIMS SETTLED
- ... 5 DISMISSED INACTIVE
- ..... OTHERS PENDING
- ..... OVER 1700 SMALL CLAIMS VS. HYDRO
- ..... SOME 29-40 CLAIMS  
SUBJECT OF NEGOTIATIONS.



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# ARBITRATOR

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- ◆ Original arbitrator:  
Justice Ferg. (1979-84)

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- ◆ Resigned, March 1984  
due to realignment of  
Manitoba court system.

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- ◆ Successor arbitrator:  
G. Campbell MacLean, Q.C.

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- ◆ Nov. 12-14, 1985 MacLean Tours  
Northern Flood Bands/  
Hydro Project.

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# Implementation FAILURE

## BY PARTIES :

- Provisions reflect compromise : details intended to be defined through implementation .
- Several issue - specific implementation mechanism but no overall negotiation/ coordination mechanisms .
- Agency/ jurisdictional responsibilities not clearly defined .
- Differences in interpretation SEEN by Hydro and Manitoba as renegotiation of NFA, by bands as failure to implement .
- No funding mechanism/ procedure .
- Fiscal management easier through arbitration than program initiatives .

# FEDERAL IMPLEMENTATION FAILURES

Canada, particularly DIAND, slow because of ....

- Uncertainty over Federal position on cost-sharing with Manitoba and/or Hydro.
- Lack of clear and coordinated policy advice to and decisions from Ministers.
- DEPT'L reluctance to act on an open-ended, undefined obligation.
- Inadequate continuity and number of persons.
- Inadequate financial resource/reluctance to prioritize commitments.
- Absence of inter-departmental policy coordination mechanisms.

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# SUMMARY

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## *IMPERATIVE CANADA FULFILL ITS SPECIFIC OBLIGATIONS & ENSURE IMPLEMENTATION BY PROPONENTS:*

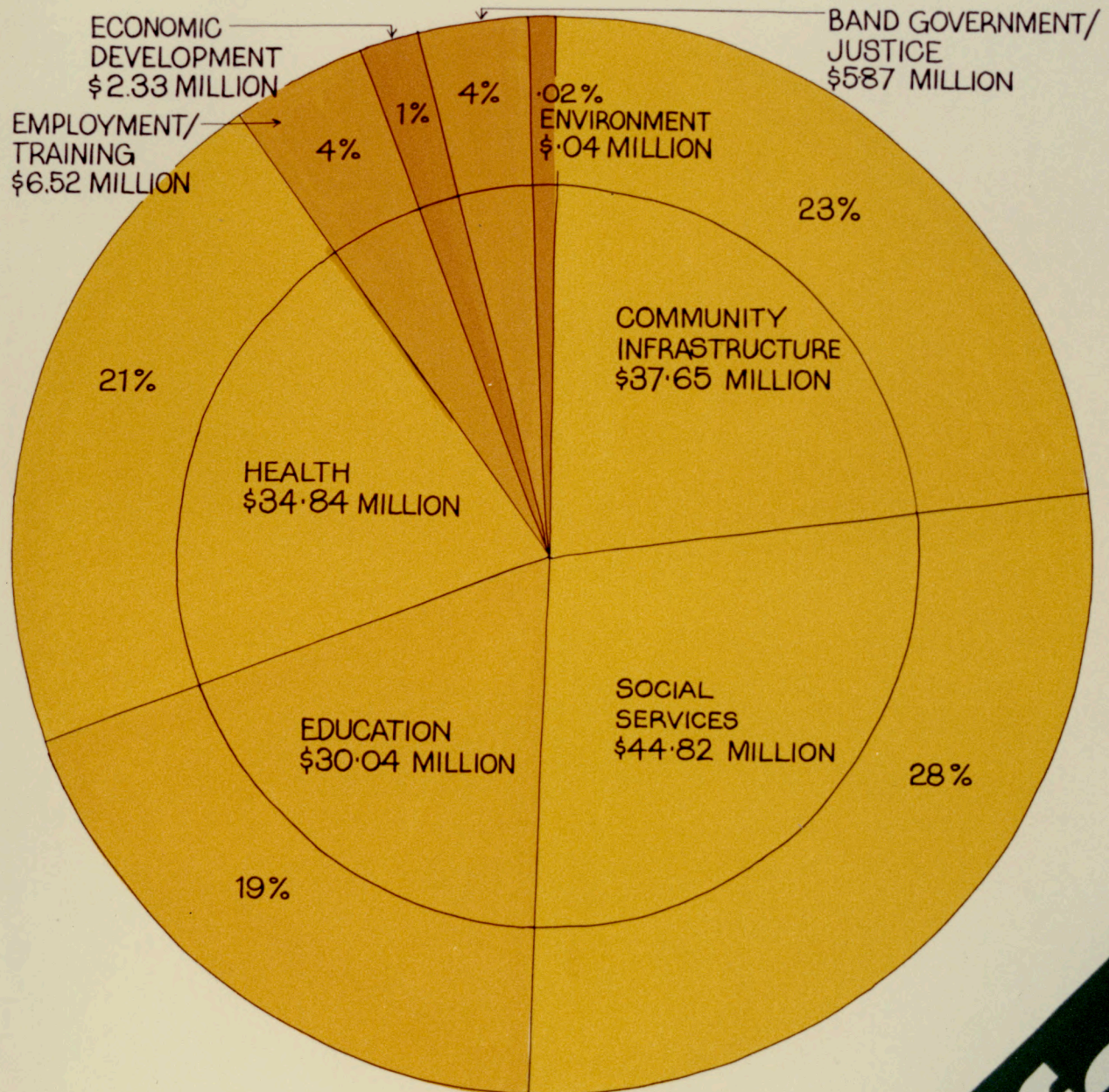
- 1** Arbitrator's wide ranging power and discretion impact:
  - Ministerial / Parliamentary discretionary policy and financial decisions,
  - Increasing liabilities for damages.
- 2** Environmental and Socio-Economic conditions at critical level. Canada's obligations constitute a significant element towards rectifying.
- 3** Unresolved obligations, open-ended Agreement may delay/halt further Hydro development which is a much needed Economic stimulus for Northern Manitoba: Limestone (1985-1992), Wuskwatim (1990-1997) and Conawapa (1993-2000).
- 4** Impact on National and Manitoba Indian issues (i.e., comprehensive and specific land claims, constitutional talks).



# Normal Federal Program Expenditures

NFA BANDS 1977 - 1984

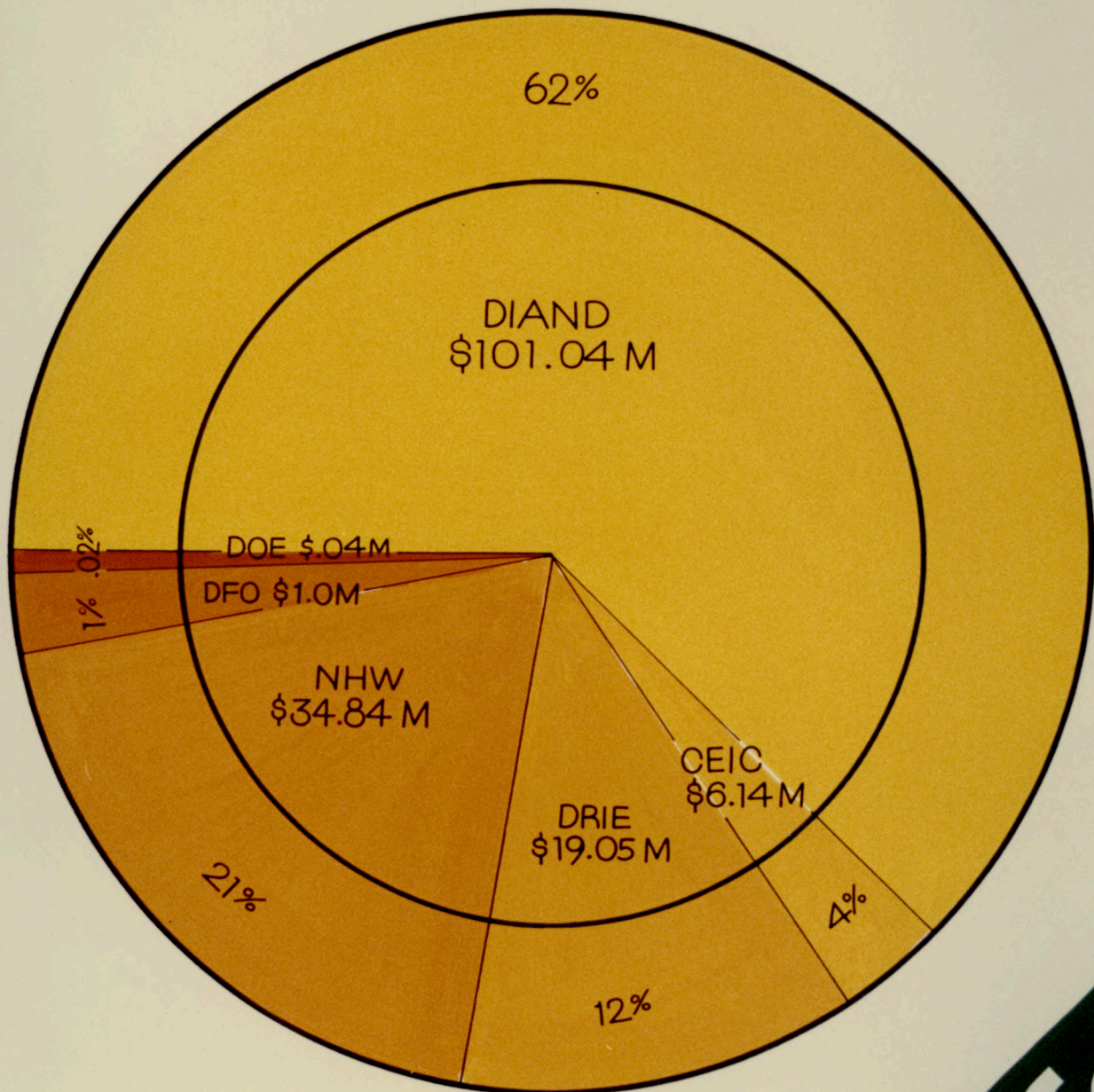
\$162.11 MILLION



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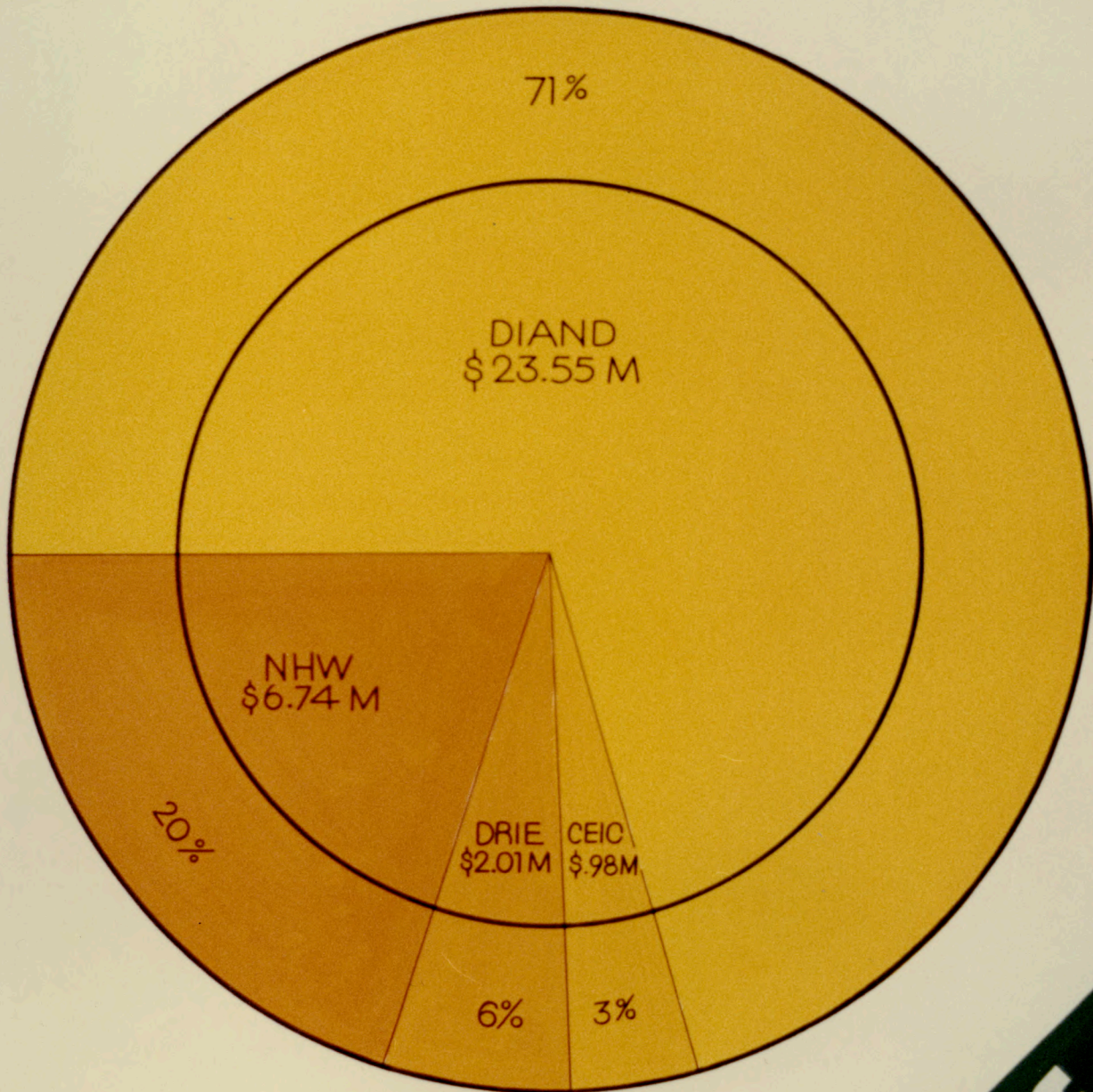
# Normal Federal Program Expenditures

NFA BANDS 1977-1984  
\$162.11 MILLION



# Normal Federal Program Expenditures

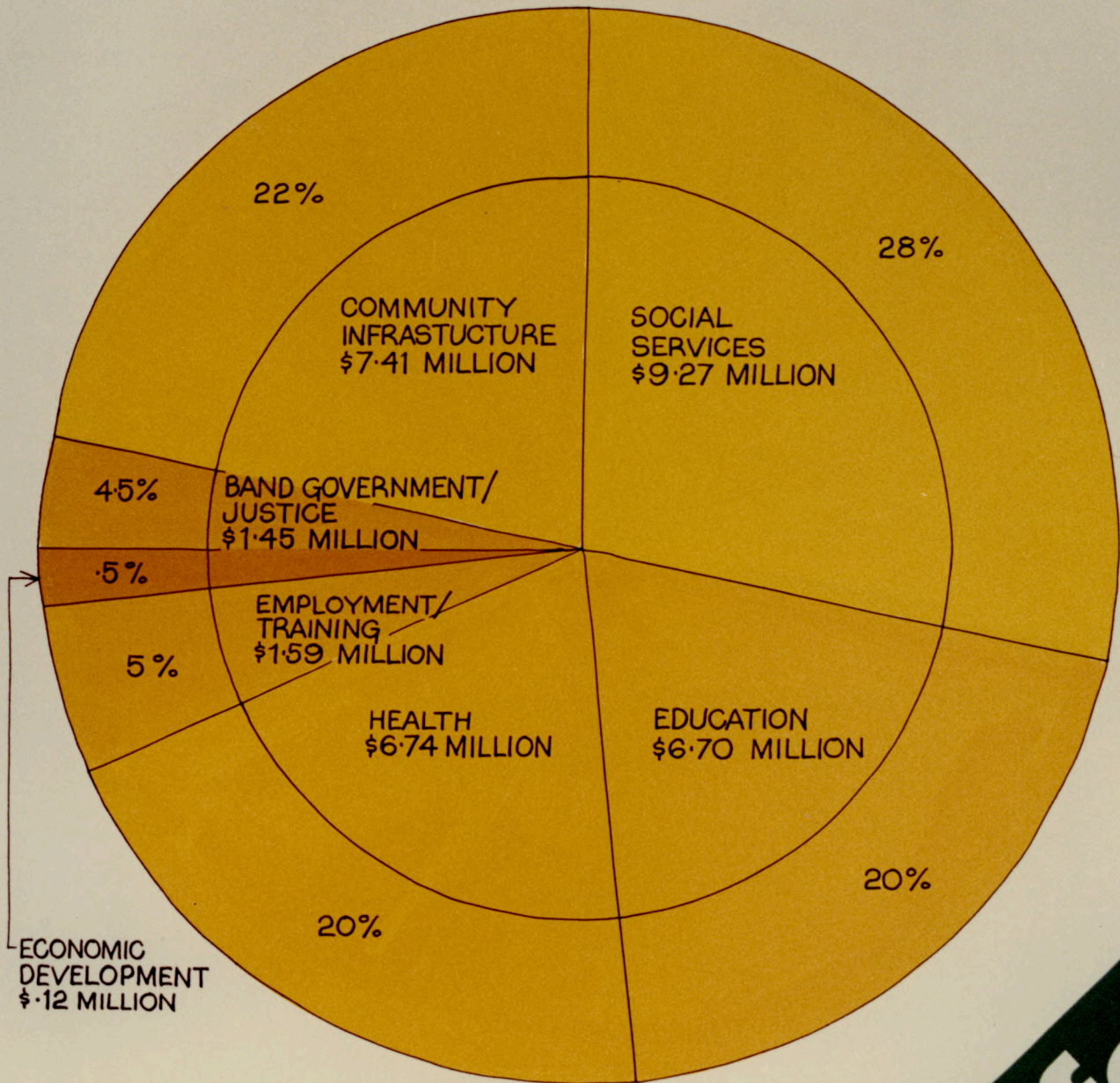
NFA BANDS 1983/84  
\$33.28 MILLION





# Normal Federal Program Expenditures

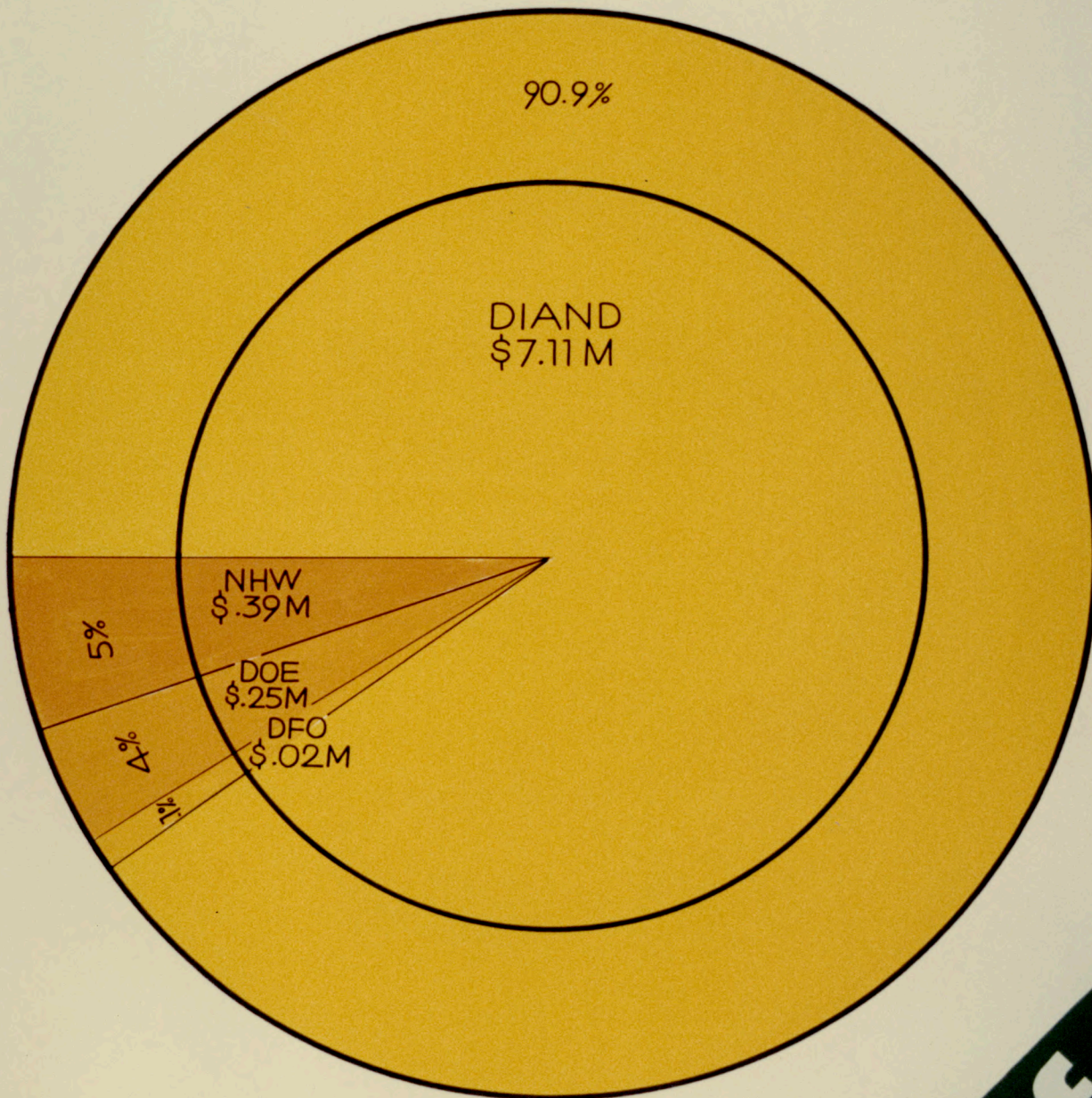
NFA BANDS 1983 - 1984  
\$33.28 MILLION



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# Specific Federal NFA Expenditures

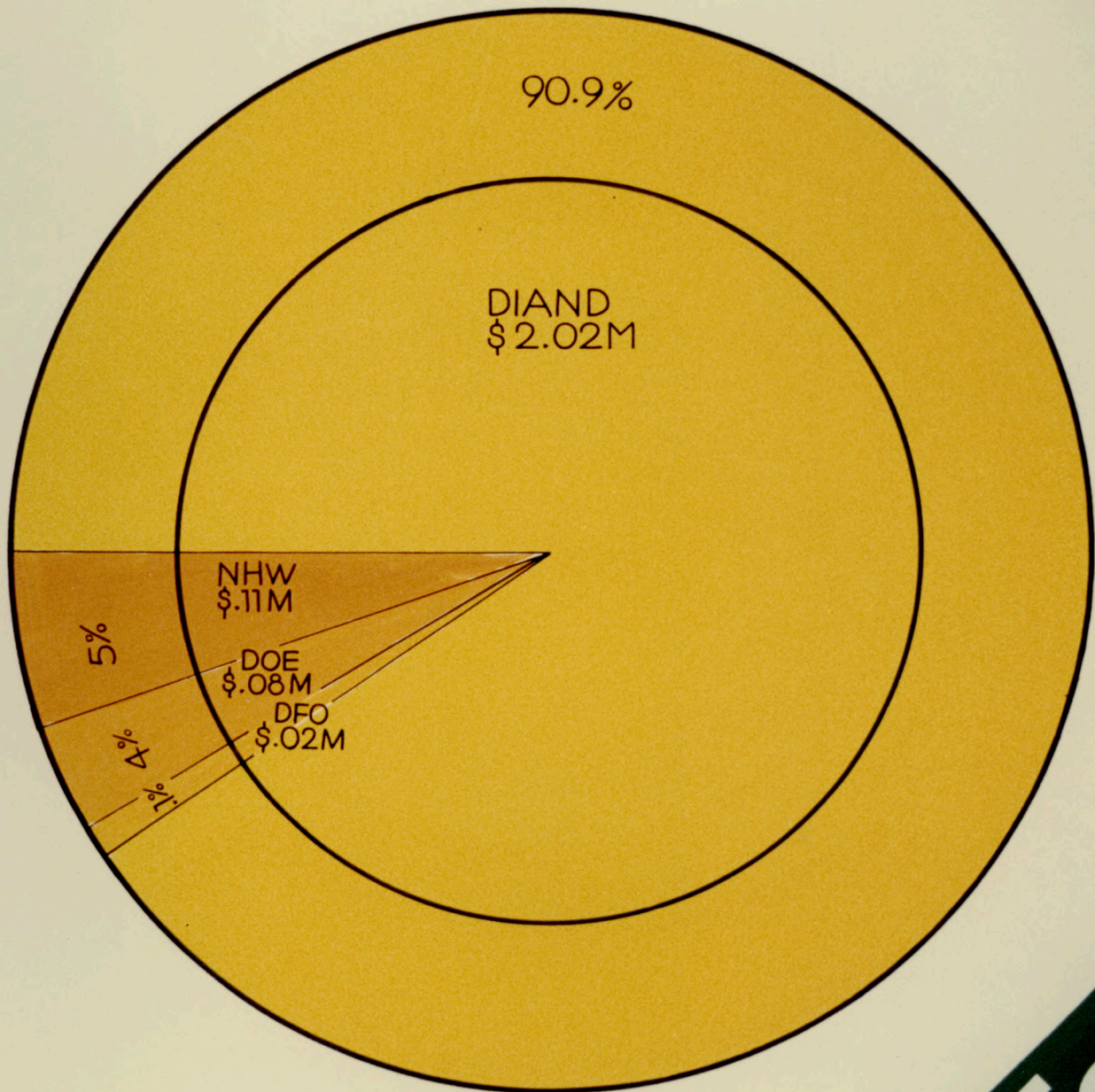
NFA BANDS 1977-1984  
\$7.77 MILLION



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# Specific Federal Expenditures

NFA BANDS 1983/84  
\$2.23 MILLION



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# **FEDERAL DECISION :**

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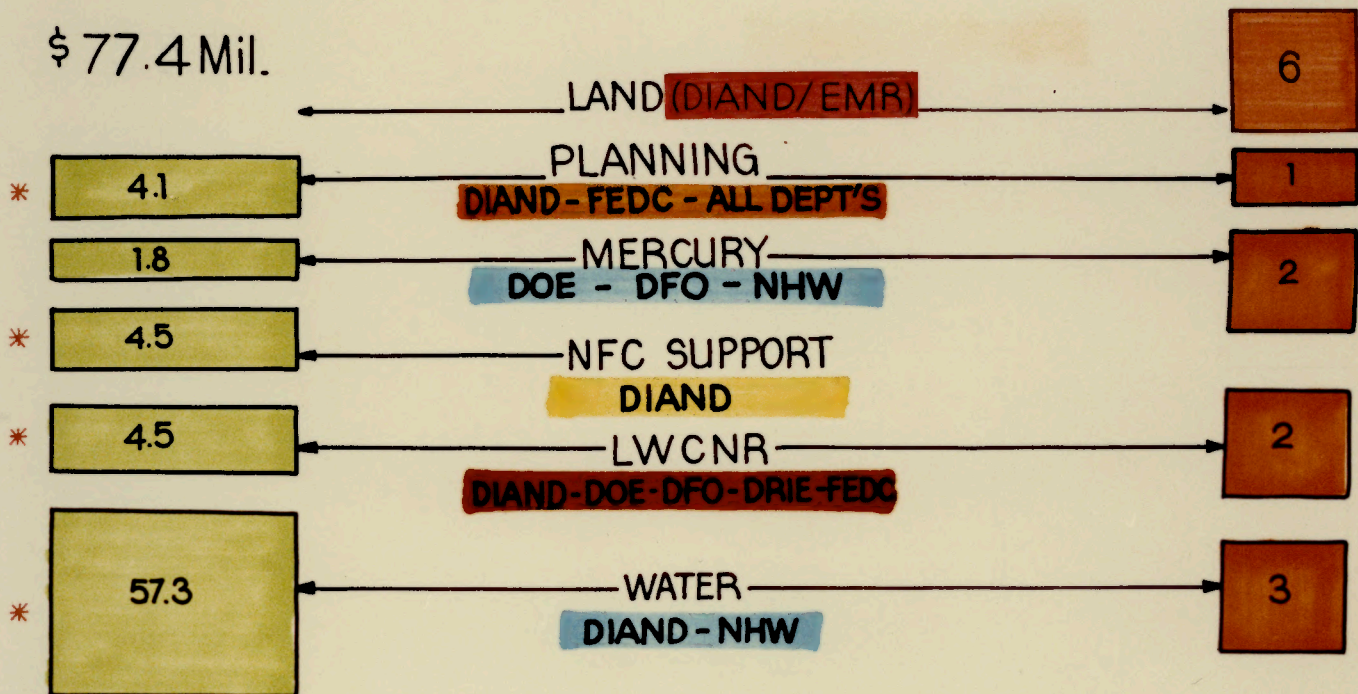
## Strategy Objectives

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- 1/ FULFILL CANADA'S SPECIFIC LEGAL NFA OBLIGATIONS.
- 2/ SUPPORT COMMUNITY EFFORTS TO MAXIMIZE BENEFITS.
- 3/ LIMIT ADVERSE ACTIONS AND DECISIONS BY ARBITRATOR AGAINST CANADA .
- 4/ PURSUE PROPONENTS TO FULFILL THEIR NFA OBLIGATIONS.
- 5/ RETRIEVAL OF PREVIOUSLY "FRONT-ENDED" COSTS.

# Short Term Federal Decisions

1. Meet specific legal obligations, including gross 5 year financial (with required annual Human resources).

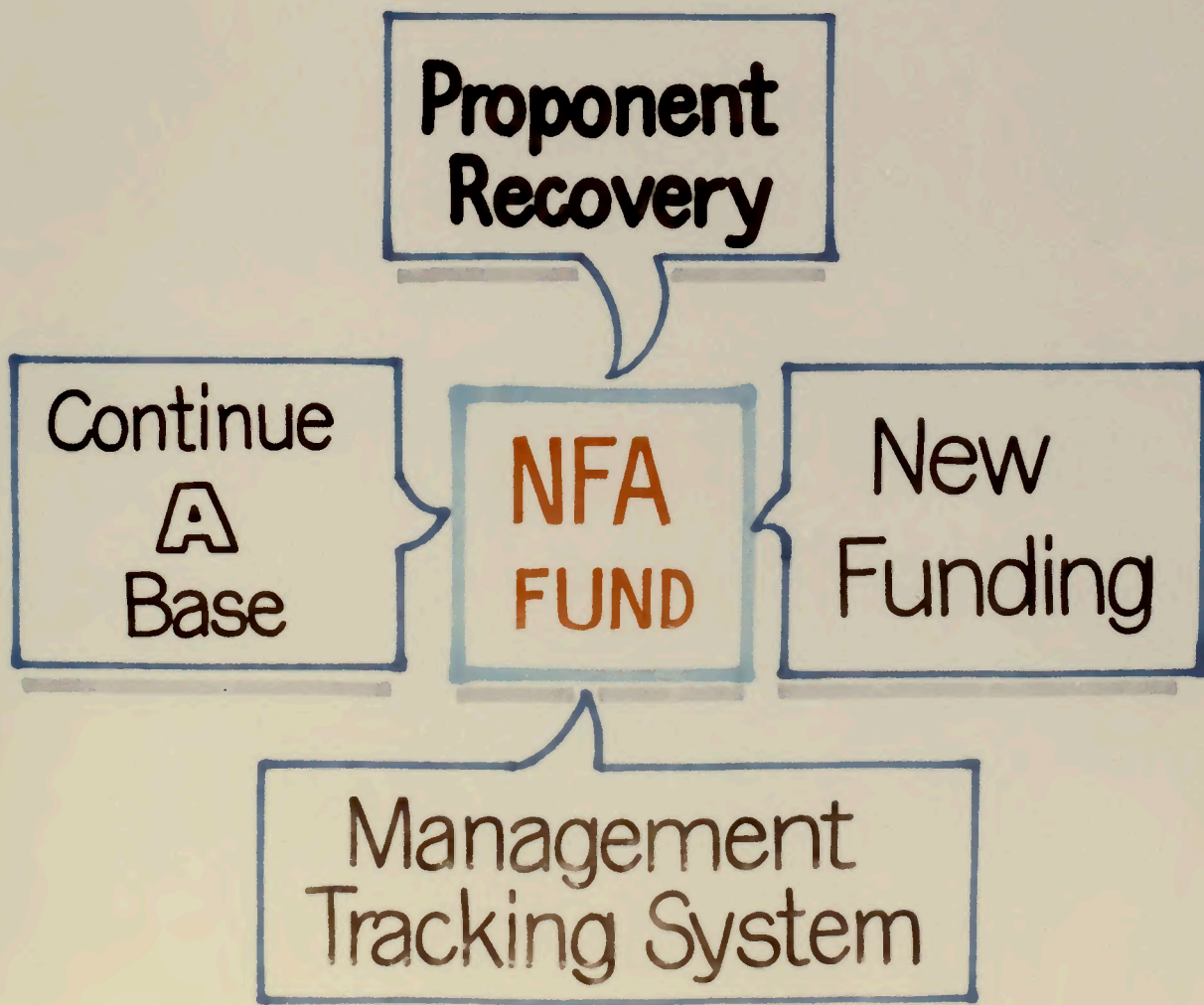


\* - Cost sharing Canada / Manitoba / Hydro

2. Department of Finance to consider possible sources of funding (\$37.4 M. fiscal framework)
3. Inter-Departmental Policy/Management group (REG/HQ-ICNFA)
4. \$75,000 Communications Plan to be developed.
5. \$2.875 Mil. for Federal Co-ordination.
6. Canada to pursue proponents for appropriate cost recovery on front ended/shared obligations.

# SHORT TERM FEDERAL DECISIONS CONT'D.

7. Mandated DIAND and Treasury Board to Develop a NFA financial management fund:



# Federal Funding Sources\*

	<u>Total of</u> <u>Obligations</u>	<u>Water</u> <u>Component</u>	<u>Balance of</u> <u>Components</u>
"A" Base (DIAND/NHW)	\$7.7	—	7.7
Reserve for statutory overruns (Finance)	\$37.4	24.5	12.9
DIAND Reg. Capital Plan	\$6.4	6.4	—
DIAND H.Q. Capital Plan	\$26.4	26.4	—
Gross Costs	<u>\$77.9</u>	<u>57.3</u>	<u>20.6</u>

\* 1984 Constant \$

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# TOTAL FEDERAL EXPENDITURE AFTER COST RECOVERY FROM PROVINCE / HYDRO

\$ MILS

	<u>TOTAL</u>	<u>COST IF RECOVERY / AGREEMENT</u>	<u>COST IF RECOVERY / ARBITRATION</u>
GROSS:	\$77.4	\$40.2	\$51.1/56.5
NET:	\$70.2	\$36.5	\$46.3/51.2

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# OUTSTANDING ISSUES

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1/ Past Damages

2/ Socio-economic and environmental impacts of current project (unknown)

3/ Community Economic development

4/ Future components of the project and unknown impacts.

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# *LONG TERM DECISIONS*

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1/ DIAND to report on a strategy for long term resolution, including detailed finite settlement package.

2/ CANADA to negotiate a settlement encompassing future impacts of balance of the project.

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# Residual Matters

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1. Prepare a socio-economic development strategy, encompassing land use and management planning, to facilitate community self-sufficiency particularly focused on potential for Limestone, Wuskwatim and Conawapa Hydro Development (Estimated cost \$13.815 million; Est. 5yr. CEIC/DIAND "A" Base = \$7.65 mil.).
2. As contingent liabilities arise (e.g. adverse rulings by Arbitrator - Cross Lake Arena, etc.), Treasury Board submissions to be prepared for additional funding (estimated gross cost \$21.65 mil.).

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# NFA Resolution

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( \$ MILS. )

Strategy

All Parties

Total

Incremental

**Specific  
Obligations**

**\$ 145/270**

**1.** Enhanced  
Delivery

\$ 170/295

\$ 25

**2.** Damage  
Compensation

\$ 256/381

\$110 (85.0)

**3.** Comprehensive  
Socio-economic  
Development

\$ 325/450

\$180

**4.** Contained  
Settlement

\$ 360/485

\$215

# LEVEL/TYPES OF NFA FEDERAL OBLIGATIONS

## Types

## Example

## Remarks

### A. LEGAL

- Continuously available potable to Canadian Drinking Standard.

- June 84 government decision
- Sept. 84 and Feb. 85 announcements
- omnibus Treasury Board submission for funding release. (Dec. 85)
- Treasury Board submissions re: capital management approvals.
- NFC chiefs "NFCRA" submission.

### B. CONTINGENT LIABILITIES

- Economic development and employment training opportunities stemming from hydro developments.

- "Socio-Economic Development Strategy encompassing new land use and hydro developments. (e. g. Limestone, etc.)"

### C. FUTURE UNKNOWN

- Socio-economic and environmental impacts of future LWCNR components

- "Report back to Cabinet on strategy for long-term resolution, a detailed settlement package."

### Nielsen Task Force on Program Review

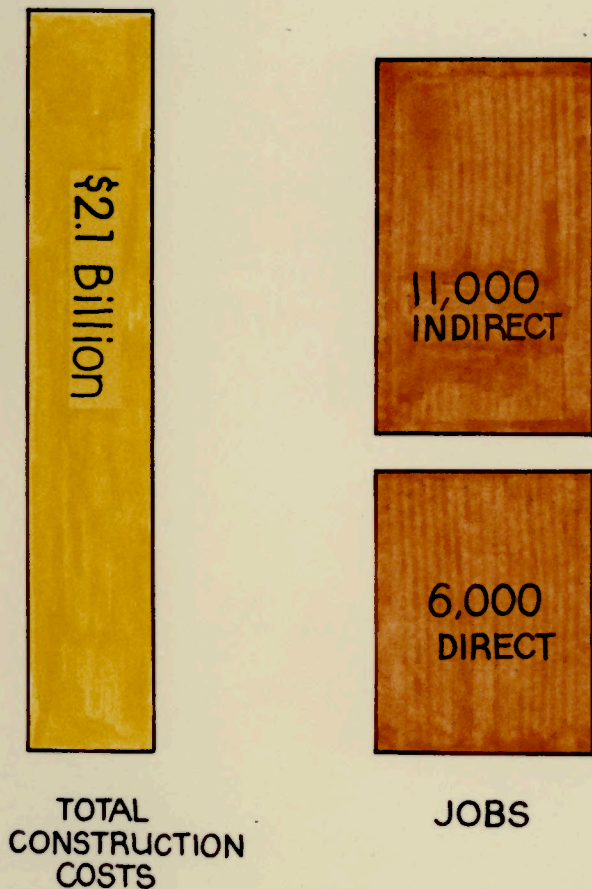
- Native program report
- Resource Development program report.

ISSUES:

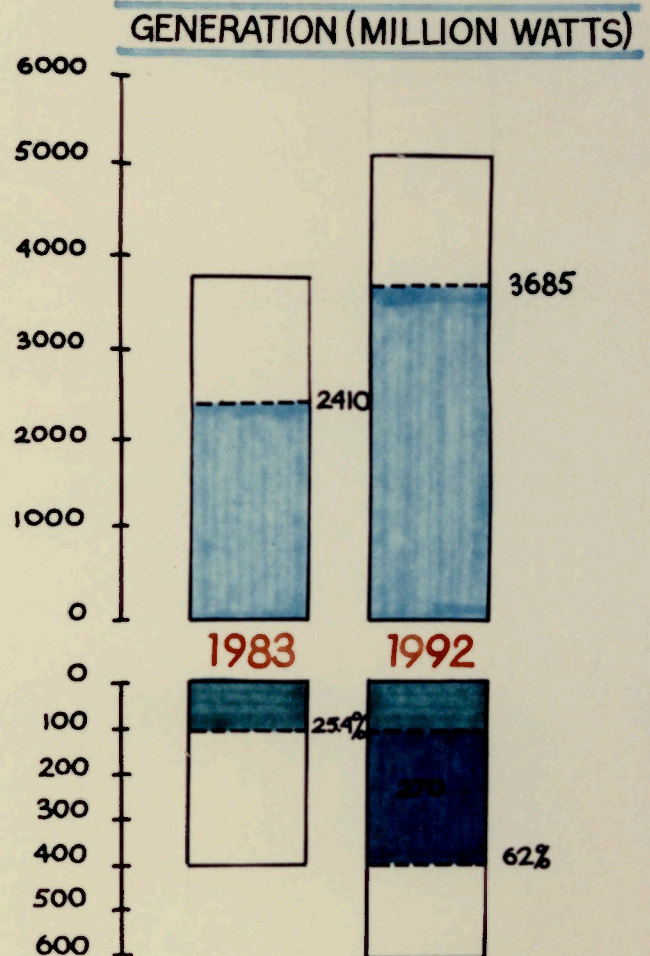
# Financial/Political GAINS

## LIMESTONE

### Expenditures



### INCREASED RENEWABLE ENERGY PRODUCTION AND EXPORT REVENUES.



### EXPORTS (MILLION \$)

### REVENUE (MILLION \$)

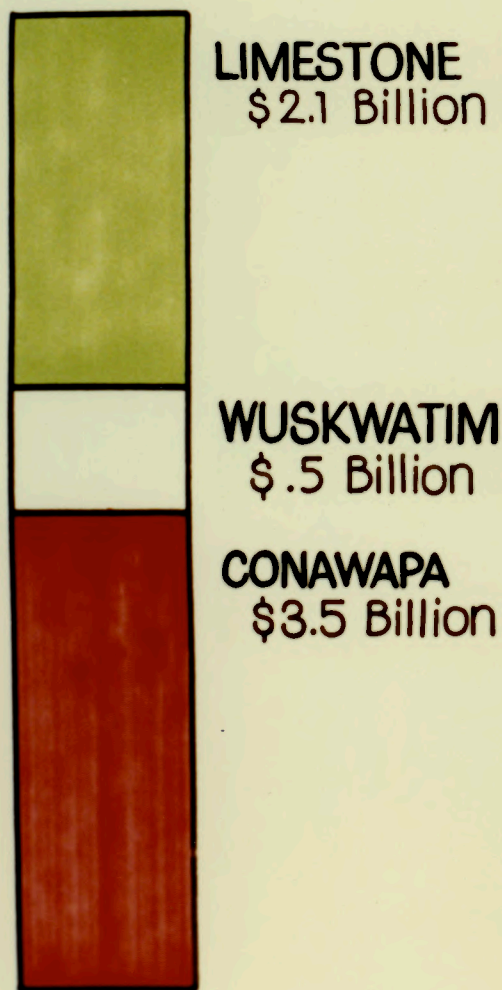
1985 \$ ESTIMATED



# Financial/Economic GAINS

## LWCNR PROJECT(S) LIMESTONE - WUSKWATIM - CONAWAPA

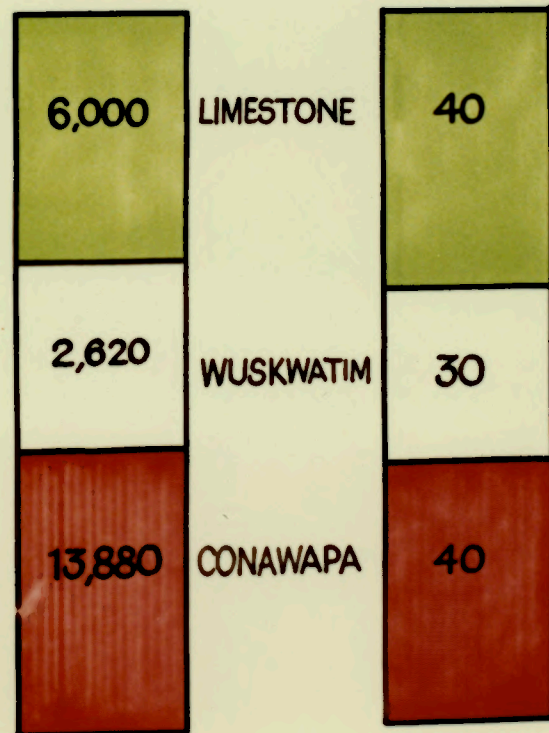
### Expenditures



### JOBS

#### Construction

#### Operating



(DIRECT JOBS)

(CONSTANT 1985 \$)

# PROPOSED 5 YEAR NEGOTIATED PACKAGE

		HYDRO	MAN.	CDA	TOTAL
<b>1</b>	NFC FUNDING	\$1.5	-	2.5	4.0
<b>2</b>	SCHEDULE "E"	-	1.25	2.2	3.45
<b>3</b>	CROSS LAKE WEIR	8.0	-	-	8.0
<b>4</b>	CROSS LAKE BRIDGE	1.1	-	1.5	2.6
<b>5</b>	ENG. SERVICES	.25	-	-	.25
<b>6</b>	WILDLIFE RES. MGMT.	14.733	1.782	1.75	18.265
<b>7</b>	CROSS LAKE ARENA -CAP	3.8	-	-	3.8
	-O&M	-	1.5	-	1.5
<b>TOTAL</b>		<b>29.383</b>	<b>4.532</b>	<b>7.95</b>	<b>41.865</b>

# NEGOTIATING TOOLS Available

- Meet Canada's specific legal obligations and create moral suasion environment
- Assess expectations / capacities for implementation - negotiation.
- Proactive Arbitration / court action .

	NFA ARTICLES	PROV./HYDRO POSITION	FEDERAL VIEWS	
			IMPACT	SUFFICIENCY
12	Infrastructure	Partial	Partial	Insufficient/ Band Judgement
13	Clearing	Entirely	Entirely	Band Judgement
14	Policy	Partial	Partial	n/a
15	Wildlife	Entirely	Entirely	Band Judgement
16	'E' Planning	Partial	Partial	Sufficient
17	Environment	Entirely	Entirely	Insufficient
18	Miscellaneous	Partial	Partial	Band Judgement
19	Trapline/Fishing	Entirely	Entirely	Band Judgement
20	C.L.C.	Unaffected	Unaffected	n/a
21	E.T.F.	Unaffected	Unaffected	n/a
22	Remedial Works	Partial	Partial	Band Judgement
23	Other Matters	Partial	Partial	Band Judgement
24	Arbitration	Partial	Partial	Contradictory
25	Successors	Partial	Partial	n/a

\* All are conditional on HYDRO maintaining NFA water levels.

# NORTHERN FLOOD

## Capital Reconstruction Proposal

### NFC PROPOSAL :

- Northern Flood Bands Indian Trust
  - assume Minister's trustee responsibility
  - receive lump sum federal payment \$57M
  - invest funds
  - transfer funds as required
- Northern Flood Capital Reconstruction Authority
  - overall administration - engineer design and construction of system
  - technical advice to band construction companies manages day-to-day finances
- Cost
  - NFBIT/NFCRA management \$ 4.4 M
  - individual band management \$ 3.2 M
  - inflationary factor for management \$ .5M
  - construction ( including inflation ) \$52.0M
  - \$60.1M

### ANALYSIS :

#### A. Advantages :

- supports bloc funding and Indian self government initiatives.
- utilizes maximum Band resources/businesses, skill training , employment.
- reduces time involved in approval and construction of capital projects via traditional separate.
  - T.B. authority for detailed engineering design work .
  - T.B. authority to undertake construction.

#### B. Concerns

- T.B. & Dept.of Finance unlikely to approve single lump sum payment.

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- NFBIT may not protect/remove Minister's trustee legal obligation under Indian Act, nor legal contractual obligation under Article 6 NFA
- DIAND estimates system can be constructed:

Design	\$ 2.0 M.
Land management	\$ 1.0 - 2.0 M.
Construction	\$ 50.0 - 56.0 M.
	\$ 53.0 - 56.0 M.

## OPTIONS:

- Support NFBIT/NFCRA concept with lump sum payment
  - requires Treasury Board/Cabinet agreement both on concept & payment.
- Support principle of maximum band responsibility via NFCRA but with regular 5 year payment scheduled by Canada.
  - requires Treasury Board/Cabinet agreement to omnibus capital construction authority.
- Undertake via regular Band Capital Management Vote 15.
  - requires normal Treasury Board submission process

## CONSIDERATIONS:

- Principle concerns of bands are:
  - timely approval and construction process
  - maximum employment and training

## RECOMMENDATION:

- Approve option #2
- Minister meet with NFC Chiefs to advise
  - cash flow problem limits consideration of lump sum.
  - concern over NFBIT concept.
  - support to maximum Band management via NFCRA
  - will request Treasury Board approve "special construction authority" to collapse traditional 2-stage approach and a band controlled construction organization.

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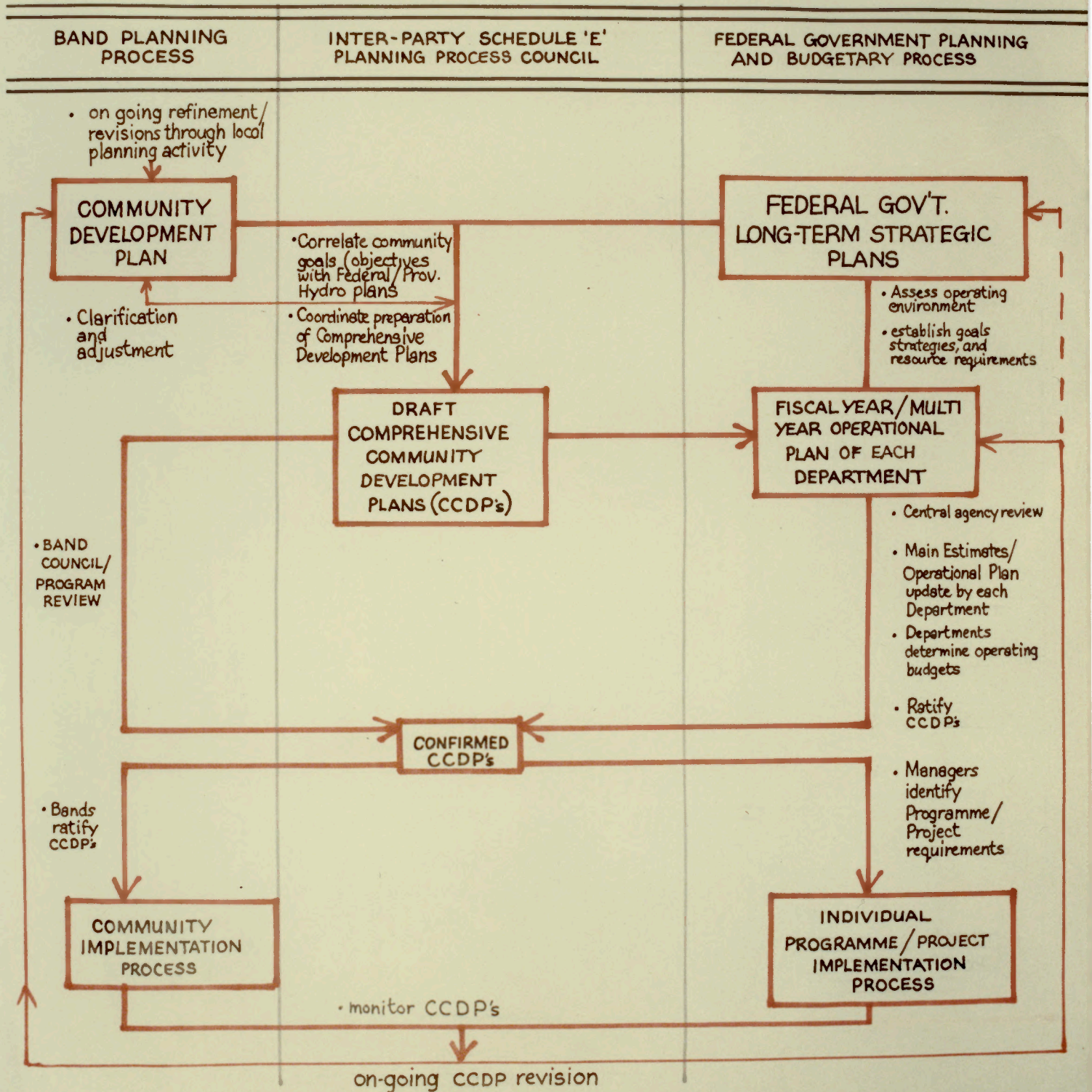
# SCHEDULE "E"

## NISTUM JOINT PLANNING COUNCIL

- Schedule "E" provides for joint governmental planning process.
- Ways & Means Committee (1982) recommends an "independent planning board."
- 4-Party Ad Hoc Committee established 1983 to refine the report & consider mechanisms.
- July 1984 INAC agrees to establishment of "formal committee."
- NFC acts as "banker" concerned over the lack of "significant progress"
- Parties pursue optional / parallel O-i-C's to establish N.J.P.C. (similar to Indian Commission of Ontario)

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# NORTHERN FLOOD AGREEMENT SCHEDULE 'E' PLANNING PROCESS FEDERAL GOVERNMENT ROLE

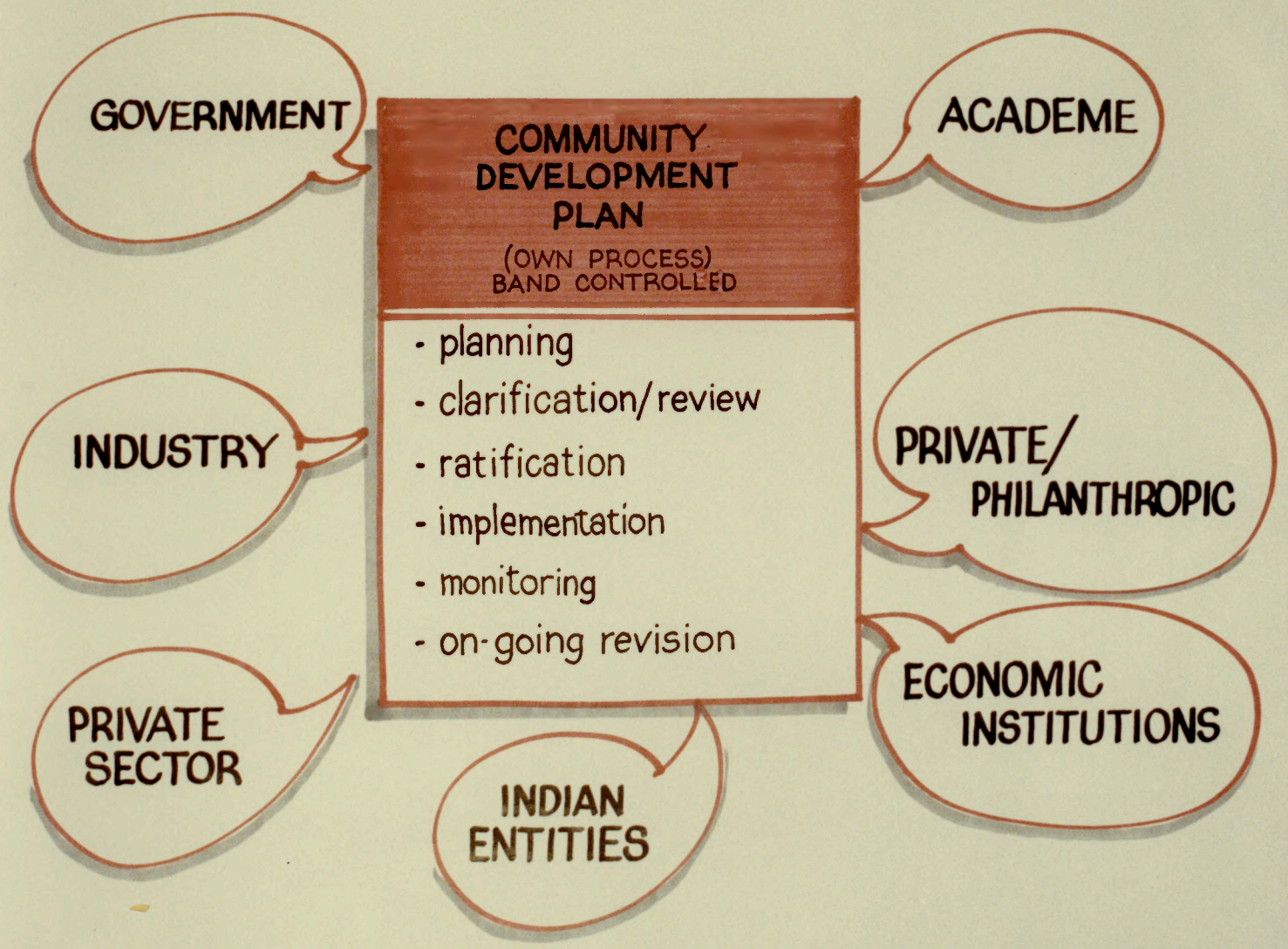




# BAND CONTROLLED

## ARTICLE 16 / SCHEDULE "E"

### COMPREHENSIVE COMMUNITY DEVELOPMENT PLANNING



# NFA Implementation

<u>ITEM</u>	<u>STATUS</u>
1. <u>NFA Omnibus T.B. Submission</u>	Inter-departmental meetings occurred with processing expected December '85.
2. <u>Water and Sewer</u>	
a) Feasibility Studies	Studies completed and under DIAND/NFC review; total estimates range from \$43.7 M to \$79.9M; negotiations expected to result in \$52.M to \$55 M range.
b) Interim Measures	\$4.2M program underway re: interim measures.
c) NFCRA/NFBIT	Band proposals under review.
d) Construction approval	Omnibus T.B. Submission requests authority to advance construction for Sept.'86 start-up.
3. <u>Overall NFA Resolution/ Negotiation Strategy</u>	Tender call to assist in strategy development; expected June '86 Cabinet Submission.
4. <u>Economic/ Employment Development</u>	
a) Limestone Employment and Training Agreement (LETA)	\$30M, 7yr. agreement signed Sept.'85; training commenced; partial fulfillment of Canada's NFA obligations.
b) Memorandum of Understanding (MOU)	Federal-Provincial enabling document to coordinate programs/services; spearheaded by FEDC with possible signing Dec./Jan; need to recognize NFA obligations.
c) NFA Economic / Employment Cabinet Document	Linkages to Limestone initiatives; anticipated June '86 Cabinet Submission.
d) Neyanun Development Corporation	evaluation underway with completion Dec.'85; review to consider NEDP funding.