

**CONSULTATION AND ACCOMMODATION REPORT  
for the  
MANITOBA-MINNESOTA TRANSMISSION PROJECT  
(MANITOBA HYDRO)  
(EH-001-2017)**

**Prepared by the Major Projects Management Office**

**June 3, 2019**

***Disclaimers***

***If there is any inconsistency or ambiguity between this report and the National Energy NEB Report (EH-001-2017), the National Energy NEB Report (EH-001-2017) shall prevail.***

***This document (section 7.0) contains confidential third party information that should not be disclosed without prior consultation with the Major Projects Management Office.***

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## **1.0 Introduction**

The Government of Canada is committed to renewing the relationship with Indigenous peoples to one based upon recognition of rights, respect, cooperation, and partnership. This commitment places a new emphasis on ensuring that the Crown's constitutional duty to consult, and where appropriate, accommodate Indigenous peoples is undertaken meaningfully, effectively, and in a manner that upholds the Honour of the Crown. The Crown also recognizes that meaningful engagement and consultation with Indigenous peoples aims to secure their free, prior, and informed consent in matters that affect them and their rights. This is what the overall consultation process for this Project was meant to achieve.

A duty to consult arises when the following three conditions are present:

1. The Crown contemplates conduct;
2. The Crown has actual or constructive knowledge of established or potential Aboriginal or Treaty rights, as defined under section 35 of the *Constitution Act*, 1982 (section 35 Aboriginal and Treaty rights); and,
3. That conduct may have adverse impacts on these section 35 Aboriginal and Treaty rights.

The Crown's consultation objective was to understand how the Crown's contemplated conduct (i.e., the potential Governor in Council decision to approve the issuance of a Certificate by the National Energy Board (NEB), subject to the NEB's terms and conditions) could potentially impact section 35 Aboriginal and Treaty rights and to solicit input from Indigenous groups on how to address or accommodate these potential impacts, where appropriate. The federal Crown has used the NEB assessment of the Manitoba-Minnesota Transmission Project (the Project) to inform the discharge of the duty to consult.

During consultation on this Project, the Crown followed the guidance from the Federal Court of Appeal (FCA) in *Tsleil-Waututh Nation (2018 FCA 153)*, including by engaging in meaningful, specific, and focused two-way dialogue with potentially impacted Indigenous groups.

As the Crown Consultation Coordinator for the Project, the Major Projects Management Office (MPMO) within Natural Resources Canada (NRCan) is responsible for ensuring the Crown's duty to consult is fulfilled and for assessing the adequacy of consultation. Since August 2018, the MPMO has been consulting with 21 potentially impacted Indigenous groups to discuss the Project's potential impact to section 35 Aboriginal and Treaty rights, as well as potential accommodation measures. At all times, the consultation process sought to uphold the Honour of the Crown, with an emphasis on respect and cooperation.

### **1.1 Purpose of the Crown Consultation and Accommodation Report**

The Government of Canada, through the MPMO of NRCan as "the Crown", has prepared this Crown Consultation and Accommodation Report (CCAR). This report documents the Crown's consultation with 21 Indigenous groups, including any potential accommodation measures, with

respect to the potential impacts of the Project on section 35 Aboriginal and Treaty rights. To this end, the CCAR:

1. Describes the consultation process undertaken by the Crown with Indigenous groups;
2. Reports the views of Indigenous groups on how the Crown conduct may potentially impact section 35 Aboriginal and Treaty rights;
3. Explains the Crown's assessment regarding the potential impacts of the Crown conduct on section 35 Aboriginal and Treaty rights;
4. Outlines accommodation measures proposed by Indigenous groups to address potential impacts on section 35 Aboriginal and Treaty rights;
5. Presents the Crown's response to each accommodation measure; and,
6. Presents the Crown's overall conclusion on the adequacy of consultation and whether the duty to consult was fulfilled.

This report was developed based on consideration of all information brought forward to the Crown by Indigenous groups through direct consultation, submissions made by Indigenous groups, and Manitoba Hydro as part of both the NEB review and the provincial environmental assessment of the Project, namely Manitoba's Clean Environment Commission (CEC) review.

## **1.2 Project Description**

On December 16, 2016, Manitoba Hydro, a provincial Crown corporation, filed an application for a permit under section 58.11 of the *National Energy Board Act* (NEB Act), seeking authority to construct and operate the Manitoba-Minnesota Transmission Line (the Project). The \$453 million project consists of the construction of a new international power line, the Dorsey International Power Line (Dorsey IPL), and modifications to two existing transmission lines. The Dorsey IPL is a 213-km, 500 kilovolt power line, that would extend from northwest of Winnipeg to Minnesota, crossing the Canada-United States border near Piney, Manitoba. The Dorsey IPL would connect with the Great Northern Transmission Line that is under development by Minnesota Power and a subsidiary of Manitoba Hydro (see Figure 1).

Manitoba Hydro requires a provincial and federal licence. This is because the power line will be located within the province but will cross an international border, making it an international power line for the purposes of the *NEB Act*. Therefore, Manitoba Hydro was required to submit two applications – one to the Government of Manitoba pursuant to Manitoba's *Environment Act* and another to the NEB, pursuant to the *NEB Act*. As part of the provincial licence process, the Project was subject to an assessment by the Manitoba Public Utilities Board and to an environmental assessment by the CEC. To avoid duplication of the measures taken by Manitoba Hydro and by the Government of Manitoba in respect of the Project, the NEB incorporated the record created in the CEC process into the NEB hearing record.

Pursuant to section 58.11 of the NEB Act, Manitoba Hydro requires a federal permit to construct and operate the Project. In October 2017, in response to concerns from Indigenous groups and to ensure the Crown's Indigenous consultation duties could be fulfilled, the NEB recommended

the Project require a Certificate of Public Convenience and Necessity (certificate) instead of a permit pursuant to section 58.16 of the *NEB Act*. A certificate requires the approval of the Governor in Council. A certificate assessment involves a hearing that provides an opportunity for Manitoba Hydro and all Intervenors to file written evidence, allows for oral cross-examination, and includes a written Information Request process to test all filed evidence on the NEB record. In addition, the Certificate assessment allows Indigenous Intervenors to provide oral traditional evidence. On December 15, 2017, the Governor in Council issued Order in Council 2017-1693 designating the Project as an international power line that is to be constructed and operated under and in accordance with a certificate issued under section 58.16 of the *NEB Act* to a section 58.16 Certificate assessment. On November 15, 2018, the NEB issued its Reasons for Decision on the Project recommending that the Governor in Council approve the NEB's decision to issue a Certificate, subject to 28 binding conditions.

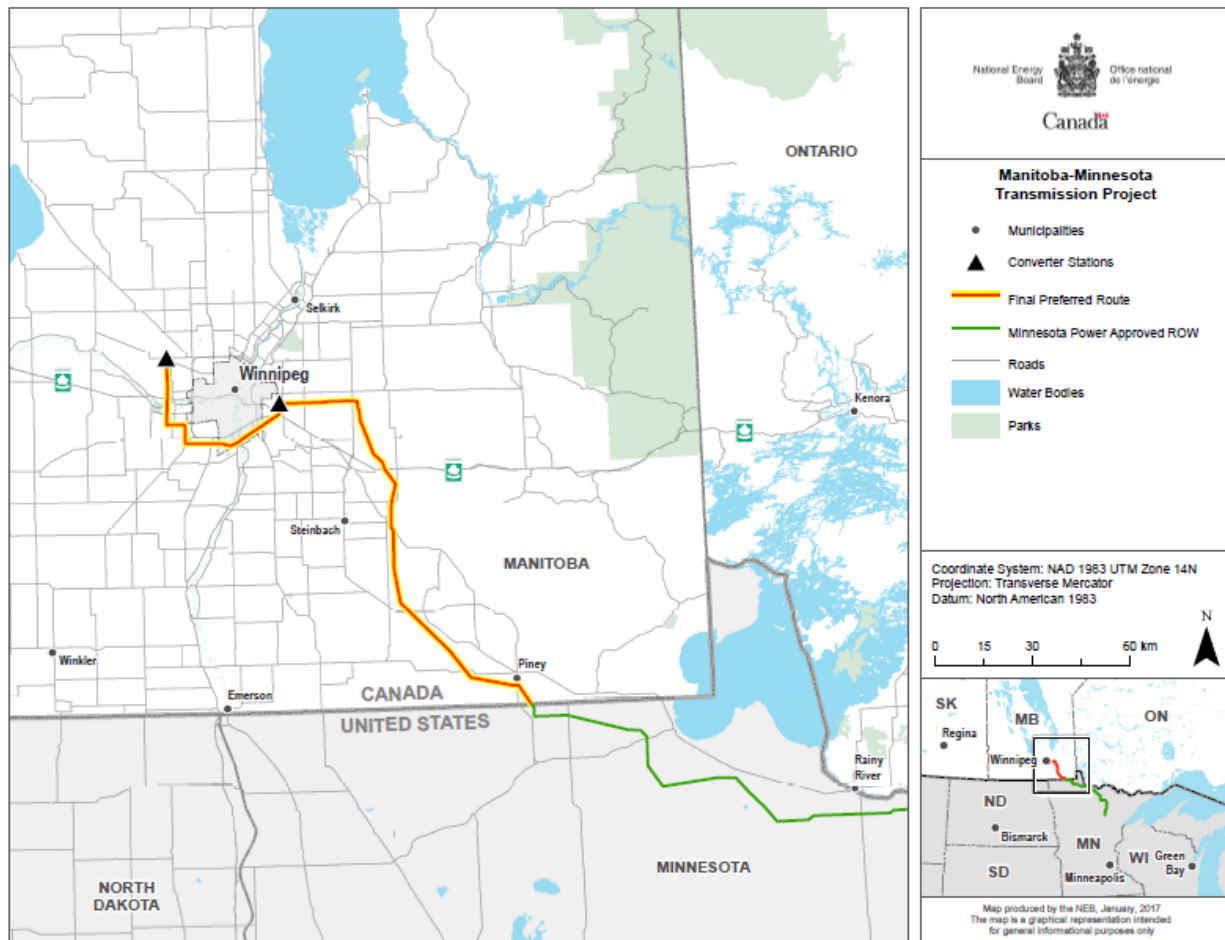
Following a provincial environmental assessment that was completed by Manitoba's CEC on September 12, 2017, the Government of Manitoba issued a Class 3 licence (No. 3288) under the *Environment Act* authorizing the construction and operation of the Project, subject to 64 conditions on April 4, 2019. In addition to the Manitoba Environment Act licence and the NEB certificate, Manitoba Hydro will need three other permits/authorizations:

1. Department of Fisheries and Oceans authorization for a culvert needed to install for access purposes.
2. Permits under the *Explosives Act* for 1) a magazine licence for storage, and 2) a blasting certificate for handling and use.
3. A permit under the Migratory Birds Convention Act to conduct monitoring efforts (effectiveness of bird diverters).

The Project would support existing Manitoba Hydro contracts for the export and import of electricity, provide benefits to Manitoba Hydro customers derived from export sales of surplus electricity, and maintain reliability of service to Manitoba Hydro customers during times of drought or emergencies.

The Project will use 92 km of existing right-of-way (ROW) and 121 km of new ROW, of which 36 km is provincial Crown land and 85 km is privately-owned land (see Figure 1). The ROW will be reclaimed after construction and maintained throughout the lifecycle of the Project. Subject to regulatory approvals, Manitoba Hydro intends to start construction in September 2019 so the project can be in service by July 2020.

**Figure 1: Location of the Manitoba Minnesota Transmission Project**



### 1.3 Interim Measures for Major Project Reviews

In January 2016, the Minister of Natural Resources and the Minister of Environment and Climate Change announced interim measures to be applied to projects undergoing regulatory review as part of a long-term plan to review the environmental assessment process and modernize the NEB. During the interim period, the Government’s decisions on major projects are guided by five principles (see Table 1 below). The Crown concludes that it has adequately met the principles identified in January 2016.

**Table 1: Assessment against Interim Measures Five Principles**

Principles	Assessment
No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant	Manitoba Hydro applied for a certificate process after the interim measures were announced therefore proceeded as necessary with the appropriate review and associated timelines.



responsible authorities and Northern regulatory boards;	
Decisions will be based on science, traditional knowledge of Aboriginal peoples and other relevant evidence;	The NEB conducted a thorough review of the Project that included scientific evidence, traditional knowledge and evidence from the CEC process record.
The views of the public and affected communities will be sought and considered;	NRCan hosted a public survey of the Project from January 14 to February 25, 2019. There was a very low response rate making the survey inconclusive.
Indigenous peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated;	The CCAR is an overview of the Crown’s consultation process for the Project. The Crown concludes that it has provided meaningful consultation opportunities and has accommodated impacts to rights, where necessary.
Direct and upstream greenhouse gas emissions linked to the projects under review will be assessed.	Environment and Climate Change Canada made a determination that a greenhouse gas emissions assessment of the Project was unnecessary as the Project will transfer low GHG emitting electricity (Manitoba) to an area that has higher GHG emitting electricity (Minnesota).

**1.4 Overview of Crown Consultation Process and Timelines**

The Government of Manitoba consulted with 21<sup>1</sup> potentially impacted Indigenous groups as part of its regulatory process in order to issue the provincial licence and the NEB review considered the entire record of the provincial CEC process. In addition, the federal Crown reviewed the Manitoba Crown consultation record in its entirety pursuant to a confidentiality agreement signed between Manitoba Sustainable Development and NRCan, as part of the consultation process.

The federal Crown consultation with Indigenous groups on this Project was guided by three key objectives:

1. Consult in a way that is fully consistent with meeting Canada’s obligations under section 35 of the *Constitution Act*, 1982 and the Government’s commitments to advance reconciliation with Indigenous peoples;

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<sup>1</sup> The Government of Manitoba consulted with 15 Manitoba First Nations, 5 Ontario First Nations, and the Manitoba Metis Federation.

2. Engage in substantive, meaningful two-way dialogue in order to fully understand concerns raised and the nature and seriousness of potential impacts on rights and to work collaboratively to identify and provide accommodations, where appropriate; and,
3. Be flexible in tailoring consultation approaches, to the extent possible, in a way that is responsive to the potential impacts and capacities of each groups, and to the known concerns with the Project. This includes following any signed consultation protocol agreements with Indigenous peoples to the extent possible.

The MPMO aims to achieve these objectives as part of an iterative process with Indigenous groups whereby the MPMO addresses accommodation within the Government's purview while refining other accommodation measures for decision by Cabinet, if necessary. As the federal Crown consultation coordinator, the MPMO has used the NEB regulatory review and environmental assessment process to inform the consultation process. Consultation with Indigenous groups can be characterized broadly as fitting into three phases:

1. Pre-NEB Hearing
  - a. In advance of the project application, the NEB sent letters to 25 Indigenous groups and organizations, including 22<sup>2</sup> potentially impacted Indigenous groups, advising them about the Project and how to participate in the NEB process.
  - b. The Crown sent letters to 21 Indigenous groups between April 29 and May 1, 2018 outlining that the Federal government would be relying on the NEB process to inform the discharge of duty to consult.
2. During the NEB Hearing (NEB assessment phase)
  - a. Indigenous groups applied to participate in the NEB hearing to provide information about potential impacts of the Project on section 35 Aboriginal and Treaty rights and interests.
  - b. Intervenors in the NEB process were eligible for funding to support participation in the NEB Hearing process.
  - c. The Crown attended all NEB Oral Traditional Evidence hearings in person in Winnipeg (June 4 to 8, 2018).
  - d. The Crown followed the NEB hearing process to better understand the interests and concerns of Indigenous groups related to the proposed Project.
3. Post-NEB Hearing (supplemental consultation phase)
  - a. The Crown actively consulted with 12 interested Indigenous groups in a two-way dialogue, to better understand the potential impacts of the proposed Project on their section 35 Aboriginal and Treaty rights and to enquire whether Indigenous groups had suggestions for proposed accommodation.

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<sup>2</sup> The Crown list featured 22 Indigenous groups. However, the Crown consulted with 21 Indigenous groups as the Dakota Ojibway Tribal Council (DOTC) is not a rights-holder and the Crown was not notified by its rights-holding members that it would be represented by the DOTC in consultations.

- b. On August 15, 2018, the Crown initiated supplemental consultation with 21 Indigenous groups, offered to meet to discuss potential Project impacts and accommodation and offered participant funding to support meaningful consultation.
- c. On November 15, 2018, the NEB issued its Reasons for Decision to the Minister of Natural Resources recommending that the Governor in Council approve the NEB's decision to issue a Certificate, subject to 28 binding conditions and authorizing Manitoba Hydro to construct and operate the Project.
- d. On February 2, 2019, the Governor in Council issued Order in Council #2019-0090 extending the legislated time limit for a decision on the Project by three months, from February 15, 2019 to May 16, 2019, to ensure adequate time for consultations with Indigenous groups.
- e. On March 22, 2019, the Crown shared drafts of the CCAR annexes with 21 Indigenous groups for review and comment by April 23, 2019 and offered to meet to discuss the draft CCAR annexes. The CCAR annexes outlined:
  - i. The Crown's understanding of the group's Aboriginal and Treaty rights within the context of the Project;
  - ii. The Crown's assessment of the Project's potential impacts to each concern raised throughout the provincial environmental assessment, the NEB hearings, and in consultations directly with the federal Crown;
  - iii. The Crown's response to Indigenous proposed accommodation measures; and
  - iv. The Crown's conclusions on whether impacts to rights are reasonably accommodated and/or mitigated
- f. On May 15, 2019, the Governor in Council issued Order in Council #2019-0510 to further extend the legislated time limit for a decision on the Project by an additional period from May 16, 2019 to June 14, 2019 to ensure adequate time to complete consultations with Indigenous groups.
- g. On June 3, 2019, the Crown shared final versions of the CCAR annexes with 21 Indigenous groups that included the Crown's conclusions regarding how Project impacts and Indigenous concerns would be addressed.
- h. The Crown remained open to providing additional funding to Indigenous groups to further support participation in consultation activities; this included providing additional funding to 10 Indigenous groups.

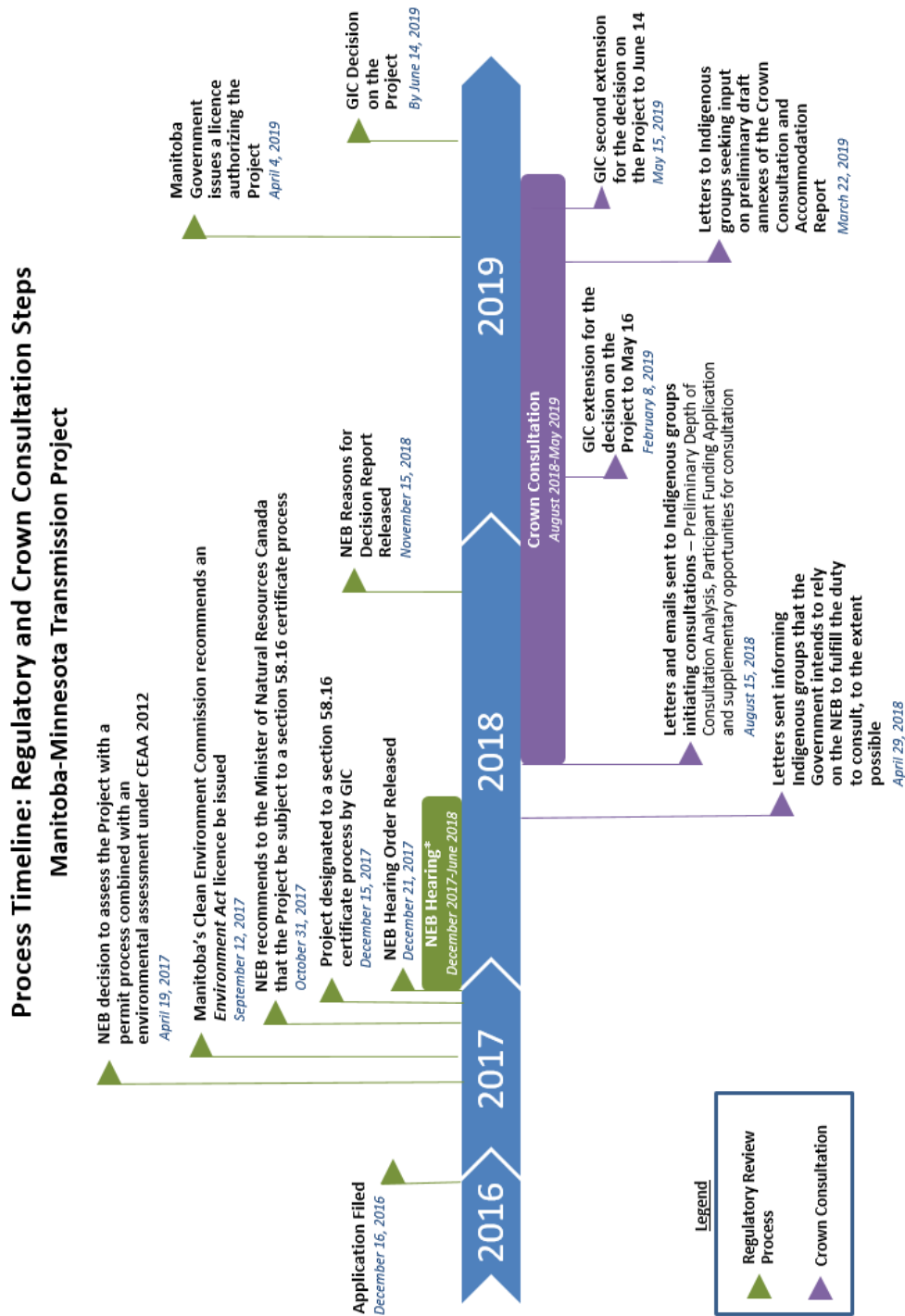
The NEB's regulatory review and environmental assessment record (including proponent commitments and CEC recommended conditions), and subsequent Reasons for Decision report supported the Crown in helping identify how the Crown's conduct in relation to the Project might adversely impact section 35 Aboriginal and Treaty rights and how impacts to rights may be mitigated and/or accommodated. The responsibility for ensuring the appropriate discharge of the legal duty to consult ultimately rests with the Crown. A detailed timeline of the NEB review and consultation process is included in Figure 2 "Process timeline for the Manitoba-Minnesota Transmission Project review (including Crown consultations)".

On July 10, 2018, MPMO and the NEB signed a project agreement, outlining each organization's roles and responsibilities regarding the review of the Project, including with respect to Indigenous consultations. In terms of roles and responsibilities for the Project:

- NRCan applied to participate in the NEB assessment in order to advance the following responsibilities:
  - Support the Minister of Natural Resources in making a recommendation to the Governor in Council on the Project;
  - Develop an online questionnaire to solicit the public's view on the Project; and,
  - Act as a point of contact for Manitoba Hydro during the Project review to provide information on the federal review process.
  
- The NEB agreed to:
  - Assess the Project application under the *NEB Act* and conduct an Environmental Assessment of the Project;
  - Conduct Indigenous consultations, through the NEB assessment, in a manner that supports Indigenous consultation requirements of any expected Statutory Authorization, including the environmental assessment Decision Statement and the Certificate of Public Convenience and Necessity;
  - Make the NEB Decision on the Project;
  - Enable participation of directly affected individuals and groups, including entities, in accordance with applicable legislation and procedural fairness;
  - Maintain the NEB Public Record and provide Process Advisors to participants; and,
  - Publish timeliness for the NEB assessment on its website.

Although the Project Agreement was signed after the completion of the NEB hearing, which closed on June 24, 2018, the Project Agreement's draft terms guided the actions of both organizations in terms of the NEB assessment.

**Figure 2: Process timeline for the Manitoba Minnesota Transmission Project review (including Crown consultations)**



\*The Crown participated in the NEB Hearing as an Intervenor

## **2.0 Engagement by Manitoba Hydro with Indigenous groups on the Project**

This section summarizes Manitoba Hydro's engagement process and the distinction between Manitoba Hydro's engagement and the Crown consultation process.

As a requirement under the NEB Filing Manual, Manitoba Hydro was required to identify, engage, and consult with potentially impacted Indigenous groups prior to filing an application for the Project with the NEB. Manitoba Hydro was also required to report to the NEB on these activities, and provide a description of any issues or concerns raised by these Indigenous groups as part of its application.

Manitoba Hydro began its First Nations and Métis Engagement Process (FNMEP) in August 2013 with 11 First Nations, the Manitoba Metis Federation, and 4 Indigenous organizations. Prior to filing an Environmental Impact Statement (EIS) in accordance with Manitoba's environmental assessment legislation and process, Manitoba Hydro engagement with Indigenous communities took place between August 2013 and September 2015. Manitoba Hydro is still actively engaging with Indigenous communities on the Project.

To inform development of the EIS, Manitoba Hydro held three rounds of consultation:

1. First Nations, the Manitoba Metis Federation, and Indigenous organizations provided feedback on alternative routes and border-crossing points, and on concerns about the Route Planning Area. This occurred over 19 leadership meetings, open houses, and information sessions;
2. Manitoba Hydro presented the preferred border crossing and alternative routes for discussion on concerns and perspectives. This occurred over 43 leadership meetings, open houses, information sessions, and workshops. As a result of Round 2 engagement between Manitoba Hydro and Minnesota Power, and information provided by First Nations, the Manitoba Metis Federation, and Indigenous organizations including sensitive and culturally important sites (e.g. Treaty Land Entitlement areas), the planned border crossing was modified; and,
3. Manitoba Hydro presented its preferred route and gathered feedback on final adjustments. This round included 28 leadership meetings, community open houses, information sessions, workshops, and field visits.

Since the filing of the Project EIS in September 2015, engagement with First Nations and Metis has continued and in November 2016, Manitoba Hydro established the MMTP Monitoring Committee to engage First Nations and Metis throughout the lifecycle of the Project. Terms of reference for the MMTP Monitoring Committee were co-developed by Manitoba Hydro and interested Indigenous groups. A website has been developed to facilitate access to records related to the MMTP Monitoring Committee and Committee meeting notices, and minutes are sent to all potentially impacted Indigenous groups. Meetings have been held on an ad-hoc basis

since the committee was created, primarily as a result of uncertainty regarding whether the Project would receive provincial and federal approvals. Should the Project be approved, it is anticipated that meetings will be held regularly to inform construction and operation of the Project.

In addition, Manitoba Hydro offered funding to eleven Indigenous groups to undertake self-directed traditional land and resource use studies that could inform the route selection and development of plans still in progress, such as the Construction Environmental Protection Plan and the Navigation and Navigation Safety Plan.

Further, through the MMTP Monitoring Committee, Manitoba Hydro engaged an Indigenous botanist to undertake vegetation analysis along the Project ROW to supplement the identification of culturally important plants.

In early 2017, Manitoba Hydro also offered financial benefit agreements (MMTP Community Specific Agreements) to 11 Indigenous groups. On March 21, 2018, the Manitoba Government instructed Manitoba Hydro to cease negotiations with Indigenous groups that had not signed agreements. At that time, Manitoba Hydro had negotiated and signed MMTP Community Specific Agreements with six Indigenous groups. The federal Crown is typically not party to such agreements unless the Crown has a direct material interest in the Project, which is not the case for this Project. When the Crown is not a party to an agreement, it is also generally not privy to the parameters of any such agreement, even if it may have a general awareness of its existence. Therefore, while the Crown acknowledges the existence of agreements between Manitoba Hydro and some Indigenous groups, with regard to ensuring that Indigenous peoples are able to benefit from a project, this report can only consider what Indigenous groups or Manitoba Hydro have voluntarily shared with the Crown. In instances where the Crown did not have information about the existence of an agreement between Manitoba Hydro and section 35 Aboriginal and Treaty rights holders, this report assumes that no such agreement exists.

### **3.0 Regulatory Review, including Environmental Assessment Processes**

#### **3.1 Provincial Environmental Assessment Process**

On November 6, 2013, the Manitoba government issued an order-in-council designating the Minister of Sustainable Development as the provincial regulatory authority for the Project.

On December 31, 2015, the Minister of Sustainable Development asked the CEC to conduct public hearings into the application by Manitoba Hydro for an *Environment Act* licence for the Project. The CEC's role in the regulatory process is to make recommendations on the granting of a licence under *The Environment Act*, including recommending potential licence conditions. The Commission is not responsible for discharging the provincial duty to consult with Indigenous groups.

CEC hearings began on May 8, 2017 and ran until June 6, 2017 in Winnipeg and La Broquerie. Throughout the hearings, the panel heard evidence and questions from Manitoba Hydro and, seven participants, including three Indigenous groups (Manitoba Metis Federation, Peguis First Nation and Dakota Plains Wahpeton Oyate). The review panel also received 16 written submissions.

To ensure participants had access to funding to support effective participation in the hearing, the Participant Assistance Regulation, under *The Environment Act*, required the establishment of a proponent-funded program to enable the hiring of legal counsel and specialists with experience in conducting assessments of biophysical and socio-economic impacts, and to pay travel and accommodation expenses for representatives making presentations.

On September 12, 2017, the CEC submitted its final report to the Minister of Sustainable Development, recommending the Project be approved for a Class 3 licence under *The Environment Act*, subject to 17 licence conditions.

On April 4, 2019, following the conclusion of a separate Indigenous consultation process, led by Manitoba Sustainable Development and Manitoba Indigenous and Northern Affairs, the Minister of Sustainable Development issued *Environment Act* Licence No. 3288 for the construction, operation, and decommissioning of the Project. The licence is subject to 64 conditions. Several of these conditions directly impact or relate to concerns raised by Indigenous peoples on this Project. The provincial certificate conditions include:

- 4 conditions related to environmental protection plans;
- 4 conditions related to culture and heritage resources;
- 4 conditions related to access management;
- 4 conditions related to vegetation management and pesticides in general; and,
- 7 conditions related to ongoing monitoring of the Project.

### **3.2 Federal Environmental Assessment Process**

In December 2016, the NEB received Manitoba Hydro's application for a permit pursuant to section 58.11 of the *NEB Act*. The Project is also a "designated project" pursuant to the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), for which the NEB is the responsible authority (see section 3 for more information).

On January 18, 2017, the Manitoba Métis Federation submitted a letter to the NEB requesting that, pursuant to section 58.16 of the *NEB Act*, the Project should require a certificate process including a hearing, in order for the Crown to discharge the duty to consult. On April 19, 2017, the NEB ruled that it would not make a recommendation to the Minister of Natural Resources that the Project be designated by the Governor in Council to undergo a certificate assessment pursuant to section 58.16 of the *NEB Act*. Rather, the NEB would move forward with a permit assessment under section 58.11 of the *NEB Act* and would undertake an environmental



assessment under CEAA 2012 with the NEB as the Responsible Authority to determine whether the Project is likely to cause significant adverse environmental effects.

The NEB issued a letter under its Enhanced Indigenous Engagement (EIE) program on June 13, 2017 to 22 potentially impacted Indigenous groups and three Indigenous organizations regarding Manitoba Hydro's section 58.11 *NEB Act* permit application for the Project. The EIE letters described the Board's section 58.11 permit process and Participant Funding Program (PFP). The letters also included a summary of the Project, information on how to contact the NEB to obtain further information, and an offer from NEB staff to attend a community meeting.

On June 27, 2017, the NEB directed Manitoba Hydro to notify the public by July 15, 2017, including potentially impacted Indigenous groups, of the opportunity to participate in the permit process for the Project. Eight parties subsequently registered to provide comments in the permit process including three Indigenous groups (Peguis First Nation, Roseau River First Nation, and Manitoba Metis Federation (MMF)). Two Indigenous Intervenor, Peguis First Nation and the MMF submitted evidence regarding the inadequacy of the consultation on the Project.

On October 31, 2017, the NEB recommended to the Minister of Natural Resources that the Project be designated, pursuant to section 58.16 of the *NEB Act*, for a certificate assessment. The NEB indicated that a section 58.16 certificate assessment would allow for more procedural flexibility, including the ability to understand and come to a better determination on the potential impacts of the Project on Indigenous interests. On December 15, 2017, the Governor in Council issued Order in Council 2017-1693 designating the Project for a certificate assessment.

On December 21, 2017, the NEB issued Hearing Order [OH-2017-001](#) establishing the hearing process to be completed within legislated timelines (by March 21, 2019), as required by the *NEB Act*. The Hearing Order provided information on steps in the certificate assessment, information on how to apply to participate, as well as a list of issues the NEB would consider during its assessment of Manitoba Hydro's application.

The NEB received an additional 18 applications to participate in the hearing process excluding the eight participants that had previously registered to participate in the NEB permit process. 19 parties were granted Intervenor status in the NEB assessment, including ten Indigenous groups and two Indigenous organizations. NRCan was an Intervenor in the NEB process. Five additional parties, including Environment and Climate Change Canada, were granted commenter status.

Participant funding was offered to non-government Intervenor to support their participation in the NEB assessment and to enable them to share any Project-related concerns. Participant funding offered to each Indigenous intervenor during the NEB assessment is outlined in section 3.2.2 of this report.

The NEB conducted its public hearing from December 21, 2017 to June 22, 2018. The hearing included written evidence, several rounds of Information Requests, letters of comment, oral

traditional evidence from Indigenous intervenors, and the submission of final, oral or written arguments.

On February 14, 2018, four months before the close of hearings, the NEB released draft conditions for the Project. The draft conditions were provided to intervenors for comment. The NEB considered all comments it received before finalizing and setting out the final terms and conditions it would impose, if the Governor in Council approves the Project.

The portion of the hearing for oral traditional evidence occurred from June 4 to 8, 2018, in Winnipeg. Seven Indigenous groups made oral traditional evidence presentations. The Crown attended these presentations in person.

Following the receipt of final arguments and the closure of the hearing record on June 22, 2018, the NEB considered all evidence presented to prepare its Reasons for Decision for the Minister of Natural Resources, which was issued on November 18, 2018.

The regulatory review and environmental assessment by the NEB is the initial part of the NEB's broader role as the lifecycle regulator for the Project. The NEB also regulates the construction, operation, and abandonment of international power lines, and has exclusive jurisdiction and responsibility to enforce certificate conditions. Should the Project be approved and Manitoba Hydro decide to proceed, the NEB will use the same oversight to regulate the Project.

The Crown relied on the NEB assessment to collect and consider information as to the Project's potential impacts to section 35 Aboriginal and Treaty rights and to consider mitigation measures proposed by Manitoba Hydro. The evidence on the NEB record also informed supplemental consultation conducted by the MPMO.

### **3.2.1 Participation of Indigenous groups in the regulatory review process**

The NEB issued a letter under its Enhanced Indigenous Engagement (EIE) program on June 13, 2017 to the 22 potentially impacted Indigenous groups on the Crown List and three Indigenous organizations regarding Manitoba Hydro's section 58.11 *NEB Act* permit application for the Project. The EIE letters described the Board's section 58.11 permit process and Participant Funding Program (PFP). The letters also included a summary of the Project, information on how to contact the NEB to obtain further information, and an offer from NEB staff to attend a community meeting.

As part of the Hearing Order, the NEB granted automatic standing as Intervenor in the certificate assessment to the three Indigenous groups that applied to participate in the section 58.11 permit assessment: the Manitoba Metis Federation, Roseau River Anishinabe First Nation, and Peguis First Nation. The NEB also invited Indigenous groups on the Crown List to apply to participate as either Intervenor or commenters. Ten rights-holding Indigenous groups were granted Intervenor status to participate in the hearings and presented their views on the potential Project-related impacts on their interests, including rights (see table 2 "Indigenous Participation in the NEB review process"). The NEB also granted Intervenor status to two Indigenous

organizations, the Southern Chiefs Organization Inc. and the Wa Ni Ska Tan - an alliance of hydro-impacted communities made up of representatives from 24 Cree, Anishinabe and Métis nations, as well as researchers, universities, and environmental non-government organizations. Wa Ni Ska Tan provided oral traditional evidence although the Wa Ni Ska Tan does not hold Aboriginal or Treaty rights.

As part of the review process, Indigenous Intervenors filed information requests to Manitoba Hydro, provided the NEB with written evidence, provided comments on the NEB's proposed conditions for the Project, responded to the NEB's information request, provided oral traditional evidence, and final argument, as detailed below in Table 2.

**Table 2: Indigenous Participation in the NEB review process**

Intervenor Name	NEB participation funding	Information requests to MH	Submitted Written Evidence	Comments on Draft Conditions	Response to NEB IR 1.1 <sup>3</sup>	OTE	Final Argument
Animakee Wa Zhing #37	√	√	√	√	√	√	√
Anishinaabeg of Naongashiing	√	√	√	√	√	√	
Brokenhead Ojibway Nation	√		√			√	
Isakatewizaagegan No. #39 First Nation							
Manitoba Métis Federation	√				√		√
Northwest Angle #33 First Nation	√	√	√	√	√	√	√
Peguis First Nation	√	√	√	√	√	√	√
Roseau River Anishinabe First Nation	√	√					
Sagkeeng First Nation	√	√	√	√	√	√	√
Shoal Lake #40 First Nation	√	√	√			√	√
Southern Chiefs Organization Inc.	√	√	√	√	√	√	√
Wa Ni Ska Tan	√	√	√	√		√	√

### 3.2.2 Funding to support participation in the NEB review process

In March 2017, the NEB announced the availability of \$250,000 to facilitate participation in the public hearings for the Project. The NEB received 16 applications requesting a total of \$1,197,967, more than was originally announced as available. After reviewing the applications, the NEB's Participant Funding Review Committee recommended and awarded a total of \$853,945 in participant funding to Indigenous groups (see Table 3).

<sup>3</sup> The NEB sent an Information Request (IR) to all Indigenous intervenors requesting additional comments on Manitoba Hydro's proposed mitigation measures to assist the Board's assessment of suitability and appropriateness of the proposed mitigation measures.

**Table 3: Allocation of funds for participation in the NEB hearings for the Manitoba-Minnesota Transmission Project**

<b>Applicant</b>	<b>Amount awarded</b>
Animakee Wa Zhing #37	\$80,000
Anishinaabeg of Naongashiing	\$61,830
Brokenhead Ojibway Nation	\$73,115
Manitoba Métis Federation	\$80,000
Northwest Angle #33 First Nation	\$80,000
Peguis First Nation	\$80,000
Roseau River Anishinabe First Nation	\$80,000
Sagkeeng First Nation	\$79,000
Shoal Lake #40 First Nation	\$80,000
Southern Chiefs Organization Inc.	\$80,000
Wa Ni Ska Tan	\$80,000
<b>Total</b>	<b>\$853,945</b>

### **3.2.3 National Energy NEB Panel Report Conclusions**

On November 15, 2018, the NEB released its Reasons for decision ([EH-001-2017](#)) on the Project. The NEB concluded that the Project is in the present and future public convenience and necessity under the *National Energy Board Act* and that the Project is not likely to cause significant adverse environmental effects under *CEAA 2012*, after mitigation measures are taken into account. The NEB also concluded that any potential Project impacts on the interests, including Aboriginal and Treaty rights, of affected Indigenous communities are not likely to be significant after accommodation measures are taken into account. As such, the NEB recommended that the Governor in Council approve the NEB's issuance of a certificate, subject to 28 conditions, authorizing the construction and operation of the Project. The NEB also determined that the duty to consult had been satisfied for the purposes of its decision.

Throughout the course of the review, the NEB considered all evidence related to engineering matters, including information provided by Manitoba Hydro and Intervenor, and is of the view that the overall design of the Project makes use of sound engineering practices. The NEB heard from some Indigenous groups a desire for Manitoba Hydro to involve Indigenous peoples in emergency response and preparedness procedures. The NEB acknowledged that Manitoba Hydro committed to fund a Monitoring Committee with Indigenous groups called the MMTP Monitoring Committee, where discussion on emergency preparedness and response could occur. The NEB noted the value and unique perspectives that Indigenous communities can provide in determining the effectiveness of mitigation measures, based on their traditional knowledge, as well as their ongoing use of the lands and resources in the area. The NEB Panel is of the view that the MMTP Monitoring Committee will be an effective way to both address Indigenous communities' concerns regarding Project impacts as well as to include Indigenous knowledge in monitoring activities for the Project.

The NEB also considered whether there is an economic need for the Project, based on market factors of supply and demand and the likelihood that the Project would be used at a reasonable level over its operational lifespan. The NEB found that there is an economic need for the Project, and that the Project will create financial value for Manitobans.

The NEB heard from Manitoba Hydro that the process of developing alternative routing and selecting the Final Preferred Route included multiple rounds of engagement with the public, First Nations, and Métis. The NEB acknowledged Manitoba Hydro's efforts to consult on the route of the Project, and found the anticipated land requirements to be reasonable and justified.

The NEB is of the view that Manitoba Hydro's design of Project-specific Indigenous engagement activities and capacity-funding initiatives were adequate given the nature of this Project. The NEB also imposed 28 certificate conditions on Manitoba Hydro that it must comply with should the Governor in Council approve the Project.

These conditions can be categorized according to Project phases:

- 11 apply prior to the commencement of construction;
- 6 apply during construction;
- 5 apply during the Project operations phase; and,
- 6 apply generally to all phases of the Project.

By subject matter, the conditions can be categorized as:

- 5 focus on safety and integrity;
- 3 focus on emergency management;
- 2 focus on Indigenous involvement and knowledge; and,
- 18 are general in nature.

In addition, Manitoba Hydro made 277 commitments during Manitoba's CEC's regulatory review. The NEB's Condition 15 (Tracking Table) requires Manitoba Hydro to adhere to its commitments, as well as commitments made during the CEC regulatory review. The NEB will track how Manitoba Hydro meets these commitments to ensure continuing Indigenous participation in the Project.

Finally, the NEB heard considerable evidence from some Indigenous groups with respect to matters outside the scope of the review and not incidental to the Project. For the first time, the NEB made three suggestions to the federal and provincial Crowns for consideration. These suggestions are not legally binding and the Government has flexibility in determining how to best respond.

**NEB Suggestion 1:** The federal and provincial Crowns should consider developing, in consultation with interested stakeholders, the terms of reference and funding for a study of regional, multi-sectoral environmental and cumulative impacts. The study may use third party and government resources to solicit widespread input from affected parties in order to develop a regional

evaluation of the aggregate cumulative effects of development on the environment and human capital. This study will be useful in giving policy direction to future infrastructure, industrial, and agricultural development projects.

**NEB Suggestion 2:** The federal and provincial Crowns, together with the appropriate water boards, should assess the impact on communities and wild rice producers affected by the fluctuating water levels of Lake-of-the-Woods.

**NEB Suggestion 3:** The Panel recommends that the NEB change its practice regarding permit applications under section 58.11 of the *NEB Act*. Where Crown consultation is required, the NEB should, by default, recommend a certificate process under section 58.16 of the *NEB Act* to the Minister, unless the specific circumstances make it clearly inappropriate to do so. This should be communicated to industry. Such a practice may mitigate against unnecessary delays in the NEB process. Additionally, this approach would not affect the continuation of provincial regulation after a project is approved.

#### **3.2.4 Governor in Council decision-making process**

Pursuant to section 58.16 (10) of the *NEB Act*, the Governor in Council must either approve or refuse to approve the NEB recommendation following receipt of the NEB's Reasons for Decision report which was made public on November 15, 2018. The Governor in Council may also defer a decision by extending the timeline for a decision.

Pursuant to the Interim Measures for Pipelines and Other NEB Reviews, the Government of Canada committed to **“undertake deeper consultations with Aboriginal peoples and provide funding to support participation in these consultations”**. To ensure sufficient time to apply this measure to the review of the Manitoba-Minnesota Transmission Project, the federal Minister of Natural Resources sought two extensions to the legislated time limit for the Governor in Council decision-making timeline by approximately four months, increasing it from three months to seven months. This extension also permitted the Crown to further consider the decision of the Federal Court of Appeal (FCA) in *Tsleil-Waututh Nation* (2018 FCA 153) on the Trans Mountain Expansion project (TMX) that determined the Crown must engage in meaningful two-way dialogue with Indigenous groups following the release of the NEB's report and that the Crown must consider proposed accommodations.

The Governor in Council's new legislated time limit to make a decision on the NEB's Reasons for Decision is June 14, 2019. This Crown Consultation and Accommodation Report was provided to the Minister of Natural Resources for consideration in preparing a recommendation to the Governor in Council, and was shared with other Ministers that may be involved in decision-making on the Project.

## 4.0 Crown Consultation with Indigenous Groups on the Contemplated Crown Conduct

In *Tsleil-Waututh Nation* (2018 FCA 153), the FCA on TMX outlined what it considered to be three broad flaws with the Crown's 2016 consultation process:

- Officials simply took notes of Indigenous concerns and did not engage in meaningful two-way dialogue;
- Officials appeared unwilling to depart from the NEB's findings and recommended conditions and consider other accommodations when responding to concerns; and,
- Canada had an erroneous view that it was unable to impose additional conditions on Trans Mountain Corporation to address the concerns of Indigenous groups about the impacts on their rights.

In considering the FCA decision, the Crown's approach to consultation for this Project:

- Strived to be more meaningful and responsive and engage in two-way dialogue;
- Invited and considered proposed accommodations to respond to concerns; and,
- Permitted consideration of additional conditions on Manitoba Hydro to address the concerns of Indigenous groups.

The Crown also continued to ensure that a decision on the Project followed the Government's Interim Measures in that it: integrates traditional Indigenous and scientific knowledge; considers direct and upstream greenhouse gas emissions; and, seeks and considers views of the public and affected communities.

### 4.1 Provincial Crown Consultation Process

Given the contemplated Crown conduct (a decision by the Manitoba Minister of Sustainable Development on whether to issue a Class 3 licence under *The Environment Act* for the Project), the Government of Manitoba had a legal duty to consult with Indigenous groups as to the Project's potential impact on Section 35 Aboriginal and Treaty rights.

While the Government of Manitoba considers relevant information learned through other processes, including through a statutory environmental assessment process, Manitoba does not rely on the environmental assessment process to fulfill its constitutional duty to consult and accommodate.

A separate provincial Crown consultation process was initiated by Manitoba Sustainable Development and Manitoba Indigenous and Northern Affairs in July 2015 with 12 Indigenous groups. Upon information provided by the NEB and NRCan, Manitoba added a further nine Indigenous groups to its Crown list, for a total of 21 Indigenous groups.

A brief overview of Manitoba's consultation process is outlined below:

- Phase I: Initial Assessment and Planning
  - Manitoba determines whether consultation is required and which Indigenous and Métis communities must be consulted as well as the nature and scope of consultation.
  
- Phase II: Community Consultation Process
  - Manitoba confirms interest in the consultation process with Indigenous and Métis communities.
  - Manitoba conducts consultation by sharing information, hearing, discussing, and understanding community concerns or recommendations.
  
- Phase III: Analysis, Recommendations & Decision Making
  - Manitoba reviews information generated through the consultation process and determines how concerns may be reasonably addressed.
  - Manitoba prepares a final report on the results of the consultation process for the provincial Crown decision makers.
  
- Phase IV: External Communications
  - Manitoba sends a final communication to each community that participated in the consultation process. The final communication identifies whether and how an Indigenous group's concerns were addressed.

## **4.2 Potential and Asserted or Established Section 35 Aboriginal and Treaty Rights**

This section summarizes the historical and contextual information related to Indigenous groups whose rights and title, or other interests, have the potential to be adversely affected by the Project, should it be approved.

### **4.2.1 Historic Treaties**

Many potentially impacted Indigenous groups are First Nation signatories to the numbered Treaties negotiated with the federal government between 1871 and 1921 (specifically Treaties 1, 3, 4, and 5; see Figure 3). These Treaties and the associated Oral Promises provide for certain gathering, hunting, and fishing rights within each Treaty territory. Specifically, in exchange for a surrender of rights, title, and privileges whatsoever to the lands, the Crown agreed to set aside land as reserves, to provide both one-time and annuity payments, and to allow First Nations pursuit of their "usual vocations of hunting, trapping and fishing."

In understanding the scope and nature of the rights and obligations under historic Treaties, the Crown is guided by the text of the Treaty, as well as the understandings and intentions of the



First Nations and Crown participants to the making of the Treaty or subsequent adhesions, following rules of Treaty interpretation articulated by the Supreme Court of Canada.

The Crown also understands that in Manitoba, Treaty rights were modified following the conclusion of the *Natural Resource Transfer Agreements*, restricting the hunting, trapping, and fishing rights for the purpose of food.

Rights protected under these historic Treaties may also include harvesting activities undertaken for spiritual and cultural purposes.

The Crown recognizes that some groups are pursuing Treaty Land Entitlement or other processes with Canada to access land previously not provided, as was promised under the Treaties.

**Figure 3: Historic Treaties across the Prairies in Canada**



As stated by the Supreme Court of Canada in *Mikisew (SCC, 2005)*, and recently reaffirmed in *Grassy Narrows (SCC, 2014)*<sup>4</sup>, the Crown's right to take up lands under historic Treaties is not absolute, and is subject to the duty to consult and, if appropriate, accommodate the Treaty First Nations' interests before reducing the area over which their members may continue to pursue hunting, trapping, and fishing rights.

All historic Treaty First Nations are entitled to engage in hunting, fishing, and trapping activities within the whole of their Treaty area. A Treaty infringement would occur if a Treaty First Nation no longer has a meaningful right to hunt, trap or fish in relation to the territory over which it traditionally hunted, trapped or fished.

While Treaty adherents have rights to hunt, trap, and fish throughout their entire Treaty area, land use information and other evidence, filed with the NEB, was reviewed to understand key interactions between the Project and First Nation's traditional use areas, including for spiritual and cultural use. The MPMO also worked closely with Crown Indigenous Relations and Northern Affairs (CIRNA) to understand any issues with respect to lands, including Treaty Land Entitlement.

#### **4.2.2 Métis Nations**

Métis are Indigenous peoples of Canada. Section 35 of the *Constitution Act, 1982* protects the customs, practices, and traditions that were historically important features of Métis communities, who emerged subsequent to European "contact", and prior to the exercise of "effective control" by the European settlers. For Métis to be able to exercise section 35 Aboriginal rights, they must be able to demonstrate they are members of a modern Métis community that has ancestral linkages to a historic rights bearing Métis community. The test for establishing Métis section 35 Aboriginal rights was set out by the Supreme Court of Canada decision in *R. v. Powley*<sup>5</sup>.

In Manitoba, there are varying provincially recognized harvesting rights for Métis, in which it is recognized that Métis have the right to harvest for food and commercial purposes, with varying implementation of this recognition on a jurisdictional basis (see Figure 4 for Manitoba). Where a recognized harvesting area or region, including such areas or settlements would potentially be impacted by the Project, Canada approached consultation at the moderate to high end of the consultation spectrum. Where the region or harvesting area was not within the potential area of impact, consultation was approached at the lower end of the spectrum.

Métis in Manitoba and Ontario are recognized to have section 35 rights to hunt for food and domestic use in specific areas, which have been affirmed by provincial and federal courts. In 2012, the province of Manitoba reached an agreement with the Manitoba Métis

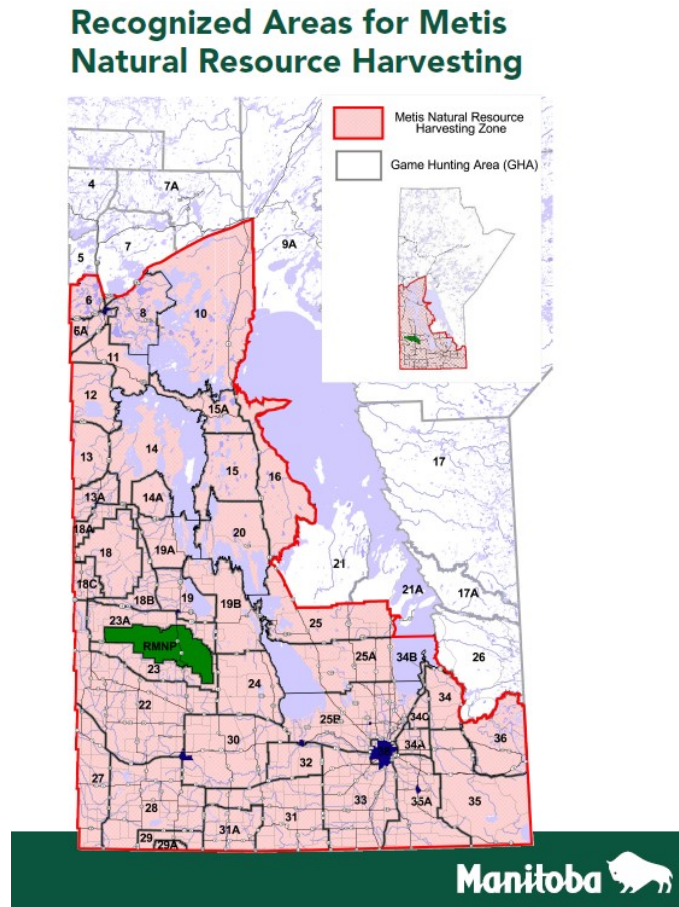
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<sup>4</sup> *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para. 56 and *Grassy Narrows First Nation v. Ontario (Natural Resources)*, [2014] 2 SCR 447 at paras. 50-3.

<sup>5</sup> *R. v. Powley*, [2003] 2 SCR 207

Federation to legally recognize Métis Natural Resource Harvesting Rights in specific areas of the province.

**Figure 4: Recognized Areas for Métis Natural Resource Harvesting in Manitoba**



### 4.2.3 Non-Treaty Rights

Non-Treaty Indigenous groups may have section 35 Aboriginal rights, including with traditional territories. While the contemplated action relates to a Project that is proposed largely for areas covered by historic Treaties, the Crown identified several non-Treaty Indigenous groups with actual or asserted section 35 Aboriginal rights that could be potentially impacted by the contemplated Crown conduct.

As such, the Crown consultation process ensured that all participating Indigenous groups who could highlight or assert any Aboriginal right, even if that right was not grounded in a Treaty, could participate in consultation when they believed the right could potentially be impacted by the contemplated Crown conduct.

### 4.3 Indigenous Groups Identified for Consultation

In May 2017, the Crown, based on its standard procedure for a major resource project, developed a list of potentially impacted Indigenous groups with advice from the NEB, Manitoba Hydro, and CIRNA.

A total of 21 individual rights-bearing Indigenous groups were identified as potentially impacted by the Project. This list was developed through the consideration of currently available information relating to Indigenous groups, whose reserves fall within 100 km on either side of the zone of impact represented by the Project or the Treaty territories are crossed by the Project, and therefore may have a potential impact on established or asserted section 35 rights. The analysis was also informed by information developed or provided to CIRNA or the NEB during other processes.

The following tables (4 and 5) list the 21 Indigenous groups in Manitoba and Ontario included in the final Crown list.

**Table 4: Indigenous Groups in Manitoba**

No.	Indigenous Groups	Province
1	Birdtail Sioux First Nation	Manitoba
2	Black River First Nation	Manitoba
3	Brokenhead Ojibway Nation	Manitoba
4	Buffalo Point First Nation	Manitoba
5	Canupawakpa Dakota First Nation	Manitoba
6	Dakota Plains Wahpeton Oyate	Manitoba
7	Dakota Tipi First Nation	Manitoba
8	Long Plain First Nation	Manitoba
9	Manitoba Métis Federation	Manitoba
10	Peguis First Nation	Manitoba
11	Roseau River Anishinabe First Nation	Manitoba
12	Sagkeeng First Nation	Manitoba
13	Sandy Bay Ojibway First Nation	Manitoba
14	Sioux Valley Dakota Nation	Manitoba
15	Swan Lake First Nation	Manitoba
16	Waywayseecappo First Nation	Manitoba

**Table 5: Indigenous Groups in Ontario**

No.	Indigenous Groups	Province
17	Animakee Wa Zhing #37	Ontario & Manitoba
18	Anishinaabeg of Naongashiing	Ontario

19	Iskatewizaagegan #39 Independent First Nation	Manitoba & Ontario
20	Northwest Angle #33	Ontario
21	Shoal Lake #40 First Nation	Manitoba & Ontario

#### 4.2.1 Establishing the Depth of Duty to Consult

The Crown undertook a preliminary depth of consultation analysis for each Indigenous group potentially impacted by the Project to determine the extent of consultation owed to each Indigenous group in relation to the Project. The analysis took account of the following factors for each Indigenous group in relation to the Project:

- Strength of the claim for any section 35 Aboriginal and Treaty rights that may be adversely affected; and,
- Degree of potential impact of contemplated Crown action or activity to adversely impact section 35 Aboriginal and Treaty rights.

The Crown considered the above two factors for each Indigenous group's use of lands and resources in proximity to areas potentially impacted by the Project.

To assess the potential severity of impacts on section 35 Aboriginal and Treaty rights, the Crown considered factors, such as:

- areas of traditional use by Indigenous groups;
- the past, present, and anticipated future uses;
- the current baseline conditions of these areas;
- the context through which rights and traditional practices are exercised;
- the availability of other lands where the meaningful exercise of interests could occur, if needed;
- residual effects of the Project;
- the extent to which the Project could impact Indigenous groups' use of the Project area, and;
- the measures proposed to mitigate adverse impacts.

The preliminary depth of consultation primarily served to inform the funding offered to each Indigenous group and the Crown's preliminary understanding of rights and potential impacts to rights. Each Indigenous group on the Crown list was offered the same process despite the depth of consultation owed. The Crown shared the preliminary depth of Consultation assessment with Indigenous groups on August 15, 2018. Indigenous groups were invited to provide any additional information to inform the content of the assessment. If new information was identified during the consultation process with an impact on the depth of consultation determined for a group, the Crown adjusted its conclusions.

The Crown compiled information to conduct the depth of consultation analysis from a number of sources, including:

- Information provided by Indigenous groups to the Crown;
- Submissions to the NEB by Manitoba Hydro;
- Submissions to the NEB by Indigenous groups;
- Correspondence between the Crown and Indigenous groups; and,
- The federal government's Indigenous and Treaty Rights Information System.

#### **4.2.2 Crown Consultation Activities by MPMO Officials**

On April 29, 2018, the Crown notified the 21 potentially impacted Indigenous groups on the Crown List by mail and email of the intent to rely on the NEB process to discharge the duty to consult for the Project, to the extent possible. The Crown attended Oral Traditional Evidence sessions held by the NEB June 4-8, 2018. Canada further followed the NEB assessment and recorded concerns identified by Indigenous groups based on evidence on the NEB record, as well as information requests and responses. Canada initiated supplemental consultation with potentially impacted Indigenous groups on August 15, 2018 after the NEB hearing record closed and before the NEB issued its Reasons for Decision report. This supplemental consultation took note of the following concerns:

- Limited participation by Indigenous groups in the NEB's assessment process (ie. 10 Indigenous groups of 21 participate in the NEB process);
- The NEB did not tailor its assessment to the consultation preferences of Indigenous groups;
- Indigenous concerns that may have been beyond the scope of the NEB assessment of the Project; and,
- A legal dispute between the Manitoba Metis Federation, Manitoba Hydro and the Government of Manitoba over Manitoba's direction to Manitoba Hydro not to proceed with a \$67M compensation agreement.

On August 15, 2018, the Crown sent a letter to Indigenous groups to initiate supplemental consultation on potential Project impacts on section 35 Aboriginal and Treaty rights and potential accommodation measures. The Crown offered Indigenous groups participant funding to support meaningful participation in the consultation process. The Crown also shared the preliminary conclusions on the depth of consultation owed and invited groups to provide any additional information that could inform the depth of consultation determination or consultation on the Project.

The Canadian Environmental Assessment Agency (CEAA) administers participant funding on behalf of the MPMO, followed up to offer assistance in completing the funding applications in advance of the September 7, 2018 deadline. The MPMO also followed up with groups to identify convenient dates to hold consultations. Four groups applied for participant funding by the initial

September 7, 2018 deadline. The Crown remained flexible and honoured funding application received after the September 7, 2018 deadline.

The Manitoba Metis Federation (MMF) submitted a letter on October 25, 2018 disputing the Crown's preliminary moderate depth of consultation assessment. As a result, the Crown revised its depth of consultation and determined it owed the MMF a high depth of consultation.

On November 16, 2018, following the release of the NEB's Reasons for Decision report on November 15, 2018, the Crown corresponded by email with the 21 groups on the Crown list to advise them of the publication of the NEB's Reasons for Decision and invited them to meet with the Crown to discuss potential Project impacts to section 35 Aboriginal and Treaty rights and potential accommodation measures.

To allow for meaningful consultation and in response to the FCA decision in *Tsleil-Waututh Nation* (2018 FCA 153), the Crown extended the deadline for making a Project decision from February 15 to May 16, 2019. The deadline was extended for a second time from May 16 to June 14, 2019. These extensions ensured that the Crown and Indigenous groups could engage in meaningful two-way dialogue on potential impacts to section 35 Aboriginal and Treaty rights and potential accommodation measures. Twelve Indigenous groups consulted with the Crown in the supplemental consultation phase, 10 of which participated in the NEB's assessment. The objectives of supplemental consultation was to engage in a dialogue with groups regarding any outstanding issues and concerns regarding the NEB Reasons for decision report on the Project, to discuss potential Project impacts to section 35 Aboriginal and Treaty rights, as well as to identify any potential accommodation measures for Governor in Council's consideration as part of its decision on the Project.

Between August 15, 2018 and May 10, 2019, the MPMO met with the 12 Indigenous groups, including the Manitoba Metis Federation, to discuss the Project's potential impacts, participant funding and potential accommodation measures. The Minister of Natural Resources also met with the Manitoba Metis Federation on three occasions, as well as with Shoal Lake #40 First Nation and Peguis First Nation to discuss the Project's impacts on section 35 Aboriginal and Treaty rights, as well as potential accommodation measures.

On March 22, 2019, a draft of an annex to the Crown Consultation and Accommodation Report specific to each Indigenous groups was shared with each Indigenous group for review and comment to help ensure that the Crown had adequately understood Indigenous groups' participation in the consultation process, their strength of claim, potential impacts on section 35 Aboriginal and Treaty rights, and whether these impacts were adequately addressed by the NEB conditions, proponent commitments or other measures. As of May 10, 2019, the Crown had received substantive comments from the Manitoba Metis Federation, Animakee Wa Zhing #37 First Nation Northwest Angle #33 First Nation, and Sagkeeng First Nation.

In addition to reviewing and commenting on group-specific annexes developed by the Crown, Indigenous groups were also offered the opportunity to provide a submission of their own to

directly describe any outstanding concerns, issues or other views with respect to the Project. The Manitoba Metis Federation, Shoal Lake #40 First Nation, Long Plain First Nation, Brokenhead Ojibway Nation, Swan Lake First Nation, Sandy Bay Ojibway First Nation, and Roseau River Anishinabe First Nation provided separate submissions that have informed groups specific annexes and have been included in the package provided to the Governor in Council.

#### **4.2.3 Federal Funding**

The Participant Funding Program supported Indigenous meaningful participation in consultation activities from September 2018 to June 2019. Based on an interdepartmental agreement, and similar to other projects subject under the Interim Measures, the administration of the Participant Funding Program was carried out by CEAA on behalf of the MPMO.

MPMO offered a total of \$294,900.00 in participant funding to all Indigenous groups, and indicated it was flexible and amenable to increase funding when the funding requirements and outcomes were reasonable, sufficiently described and once initial funding was fully utilized. Indigenous groups also received funding to support their participation in the Manitoba's CEC regulatory review and provincial consultation process review, as well as the NEB assessment of the Project. The NEB offered up to \$853,945 in participant funding to ten Indigenous groups involved in the NEB review, as well as \$160,000 to two Indigenous organizations.

In the supplemental consultation phase, the Crown invited groups to apply for funding, initially offering \$9,000 to groups with a moderate depth of consultation, and \$5,000 to groups owed a low level of consultation, with the exception of the Manitoba Metis Federation, which was offered \$27,000 with a moderate depth of consultation. These funds were identified to support the groups' review of the depth of consultation assessment, the NEB Reasons for decision, the Crown's preliminary annexes in the CCAR, internal community consultation and meaningful discussions with the Crown on any issues that may remain outstanding, along with the consideration of measures to further reasonably accommodate any potential outstanding impacts, if necessary.

In response to requests from nine Indigenous groups for additional funding, the Crown re-assessed its funding methodology to ensure fair access to additional resources between potentially impacted Indigenous groups. Participant funding is not intended to cover the full costs of participation in consultation activities but to provide some financial support. The Crown indicated to Indigenous groups that it remained open to further funding to support consultation activities.

The preliminary funding offers distributed in August 2018 and supplementary offers are outlined in the following funding (Table 6):



**Table 6: Allocation of funds for participation in consultations on the MMTP**

Recipient Name	Original Funding Offer	Contribution Agreement Signed	Additional Funding Offer	Contribution Agreement Signed for additional funding offer	Total Offered Funding
Animakee Wa Zhing No.37	\$ 9,000.00	√	\$ 14,500.00	√	\$23,500.00
Anishnaabeg of Naongashiing	\$ 9,000.00				\$9,000.00
Birdtail Sioux First Nation	\$ 5,000.00				\$5,000.00
Black River First Nation	\$ 5,000.00				\$5,000.00
Brokenhead Ojibway Nation	\$ 9,000.00	√	\$ 14,500.00		\$23,500.00
Buffalo Point First Nation	\$ 5,000.00				\$5,000.00
Canupawapka Dakota First Nation	\$ 5,000.00				\$5,000.00
Dakota Plains Wahpeton Oyate	\$ 5,000.00				\$5,000.00
Dakota Tipi First Nation	\$ 5,000.00				\$5,000.00
Iskatewizaagegan 39 Independent First Nation	\$ 9,000.00				\$9,000.00
Long Plain First Nation	\$ 5,000.00		\$ 14,500.00 <sup>6</sup>		\$14,500.00
Manitoba Metis Federation	\$ 27,000.00		\$ 9,000.00	√	\$36,000.00
Northwest Angle No. 33	\$ 9,000.00	√	\$ 10,000.00		\$19,000.00
Peguis First Nation	\$ 9,000.00		\$ 27,000.00	√	\$27,000.00
Roseau River Anishinabe First Nation	\$ 9,000.00	√	\$ 21,500.00		\$30,500.00
Sagkeeng First Nation	\$ 9,000.00	√			\$9,000.00
Sandy Bay Ojibway First Nation	\$ 5,000.00		\$ 14,500.00 <sup>6</sup>		\$14,500.00
Shoal Lake 40 First Nation	\$ 9,000.00	√	\$ 15,900.00		\$24,900.00
Sioux Valley Dakota First Nation	\$ 5,000.00				\$5,000.00
Swan Lake First Nation	\$ 5,000.00		\$ 14,500.00 <sup>6</sup>	√	\$14,500.00
Waywayseecappo First Nation	\$ 5,000.00				\$5,000.00
<b>Total</b>	<b>\$ 163,000.00</b>	<b>6</b>	<b>\$131,900.00</b>	<b>4</b>	<b>\$294,900.00</b>

<sup>6</sup> These groups did not accept the initial \$5,000 funding offer and after consideration of their requests, were reoffered \$14,500 in total participant funding amount.

### **4.3 Crown Consultation Record and Tracking of Key Issues**

Following each meeting with an Indigenous group, Crown officials developed a draft meeting record and shared it with the group to ensure that the conversation was captured correctly and to seek concurrence on any outstanding action items. The meeting records also informed the development of group-specific annexes. The Crown adjusted the minutes, as appropriate, and where there was disagreement, the Crown retained two copies (the Crown's version and the Indigenous group's version) of the meeting minutes for the consultation record.

The Crown also tracked all correspondence with each Indigenous group, both to share information and to arrange meetings, and noted any questions or issues that were raised through this correspondence, to ensure they were appropriately addressed. This includes any issues identified that were not directly linked to the Project.

The Crown also developed an issue tracking tool to identify issues raised by Indigenous groups during the NEB process and updated it throughout the consultation process. This tool also included an analysis by the Crown examining the extent to which Manitoba Hydro's commitments, the Manitoba Licence conditions, and the NEB's proposed conditions addressed the concerns of Indigenous groups, or if a gap existed. The tool was updated as consultation progressed; and, the tool informed consideration of areas in which further accommodation measures may be necessary.

### **5.0 Potential Impacts of Contemplated Crown Conduct on Section 35 Rights and Interests**

This section summarizes the issues raised by Indigenous groups through the NEB assessment and during supplemental consultation. Separate Indigenous group-specific annexes were also prepared that outline Indigenous concerns and potential impacts to section 35 Aboriginal and Treaty rights and how they were accommodated by proponent commitments, Manitoba licence conditions, and NEB conditions, as well as the Crown's conclusions on whether the impacts have been reasonably accommodated and Crown accommodation measures, if applicable. Draft annexes were shared with each Indigenous group for review and comment on March 22, 2019 for review and comment by April 23. This deadline was later extended to May 31, 2019. Indigenous groups will also receive a final annex in advance of the Governor in Council's decision on the Project including proposed amendments to five NEB conditions. Unless requested by the Indigenous group, group specific annexes will not be published with the report because they may contain third-party information.

As a result of concerns raised by multiple Indigenous groups, the Crown is proposing amendments to the following five NEB conditions to accommodate Indigenous concerns by ensuring that Manitoba Hydro follows through on commitments made to Indigenous groups and considers concerns raised by Indigenous groups regarding the impacts of the Project:

1. **Condition 3 (Implementation of Commitments)** - The Crown is proposing that Condition 3 be amended to specifically include all commitments made to Indigenous groups through its Project application or otherwise on the record of the EH-001-2017.
2. **Condition 15 (Commitments to Tracking Table)** – The Crown is proposing that Condition 15 be amended to specifically include all commitments made to Indigenous communities
3. **Condition 21 (Issues Tracking)** - The Crown is proposing that Condition 21 be amended to specifically include complaints raised through the MMTP Monitoring Committee.
4. **Condition 22 (Crown land Offset Measures Plan)** - The Crown understands Indigenous groups’ concern regarding how Manitoba Hydro will consider Indigenous input in the development of the Crown land Offset Measures Plan. As a result, the Crown has proposed amendments to NEB Condition 22 to specifically ensure that Manitoba Hydro engages impacted Indigenous groups regarding the development of the plan, as well as to ensure the plan includes information obtained through Indigenous Knowledge and Traditional Land Use Studies, and that Manitoba Hydro provides the NEB with a summary that includes a description of any issues or concerns raised by impacted Indigenous groups and how Manitoba Hydro addressed or responded to them.
5. **Condition 26 (Wetland Offset Measures Plan)** - The Crown understands Indigenous groups’ concern regarding how Manitoba Hydro will consider Indigenous input in the development of the Wetland Offset Measures Plan. As a result, the Crown has proposed amendments to NEB Condition 26 to specifically ensure that Manitoba Hydro engages impacted Indigenous groups regarding the development of the plan as well as ensure the plan includes information obtained through Indigenous Knowledge and Land Use Studies, and that Manitoba Hydro provides the NEB with a summary that includes a description of any issues or concerns raised by impacted Indigenous groups and how Manitoba Hydro addressed or responded to them.

## **5.1 Issues Raised by Indigenous Groups during the Regulatory Review and Environmental Assessment and Crown Consultation Processes**

### **5.1.1 Common Concerns Raised by Indigenous Group Regarding Potential Project Impacts:**

**5.1.1.1** Loss of the Crown Land Due to the Project

**5.1.1.2** Potential for the Project to Impact Wildlife & Wildlife Habitat (Hunting & Trapping)

**5.1.1.3** Potential for Restricted Access to the Project Right-of-way during Project Construction and Operation;

- 5.1.1.4 Potential for Increased Access to the Project Right-of-Way for Non-Indigenous Resource Users and Animal Predators;
- 5.1.1.5 Potential for Project-Generated Electromagnetic Fields (EMF) to Result in Real or Perceived Health Impacts;
- 5.1.1.6 Potential Real or Perceived Health Impacts due to the Application of Herbicide for Integrated Vegetation Management Along the Project Right-of-Way;
- 5.1.1.7 Potential for the Project to Impact Fish & Fish Habitat (Fishing)
- 5.1.1.8 Need for Direct Economic Benefits and Financial Compensation for Indigenous groups;
- 5.1.1.9 Potential for the Project to Impact Traditional Use & Medicinal Plants (Plant Harvesting);
- 5.1.1.10 Potential for the Project to Contribute to Fluctuations in Water Levels in the Lake of the Woods;
- 5.1.1.11 Inadequacy of the MMTP Monitoring Committee;
- 5.1.1.12 Inadequacy of Indigenous Consultation;

**5.1.2 Other issues raised by at least one of the potentially impacted Indigenous Groups**

- 5.1.2.1 Potential for the Project to Impact Cultural and Heritage Resources;
- 5.1.2.2 Accidents, Malfunctions & Emergency Preparedness/Response;
- 5.1.2.3 Contribution of the Project to Cumulative Effects of Resource Development on the Exercise of Section 35 Aboriginal and Treaty rights;
- 5.1.2.4 Potential for the Project to Impacts Moose & White-Tailed Deer (Hunting & Trapping);
- 5.1.2.5 Potential for the Project to Impact Navigation & Navigation Safety;
- 5.1.2.6 Inadequate Funding for Indigenous Knowledge Studies from Manitoba Hydro; and,
- 5.1.2.7 Potential for the Project to result in the Fragmentation or Loss of Wetlands.

## **5.1.1 Common Concerns Raised by Indigenous Group Related to Potential Impacts on Rights**

### **5.1.1.1 Loss of Crown Land due to the Project**

Issue: Potential for the Project to result in the loss of Crown lands due to construction of the ROW, on which section 35 Aboriginal and Treaty rights can be exercised or which are available for selection as part of settlements to outstanding specific land claims (e.g. Treaty Land Entitlement, Farmland Entitlement claim and Lake of the Woods flooding claim).

During the NEB assessment, and in ensuing meetings with the Crown, 13 Indigenous groups raised concerns about the loss of Crown land due to the construction or ongoing operation of the Project. For Treaty 1 signatories, routing preferences included avoiding Crown land where possible to protect Treaty Land Entitlement (TLE) selection opportunities. The Crown was also told by Treaty 1 signatories that any further loss of Crown land due to the Project constituted an adverse impact on the ability of each Indigenous group to fulfill its outstanding land quantum under their respective TLE agreements.

#### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro submitted that, as indicated in the Environmental Impact Statement (EIS), the only place where a permanent change in access to traditional lands may occur would be at or near facilities such as converter stations or switchyards.

Manitoba Hydro provided funding to Indigenous groups to undertake self-directed Indigenous Knowledge studies to inform the selection of the Final Preferred Route and stated it undertook multiple rounds of engagement through its First Nations and Métis Engagement Process (FNMEP) to receive feedback on general and specific areas of importance to Indigenous groups to avoid for routing.

In addition, Manitoba Hydro stated that there would be no restriction to access of traditional use sites on Crown lands within the Project easement. Indigenous communities would be able to access Crown lands for the exercise of section 35 Aboriginal and Treaty rights, except for short periods during construction where some restrictions would apply in active construction zones based on safety concerns to Project staff and the public.

With respect to accommodation for the loss of Crown lands, Manitoba Hydro said an offset program involving the replacement of land affected by the Project with land of similar value elsewhere, would require oversight and participation by Manitoba. As the Manitoba is the owner of most Crown lands in that province, and would have oversight over many of the challenges associated with implementing an offset requirement, Manitoba would be best suited to determine whether an offset program is appropriate and, if so, in what form.

#### ***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB stated that reduced or interrupted access to Crown lands may result in temporary disruptions in the ability of Indigenous peoples to exercise their

traditional activities. Therefore, the NEB imposed three conditions on Manitoba Hydro that would offset or compensate for any permanent loss of Crown lands or wetlands as a result of the Project, including:

- Condition 22 requires Manitoba Hydro to file with the NEB, 30 days prior to commencing operations, a Crown Land Offset Measures Plan that outlines offset and compensation measures for permanent loss of Crown lands available for traditional use by Indigenous peoples resulting from the Project.
- Condition 23 requires Manitoba Hydro to submit a post-construction monitoring report outlining the total area of permanent loss of wetlands resulting from construction of the Project and an explanation of how that loss will be offset or compensated, as per the Wetland Offset Measures Plan
- Condition 26 requires Manitoba Hydro to file with the NEB, within 90 days of commencing operation of the Project, a Wetland Offset Measures Plan that outlines how permanent loss of wetlands resulting from the Project will be offset or compensated. In addition, Condition 26 requires Manitoba Hydro to explain how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands be quantified and reported to the NEB.

### ***Treaty Land Entitlement***

Between 1871 and 1910, 58 First Nations in Manitoba signed a series of treaties with the Crown, known as the numbered treaties. Each of these treaties provided reserve land to be set apart by the Government of Canada for a First Nation. The size of reserve land was based on a First Nation's population and the per capita formula in the treaty. In Manitoba, the majority of First Nations received their entire land allocations under their treaties. However, some First Nations did not. TLE agreements fulfill federal obligations to provide sufficient amounts of reserve land as part of those treaties.

In 1930, the federal government passed a series of *Natural Resources Transfer Acts* (NRTA) that transferred federal control of lands and natural resources to the respective prairie provincial governments: Alberta, Saskatchewan and Manitoba. Between 1994 and 2009, the Government of Canada and 29 Manitoba First Nations, with Manitoba either as a party to those agreements or as a signatory to a linked bilateral agreement with Canada, agreed on how to address the land shortfall through TLE Settlement Agreements.

The Manitoba TLE Framework Agreement was signed on May 29, 1997, by Canada and Manitoba and the TLE Committee of Manitoba Inc., on behalf of 19 (but now 21 due to band division) Manitoba First Nations with outstanding TLEs. This agreement provides for the 21 First Nations to select or acquire a total of just over 1.1 million acres that may be added to reserve. Provincial Crown land, which is transferred to Canada and subsequently set apart for TLE reserve creation,

will comprise 985,949 acres. The remaining 114,677 acres, is to be purchased from willing sellers<sup>7</sup>. Indigenous groups were provided funding to purchase fee-simple land.

Four Treaty 1 signatories on the Crown List for the Project signed individual TLE Settlement Agreements with Canada (Long Plain First Nation – 1994, Swan Lake First Nation – 1995, Roseau River Anishinabe First Nation – 1996 & Peguis First Nation – 2009). Although each these TLE Agreements permit the selection of available Crown land to be added to reserve under their individual TLE agreements, there was a recognition at the time these agreements were signed that there was not enough Crown land in southern Manitoba to fill the outstanding land quantum. Therefore, Canada provided payments to each group as part of their individual TLE agreement to acquire fee-simple land for addition to reserve to fill the shortfall.

During the NEB assessment of the Project, seven First Nations expressed concern about the Project's potential to reduce or encumber lands available to fulfill TLE. Manitoba Hydro responded that it identified TLE selections as areas of least preference during the routing process for the Project and noted that the Final Preferred Route does not transect reserve lands or any TLE selections. The NEB and the CEC found that the process and criteria used to determine the Final Preferred Route were acceptable and appropriate.

On March 5, 2019, Crown-Indigenous Relations and Northern Affairs (CIRNA) confirmed with the MPMO that the Project would not transect any Crown land selected or fee-simple land acquired that have been identified by Indigenous groups to CIRNA for addition to reserve under any TLE Agreements. However, on April 11, 2019, following Manitoba's approval of the Project, the Long Plain First Nation notified the Minister of Crown-Indigenous Relation and Northern Affairs of its selection of provincial Crown land for additional to reserve, pursuant to its TLE agreement, that would be transected by the Project's ROW. Long Plain First Nation subsequently notified the Minister of Natural Resources on May 1, 2019 of this action and the MPMO on May 2, 2019.

### ***Crown's Conclusion***

The Crown understands that the ongoing ability to exercise section 35 Aboriginal and Treaty rights is critical to Indigenous culture and to Canada. As we heard many times, Indigenous groups consider themselves to be stewards of the land, on which they also depend and continue to use for sustenance and cultural purposes.

The Crown recognizes the concerns of Indigenous groups regarding the potential impacts of the Project on the availability of Crown lands, on which section 35 Aboriginal and Treaty rights may be exercised. To mitigate this adverse impact, Manitoba Hydro developed the Final Preferred Route based on a process that included input from Indigenous groups and identification of important sites. This process ensured that:

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<sup>7</sup> Treaty Land Entitlements in Manitoba <https://www.aadnc-aandc.gc.ca/eng/1305306991615/1305307177471#frame>

- Site specific issues are documented, route alterations are brought forward to the project team, concerns and preferences are compiled, and general transmission line routing feedback is considered in the decision making process;
- Information collected from the Indigenous groups is provided to discipline specialists to enhance their assessments of the preferred route;
- Local feedback and knowledge assisted in final design and placement, such as route modifications and tower placement; and,
- Information and knowledge collected assists in determining mitigation measures to minimize potential impacts to people and the environment.

In addition, the Crown notes Manitoba Hydro's First Nations and Metis Engagement Program (FNMEP) process heard general routing preferences from Indigenous communities that included avoiding Crown land, where possible, to protect:

- TLE selection opportunities;
- Intact natural areas and wildlife;
- Important plant harvest areas; and,
- Culturally or historically important sites.

Manitoba Hydro suggested that the contiguous nature of intact Crown lands is one of the key aspects of its value. As a result of incorporating Indigenous traditional knowledge in the routing process, Manitoba Hydro moved the Project's ROW to establish a Final Preferred Route that traversed less unoccupied Crown lands. Therefore, the Project's ROW traverses 36 km of Crown land with less than 10 percent of the route crossing unoccupied Crown lands and over 43 percent of the route following an existing ROW.

Manitoba Hydro has also committed to protecting sensitive sites under its Construction Environmental Protection Plan (CEPP) in order to preserve traditional land use locations. Manitoba Hydro's CEPP will provide guidance for the implementation of environmental protection measures for the Project, which will be applied to both private and Crown land.

The Crown notes Manitoba Hydro will not restrict access to traditional use sites on Crown lands along the ROW. However, there will be short period during construction where there will be some restrictions in active construction zones based on safety concerns to Project staff and the public. Indigenous groups will still be able to access traditional use sites in order to exercise section 35 Aboriginal and Treaty rights along the ROW, except in active construction zones for public safety reasons.

As for lands made inaccessible for exercising section 35 rights, the NEB imposed Condition 22 (Crown Lands Offsets Plan) to mitigate the adverse impact of the Project on the permanent loss of Crown lands. Condition 22 requires Manitoba Hydro to engage with Indigenous groups and other stakeholders to establish a plan to offset or compensate the loss of Crown lands on which section 35 Aboriginal and Treaty rights can be exercised. Since the term 'permanent loss' in



Condition 22 is not defined, Indigenous groups and other stakeholders can further discuss in detail what Crown lands risk being permanently lost to the exercise of section 35 rights.

The Crown notes the NEB's finding that after construction is completed, access to the ROW will be unchanged and plant harvesting, fishing, hunting and trapping, travel and use of cultural sites will be widely available in the area of the Project, and that these activities will still be possible. Upon Manitoba Hydro's submission of its Condition 22 filing, the NEB will make a determination whether sufficient engagement with Indigenous groups has occurred prior to making a decision whether to accept Manitoba Hydro's Condition 22 plan. However, to provide further clarity, the Crown is proposing amendments to Condition 22 that would require the Manitoba Hydro to provide the NEB with a description of any issues raised by Indigenous groups and how Manitoba Hydro addressed or responded to them.

As to concerns about the NEB's "approve first, consult later" approach to NEB Condition 22 (Crown Lands Offset Plan), the Crown finds this to be a reasonable and appropriate approach to accommodation. The power line certificate and its terms and conditions generally authorize the construction and operation of the Project, but these also set out, via the terms and conditions, the subsequent technical and detailed information that inform more precisely how the Project will be constructed and operated in a manner that will reduce or minimize its predicted effects. Further details that can resolve, to the extent possible, some Indigenous concerns that have been raised will come into focus as the more precise details required through mandated plans for the Project and detailed constructions plans are being developed. The Crown Lands Offset Plan represents a plan to provide additional details aimed at resolving Indigenous concerns as they become more clear during the course of detailed project planning. Project approval is premised on the presence of a plan that will subsequently detail how Indigenous concerns that have been raised will be addressed.

Finally, it is noted that up until May 1, 2019, the Crown understood that, after conferring with CIRNA, the Project would not intersect with any current Treaty Land Entitlement (TLE) parcel selected or acquired by Indigenous groups. The Crown also acknowledges that Long Plain First Nation has attempted to select Crown land that would be transected by the Project, should it be approved by the Governor in Council. However, given Long Plain made this selection on April 11, after Manitoba had already approved the Project and that NRCan was not informed until May 2. Under the TLE Agreement, a land selection identified by the Indigenous group to the Crown triggers specific procedures which have been initiated with CIRNA and Manitoba.

**Crown Conclusion:** Based on Manitoba Hydro's routing process and commitments, as well as NEB Conditions 22, 23 and 26, the Crown concludes that Indigenous groups' concerns with respect to the Project's contribution to the loss of Crown lands, on which section 35 Aboriginal and Treaty rights are exercised, are reasonably accommodated.

The Crown views the implementation of TLE as an issue distinct from the consultation process on the Project, particularly as the TLE question was addressed during the NEB hearings and the recent selections still needs to be processed through formal procedures outlined in the TLE

agreement. The group specific TLE Agreements already set out the terms and conditions for implementation, including the Additions to Reserve policy, which offer the necessary guidance for the parties to execute their respective roles and responsibilities.

#### **5.1.1.2 Potential for the Project to Impact Wildlife & Wildlife Habitat (Hunting & Trapping)**

Issue: During the NEB assessment and in ensuing meetings with the Crown, 11 Indigenous groups raised concerns about the potential for the Project to result in losses or disruption to wildlife and wildlife habitat, which could impact the ability of Indigenous groups to exercise section 35 hunting and trapping rights.

##### ***Proponent Commitments & Responses***

In its Environmental Impact Statement (EIS), Manitoba Hydro noted that the Project will have adverse, but low in magnitude, effects on wildlife and wildlife habitat. Manitoba Hydro also said that the Project, in combination with other future projects, will have a small contribution to cumulative effects on wildlife and wildlife habitat. However, Manitoba Hydro also noted that the impact on hunting and trapping is characterized as moderate, given that Indigenous groups identified a number of specific hunting and trapping sites along the ROW and the reduction in use that may occur as a result of the presence of the Project.

Manitoba Hydro has developed a draft Construction Environmental Protection Plan (CEPP), which includes a series of measures to mitigate adverse impacts to wildlife and wildlife habitat, as well as impacts to hunting and trapping. Some of the mitigation measures include:

- Construction timing windows
  - Recommended reduced risk timing windows are periods of the year when wildlife species are sensitive to disruptive operations because of a sensitive lifecycle activity such as calving, nesting, hibernation, etc.
- Buffers and setbacks
  - To protect wildlife, Manitoba Hydro has established the following vegetated buffers (where shrub and herbaceous vegetation is to be maintained) and setbacks ranging from 30 to 150 metres (where no work shall occur unless authorized by the senior environmental assessment officer).
- Birds and habitat
  - Bird diverters or aerial markers may be installed in high bird traffic areas.
  - Avoiding construction during breeding bird-timing windows, to the extent possible.
  - A specific habitat management plan for the Golden Winged-Warbler, which is a Species of Conservation Concern.

- Reptiles/amphibians
  - Removing reptiles and amphibians, including the endangered northern leopard frog to areas outside of the construction area; and erecting exclusion fencing to minimize the risk of frogs entering the work area.
- Species of concern
  - Suspending construction and implementing protocol should rare plants or wildlife species be identified or suspected along the ROW during construction.
- Rights-of-way
  - Rehabilitating disturbed areas along ROW per the Rehabilitation and Invasive Species Management Plan.
- Wildlife protection
  - Orientation for contractor and Manitoba Hydro employees will include training for awareness of environmental protection measures for wildlife and wildlife habitat.
  - Boundaries of important wildlife habitats (i.e. mineral licks and stick nests) will be identified in map sheets and flagged prior to clearing.
  - Hunting and harvesting of wildlife by project staff will not be permitted while working on the project sites.
  - Prior to seeking authorization from Manitoba Sustainable Development to remove a Muskrat house, Beaver Dam or Lodge, documentation of reasonable attempts to trap resident beavers/muskrat must be provided.
  - Trees containing large nests of sticks and areas where active animal dens or burrows are encountered will be left undisturbed until unoccupied. Artificial structures for nesting may be provided if unoccupied nests must be removed.

In addition the above, Manitoba Hydro stated that the selection of its Final Preferred Route serves as a measure that mitigates potential impacts to hunting and trapping as it:

- Is located primarily on developed and agricultural land (more than 65% of the ROW occurs on agricultural or developed lands) and follows an existing corridor, reducing the need to clear intact forest;
- Is located in an area where few new access routes will need to be constructed due to availability of existing infrastructure;
- Avoids the Sandilands area, the area west of Sundown, the Marchand area, Spur Woods and Watson P. Davidson WMA;
- Is located away from key areas identified during wildlife field investigations, including grouse leks, and areas in close proximity to wetlands;

Manitoba Hydro has also outlined that Indigenous groups can identify sensitive hunting and trapping sites for protection under the CEPP.

**NEB condition or findings with respect to this issue**

In its Reasons for Decision, the NEB noted that the Project has the potential to have adverse effects on migratory birds protected under the *Migratory Birds Convention Act* (MBCA). The NEB examined Manitoba Hydro's mitigation measures, and considered the following measures as key to avoiding or minimizing effects on migratory birds:

- Conducting most Project work during the winter when migratory birds are not present;
- Conducting nest sweeps prior to activities that occur during the breeding bird period; and
- Installing bird diverters on wires where the risk of collisions is expected to be highest.

The NEB noted that Manitoba Hydro committed to monitoring avian mortality post-construction. The NEB expects Manitoba Hydro will include the monitoring results, as well as any necessary adaptive management measures implemented to further reduce avian mortality, in the post-construction monitoring reports to be filed annually, in accordance with Condition 23 (Post-Construction Monitoring Reports). The NEB finds in its Reasons for Decision that the potential residual adverse environmental effects of the Project on migratory birds are not likely to be significant.

The NEB recognized that Manitoba Hydro used a precautionary approach in its assessment and assumed the presence of all species at risk when developing its mitigation measures. The NEB considered this an acceptable approach, particularly since Manitoba Hydro plans to construct during winter, when the risk of disturbance to wildlife species at risk is limited. Manitoba Hydro has committed to implement appropriate protection measures if plant or wildlife species-at-risk are found, or suspected to occur, on the ROW, prior to or during construction, or if construction activities will occur during sensitive timing windows for wildlife species-at-risk.

In regards to the Project's effects on critical habitat for the golden-winged warbler, the NEB noted Environment and Climate Change Canada's (ECCC) support of Manitoba Hydro's Golden-Winged Warbler Habitat Management Plan. The NEB assessed that Manitoba Hydro's plans to use integrated vegetation management techniques during construction and operation to provide habitat suitable for golden-winged warblers is appropriate and will minimize the Project's adverse environmental effects on this species. The NEB expects Manitoba Hydro to monitor and report the effectiveness of these measures post-construction, as per the requirements of Condition 23 (Post-Construction Monitoring Reports).

In addition, if any species at risk are newly identified during construction, the NEB expects Manitoba Hydro to report on any protective measures implemented during construction, and monitor the success of those measures post-construction, as per the requirements of Condition 23 (Post-Construction Monitoring Reports).

Lastly, the NEB expects Manitoba Hydro to periodically check for updates to *Species at Risk Act* (SARA) Schedule 1 listings, prior to and during construction, including any issuance or updating of management plans and recovery strategies by ECCC, for species at risk that may occur in the

Project area, and implement mitigation strategies accordingly. The NEB found the potential residual adverse environmental effects of the Project on species at risk not likely to be significant.

***Crown's Conclusion***

The Crown notes that the NEB determined Manitoba Hydro's EIS methodology, including its selection of valued components, satisfies provincial and federal guidance documents, including the NEB's Filing Manual. The EIS assessed that the Project will have adverse, but low in magnitude, effects on wildlife and wildlife habitat, and in combination with other future projects, will have a small contribution to cumulative effects on wildlife and wildlife habitat.

In addition, in its EIS, Manitoba Hydro conducted wildlife surveys. To inform its conclusion about wildlife species and their future ranges, Manitoba Hydro considered knowledge about the local wildlife populations based on Indigenous input, knowledge from provincial departments, and an understanding of the ecology of the species gained from literature.

The Crown acknowledges the Project will result in habitat loss along uncleared portions of the ROW, and that sensory disturbance associated with construction and maintenance work, may cause displacement. However, the EIS found that, although temporary local shifts in wildlife distribution might occur, with the implementation of mitigation measures, most wildlife using these areas will return once work causing sensory disturbances end.

Based, in part, on feedback received through Manitoba Hydro's First Nation and Metis Engagement Program (FNMEP), Manitoba Hydro shifted its Final Preferred Route further west resulting in less overlap with designated and protected lands, and large patches of intact forest to reduce the Project's impact to wildlife and wildlife habitat. Other key mitigation measures to reduce potential Project impacts to wildlife and wildlife habitat outlined in Manitoba Hydro's CEPP include:

- Clearing the ROW outside of the reduced-risk timing windows for wildlife species;
- Sighting towers outside of wetlands;
- Maintaining 30 metre buffer zones around wetlands
- Buffering active dens and stick nests from construction activity until unoccupied;
- Installing bird flight diverters on overhead wires to reduce the potential for wire collisions and fatalities; and,
- Restricting construction activities to established roads, trails and cleared construction areas to limit the creation of new predator and hunter access.

With respect to birds, the NEB examined Manitoba Hydro's proposed mitigation measures and found that the residual adverse environmental effects of the Project on birds are likely not to be significant. Although the NEB noted that the Project impacts to migratory birds may be permanent if mortality occurs due to destruction of nests or bird-wire collisions, the Crown notes Manitoba Hydro said it would not clear trees or construct during the breeding period (April-August) when migratory birds are present, without conducting pre-activity nest sweeps. If nests were found to be active, appropriate buffers/setbacks would be implemented, depending on the

level of disturbance expected. Manitoba Hydro also committed to installing flight diverters; these would be installed on the shield wires to reduce collision risk in areas with high migratory bird concentration.

In addition, Manitoba Hydro has committed to monitoring avian mortality post-construction and the NEB expects Manitoba Hydro will include the monitoring results, as well as any necessary adaptive management measures in the post-construction monitoring reports. Manitoba Hydro, as required by Condition 23 (Post Construction Monitoring Reports) will file these reports annually.

With regard to the Project's effects to critical habitat for the golden-winged warbler, the Crown notes Environment and Climate Change Canada's (ECCC) support of Manitoba Hydro's Golden-Winged Warbler Habitat Management Plan. The Crown notes the NEB's position that Manitoba Hydro's plan to use integrated vegetation management techniques during construction and operations to provide habitat suitable for golden-winged warblers is appropriate and will minimize the Project's adverse environmental effects to this species. Per Condition 22 (Crown land Offset Measures Plan) Manitoba Hydro must continue to monitor and report the effectiveness of these measures post-construction.

Further, Condition 23 requires Manitoba Hydro to convey to the NEB if any species at risk are newly identified during construction. Manitoba Hydro must also report on any protective measures implemented during construction, and monitor the success of those measures post-construction.

The Crown also notes Manitoba Hydro is expected to periodically check for updates to *Species At Risk Act* (SARA) Schedule 1 listings prior to and during construction, including any issuance or updating of management plans and recovery strategies by ECCC for species at risk that may occur in the Project area, and implement mitigation strategies accordingly. The NEB found the potential residual adverse environmental effects of the Project to species at risk are not likely to be significant.

The Crown has also reviewed Manitoba Hydro's draft Construction Environmental Protection Plan (CEPP), and notes the CEPP outlines a series of measures and procedures to mitigate and/or reduce potential impacts to wildlife. The NEB's Condition 10 requires Manitoba Hydro to file a final CEPP, 90 days prior to construction.

Further, the Crown is of the view that the MMTP Monitoring Committee will serve as a venue to support effective and meaningful participation in the monitoring of the Project, including on the effectiveness of Manitoba Hydro's adaptive management and mitigation measures for wildlife and wildlife habitat.

**Crown Conclusion:** Based on Manitoba Hydro's commitments, the findings of Manitoba Hydro's EIS, as well as the NEB findings and conditions, the Crown concludes that the concern of Indigenous groups regarding potential Project impacts to wildlife and wildlife habitat, including

the ability of members of Indigenous groups to exercise section 35 hunting and trapping rights in relation to wildlife, are reasonably accommodated.

### **5.1.1.3 Potential for Restricted Access to the Project Right-of-way during Project Construction & Operation**

Issue: During the NEB assessment, and in ensuing meetings with the Crown, nine Indigenous groups expressed concerns about the potential for the Project to reduce or limit the ability of Indigenous groups to access the Project ROW during construction or operation for exercise of section 35 Aboriginal and Treaty rights.

#### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro stated there would be no restriction to access of traditional use sites on Crown lands within the Project easement, except in active construction or maintenance zones for public safety concerns. The Manitoba Metis Federation dubbed this commitment “no infringement until there was a need for infringement”.

In addition, Manitoba Hydro has developed a draft Construction Access Management Plan (AMP) for the Project. The Manitoba *Environment Act* Licence Condition 23 also requires Manitoba Hydro to prepare an Operation Access Management Plan (OAMP) for the operational stage of the Project as part of its Environmental Protection Program. Manitoba Hydro has stated that the OAMP will be informed by knowledge gained during the construction phase.

Manitoba Hydro has also developed an Environmental Monitoring Plan (EMP). Section 2.5 of the EMP notes that a Project website will be maintained and updated regularly throughout the Project to provide information on Project activities. Additional information will also be available at all times via a toll-free phone number or dedicated project email, both of which are already active. Up-to date information will also be posted on the Project website. Indigenous groups can access these information sources in order to be aware of planned Project activities that have the potential to affect the use of areas around the ROW.

#### ***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB noted that after construction is completed, access to the ROW will be unchanged and plant harvesting, fishing, hunting and trapping, travel, and use of cultural sites will still be widely possible in the Project area.

The NEB imposed one condition on Manitoba Hydro to respond to ROW access concerns:

- Condition 10 requires Manitoba Hydro to file a Construction Environmental Protection Plan (CEPP) with the NEB for approval, at least 90 days prior to commencing construction, that includes an Access Management Plan, as well as evidence and a summary of Manitoba Hydro’s consultation with potentially affected persons, organizations,

Indigenous communities, and federal and provincial authorities regarding the updated CEPP, including:

- Any concerns that were raised;
- Steps Manitoba Hydro has taken or will take to address those concerns; and/or,
- Explanations about why no further action is required, if applicable.

### ***Crown's Conclusion***

The Crown acknowledges the concern of Indigenous groups regarding the ability to access the Project area during all phases of the Project for the purpose of exercising section 35 Aboriginal and Treaty rights. With respect to construction, the Crown recognizes Manitoba Hydro's commitment to ensuring there will be no restriction to access to traditional use sites on Crown lands within the Project easement and that Indigenous communities will still be able to access Crown lands, except in active construction zones or during maintenance for public safety reasons. In addition, the Crown notes that Manitoba Hydro's First Nations Metis Engagement Program (FNMEP) process heard general routing preferences from Indigenous communities that included avoiding Crown land, where possible, to protect:

- TLE selection opportunities;
- Intact natural areas and wildlife;
- Important plant harvest areas; and,
- Culturally or historically important sites.

Manitoba Hydro suggested that the contiguous nature of intact Crown lands is one of the key aspects of its value. As a result of incorporating Indigenous traditional knowledge in the routing process, Manitoba Hydro moved the Project's ROW to establish a Final Preferred Route that traversed less unoccupied Crown lands. Therefore, the Project's ROW traverses 36 km of Crown land with less than 10 percent of the route crossing unoccupied Crown lands and over 43 percent of the route following an existing ROW.

In its Reasons for Decision, the NEB noted that after construction is completed, access to the ROW will be unchanged and plant harvesting, fishing, hunting and trapping, travel, and use of cultural sites will still be widely possible in the Project area.

NEB Condition 10 (Construction Environmental Protection Plan) requires Manitoba Hydro to file with the NEB, prior to construction, an Access Management Plan. A draft of the Plan is available on Manitoba Hydro. The Crown understands that although access to and the ability of Indigenous groups to exercise section 35 Aboriginal and Treaty rights in the Project area may be restricted in active construction zones, such limitations will be temporary in order to ensure public safety.

In addition, Manitoba *Environment Act* Licence Condition 23 requires Manitoba Hydro to file an Access Management Plan for the operational stage of the Project. Although that plan is not yet available, Manitoba Hydro has stated that the plan will be informed by knowledge gained during the construction phase.



***Crown Conclusion:*** Based on Manitoba Hydro's commitments, Manitoba Hydro's decision to relocate its Final Preferred Route in response to Indigenous feedback, the mitigation measures in the AMP, as well as the NEB findings and Condition 10, the Crown concludes that concerns regarding the ability of Indigenous groups to access the Project area to exercise section 35 Aboriginal and Treaty rights are reasonably accommodated.

#### **5.1.1.4 Potential for Increased Access to the Project Right-of-way to Non-Indigenous Resource Users and Animal Predators**

***Issue:*** During the NEB assessment, and in ensuing meetings with the Crown, four Indigenous groups raised concerns regarding the potential for the Project to result in increased access to the Project ROW to non-rights holding harvesters, which could increase competition for resources harvested through the exercise of section 35 Aboriginal and Treaty rights by Indigenous peoples. Indigenous groups also raised concerns about increased access to the Project ROW for animal predators, which could add to pressures on local wildlife and further burden the exercise hunting and trapping rights.

#### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro stated there would be no access restrictions to ROW, including traditional use sites on Crown lands, except in active construction or maintenance zones for public safety concerns.

Manitoba Hydro has developed a draft Construction Access Management Plan (CAMP) for the Project. The draft CAMP is available on the Project website and outlines a series of mitigation measures intended to address Indigenous concerns pertaining to increased access to the ROW by non-Indigenous harvesters, including to reduce the potential for increased predation pressures due competition between Indigenous and non-Indigenous resource users, as well as predators of local wildlife:

#### ***Construction Access Opportunities:***

- Restricting the proponent and contractors to existing identified access options (highways, roads, trails and linear features).

#### ***Line of Site Buffers:***

- Maintaining existing low growing vegetation and/or terrain features to create line of site buffers/visual barriers where the transmission line ROW intersects provincial roads and highways to limit the line of sight of humans and predators along the ROW.

#### ***By-Pass Routes and Trails:***

- Manitoba Hydro will be accessing the ROW through existing trails and access points to the extent feasible. If in some instances a new by-pass trail/access route is required, Manitoba Hydro will: 1) site the route, 2) evaluate the location to identify

environmental and cultural sensitivities, and 3) ensure any new trails follow mitigation measures outlined in Construction Environmental Protection Plan (CEPP);

- The use of existing access routes wherever possible will reduce the potential for expanded public access to the ROW and reduce competition for use of the land; and,
- All new access routes on Crown land to the ROW will be maintained with a maximum line of sight of 50 meters from the centerline of Provincial Roads where possible.

*Access Rehabilitation:*

- Manitoba Hydro's preference is to utilize existing roads and trails to the extent possible prior to development of any new access routes; and,
- After construction, access routes not required during operations will be decommissioned using a variety of techniques such as trenching/mounding, lockable gates, culvert removal, rock placement, and/or vegetation rehabilitation to ensure that areas previously inaccessible are returned back to that state. This will prevent easier access to previously undisturbed forested areas and will reduce pressures of predation and hunting on local wildlife.

*Restrictions/Measures for Manitoba Hydro Employees & Employees of Contractor:*

- Not permitted to transport, use or store their personal off-road vehicles (ORV) (e.g., snowmobiles, all-terrain vehicles, boats, etc.) on the construction site where the intent of use is not Project work related;
- Not permitted to transport, store or use weapons on the construction site (including camps) or utilize construction access for hunting; and,
- Contractor Environmental Pre-Construction Orientation meetings will be held to review Project specifics and key environmental requirements with all of its Contractors at a supervisory level.

With respect to employment and temporary workers, Manitoba Hydro stated the expected combined peak number of workers is approximately 175, with average monthly numbers of workers in the ROW expected to be around 100. Manitoba Hydro stated most of the workers recruited for the construction of the Project will be hired from outside the Project area, and will stay in temporary accommodations (i.e. hotels, motels) in local communities or in a mobile construction camp. Manitoba Hydro has committed to implementing a Workers Code of Conduct, which will limit the impacts of temporary labour forces and temporary labour camps on local fire, police, emergency, and protection services.

Manitoba Hydro also stated that cultural awareness training will be provided to Manitoba Hydro field staff and any construction workers on the Project. Project field staff and contractors will be required to conduct Indigenous awareness training, harassment-free workplace training, and cultural and heritage resource protection training with all of its site personnel, as part of its pre-job orientation.

The Manitoba *Environment Act* Licence Condition 23 also requires Manitoba Hydro to prepare an AMP for the operational stage of the Project as part of its Environmental Protection Program. Manitoba Hydro has stated that the AMP developed for the operation phase of the Project will be informed by knowledge gained during the construction phase.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB found that, after construction is completed, access to the Right of Way (ROW) will be unchanged and plant harvesting, fishing, hunting and trapping, travel and use of cultural sites will be widely available in the area of the Project, and that these activities will still be possible.

The NEB imposed one condition on Manitoba Hydro which may respond to Indigenous concerns regarding increased access to the ROW:

- Condition 10 requires Manitoba Hydro to file a Construction Environmental Protection Plan (CEPP) with the NEB for approval, at least 90 days prior to commencing construction, that includes an Access Management Plan, as well as evidence and a summary of Manitoba Hydro's consultation with potentially affected persons, organizations, Indigenous communities, and federal and provincial authorities regarding the updated CEPP, including:
  - Any concerns that were raised;
  - Steps Manitoba Hydro has taken or will take to address those concerns; and/or,
  - Explanations about why no further action is required, if applicable.

***Crown's Conclusion***

The Crown acknowledges the concern of Indigenous groups regarding the potential for the Project to result in increased access to the ROW to non-Indigenous harvesters, as well as predators, which may increase competition for resources harvested by the exercise of section 35 Aboriginal and Treaty rights.

With respect to construction, the Crown recognizes Manitoba Hydro's commitment to ensuring there will be no restriction in access to traditional use sites on Crown lands within the Project ROW, except in active construction zones or during maintenance for public safety reasons.

The Crown notes that Manitoba Hydro's First Nations Metis Engagement Program (FNMEP) process heard general routing preferences from Indigenous communities that included avoiding Crown land, where possible, to protect:

- TLE selection opportunities;
- Intact natural areas and wildlife;
- Important plant harvest areas; and,
- Culturally or historically important sites.

As a result, the Final Preferred Route was moved further west and transects less Crown land.

The Crown also notes Manitoba Hydro's draft CAMP, which includes a series of measures to mitigate potential increased access to the ROW by non-Indigenous harvesters and predators. Condition 10 requires Manitoba Hydro to file a final CAMP for NEB approval prior to construction.

The Crown further notes Manitoba licence condition 23 (Access Management) which requires Manitoba Hydro to file a plan for a CAMP for review by the Eastern Region Integrated Resource Management Team (IRMT) and approval of Manitoba Sustainable Development, and must ensure construction access is not located in specifically identified sites used for the exercise of section 35 Aboriginal and Treaty rights near the Project.

The Crown also notes Manitoba licence condition 24 (Access Management), which requires Manitoba Hydro to file an operations access management plan (OAMP) for Crown lands for review by the Eastern Region IRMT and the approval of Manitoba Sustainable Development prior to the completion of construction. The OAMP must include access points (i.e. locations of roads, trails and water crossings) to be used for operational purposes, access points that will be decommissioned post-construction and access methods to be used for managing vegetation (e.g. applying herbicide) along the ROW.

***Crown's Conclusions:*** Accounting for the Manitoba Hydro's decision to relocate its Final Preferred Route in response to Indigenous feedback, NEB Condition 10, Manitoba licence conditions 23 and 24, and the mitigation measures in the draft CAMP, including the measures related to Manitoba Hydro employees and its contractors, the Crown concludes that the Project's potential to result in increased access to non-Indigenous harvesters and predators, which could increase competition for resources harvested by the exercise of section 35 Aboriginal and Treaty rights, is reasonably accommodated.

#### **5.1.1.5 Potential for Project-Generated Electromagnetic Fields (EMF) to result in Real or Perceived Health Impacts**

Issue: During the NEB assessment and in ensuing meetings with the Crown, eight Indigenous groups raised concerns about the impact of project-generated EMF on the health of humans, vegetation, and wildlife.

#### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro noted that according to Health Canada, the World Health Organization, and other international health entities, there is no scientific evidence suggesting that exposure to low-levels of EMF has negative health impacts on humans, vegetation, and wild or domestic animals.

Manitoba Hydro stated it would maintain EMF levels within the guidelines set by the International Commission on Non-Ionizing Radiation Protection, which have been adopted by the World Health Organization and Health Canada.

To address exposure to EMF concerns, Manitoba Hydro made two commitments as part of the CEC process:

- Commitment 220, Manitoba Hydro will continue to address concerns related to EMF and provide factual, science-based information to concerned individuals and organizations; and,
- Commitment 236, Manitoba Hydro will communicate and share resources on human health findings with local residents to reduce perceived risks related to EMF exposure and other environmental exposures, such as industrial odours, noise and air pollution.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB acknowledged the concerns raised regarding EMF exposure, in particular, the perceptions of risk to human health by Indigenous communities. The NEB found Manitoba Hydro's comprehensive assessment of EMF and EMF-related exposure acceptable. The NEB noted that Project design would meet the international and national guidelines regarding exposure levels from transmission lines.

Based on the balance of evidence, the NEB found that exposure to EMF is not likely to cause significant adverse effects to human health. However considering the nature of the concerns raised, including perception of risk, the NEB encouraged Manitoba Hydro to continue communicating with Indigenous communities and other interested parties regarding these concerns through ongoing engagement activities and the MMTP Monitoring Committee.

***Crown's Conclusion***

The Crown acknowledges that some Indigenous groups are concerned about the potential for detrimental impacts due EMF exposure on the health of humans, animals, and vegetation. As Manitoba Hydro stated in its Environmental Impact Statement (EIS), the World Health Organization notes that current scientific evidence does not confirm the existence of any health consequences from exposure to low-level electromagnetic fields. Manitoba Hydro has committed to ensuring EMF exposure levels from the Project remain within the guidelines set by the International Commission for Non-Ionizing Radiation Protection, also adopted by the World Health Organization and Health Canada.

Further, the NEB concluded that EMF is not likely to cause significant adverse effects to health, after hearing balanced evidence from Manitoba Hydro and Indigenous Intervenors on this matter. The Crown supports the NEB's position.

The Crown recognizes that members of Indigenous groups may still perceive potential adverse effects to health due to EMF exposure, which may impact how community members exercise their section 35 Aboriginal and Treaty rights near the Project. Some Indigenous groups proposed

that Manitoba Hydro or the Crown fund the development of a risk communication plan to address real or perceived community concerns on health and safety impacts of EMF. In response, the Crown notes that Manitoba Hydro has committed to providing Indigenous communities with plain language, fact-based information on health findings with respect to EMF, including through the MMTP Monitoring Committee. All potentially impacted Indigenous groups are invited to participate in the MMTP Monitoring Committee and/or access information available on the monitoring committee website. The Crown's assessment is that this will help correct any misperception regarding exposure to EMF due to the Project.

***Crown Conclusion:*** Based on Manitoba Hydro's commitments to abide by international standards and share fact-based information with Indigenous groups concerned about the potential impacts of exposure to EMF during operation of the Project, , as well as the NEB findings, the Crown concludes that concerns regarding exposure to EMF are reasonably accommodated.

#### **5.1.1.6 Potential Real or Perceived Health Impacts due to the Application of Herbicide for Integrated Vegetation Management along the Project Right-of-Way**

Issue: During the NEB assessment, and in ensuring meetings with the Crown, 11 Indigenous groups raised concerns about the potential real or perceived impacts of the application for herbicide along the ROW for integrated vegetation management on the health of humans traditional use and medicinal plants, fish, and water. In addition, Indigenous groups also expressed concerns about the potential for the application of herbicides to result in increased stress and anxiety for Indigenous groups due to perceived contamination of plants, wildlife, fish and water, which may result in alienation from traditional territory and further impact the exercise of section 35 Aboriginal and Treaty rights.

#### ***Proponent Commitments & Responses***

Manitoba Hydro explained that it uses herbicides judiciously. In its filings to the NEB, Manitoba Hydro stated applies herbicides selectively and that it will only affect broadleaf plants, leaving other nearby trees and plants to grow and thrive. Manitoba Hydro also indicated that it will not apply herbicides annually to a ROW, rather in approximately five to eight year intervals.

Manitoba Hydro indicated it would not apply herbicides within 30 metres of watercourses and wetlands, and for other environmentally sensitive sites that are sensitive to herbicide application, including areas designated as Traditional Use Plant Species, as identified through Indigenous knowledge. It also indicated that it would apply a 30 metre herbicide-free buffer, unless directed otherwise by a Weed Supervisor or a landowner.

Manitoba Hydro indicated that herbicide registration, and premarket approval and regulations governing herbicide application follow the federal *Pest Control Products Act* (Health Canada 2006), which is reviewed by Health Canada to confirm that human health is protected adequately.

Manitoba Hydro stated it is aware that some Indigenous groups may not use the RoW after construction due to concerns about herbicide contamination and its impacts on human health, and the plants and animals that they harvest. Thus, Manitoba Hydro committed that if areas of concern are identified, it would prevent spraying those sites. It further added that the application of herbicides for the Project would not result in concentrations in traditionally harvested foods such that the consumption of these foods would result in exposures that would exceed allowable daily intakes.

In an effort to address concerns about use of herbicides, Manitoba Hydro committed to the development of an Integrated Vegetation Management Plan (IVMP) that would provide a balanced approach through knowledge-sharing and mapping areas of concern. The IVMP will be completed prior to commencement of vegetation management activities for operation and maintenance of the Project. The scope of the plan would include a description of vegetation control methods, criteria for application of control methods, and communication protocols to the public and Indigenous communities. A draft of the plan is available on Manitoba Hydro's website. Some relevant points in the plan are highlighted below:

#### Draft Integrated Vegetation Management Plan (IVMP) s.1.2

- Manitoba Hydro has identified over 50 Environmentally Sensitive Sites and developed customized protection and mitigation measures for each site.
- Manitoba Hydro will implement a 30 m riparian pesticide free buffer. This buffer exceeds all current regulatory requirements in Manitoba.
- Manitoba Hydro will also implement a 30 m pesticide free buffer to protect Plant Species of Conservation Concern and Traditional Use Plant Species.
- Manitoba Hydro will post signage outlining herbicide application details within treatment area for 14 days following herbicide application.

#### Draft Integrated Vegetation Management Plan (IVMP) s.3.7

- Herbicides can reduce environmental risks compared to mechanical vegetation removal.
- There is greater potential for mowing or slashing to destroy birds nest and habitat for burrowing animals compared to herbicide applications. Mechanical methods often use heavy equipment that is more likely to damage non-target vegetation and can cause rutting or degrade the ground surface.
- Many herbicide techniques are also directed techniques (i.e. target a specific plant or tree), which reduces the impact on non-target species, minimizes herbicide use, and optimizes natural control.

Further, Manitoba Hydro stated that herbicide use in Manitoba is regulated pursuant to *The Environment Act*, *The Pesticides and Fertilizers Control Act*, and its own regulations. As such,

Manitoba Hydro will annually apply, prior to herbicide application along its transmission lines, for provincial “Pesticide Use Permits”.

In terms of communicating the use of herbicides, Manitoba Hydro will provide notifications of its herbicide applications through its First Nations and Métis Engagement Process (FNMEP). On Crown land, Manitoba Hydro will post signs for 14 days after treating areas. The notification may also be posted on the MMTP Monitoring Committee website, if approved by the Committee. In addition, when applying for a permit to utilize herbicides or pesticides, Manitoba Hydro will advertise notices in local newspapers of the proposed use and locations for comment. Indigenous communities, the public, and other organizations may submit comments to Manitoba Sustainable Development’s Environmental Approvals Branch for consideration when reviewing Manitoba Hydro’s application.

Manitoba Hydro estimates that the new ROW for the transmission line consists of 30% provincial Crown land, which would potentially be a candidate for herbicide use in vegetation management. This includes consideration of buffers from wetlands and waterways, environmentally sensitive sites currently known to Manitoba Hydro, and the ability to access the area in summer months. Manitoba Hydro stated its intention to continue working with Indigenous communities and organizations to further identify specific sites that support traditional gathering activities that could further reduce the number.

To address use of herbicides concerns, Manitoba Hydro made seven commitments as part of the CEC process:

- **Commitment 18:** Application of herbicides will adhere to appropriate general mitigation measures and all chemical applications will be conducted by a certified licensed applicator.
- **Commitment 19:** Herbicides are to be applied in accordance with a Pesticide Use Permit and Pesticide Application Requirements for Manitoba Hydro Employees and Contractors Publication.
- **Commitment 20:** Herbicides will not be applied to open water or to areas where fish habitat may be affected.
- **Commitment 57:** Non-herbicide methods such as hand cutting, mechanical cutting or winter shearing will be used to clear the transmission line ROW and other sites. If herbicides are required to control vegetation growth, such as noxious/invasive weeds during construction, all applicable permits and provincial regulations (*The Noxious Weed Act*) will be followed.
- **Commitment 87:** Herbicides will not be used for ROW clearing. For maintenance of the ROW, an Integrated Vegetation Management Program will be developed. Manitoba Hydro will consider nonchemical vegetation management in clearly identified sensitive sites that contain plants that are of importance to Indigenous harvesters.



- **Commitment 204:** Manitoba Hydro is required to adhere to all laws and regulations regarding herbicide use, which will mitigate the potential for harm. Label restrictions will be adhered to during application.
- **Commitment 205:** Sensitive areas will not be treated with herbicides, such as those used for gathering berries and harvesting other types of traditional plant and animal country foods, that have been identified through Indigenous Traditional Knowledge (ITK).

Additionally, Manitoba *Environment Act* Licence Condition 50 requires Manitoba Hydro to submit a review of its integrated vegetation-management practices for the ROW five and 10 years after the completion of construction and as determined by the Director of the Environmental Approvals Branch of Manitoba Sustainable Development thereafter.

Lastly, as part of the MMTP Monitoring Committee, Manitoba Hydro has plans to hire a Traditional Monitor that will bring Indigenous perspective during Project construction and to environmental protection measures being implemented, to build trust between Indigenous and non-Indigenous construction personnel, and to fulfill the committee's second goal of bringing Indigenous knowledge to monitor the health of land and water.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB concluded Manitoba Hydro's approach to integrated vegetation management, including the application of herbicides, is appropriate. Herbicide use is a necessary tool in a larger integrated vegetation management toolbox. The NEB noted that Manitoba Hydro has committed to not using herbicides indiscriminately, and that "herbicide-free" buffers will be established and maintained adjacent to watercourses, wetlands, and as much as possible around sites identified as being of concern to Indigenous communities.

The NEB noted that Manitoba Hydro will not apply herbicides annually, but rather in intervals of five to eight years or greater. In addition, herbicide use is highly regulated by provincial and federal authorities, and Manitoba Hydro committed to follow all applicable guidelines and regulations. The NEB accepted Manitoba Hydro's reliance on the use of exposure limits developed or recommended by authorities such as Health Canada and the US Environmental Protection Agency, as well as its commitments to follow all provincial and federal guidelines when applying herbicides. The NEB found the approach acceptable, as the guidelines are broadly protective of human health. The NEB concluded that additional assessment of the herbicides use, as recommended by some Intervenors, was not required.

The NEB imposed one condition on Manitoba Hydro to respond to use of herbicide concerns:

- Condition 11 (Outstanding Indigenous Knowledge Studies) requires Manitoba Hydro to file with the NEB for approval, at least 60 days prior to commencing construction, a report outlining a plan for completing outstanding Indigenous Knowledge studies. The report must include how Manitoba Hydro has revised its Construction Environmental Protection Plan (CEPP) as a result of the Indigenous Knowledge studies.

Lastly, as detailed in Condition 10, the NEB requires Manitoba Hydro to file its IVMP, as part of its updated CEPP. The NEB expects Manitoba Hydro to consider and address, where possible, the concerns raised by Parties, including Indigenous groups, when developing its IVMP.

### ***Crown's conclusion***

The Crown notes that the NEB found Manitoba Hydro's approach to integrated vegetation management, including the application of herbicides, to be appropriate, and noted that herbicide use is a necessary tool in terms of integrated vegetation management. It is also noted that the NEB accepted Manitoba Hydro's reliance on the use of exposure limits developed or recommended by authorities such as Health Canada and the US Environmental Protection Agency, as well as its commitments to follow all provincial and federal guidelines when applying herbicides. The NEB found this approach acceptable, and highlighted that the guidelines are broadly protective of human health.

The Crown recognizes herbicide use in Manitoba is subject to a strict regulatory regime, as well as Manitoba Hydro's commitment to notify Indigenous communities of pending application of herbicide to specific areas of the ROW (e.g. via MMTP Monitoring Committee and signs on Crown land 14 days after application). It is also recognized that Manitoba Hydro will use registered herbicides that are premarket approved and must comply with regulations governing herbicide application follow the federal *Pest Control Products Act* (Health Canada 2006).

In addition, Manitoba Hydro committed to providing plain language, fact-based information regarding its IVMP and the use of herbicide to concerned Indigenous communities, including through the MMTP Monitoring Committee. It was stated during the NEB assessment that herbicides would not be sprayed indiscriminately and would be applied every five to eight years. The Crown notes in Manitoba Hydro's draft IVMP that a 30 metre riparian pesticide free buffer will be implemented. This buffer exceeds all current regulatory requirements in Manitoba. In addition, Manitoba Hydro will also insert a 30 metre pesticide free buffer to protect Plant Species of Conservation Concern and Traditional Use Plant Species. The IVMP also notes that mechanical vegetation removal (e.g. mowing and slashing) may result in damage more severe to wildlife and wildlife habitat, as well as plants, than herbicide application.

To ensure the protection of culturally sensitive sites, the Crown understands Manitoba Hydro offered funding to interested Indigenous groups to complete a self-directed Indigenous Knowledge study, including to identify sensitive sites. Condition 11 (Outstanding Indigenous Traditional Knowledge Studies) requires the completion of any outstanding Indigenous Traditional Knowledge studies prior to construction, as well as an explanation as to how their findings have informed the Construction Environmental Protection Plan (CEPP). Manitoba Hydro said if areas of concern are identified, it would prevent spraying in those sites, as part of its CEPP.

Further, Condition 10 (Construction Environmental Protection Plan) requires Manitoba Hydro to file an Integrated Vegetation Management Plan (IVMP), which outlines Manitoba Hydro's approach to maintaining a variety of habitats along the ROW, including for traditional use and

species of conservation concern (e.g. plants, mammals, birds etc.). The IVMP must be filed prior to construction and must account for concerns raised by Indigenous groups.

The Crown recognizes that use of herbicide for integrated vegetation management may result in increased psychosocial effects due to potential real or perceived adverse impacts of herbicide to water, fish, wildlife, and human health, which may impact how community members exercise section 35 Aboriginal and Treaty rights near the Project.

The Crown concludes that potential impacts of herbicide use for integrated vegetation management to section 35 Aboriginal and Treaty rights can be mitigated through a combination of the following:

- Manitoba's herbicide regulatory regime, that may result in less damage to wildlife, wildlife habitat and plants than if mechanical means are used;
- NEB Conditions 10 and 11; and,
- Manitoba Hydro's commitments to protect sensitive sites from herbicide use and to notify Indigenous groups in advance of herbicide application.

Finally, the Crown is proposing amendments to condition 3 (Implementation of Commitments) to explicitly require Manitoba Hydro to implement all commitments to Indigenous groups that were on the NEB record.

***Crown Conclusion:*** Based on Manitoba Hydro's commitments, the NEB findings and conditions, the Crown's proposed amendment to NEB Condition 3, as well as existing regulatory processes for herbicides application, the Crown concludes that potential adverse impacts from use of herbicides on water, fish and fish habitat, wildlife and wildlife habitat, human health, and ability of Indigenous groups to exercise section 35 Aboriginal and Treaty rights are reasonably accommodated.

#### **5.1.1.7 Potential for the Project to Impact Fish and Fish Habitat (Fishing)**

***Issue:*** During the NEB assessment, seven Indigenous groups raised concerns about the potential for the Project to impact fish and fish habitat, as well as the abilities of their members to exercise section 35 fishing rights. Concerns centered on potential adverse impacts to fish, mussels, and aquatic species at risk populations, reproductive success of aquatic species, riparian and instream habitat functions, and habitat availability.

#### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro noted that the Project's potential effects on fish and fish habitat, including species at risk, are expected to be limited since no in-water work is planned at watercourse crossings. In addition, Project activities near watercourses would be limited to selective removal of riparian vegetation, except where existing access is not available. In those locations, clearing would be required for trail access, and temporary ice and snowfall crossings would be constructed on the frozen watercourses.

During the supplemental consultation phase, Manitoba Hydro informed MPMO that it would require a Department of Fisheries and Oceans (DFO) Fisheries Act authorization to install a culvert required for access purposes.

Manitoba Hydro's environmental monitoring plan indicates that it will monitor riparian buffers, ground cover and erosion at watercourse crossings during construction and one year post-construction to verify the effectiveness of its mitigation measures.

To address concerns about the Project potential impacts on fish and fish habitat, Manitoba Hydro made 43 commitments as part of the CEC process:

1. **Commitments 2-35:** Manitoba Hydro has committed to addressing concerns with water, including stream crossings, fish protection, riparian management, clearing, erosion protection and sediment control.
2. **Commitment 42:** Vehicle, equipment and machinery maintenance and repairs will be carried out in designated areas located at least 100 m from the ordinary high water mark of a waterbody, riparian area or wetland.
3. **Commitment 50:** Approach grades to waterbodies will be reduced to limit disturbance to riparian areas.
4. **Commitment 58:** Trees will be felled toward the middle of rights-of-way or cleared areas to avoid damaging standing trees. Trees will not be felled into waterbodies. Danger trees will be flagged or marked for removal using methods that do not damage soils and adjacent vegetation.
5. **Commitment 67:** Surface water runoff will be directed away from disturbed and erosion prone areas but not directly into waterbodies.
6. **Commitment 129:** Subject to suitable soil conditions and drainage, and compliance with the *Public Health Act* and/or the *Environment Act* (Province of Manitoba 1996; 2015a), wastewater will be transported to an appropriate wastewater facility.
7. **Commitment 191:** A qualified drilling contractor with appropriate experience will be present for work in areas underlain by artesian aquifers.
8. **Commitment 193:** Follow-up inspections of installed foundations will be conducted to monitor for excess water leakage.
9. **Commitment 195:** Monitoring of groundwater levels in drill holes will be conducted during drilling and foundation installation.
10. **Commitment 196:** Precautions will be taken where there is potential for mixing surface and groundwater

***NEB condition or findings with respect to this issue***

In its Reason for Decision, the NEB noted that as per a Memorandum of Understanding between the NEB and DFO signed on December 16, 2013, the NEB is required to assess the Project's impact to fish and fish habitat. The NEB heard evidence from Indigenous groups regarding Manitoba Hydro's planned activities at watercourse crossings. Based on the evidence, the NEB concluded that the interaction of the Project with fish and fish habitat, including any species at risk, is limited

and that Manitoba Hydro's proposed mitigation measures will effectively mitigate any potential adverse effects.

The NEB further noted that Manitoba Hydro has committed to following the Department of Fisheries and Oceans' *Measures to Avoid Causing Harm to Fish and Fish Habitat*. The NEB is of the view that there is a low likelihood of the Project causing serious harm to fish or fish habitat, and no authorization under paragraph 35(2)(b) of the *Fisheries Act* is required.

The NEB imposed the following conditions on Manitoba Hydro that will require it to ensure it follows any commitments made to Indigenous peoples and NEB-imposed conditions related to fish and fish habitat:

- Condition 3 (Implementation of Commitments) requires that all commitments made in the proceeding be implemented.
- Condition 9 (Navigation and Navigation Safety Plan) requires Manitoba Hydro to file, for approval, a Navigation and Navigation Safety Plan ninety days prior to commencing construction.
- Condition 15 (Commitments Tracking Table) requires Manitoba Hydro to produce a Commitments Tracking Table that is updated until all commitments are satisfied.
- Condition 10 (Construction Environmental Protection Plan) requires Manitoba Hydro to submit, for approval, a Construction Environmental Protection Plan (CEPP) for the Project which includes an Erosion Protection and Sediment Control Management Plan, Rehabilitation and Invasive Species Management Plan, Emergency Preparedness and Response Plan, and Environmental Monitoring Plan.
- Condition 23 (Post Construction Monitoring Reports) requires Manitoba Hydro to submit annual post-construction monitoring reports for 10 years and the NEB expects that the results of monitoring at watercourses to be included in those reports.

The NEB concluded that any residual effects of the Project to fish and fish habitat are not likely to be significant. It noted that the effects would be short to medium term in temporal extent, given that interactions would occur at multiple crossings but each would be of short duration (weeks to months) and limited to the construction and restoration periods, and brief periods during operations. Further, the NEB was of the view that the effects would be reversible, limited to fish and fish habitat LAA, and be of low to moderate magnitude, depending on the specific crossing location, sensitivity of the species present, and habitat quality.

### ***Crown Conclusion***

The Crown notes that the NEB found the interaction of the Project with fish and fish habitat, including any species at risk, is limited and determined that Manitoba Hydro's proposed mitigation measures, including as outlined in its Construction Environmental Protection Plan (CEPP) will effectively mitigate any potential adverse impacts.

Manitoba Hydro stated there will be limited impacts to water as no in-water work is planned at water crossings and Project-related activities near watercourses would be limited. Manitoba Hydro has also made several commitments to mitigate potential impacts to the aquatic

environment, including implementing a 30 metre riparian herbicide free buffer zones that exceed all regulatory requirements applicable to herbicide use in Manitoba.

In addition, the Manitoba Hydro's Environmental Monitoring Plan (EMP) indicates that it will monitor riparian buffers, ground cover and erosion at watercourse crossings during construction and one year post-construction to verify the effectiveness of its mitigation measures. A draft version of the EMP<sup>8</sup> is available on Manitoba Hydro's website for comment.

Pursuant to Condition 10 (Construction Environmental Protection Plan ), the Crown notes the NEB expects that Manitoba Hydro's CEPP clearly documents the measures it has committed to implementing in order to protect fish and their habitat from the effects of the Project. The condition requires the CEPP to include an Erosion Protection and Sediment Control Management Plan, Rehabilitation and Invasive Species Management Plan, Emergency Preparedness and Response Plan, and Environmental Monitoring Plan. The CEPP must be filed with the NEB for approval prior to construction. Condition 23 (Post Construction Monitoring Reports) also requires Manitoba Hydro to submit annual post-construction monitoring reports for 10 years and the NEB expects that the results of monitoring at watercourses to be included in those reports. Finally, the Crown is proposing amendments to condition 3 (Implementation of Commitments) to explicitly require Manitoba Hydro to implement all commitments to Indigenous groups that were on the NEB record.

***Crown Conclusion:*** Based on Manitoba Hydro commitments, the NEB's findings and conditions, and the Crown's proposed amendment to Condition 3, the Crown concludes that concerns with respect to the Project's potential impact on fish and fish habitat, including the ability of Indigenous groups to exercise section 35 fishing rights are reasonably accommodated.

#### **5.1.1.8 Need for Direct Economic Benefits and Financial Compensation for Indigenous Groups**

**Issue:** During the NEB assessment, and in ensuing meetings with the Crown, 11 Indigenous groups raised concerns about the need for economic benefits and/or financial compensation.

Proponents can negotiate benefits agreements with potentially impacted Indigenous groups. These are confidential agreements that define a voluntary and mutually beneficial long-term relationship between a proponent and an Indigenous group, and can include financial compensation, employment opportunities and training, business opportunities or improved community services and infrastructure. In the case of this Project and although not intended as mitigation or financial compensation to rights impacts but as economic benefits for the Project, Manitoba Hydro signed six Community Specific Agreements with Indigenous groups and

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<sup>8</sup> Manitoba Hydro Environmental Monitoring Plan:  
[https://www.hydro.mb.ca/projects/mb\\_mn\\_transmission/pdfs/draft/epp\\_environmental\\_monitoring\\_plan\\_draft\\_20170412.pdf](https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/draft/epp_environmental_monitoring_plan_draft_20170412.pdf)

cancelled the negotiation of six others. Indigenous groups with cancelled agreements tended to focus on this issue during Crown consultations.

In regards to financial compensation, the Updated Guidelines for Federal Officials to Fulfill the Duty to Consult (page 53) state that, where it is not possible to avoid, eliminate, or substantially reduce adverse impacts, it may be appropriate to compensate an Indigenous group for any adverse impacts on their potential or established section 35 Aboriginal or Treaty rights. Compensation can take a variety of forms including habitat replacement; providing skills, training or employment opportunities for members of the Indigenous group; land exchanges; impact-benefit agreements; or cash compensation. This definition was used in determining the extent to which the consideration for the extent to which this concern was reasonably accommodated.

### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro stated that based on the mandatory Indigenous content provisions included in the Project's construction tender documents, a minimum of 20 percent of the value of the transmission construction contract will consist of Indigenous content (10 percent must be Metis content). Indigenous content could be higher as Manitoba Hydro stated it will include incentives in the tender documents for contractors to exceed the minimum 20 percent Indigenous content threshold and Manitoba Hydro would score those bids more favourably. Indigenous employment opportunities will be promoted through two construction contracts for the Project that guarantee up to 50,000 Indigenous hours and 65,000 Indigenous hours and Indigenous hiring preferences.

In addition, Manitoba Hydro will monitor how contractors are meeting Indigenous content targets, as committed through bids. If a contractor is not achieving the Indigenous content target as committed in their initial bids, Manitoba Hydro expects contractors to explain how the Indigenous content target will be met. Manitoba Hydro can also withhold contractor payments. Manitoba Hydro noted that certain communities were interested in revenue sharing opportunities, but it does not have the mandate to enter into such discussions. Revenue sharing is an issue that would require input from and consideration by other interested third parties, including the Province of Manitoba and the Public Utilities Board.

Indigenous groups raised a number of alternative options to achieve financial compensation for the Project including securing:

- Equity in the Project, or with Manitoba Hydro; and,
- Price Per Kilowatt of Exported Power to Indigenous Communities.

Manitoba Hydro is a provincial Crown Corporation governed by the Manitoba Hydro-Electric Board as per the *Manitoba Hydro Act*. It is accountable to the Manitoba Minister of Crown Services. The constitutional implications of imposing a levy, in the form of a price per kilowatt hour on Manitoba Hydro's exports of power, are significant. The federal Crown does not have the jurisdictional authority to compel a provincial Crown corporation or provincial government to offer economic accommodation. Manitoba Hydro noted that certain communities were

interested in revenue sharing opportunities but stated that it does not have the mandate to enter into such discussions. Rather revenue sharing is an issue that would require input from and consideration by other interested third parties, including the Province of Manitoba and the Manitoba Public Utilities Board.

It is also understood that the MMTP Monitoring Committee is seeking to hire four Indigenous monitors (two compliance and environment monitors; a traditional monitor; and, a communications monitor), who will report to Committee members on Project construction. The Crown notes that a Monitor Hiring Subcommittee has been assembled and that those monitors will be entrusted to work with Manitoba Hydro's own environmental inspection officers and construction supervisors to ensure environmental protection measures are met.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB concluded that the Project would provide benefits to Indigenous, local, regional, and provincial economies.

The NEB did not provide any conditions directly relating to direct economic benefits and/or financial compensation. In its Reasons for Decision, the NEB noted Manitoba Hydro's commitments regarding Indigenous content provisions of its construction contracts that would result in purchases from Indigenous suppliers, contracts with Indigenous subcontractors, and direct employment and training of Indigenous peoples.

NEB imposed two conditions on Manitoba Hydro that would offset or compensate for any permanent loss of Crown lands or wetlands as a result of the Project, including:

- Condition 22 requires Manitoba Hydro to file with the NEB, 30 days prior to commencing operations, a Crown Land Offset Measures Plan that outlines offset and compensation measures for permanent loss of Crown lands available for traditional use by Indigenous peoples resulting from the Project; and,
- Condition 26 requires Manitoba Hydro to file with the NEB, within 90 days of commencing operation of the Project, a Wetland Offset Measures Plan that outlines how permanent loss of wetlands resulting from the Project will be offset or compensated. In addition, Condition 26 requires Manitoba Hydro to explain how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands be quantified and reported to the NEB.

***Crown's Conclusion***

Indigenous groups suggested the federal government share Federal Corporate Tax Revenue as a form of economic benefit and accommodation. As a provincial Crown Corporation, Manitoba Hydro is immune from federal corporate income taxes under s.125 of the Constitution. As a result, the federal Crown will derive no tax revenue from Manitoba Hydro's earnings from the Project.



The Crown notes Manitoba Hydro's commitments regarding Indigenous content provisions of its construction contracts, including a commitment to a minimum of 20 percent of the value of the transmission construction contract consisting of Indigenous content, though this may be higher if proponents choose to use the incentives. Indigenous employment opportunities will also be promoted through the Indigenous hours requirement and Indigenous hiring preference. Manitoba Hydro's commitments are legally enforceable under two conditions of the NEB certificate:

- Condition 3 (Implementation of Commitments) requires that all commitments made in the proceeding be implemented.
- Condition 15 (Commitments Tracking Table) requires Manitoba Hydro to produce a Commitments Tracking Table that is updated until all commitments are satisfied.

In addition, the Crown notes Manitoba Hydro's internal employment equity program includes opportunities in training, education, and employment.

The Crown also notes that under NEB Conditions 22 and 26, Manitoba Hydro must provide compensation to Indigenous groups, should it either not be able or willing to provide offsets for the permanent loss of Crown land and wetlands due to the Project.

The Crown understands that Manitoba Hydro continues to be open to meeting with the First Nations and Métis Engagement Process (FNMEP) communities and organizations upon request.

***Crown Conclusion:*** Based on Manitoba Hydro's commitments to Indigenous content, including incentives to increase Indigenous content in contracts, as well as NEB Conditions 22 and 26 for Crown land and wetland, the Crown concludes that no further action is required regarding Indigenous concerns related to economic benefits and financial compensation in respect of the Project.

#### **5.1.1.9 Potential for the Project to Impact Traditional Use & Medicinal Plants (Plant Harvesting)**

***Issue:*** During the NEB assessment and in ensuing meetings with the Crown, seven Indigenous groups raised concern regarding the potential impact of the Project on traditional use and medicinal plants, as well as the ability of Indigenous groups to exercise s.35 Aboriginal and Treaty rights in relation to those plants on or the Project ROW.

#### ***Proponent Commitments & Responses***

In its filings with the NEB, Manitoba Hydro stated that it provided funding to Indigenous groups to undertake self-directed Indigenous knowledge studies, including to identify locations of medicinal & traditional use plants for protection under its Construction Environmental Protection Plan (CEPP). Manitoba Hydro stated that Indigenous groups will continue to have the opportunity

to identify the locations of traditional use and medicinal plants to ensure they are protected under the CEPP.

Per its Environmental Impact Statement (EIS), Manitoba Hydro stated that it incorporated feedback from Indigenous groups and findings from Indigenous knowledge studies into its routing and clearing plans. In many cases, the feedback resulted in the avoidance of sensitive areas and activities that are ecologically, socially, or culturally important. Manitoba Hydro also committed to seeking feedback from Indigenous groups, through the MMTP Monitoring Committee, on topics of interest to the Committee regarding its CEPP, and associated plans. Participation on the MMTP Monitoring Committee is open to all potentially impacted Indigenous groups.

Key measures outlined in the CEPP to mitigate potential Project impacts to traditional use and medicinal plants include:

- Protecting Species At Risk (SAR) and critical habitat in accordance with provincial and federal legislation and provincial and federal guidelines;
- Maintaining a 30 metre construction setback distance to known SAR and a 10 metre buffer Species of Conservation Concern (SOCC) within the Project ROW;
- Ensuring setbacks and buffers along the Project ROW are clearly identified by signage or flagging prior to construction;
- Avoiding of confirmed location of SOCC for final tower sittings, where possible;
- Contacting Manitoba Conservation and Water Stewardship to determine the most appropriate mitigation action if avoidance of listed rare plant species is not possible. This could include harvesting seed from the right-of-way, salvaging and transplanting portions of sod, collecting cuttings or transplanting whole plants;
- Conducting additional surveys along the Project ROW prior to construction to identify new occurrences of rare plants; and,
- Clearing the Project ROW when the ground is frozen or dry to limit rutting and erosion, where applicable. In situations where the ground is not dry or completely frozen, alternative methods, such as the use of construction mats, will be employed during ROW clearing.

In addition, Manitoba Hydro developed an Integrated Vegetation Management Plan (IVMP) to ensure the protection of medicinal plants and herbs throughout and near the Project ROW. Information gathered from Indigenous knowledge studies has informed the IVMP. Manitoba Hydro committed to maintaining a 30 metre pesticide free buffer for the protection of Plant Species of Concern and Traditional Use Plant Species identified by Indigenous groups in the IVMP to ensure their protection from herbicide applied elsewhere along the ROW.

Manitoba Hydro also stated it will consider traditional knowledge and issues about traditional land use through its ongoing Indigenous engagement process, and will consider additional potential avoidance or mitigation measures. In CEC commitment 75, Manitoba Hydro stated that

if avoidance of listed rare plant species is not possible, Manitoba Conservation and Water Stewardship will be contacted to determine the most appropriate mitigation action. This could include harvesting seed from the ROW, salvaging and transplanting portions of sod, collecting cuttings or transplanting whole plants.

It is also understood that the MMTP Monitoring Committee is seeking to hire four Indigenous monitors (two compliance and environment monitors; a traditional monitor; and a communications monitor), who will report to Committee members on Project construction. The Crown notes that a Monitor Hiring Subcommittee has been assembled and that those monitors will be entrusted to work with Manitoba Hydro's own environmental inspection officers and construction supervisors to ensure environmental protection measures are met. Manitoba Hydro also said that, prior to construction, it will seek feedback from Indigenous communities, through the MMTP Monitoring Committee, on topics of interest to the committee regarding its construction-specific environmental protection plan (CEPP) and associated plans.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB stated that with the mitigation measures proposed by Manitoba Hydro, the potential adverse effects of the Project on the current use and harvesting of traditional plants and medicines are temporary, and not likely to be significant.

The NEB imposed two conditions on Manitoba Hydro that would limit any potential environmental impacts of the Project:

- Condition 10 (Construction Environmental Protection Plan) requires Manitoba Hydro to file an Integrated Vegetation Management Plan prior to construction, which must account for concerns raised by Indigenous groups.
- Condition 11 (Indigenous Knowledge Studies Report) requires Manitoba Hydro to submit a report outlining a plan for completing Indigenous Knowledge Studies, including a description of how Manitoba Hydro has revised its CEPP as a result of the studies.

The NEB also proposed conditions that will require Manitoba Hydro to ensure any commitments to Indigenous groups or NEB-imposed conditions are being followed:

- Condition 1 requires Manitoba Hydro to comply with all of the conditions imposed by the NEB in its certificate, unless the NEB directs otherwise.
- Condition 3 requires Manitoba Hydro to implement, or cause to be implemented, all of the policies, practices, mitigations measures, recommendations, and procedures for the protection of the environment and promotion of safety referred to in its application, or as otherwise agreed to in its related submissions.
- Condition 15 requires Manitoba Hydro to file with the NEB, and post on its website, a commitments tracking table listing all commitments it made in its application and otherwise agreed to, through the course of the NEB review.

- Condition 21 requires Manitoba Hydro to create and maintain records that chronologically track complaints by Indigenous communities and other stakeholders related to the Project for five years after the commencement of operations. The tracking will include information on any further actions to be taken or an explanation as to why no further action is required.
- Condition 23 requires Manitoba Hydro to file with the NEB annual post-construction monitoring reports, which would include, among other things, identification of any reclamation or other environmental issues, which arose during construction or in the course of the previous year, and a description of any corrective actions taken.

Further, the NEB noted the interest of multiple Indigenous groups in participation in environmental monitoring of the Project. In response, Manitoba Hydro noted that it may be challenging to provide an environmental monitoring position for each community. Rather, Manitoba Hydro has said the purpose of the MMTP Monitoring Committee is to support effective and meaningful Indigenous participation in monitoring the construction and operation of the Project. Manitoba Hydro will continue to provide opportunities for Indigenous communities to participate in the Committee.

### ***Crown's Conclusion***

The Crown understands that the ongoing ability to exercise section 35 Aboriginal and Treaty rights is critical to Indigenous culture and to Canada. The Crown consultation team heard many times that Indigenous groups consider themselves stewards of the land, on which they also depend and continue to use for sustenance and cultural purposes. The Crown understands that the ability to exercise section 35 Aboriginal and Treaty rights to harvest medicinal plants and herbs is important to Indigenous peoples.

The Crown notes that Manitoba Hydro provided funding to interested Indigenous groups to conduct self-directed Indigenous knowledge studies in order to identify culturally sensitive sites requiring protection under Manitoba Hydro's CEPP, including with respect to medicinal and traditional use plants. NEB Condition 11 (Indigenous Knowledge Studies Report) requires the completion of any outstanding Indigenous traditional knowledge studies prior to construction, as well as an explanation as to how the findings have informed the Construction Environmental Protection Plan (CEPP).

In addition, Manitoba Hydro has committed to protecting environmentally sensitive sites, including their locations, features, areas, and activities that are ecologically, socially or culturally important. Manitoba Hydro has also committed to seeking feedback from Indigenous communities, through the MMTP Monitoring Committee, on topics of interest to the committee regarding its Construction Environmental Protection Plan and associated plans.

Further, the Crown notes that Manitoba Hydro committed to maintaining a 30 metre pesticide free buffer for the protection of Plant Species of Conservation Concern and Traditional Use Plant Species identified by Indigenous group in the Integrated Vegetation Management Plan (IVMP) to ensure their protection from herbicide applied elsewhere along the ROW.

The Crown also notes the NEB stated that with the mitigation measures proposed by Manitoba Hydro, the potential adverse effects of the Project on the current use and harvesting of traditional plants and medicines are temporary, and not likely to be significant.

**Crown Conclusion:** Based on Manitoba Hydro's commitments, as well as the NEB's findings and conditions, the Crown concludes that concerns regarding the potential impacts of the Project on traditional use and medicinal plants, including the ability of Indigenous groups to exercise section 35 Aboriginal and Treaty rights in relation to those plants, are reasonably accommodated.

#### **5.1.1.10 Potential for the Project to Contribute to Fluctuating Water Levels in the Lake of the Woods**

**Issue:** Potential for the Project to impact water levels in the Lake of the Woods and the Winnipeg River.

During the NEB assessment, and in ensuing meetings with the Crown, five Indigenous groups raised concerns that the storage of water required to supply electricity for exports via the Project would result in altered seasonal water levels along the Winnipeg River and in the Lake of the Woods watershed. They stated that any fluctuation in water levels due to the Project would result in impacts to section 35 Aboriginal and Treaty rights to fish, to harvest wild rice and to carry out other traditional activities. Indigenous groups also noted Manitoba Hydro's Environmental Impact Statement (EIS) did not include any information regarding water levels upstream of the Project, resulting in a gap in the EIS that should be addressed.

The NEB did not include this concern in its List of Issues and ruled (NEB Ruling No. 4) it to be out of scope of its assessment for the Project and explained that water levels in the Lake of the Woods, and water flow downstream through the Winnipeg River, are regulated by the Canadian Lake of the Woods Control Board (LWCB). Three Indigenous groups disagreed with the NEB's ruling on this matter.

During supplemental consultation, Shoal Lake #40 expressed concerns about fluctuating water levels in the Lake of the Woods and the impact it has on its membership's ability to exercise section 35 Aboriginal and Treaty rights, including wild rice harvesting. In particular, Shoal Lake #40 raised fundamental concerns about the consideration of section 35 Aboriginal and Treaty rights as part of the decision-making process administered by the LWCB for water level management determinations in the Lake of the Woods, including how the LWCB balances Indigenous interests with those of stakeholder groups (e.g. electricity producers, recreational users, cottage owners). Shoal Lake #40's concerns highlighted a key challenge: the need to prioritize the exercise of section 35 Aboriginal and Treaty rights by Indigenous communities near the Lake of the Woods and the legislative requirements set out under Ontario, Manitoba, and Canadian law, under which the LWCB functions, to regulate water levels for the most beneficial use of all inhabitants in the watershed.

### ***Proponent Commitments & Responses***

Although Manitoba Hydro agreed with the NEB that the issue of the Project's contribution to water levels in the Lake of the Woods and the Winnipeg River was outside the scope of the NEB assessment, Manitoba Hydro also provided information confirming that the water levels in Lake of the Woods would not be impacted by the Project or by contractual financial arrangements supporting the Project associated with wind energy storage. Manitoba Hydro also explained that the vast majority of electricity is generated by dams on the Nelson River (1000 km from the Lake of the Woods) and that it is at those dams where variations in Manitoba power demand or export markets/contracts are managed. Further, Manitoba Hydro clarified that the Lake of the Woods is not a hydropower reservoir, that the LWCB does not change outflows on short-term demand for various hydro interests, like Manitoba Hydro, and offered to meet with Indigenous groups to further discuss this issue outside the NEB assessment.

In its filings to the NEB, Manitoba Hydro stated that First Nations and Métis involvement in the MMTP Monitoring Committee is essential for the Project and it would continue to develop mechanisms for their involvement. Manitoba Hydro also committed that the MMTP Monitoring Committee, a forum for discussion of concerns between Indigenous communities and Manitoba Hydro on the Project, would remain in place through Project construction, and during operation, commensurate with the nature of activities occurring at a given time.

### ***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB accepted the evidence of Manitoba Hydro that this Project would not impact the water levels on the Lake of the Woods and referenced Manitoba Hydro's commitment to continuing engagement with Indigenous groups, including as part of the MMTP Monitoring Committee.

In addition, the NEB stated it heard considerable evidence from certain Indigenous Intervenors regarding matters that, while outside the scope of this Project and not incidental to the Project, were of great concern to those Intervenors, including the issue of fluctuating water levels in the Lake of the Woods watershed. In response, the NEB suggested Canada and the provinces of Manitoba and Ontario, together with the appropriate water boards, assess the impact on communities and wild rice producers affected by the fluctuating water levels of Lake of the Woods (NEB Suggestion #2).

### ***Crown's Conclusion***

The Crown recognizes that upstream effects of the Project, including the potential for the Project to impact water levels on the Lake of the Woods and the Winnipeg River, were not considered as part of the NEB assessment pursuant to the NEB's Ruling No.4, which explained the NEB assessment was considering Manitoba Hydro's application for a certificate under s.58.16 of the *NEB Act* for a new international power line.

The Crown has taken the position of responding to NEB suggestion #2, as a matter of good public policy and in the spirit of reconciliation with Indigenous communities.

The Crown acknowledges the concerns raised regarding the impacts of fluctuating water levels on traditional uses of these waters for economic, social and cultural uses and the consideration of Indigenous perspectives in water level decision-making. In response, the Crown proposes to engage all jurisdictions involved, Indigenous Peoples, and other relevant parties to respond to these concerns. Environment and Climate Change Canada (ECCC) will lead work to assess the process and context for water level regulation in the Lake of the Woods. A participative approach is proposed to examine and identify potential improvements to the Lake of the Woods Control Board engagement and decision-making processes.

***Crown Conclusion:*** On the balance of received information, the Crown concludes that the Project will not impact water levels in the Lake of the Woods. However, in response to Indigenous concerns regarding fluctuating water levels on the Lake of the Woods, and as noted in NEB Suggestion #2, the Crown will establish a working group, inclusive of Indigenous communities, to identify opportunities and best practices to inform decision-making with more inclusive processes that considers Indigenous perspectives in water level regulation.

#### **5.1.1.11 Inadequacy of the MMTP Monitoring Committee**

***Issue:*** During the NEB assessment, and in ensuing meetings with the Crown, five Indigenous groups expressed concern about the scope, governance, and activities of the MMTP Monitoring Committee, created and organized by Manitoba Hydro. Indigenous groups were particularly concerned with the absence of a mechanism to compel Manitoba Hydro to act on issues/concerns raised by Monitoring Committee participants and expressed a general desire for Manitoba Hydro funded community-specific environmental monitoring programs for the life of the Project, as well as a federal role in overseeing the committee.

#### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro stated that Indigenous involvement in the MMTP Monitoring Committee is essential for the Project and it would continue to develop mechanisms for Indigenous involvement. Manitoba Hydro has committed that the MMTP Monitoring Committee will remain in place through Project construction and during project operation, commensurate with the nature of activities occurring at a given time.

The MMTP Monitoring Committee has met seven times since November 2016, with 14 Indigenous communities participating to date. Manitoba Hydro committed to providing an opportunity for 25 Indigenous communities identified in Manitoba Hydro's First Nations and Metis Engagement Program (FNMEP) and the NEB's Consultation Directive to participate in the MMTP Monitoring Committee. Manitoba Hydro provides funding for all Committee activities, covers the travel and accommodation costs, as well as an honorarium, for two participants from each Indigenous community. In addition, Manitoba Hydro confirmed that all elements of construction and geographic locations of the Project are included within the Committee's scope. The minutes of all meetings are available on the Committee website (password protected).

### ***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB agreed with Indigenous Intervenors and Manitoba Hydro that Indigenous peoples bring unique perspectives in determining the effectiveness of mitigation measures, based on their traditional knowledge, as well as their ongoing use of the lands and resources in the area.

The NEB imposed several conditions on Manitoba Hydro to ensure any commitments to Indigenous groups are followed. This includes commitments made to include Indigenous groups in ongoing monitoring activities:

- Condition 1 requires Manitoba Hydro to comply with all of the conditions imposed by the NEB in its certificate, unless the NEB directs otherwise.
- Condition 3 requires Manitoba Hydro to implement, or cause to be implemented, all of the policies, practices, mitigations measures, recommendations, and procedures for the protection of the environment and promotion of safety referred to in its application, or as otherwise agreed to in its related submissions.
- Condition 15 requires Manitoba Hydro to file with the NEB, and post on its website, a commitments tracking table listing all commitments it made in its application and otherwise agreed to through the course of the NEB review.
- Condition 21 requires Manitoba Hydro to create and maintain records that chronologically track complaints by Indigenous communities and other stakeholders related to the Project for five years after the commencement of operations. The tracking will include information on any further actions to be taken or an explanation as to why no further action is required.
- Condition 23 requires Manitoba Hydro to file with the NEB annual post-construction monitoring reports, which would include, among other things, identification of any reclamation or other environmental issues, which arose during construction or in the course of the previous year, and a description of any corrective actions taken.

The NEB noted the interest of Indigenous groups in participating in monitoring of the Project throughout the NEB assessment, as well as the concerns from Manitoba Hydro about the potential difficulty of developing a monitoring program specific to Indigenous group. Manitoba Hydro said the purpose of the MMTP Monitoring Committee is to support effective and meaningful Indigenous participation in monitoring the construction and operation of the Project. Manitoba Hydro will continue to provide opportunities for Indigenous communities to participate in the Committee.

### ***Crown's Conclusion***

The Crown supports Manitoba Hydro's establishment of the MMTP Monitoring Committee, which is already active. All 21 potentially impacted Indigenous groups on the Crown List have been invited to participate in the Committee. The Crown understands the purpose of the Committee is to support effective and meaningful participation in the monitoring of the Project. In addition, in an effort to collaboratively provide informed advice on ways to address issues of



concern, the Committee aims to create a platform to understand issues of concern to Indigenous participants and Manitoba Hydro. The Committee is an avenue to share information relating to environmental issues in a cooperative and transparent manner.

In response to Indigenous concerns about the scope, governance, and activities of the MMTP Monitoring Committee, MPMO conducted an analysis to compare the MMTP Monitoring Committee with the Indigenous Advisory Monitoring Committees (IAMC) put in place by the Crown for the Trans Mountain Expansion Pipeline (TMX) and Enbridge's Line 3 Replacement Project (Line 3). The Crown notes the MMTP Monitoring Committee and the two IAMCs have similar objectives and approaches. With respect to the two IAMCs, it is recognized that:

1. The Crown provides funding for Indigenous-led studies, such as traditional land and resource use studies, and funding to support the participation of Indigenous committee members; and,
2. The NEB and other federal departments participate in the two IAMCs with Indigenous groups on environmental assessment/monitoring of the Project, and provide advice to the NEB items of concern.

However, the Crown also recognizes that Manitoba Hydro provides funding for all Committee activities, covers the travel and accommodation costs, as well as an honorarium, for two participants from each Indigenous community. In terms of funding for Indigenous studies, NRCan is establishing a terrestrial and cultural studies initiative to support Indigenous-led studies to improve understanding of land-based issues such as harvesting plants on the land, hunting of land-based animals, and cultural impacts of changing the landscape and resources. The results of these studies could provide information on the cumulative effects of development on Indigenous rights and inform the operations and maintenance phases of this Project.

With respect to government oversight, the Crown notes that a representative of Manitoba Sustainable Development participates as an observer on the Committee. Given Manitoba Sustainable Development is the primary regulator of the Project, this representative may serve as a conduit between the Committee and the provincial regulatory body, including with respect to matters of concern to Indigenous groups.

The Crown also notes NEB Condition 21 (Issues Tracking) requiring Manitoba Hydro to maintain records that chronologically track complaints by Indigenous peoples and explain actions taken to address them. As noted in Section 5.0, the Crown is proposing that Condition 21 be amended to specifically include complaints raised through the MMTP Monitoring Committee.

The Crown therefore concludes that the MMTP Monitoring Committee is a constructive forum for Indigenous groups to work with Manitoba Hydro to address Indigenous concerns and to provide input to Manitoba Hydro on the development of its Environmental Protection Program for the Project.

***Crown's Conclusion:*** Based on the open invitation to Indigenous groups to participate in the Committee, the existing terms of reference, participation of the Manitoba Sustainable Development in the Monitoring Committee, and the ability of Indigenous groups to file a motion or grievance against Manitoba Hydro with the NEB should an Indigenous group be of the view that Manitoba Hydro is in non-compliance with NEB conditions, the Crown concludes that concerns regarding the MMTP Monitoring Committee are reasonably addressed.

#### **5.1.1.11 Inadequacy of Indigenous Consultation**

***Issue:*** During the NEB assessment, and in ensuing meetings with the Crown, 11 Indigenous groups raised concerns with the manner in which federal and provincial Indigenous consultation occurred, including through the NEB assessment. Concerns with federal and provincial consultation focused on the following issues:

- Inadequate provision of participant funding
- Unrealistic timelines for meaningful consultation, including stringent NEB assessment timelines
- Inadequate mandate of MPMO officials to provide meaningful accommodation
- Consultation process was not tailored to Indigenous preferences

These concerns are important as the Crown has a duty to meaningfully consult, and accommodate where appropriate, all potentially impacted Indigenous groups when its contemplated conduct may impact section 35 Aboriginal and Treaty rights.

#### ***NEB findings with respect to this issue***

Details on Indigenous consultation through the NEB assessment of the Project can be found in section 3.2 of this report.

With respect to timelines during the NEB assessment, Indigenous Intervenor had the opportunity to submit motions to the NEB seeking additional time for the review/submission of evidence. On two occasions, following motions submitted by Shoal Lake #40 and the Southern Chiefs Organization, the NEB agreed to extend deadlines for the submission of evidence (NEB Ruling No. 5 & NEB Ruling No. 12). At no point did the NEB deny a motion filed by Indigenous Intervenor that sought timeline extensions during the assessment of the Project.

With respect to participant funding, the NEB awarded up to \$853,945 to Indigenous Intervenor to support meaningful participation in the NEB assessment. A detailed overview of the funding offered to Indigenous Intervenor by the NEB is outlined in section 3.2.2 of this report.

The NEB concluded in its Reasons for Decision that there was adequate consultation and accommodation for the purpose of the NEB's decision on the Project. The NEB also assessed that any potential project impacts on the interests, including Section 35 Aboriginal and Treaty rights, of affected Indigenous peoples are not likely to be significant and can be effectively addressed.

### ***Crown's Conclusion***

This Crown Consultation and Accommodation Report lays out the consultation process undertaken by the Crown for this project. The objectives, activities, and approaches were designed to support the Government of Canada's broader commitments to reconciliation, UNDRIP, and the direction laid out by the courts, including the recent FCA decision in *Tsleil-Waututh Nation* (2018 FCA 153). .

The provincial Crown administered a separate consultation process with respect to its own contemplated conduct – whether to issue a Class 3 *Environment Act* licence to Manitoba Hydro to construct and operate the Project. The record of provincial consultation does not form part of the federal Crown's own consultation record and does not inform whether the federal Crown has discharged the duty to consult in respect of the Project.

The mandate provided to the Crown Consultation Coordinator, and other MPMO officials, for the supplemental consultation phase was designed to enable meaningful two-way dialogue on the Project's potential impacts to section 35 Aboriginal and Treaty rights as part of an iterative process where the MPMO addressed accommodation within NRCan's purview, while also working with Indigenous groups to refine other potential accommodation measures for decision by Cabinet (i.e. potential changes to NEB conditions).

Details regarding funding made available by the NEB and the MPMO to support the meaningful participation of Indigenous groups in the NEB assessment and supplemental consultation phase can be found in section 3.2.2 and 4.2.3 of this report.

The Crown showed repeated flexibility and provided multiple opportunities over 15 months to Indigenous groups to discuss the potential impacts of the Project to section 35 Aboriginal and Treaty rights, as well as potential accommodation measures. Details regarding timelines for supplemental consultation by federal officials can be found in section 4.2.2 of this report.

**Crown Conclusion:** The Crown concludes that the timelines, mandate of MPMO officials, amount of participant funding and approach to consultation has been sufficient for enabling opportunities for meaningful two-way dialogue between Indigenous groups and the Crown either on potential Project impacts to section 35 Aboriginal and Treaty rights, as well as potential accommodation measures.

### **5.1.2 Other Indigenous Group Concerns Related to Potential Impacts on Rights**

During the Crown consultation process, at least one Indigenous group raised the following potential impacts on section 35 Aboriginal and Treaty rights. It should be noted that because these issues were not identified by multiple Indigenous groups, a shorter analysis has been included within the CCAR to outline how each has been addressed.

#### **5.1.2.1 Potential for the Project to Impact Cultural & Heritage Resources**

Issue: During the NEB assessment, and in ensuing meetings with the Crown, 13 Indigenous groups shared concerns about the potential for the Project to impact cultural heritage resources and the ability of Indigenous groups to exercise section 35 Aboriginal and Treaty rights in relation to those resources. Cultural and heritage resources can include archaeological sites, Indigenous burial grounds, historic trade/travel routes, ceremonial sites or other heritage resources that possess cultural significance to Indigenous peoples.

### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro stated it will follow all processes outlined in Manitoba's *Heritage Resources Act (1986)*, which encourages and facilitates the protection and conservation of Manitoba's heritage resources. Heritage sites include buildings, structures, and land of archaeological and historical significance. Manitoba Hydro has drafted a Project Cultural and Heritage Resources Protection Plan (CHRPP), as part of the Construction Environmental Protection Plan (CEPP). Manitoba Hydro's CHRPP outlines strict procedures that contractors must follow in the event a burial ground or human remains are discovered.

Manitoba Hydro committed to implement ongoing protection measures, such as the implementation of a heritage resource impact monitoring (HRIM) field work program, which will continue the assessment of high heritage potential areas over the course of clearing and construction activities. Indigenous knowledge holders will inform the heritage resource surveys through direct involvement in the pre-construction HRIM field investigation and share results with their respective communities. The MMTP Monitoring Committee will also have input in the Project CHRPP.

Manitoba Hydro offered funding to all potentially affected Indigenous communities to complete self-directed Indigenous knowledge studies. The updated CEPP will incorporate information from any outstanding Indigenous Knowledge and land use studies as required under NEB condition 11. Site-specific mitigation can be applied to protect Environmentally Sensitive Sites (ESS), consisting of locations, features, areas and activities identified to be ecologically, socially or culturally important or sensitive to disturbance.

MMTP Monitoring Committee has plans to hire a Traditional Monitor where one of the responsibilities of this position will be to monitor activities related to culturally important areas and potential discoveries, including burial grounds, and to provide an Indigenous perspective during construction of the Project on the implementation of environmental protection measures. To address concerns regarding cultural heritage resources and cultural heritage sites, Manitoba Hydro made several commitments as part of the CEC process:

- **Commitment 38:** Environmentally sensitive sites, features and areas will be identified and mapped before clearing.
- **Commitment 51:** Buffers and sensitive areas (where applicable) will be clearly marked with stakes and/or flagging tape prior to clearing.
- **Commitment 80:** Areas identified for selective clearing (e.g., buffer zones, sensitive sites) will be flagged prior to clearing.

- **Commitment 96:** Bypass trails, sensitive sites and buffer areas will be clearly marked prior to clearing. The contractor will be responsible for developing, implementing and maintaining Erosion Protection and Sediment Control Plans and procedures to be put in place prior to commencement of construction activities.
- **Commitment 110:** Pre-construction investigation by a professional archaeologist in areas that are considered to be heritage sensitive such as sites identified as being culturally sensitive by First Nation and Métis, extant buildings or building foundations, stone features, burial sites and any other heritage resources sites as defined by The Heritage Resources Act (1986).
- **Commitment 114:** Providing opportunities for First Nations and MMF [Manitoba Métis Federation] to identify sensitive sites to help inform the Environmental Protection Program for the Project.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB concluded that the potential adverse impacts of the Project on heritage resources was not likely to be significant. In particular, the NEB noted that Manitoba Hydro's incorporation of feedback from Indigenous communities and findings from self-directed Indigenous knowledge studies into its routing process, resulted in the avoidance of sensitive heritage resource sites.

In its decision report, the NEB imposed two conditions in regards to protection of cultural heritage resources:

- Condition 16 (Heritage Resources), requires Manitoba Hydro to file confirmation that it has obtained all permits and clearances from Manitoba's Heritage Resources Branch.
- Condition 10 (Construction Environmental Protection Plan) requires Manitoba Hydro to submit its CEPP plan with the NEB for approval, at least 90 days prior to commencing construction, and includes the final version of Manitoba Hydro's Construction Heritage Resource Protection Plan.
- Condition 11 (Indigenous Knowledge Studies Report) which requires Manitoba Hydro to submit a report outlining a plan for completing outstanding Indigenous knowledge studies and how it has revised its CEPP as a result.

In addition, the NEB proposed several conditions that will require Manitoba Hydro to ensure any commitments to Indigenous groups or NEB-imposed conditions are followed. This includes commitments made to include Indigenous peoples related to ongoing monitoring activities or information sharing:

- Condition 1 requires Manitoba Hydro to comply with all of the conditions imposed by the NEB in its certificate, unless the NEB otherwise directs.
- Condition 3 requires Manitoba Hydro to implement, or cause to be implemented, all of the policies, practices, mitigations measures, recommendations, and procedures for the protection of the environment and promotion of safety referred to in its application, or

as otherwise agreed to in its related submissions. As mentioned previously in Section 5.0, the Crown is proposing amendments to this condition.

- Condition 15 requires Manitoba Hydro to file with the NEB, and post on its website, a commitments tracking table listing all commitments it made in its application and otherwise agreed to through the course of the NEB review. As mentioned previously in Section 5.0, the Crown is proposing amendments to this condition.
- Condition 21 requires Manitoba Hydro to create and maintain records that chronologically track complaints by Indigenous communities and other stakeholders related to the Project for five years after the commencement of operations. The tracking will include information on any further actions to be taken or an explanation as to why no further action is required. As mentioned previously in Section 5.0, the Crown is proposing amendments to this condition.

### ***Crown's Conclusion***

The Crown highlights that management of archaeological and heritage resources is the responsibility of the provincial government. Before construction can begin, Manitoba Hydro must obtain clearances from the Heritage Resources Branch of Manitoba with respect to archaeological and heritage resources. Any permits issued by Manitoba may identify any conditions of approval or mitigation measures that Manitoba Hydro would be required to meet. The Crown recognizes that Manitoba Hydro developed the Final Preferred Route based on a process that included public input and identification of important sites, resulting in readjustment of the route. The Crown notes Manitoba Hydro's commitment to protecting sensitive sites under its Construction Environmental Protection Plan (CEPP) in order to preserve traditional land use locations. Manitoba Hydro's CEPP will provide guidance for the implementation of environmental protection measures for the Project, which will be applied to both private and Crown land.

In addition, the Crown notes that the MMTP Monitoring Committee has plans to hire a Traditional Monitor and Manitoba Hydro's CHRPP outlines strict procedures in the event a burial ground or human remains are discovered.

In response to concerns regarding the protection of heritage sites, the Crown notes that the NEB imposed Condition 16 (Heritage Resources) and Condition 10 (Construction Environmental Protection Plan). The Crown is also modifying condition 3 (Implementation of Commitments) to specifically require Manitoba Hydro to implement all commitments to Indigenous groups that were on the NEB record.

***Crown Conclusion:*** Based on the existing provincial legislation, Manitoba Hydro's commitments, the NEB conditions, and the Crown's modification of Condition 3, the Crown concludes that concerns of the Project's potential impact to sensitive cultural resource sites, including undiscovered sites, are reasonably accommodated.

### **5.1.2.2 Accidents, Malfunctions & Emergency Preparedness and Response**

Issue: During the NEB assessment, two Indigenous groups raised concerns regarding the potential for risks to public safety due to potential Project accidents or malfunctions, as well as the extent of Indigenous involvement in emergency response and preparedness procedures for the Project.

### ***Proponent Commitments & Responses***

Manitoba Hydro identified and assessed the effects of accidents and malfunctions on workers, the public, and bio-physical and socio-economic elements based on section 6.6.1(2) of the NEB Electricity Filing Manual (2015). Chapter 21 of Manitoba Hydro's Environmental Impact Statement (EIS) identifies potential accidents, malfunctions and unplanned events that may occur during the construction and operation of the Project, and assesses their potential effects on each of the identified valued components. The Project has also been designed to comply with North American Electric Reliability Corporation (NREC) standards.

In its EIS, Manitoba Hydro identified the following accidents, malfunctions and unplanned events for the project: power outages, tower collapse due to extreme weather, sabotage or force majeure, electrocution, failure of erosion protection and sediment control measures, spill of hazardous materials, release of insulating gas, interconnection of aquifers, fire and collisions. For each of these accidents, Manitoba Hydro outlined how it would mitigate the risks in Chapter 21 of its EIS.

In its filings to the NEB, Manitoba Hydro committed to providing clear communications for major project milestones, including project-related emergency response updates and notifications. In addition, Manitoba Hydro welcomed opportunities to continue discussions through its First Nations and Métis Engagement Process (FNMEP), which includes all 21 Indigenous groups on the Crown List, as well as through the MMTP Monitoring Committee, to which all 21 impacted groups have been invited to participate.

Further, Manitoba Hydro is required to develop, for approval by the NEB, an emergency preparedness and response plan prior to construction. In addition, to further address concerns about emergency response and preparedness procedures, Manitoba Hydro made the following commitments as part of the CEC process:

- **Commitment 99:** Through ongoing engagement processes, interested First Nations and the Manitoba Metis Federation will be notified about when/where construction is occurring.
- **Commitment 127:** Project personnel will be made aware of the Emergency Response Plan (ERP) and designated staff will receive ERP training. Among other elements, the plan will address handling and storage of materials, driving safety, animal encounters, emergency response communications, spill response, personnel injury response, and vehicle collisions.
- **Commitment 218:** Manitoba Hydro will develop, organize, and participate in ongoing Public engagement and First Nation and Metis engagement processes activities in order to provide timeline and up-to-date information regarding Project activities and to receive feedback.

- **Commitment 233:** Through ongoing engagement process notifications to interested First Nations and the Manitoba Metis Federation advising on when/where construction is occurring.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB stated that emergency response plans are an important product of the emergency management program, which is a component of the management system. The NEB noted that information contained in emergency response plans can contribute to the protection of the environment and the safety of the public adjacent to international and inter-provincial power lines.

In addition, the NEB noted that, as the operator of the Project, Manitoba Hydro is responsible for addressing a possible emergency or incident during the lifecycle of the Project, including during construction, operation, and abandonment.

The NEB stated that Manitoba Hydro is required to demonstrate that it has sufficient financial resources to cover the costs of losses or damages that may arise from potential malfunctions, accidents, and failures during the operation of the Project. The NEB concluded that Manitoba Hydro had sufficient financial means to pay for the cost of an incident during the operation of the Project.

The NEB Condition 3 requires Manitoba Hydro to implement, or cause to be implemented, all of the policies, practices, mitigations measures, recommendations, and procedures for the protection of the environment and promotion of safety referred to in its application, or as otherwise agreed to in its related submissions.

The NEB imposed one condition on Manitoba Hydro in response to emergency response and preparedness concerns:

1. Condition 14 (Construction Emergency Response Plan) requires Manitoba Hydro to submit an Emergency Response Plan, at least 45 days prior to commencing construction, consisting of:
  - A response plan for spills of fuels and fluids associated with construction;
  - A response plan for medical incidents that includes provision for 24-hour emergency transport to hospital;
  - A plan for fire response;
  - A security plan; and,
  - An emergency contact list and emergency notification plan for government and response agencies and communities (including Indigenous and Métis) adjacent to the ROW and/or impacted by work sites.

***Crown's Conclusion***

With respect to Indigenous concerns regarding accidents and malfunctions, the Crown recognizes that the NEB found that Manitoba Hydro had sufficient financial means to pay for the cost of an incident.



The Crown also acknowledges the importance of emergency response plans and the involvement of Indigenous communities in developing the plans. The Crown understands Manitoba Hydro has established the MMTP Monitoring Committee with Indigenous communities, which will be used as a venue to discuss ongoing issues, including emergency response plans. This commitment is protected under Condition 3 (Implementation of Commitments) and further strengthened by the Crown's proposed amendment to explicitly require Manitoba Hydro to implement all commitments to Indigenous groups that were on the NEB record.

The NEB has also imposed Condition 14 (Construction Emergency Response Plan) requiring Manitoba Hydro to submit a Construction Emergency Response Plan. A draft version of the Construction Emergency Response Plan<sup>9</sup> is currently available on Manitoba Hydro's project website for review and comment, including by Indigenous groups.

It is acknowledged that Manitoba Hydro recognizes that Indigenous communities may have different preferences for how information is communicated and that Manitoba Hydro has stated it is open to discussing alternative communication methods with Indigenous groups. Manitoba Hydro intends to continue the First Nation and Metis Engagement Process (FNMEP) as a mechanism for understanding preferences for Project-related updates. The Project website will be regularly updated and interested parties will be invited to sign up for electronic communication service to receive updates. In addition, Indigenous groups can receive in-person updates through the MMTP Monitoring Committee, which is already active, and FNMEP communications.

***Crown Conclusion:*** Based on Manitoba Hydro commitments, the MMTP Monitoring Committee as a venue to discuss emergency response plan, NEB findings, NEB conditions, and the Crown's proposed amendment to Condition 3, the Crown concludes that concerns with respect to the potential for accidents and malfunctions during construction and operations are reasonably accommodated.

### **5.1.2.3 Contribution of the Project to Cumulative Effects of Resource Development on the Exercise of Section 35 Aboriginal and Treaty Rights**

**Issue:** During the NEB assessment, and in ensuing meetings with the Crown, four Indigenous groups raised concerns about the Project's contribution to the cumulative effects of development on section 35 Aboriginal and Treaty rights, as well as the insufficiency of Manitoba Hydro's cumulative effects assessment, stating it required a more thorough evaluation of literature, expert consultation with scientists, and inclusion of local and Indigenous knowledge.

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<sup>9</sup> Draft Emergency Response Plan:  
[https://www.hydro.mb.ca/projects/mb\\_mn\\_transmission/pdfs/draft/epp\\_transmission\\_line\\_construction\\_emergency\\_response\\_plan.pdf](https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/draft/epp_transmission_line_construction_emergency_response_plan.pdf)

Some Indigenous groups suggested that the NEB look beyond impact minimization, and provide compensation and benefits to offset unavoidable Project-specific residual impacts to Indigenous peoples.

***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro stated that a key mitigation to address cumulative effects to traditional land and resource use is routing, and the understanding that traditional practices can continue on the ROW once construction is complete.

Manitoba Hydro submitted that cumulative effects on the ability of Indigenous groups to continue conducting traditional activities and practices is anticipated to be limited as a result of the Project being routed for much of its length within an existing transmission corridor. This includes selecting a Final Preferred Route that skirts large, intact cultural areas such as the Watson P. Davidson Wildlife Management Area, the Boutang Area of Special Interest, and the Hugo, Caliento, Piney, and Sundown Wetlands. Manitoba Hydro stated that the Final Preferred Route avoids areas identified as important for birds, wildlife, plants of traditional importance, sites of cultural importance, and areas considered to have high heritage value.

Further, Manitoba Hydro committed to mitigating potential cumulative effects through monitoring of its projects for potential effects and implementing adaptive management for unanticipated effects.

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB's assessment of cumulative effects considered the impacts of adverse residual impacts associated with the Project in combination with the residual impacts from other projects and activities that have been or will be carried out, within the appropriate temporal and spatial boundaries, and ecological context. Manitoba Hydro provided a list of reasonably foreseeable developments with potential to contribute further to cumulative effects to aid the NEB in its decision-making.

The NEB was of the view that the Project's potential contributions to cumulative effects in the region have been substantially reduced through Manitoba Hydro's design, which will be further reduced as a result of the mitigation measures, as committed by Manitoba Hydro, and the conditions imposed by the NEB. The NEB however, made a suggestion to the federal and provincial Crowns to "consider developing the terms of reference and funding for a regional environmental assessment for southern Manitoba".

The NEB imposed three conditions on Manitoba Hydro that help to mitigate the cumulative effects of project development in southern Manitoba:

- Condition 22 (Crown Land Offsets Measures Plan) requires Manitoba Hydro to file with the NEB, 30 days prior to commencing operations, a Crown Land Offset Measures Plan that outlines offset and compensation measures for permanent loss of Crown lands available for traditional use by Indigenous peoples resulting from the Project. As

mentioned previously in Section 5.0, the Crown is proposing amendments to this condition.

- Condition 23 (Post-Construction Monitoring Reports) requires Manitoba Hydro to submit a post-construction monitoring report outlining the total area of permanent loss of wetlands resulting from construction of the Project and an explanation of how that loss will be offset or compensated, as per the Wetland Offset Measures Plan
- Condition 26 (Wetland Offset Measures Plan) requires Manitoba Hydro to file with the NEB, within 90 days of commencing operation of the Project, a Wetland Offset Measures Plan that outlines how permanent loss of wetlands resulting from the Project will be offset or compensated. In addition, Condition 26 requires Manitoba Hydro to explain how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands be quantified and reported to the NEB. As mentioned previously in Section 5.0, the Crown is proposing amendments to this condition.

### ***Crown's Conclusion***

The Crown acknowledges that Indigenous groups said “the adjudication of large energy infrastructure projects feels like “death by a thousand cuts” wherein each new project adds another “cut” with no apparent opportunity to mitigate the ongoing cumulative impacts of these cuts”. The Crown notes the NEB acknowledged the concerns raised by Indigenous groups and recognized the ability of ongoing and potential cumulative effects to have lasting cultural implications. In response, the NEB made a suggestion to the federal and provincial Crowns to consider developing, in consultation with interested stakeholders, the terms of reference and funding for a study of regional, multi-sectoral environmental, and cumulative impacts.

The Crown also notes that NEB examined Manitoba Hydro's EIS, including its cumulative effects assessment and selection of valued components, and determined that it satisfies federal and provincial guiding documents, including the NEB Filing Manual. The NEB also found that most residual effects would be low to moderate in magnitude and restricted to the ROW or Local Assessment Area, and would not likely result in significant adverse cumulative effects.

The Crown notes the NEB finding that the Project's potential contributions to cumulative effects in the region have been substantially reduced through Manitoba Hydro's Project design and will be further reduced because of the mitigation measures. The NEB imposed Condition 22 and 26 to further reduce the potential for cumulative effects. The Crown is further strengthening conditions 22 and 26 requiring Manitoba Hydro to further engage with impacted Indigenous groups (see Section 5.0).

In response to the NEB suggestion, the Crown understands the cumulative effects of development from a regional context is of interest to Canada and will consider the information provided through the NEB assessment for the Project as it works to identify the areas on which to focus potential regional assessments. Collaboration with Manitoba, Indigenous groups and stakeholders will be essential.

Various initiatives are already in place to support cumulative effects work in the Lake-of-the-Woods area. For example, the Lake of the Woods Science Program is a five-year (2016-2021) science program to study the factors affecting water quality in the Lake of the Woods. The objective of the program are to monitor and assess water quality conditions; identify causes and consequences of nutrient enrichment and algal blooms; and predict the Lake's response to potential nutrient load reduction strategies. Environment and Climate Change Canada (ECCC) is collaborating on this work with Indigenous organizations, the United States, the International Joint Commission, Binational Science Coordination Groups and non-governmental researchers. Additionally, the International Joint Commission is active in the Lake of the Woods area, and is developing "objectives and alert levels" to assess monitoring information collected by federal provincial and state agencies, and advise Governments of water quality and aquatic ecosystem priorities for action. ECCC will continue to work with Indigenous communities through its programs and initiatives in the Southern Manitoba area near Lake Winnipeg and east towards the Lake-of-the-Woods.

In addition, NRCan will establish a terrestrial and cultural studies initiative to support Indigenous-led studies to improve understanding of land-based issues such as harvesting plants on the land, hunting of land-based animals, and cultural impacts of changing the landscape and resources. The results of these studies could provide information on the cumulative effects of development on Indigenous rights and inform the operations and maintenance phases of this Project.

**Crown Conclusion:** Based on Manitoba Hydro commitments, the NEB's findings and conditions, the Crown's modifications to NEB conditions 3, 22, and 26, as well as the Crown's response to the NEB suggestion, the Crown concludes that Indigenous concerns regarding the cumulative effects of development on section 35 Aboriginal and Treaty rights are reasonably accommodated in respect of the Project.

#### **5.1.2.4 Potential for the Project to Impact Moose & White-Tailed Deer (Hunting & Trapping)**

**Issue:** During the NEB assessment, and in ensuing meetings with the Crown, five Indigenous groups raised concerns about potential Project impacts to moose and deer and the ability of their members to exercise section 35 hunting and trapping rights in relation to those two species. Two Indigenous groups sought

#### **Proponent Commitments & Responses**

In its filings to the NEB, Manitoba Hydro submitted as part of its Environmental Impact Statement (EIS) that the Project will have adverse, low in magnitude effects on wildlife and wildlife habitat, including for moose and deer. The EIS also said that the Project, in combination with other future projects, will have a small contribution to cumulative effects on wildlife and wildlife habitat, including on moose and deer.

Manitoba Hydro noted that Manitoba Sustainable Development identified habitat fragmentation, fire suppression, human development, increased hunting pressure (wolves and unregulated harvest), and disease/parasites as factors contributing to the moose decline.

In terms of the white tailed deer, Manitoba Hydro found they are a widespread generalist species found throughout Manitoba including the Regional Assessment Area (RAA), and despite recent population declines, long-term population trends remain stable. Recent population declines are primarily due to harsh winters but also increased hunting pressure from rights-based hunting and predation by wolves and coyotes.

Manitoba Hydro also explained most adverse effects on wildlife and wildlife habitat in the LAA were mitigated during the planning and transmission line routing process by avoiding existing parks and protected areas, and through consideration of the core areas occupied by the Vita elk herd (Wildlife and Wildlife Habitat TDR), and large tracts of intact habitat (e.g. forests, wetlands). Where the project does traverse natural habitat, mitigation measures (e.g. timing windows, setbacks and buffers) will be implemented to reduce adverse effects on wildlife and wildlife habitat.

***NEB condition or findings with respect to this issue***

The Board was satisfied with Manitoba Hydro's EIS methodology, including its selection of valued components and its incorporation of traditional knowledge and Indigenous concerns to assess Project impacts, and found its approach in accordance with provincial and federal guidance documents, including the Board's Filing Manual.

The NEB imposed one condition on Manitoba Hydro to address concerns regarding wildlife hunting and trapping, particularly moose and deer populations:

1. Condition 11 (Indigenous Knowledge Studies Report) requires Manitoba Hydro to submit a report outlining a plan for completing Indigenous knowledge studies, including a description of how Manitoba Hydro has revised its CEPP as a result of the Indigenous knowledge studies.

***Crown's conclusion***

The Crown notes that the NEB Reasons for Decision determined Manitoba Hydro's EIS methodology, satisfied provincial and federal guidance documents, including the NEB Filing Manual. The EIS determined that the Project will have adverse but low in magnitude effects on wildlife and wildlife habitat, including moose and that in combination with other future projects, will have small contribution to cumulative effects on wildlife and wildlife habitat, including moose and deer.

The Crown notes that in its EIS, Manitoba Hydro considered moose and deer within the context of wildlife surveys conducted. To make its conclusion about the species and its future in the range, Manitoba Hydro considered knowledge about the local populations based on Indigenous input, knowledge from provincial departments, and an understanding of the ecology of the species gained from literature.

The Crown also recognizes that under Manitoba's *Wildlife Act*, Manitoba Sustainable Development is the management authority responsible for managing and enhancing ungulate

populations in the Project area. This would include setting priority areas for moose restoration and targets for moose populations. It is noted that Manitoba Hydro has committed to communicating with Manitoba Sustainable Development on the results of its monitoring program as part of the draft Environmental Monitoring Plan.

The Crown acknowledges that moose and deer are culturally critical species to some Indigenous groups, including for sustenance. Further loss of moose may impact the ability of some Indigenous groups to exercise section 35 Aboriginal and Treaty rights. However, the Crown notes the EIS found that moose are rare in southern Manitoba and adverse impacts of the Project and the Project's contribution to cumulative effects on wildlife and wildlife habitat, including moose and moose habitat, are not significant. Indigenous harvesters will be able to access the transmission line ROW to exercise section 35 Aboriginal and Treaty rights activities during operation of the Project as access permissions along the ROW after construction will be similar to those currently in effect.

***Crown conclusion:*** Given the findings of the EIS and the NEB's finding related to wildlife and wildlife habitat research on the decline of moose populations, the proponent's commitments, and the NEB's views that the EIS satisfied provincial and federal guiding documents, the Crown's conclusion is that impact of the Project on the ability of members of Indigenous groups to exercise their s.35 Aboriginal and Treaty rights related to moose and deer are reasonably accommodated.

#### **5.1.2.5 Potential for the Project to Impact Navigation & Navigation Safety**

***Issue:*** During the NEB assessment and in ensuing meetings with the Crown, two Indigenous groups raised concerns about Project's potential risk to public safety, the decreased access to navigable waters, and interference or restriction to navigation.

#### ***Proponent Commitments & Responses***

In its filings to the NEB, Manitoba Hydro stated that, given no temporary or permanent in-water works or structures are planned for the Project, there is limited potential for the Project to cause effects to navigation and navigation safety. During the NEB hearing, Manitoba Hydro said it had revised its approach for conductor stringing across navigable waters, and that helicopters, rather than boats, would be used for stringing. During these activities, flag persons in boats would be situated both upstream and downstream of the ROW as a navigation safety precaution (NEB Reasons for Decision, pg.140).

In addition, as a navigation precaution, boats with flag persons are required during conductor stringing at navigable watercourse crossings, but Manitoba Hydro indicated that it would launch the boats at authorized boat launches and remain in deep water to avoid disturbance to bed and banks of watercourses, including clam and mussel habitat (NEB Reasons for Decision, pg.128).

Further, Manitoba Hydro stated that impacts to navigation and navigation safety would be eliminated because of its mitigation measures. These measures, also to be included in the CEPP, are as follows:

- Ensuring the crossings will not impede water flow,
- Creating a v-notch in the centre of the ice bridge at the end of the crossing season to allow it to melt from the centre (Manitoba Hydro mentioned ice bridges may be used at navigable crossings), and
- Securing any logs used to stabilize the shoreline approaches and removing them either before or immediately following the spring freshet.

To address navigation and safety concerns, Manitoba Hydro made the following commitment as part of the CEC process:

- Commitment 181: Where applicable, provisions of the Navigation Protection Act related to the “Minor Works Order” for classes of work related to Aerial Cables – Power and Telecommunication will be adhered to.

***NEB condition or findings with respect to this issue***

The NEB assessed the potential effects of the Project to navigation and navigation Safety in the hearing process. In its Reasons for Decision, the NEB stated that, as per the evidence, navigation and navigation safety may be adversely affected temporarily and/or for a short period of time.

As a result, the NEB imposed one condition on Manitoba Hydro:

- Condition 9 (Navigation and Navigation Safety Plan) requires Manitoba Hydro to file, for approval, a Navigation and Navigation Safety Plan ninety (90) days prior to commencing construction. This timing coincides with required filing of the CEPP (Condition 10), of which the Navigation and Navigation Safety Plan is a part.

The NEB concluded that with the implementation of Condition 9, any potential adverse residual environmental effects to navigation and navigation safety would not be significant. Any residual effects are expected to be short-term in duration, reversible, low magnitude, and limited in extent to the ROW.

***Crown’s Conclusion***

The Crown recognizes the concerns of Indigenous peoples with regard to navigable waters and navigation safety. Manitoba Hydro has committed to using helicopters, rather than boats, for conductor stringing across navigable waters.

The NEB also imposed Condition 9 (Navigation and Navigation Safety Plan) which requires Manitoba Hydro to file, for approval, a Navigation and Navigation Safety Plan 90 days prior to commencing construction. The NEB concluded that with the implementation of condition 9 and proponent commitments, the adverse effects of the Project construction to navigation and

navigation safety would not be significant. Finally, the Crown is proposing amendment to condition 3 (Implementation of Commitments) to explicitly require Manitoba Hydro to implement all commitments to Indigenous groups that were on the NEB record.

***Crown Conclusion:*** Based on the NEB's conclusion, NEB condition 9, Manitoba Hydro's commitment and mitigation measures, and the Crown's proposed amendment to condition 3, the Crown concludes that concerns regarding navigation and safety are reasonably accommodated.

#### **5.1.2.6 Inadequate Funding for Indigenous Knowledge Studies by Manitoba Hydro**

***Issue:*** During the NEB assessment and in ensuing meetings with the Crown, six Indigenous groups raised concerns about inadequate funding from Manitoba Hydro for the completion of self-directed Indigenous knowledge studies, which could help identify potential Project impacts to section 35 Aboriginal and Treaty rights.

#### ***Proponent Commitments & Responses***

In response to an Information Request during the NEB assessment, Manitoba Hydro stated it committed to funding 11 Indigenous groups for the completion of self-directed Indigenous knowledge studies to inform the selection of the Final Preferred Route and/or to identify Environmentally Sensitive Sites (ESS) requiring protection under Manitoba Hydro's Construction Environmental Protection Plan (CEPP). In addition, Manitoba Hydro noted the studies were intended to enhance understanding of environmental and cultural baseline conditions in the geographic areas potentially influenced by the Project.

Prior to filing its application with the NEB, Manitoba Hydro was in receipt of five completed Indigenous knowledge studies, representing seven Indigenous communities. The Crown understands that Manitoba Hydro has now received seven studies representing nine Indigenous communities, with one study representing two Indigenous groups still outstanding and discussions ongoing with an additional community over a contribution agreement to fund an Indigenous knowledge study of its own.

In its filings to the NEB, Manitoba Hydro stated that information shared through the First Nations and Metis Engagement Process (FNMEP) and Indigenous knowledge studies were provided to assessment practitioners for consideration during the valued components selection process for its Environmental Impact Statement (EIS). Manitoba Hydro also noted that in terms of traditional land and resource use in the Project area, the Environmental Impact Statement (EIS) adopted conservative assumptions.

In response to concerns from Indigenous communities that had not yet completed a study, Manitoba Hydro stated that the findings from outstanding self-directed Indigenous knowledge studies will be incorporated into its updated CEPP. It also expressed a willingness to protect new Environmentally Sensitive Sites (ESS) that could be identified as part of any outstanding studies' findings.



Lastly, Manitoba Hydro stated it remains open to meeting with interested Indigenous groups to discuss concerns that can be used to inform the Environmental Protection Program for the Project.

***NEB condition or findings with respect to this issue***

In the NEB's Reasons for Decision, the NEB noted that Manitoba Hydro had reached an agreement to fund 11 Indigenous communities to undertake self-directed Indigenous knowledge studies, and that Manitoba Hydro remained open to protecting ESS sites, not yet identified, under its CEPP.

In addition, the NEB found Manitoba Hydro's Environmental Impact Statement methodology, including its selection of valued components, and its incorporation of traditional knowledge and Indigenous concerns to assess Project impacts, in accordance with provincial and federal guidance documents, including the NEB's Filing Manual.

The NEB imposed two conditions on Manitoba Hydro in relation to the funding and inclusion of traditional knowledge concern:

- Condition 3 (Implementation of Commitments) requires Manitoba Hydro to implement, or cause to be implemented, all of the policies, practices, mitigations measures, recommendations, and procedures for the protection of the environment and promotion of safety referred to in its application, or as otherwise agreed to in its related submissions. As mentioned in section 5.0, the Crown is proposing amendments to this condition.
- Condition 11 (Indigenous Knowledge Studies Report) requires Manitoba Hydro to submit a report outlining a plan for completing Indigenous knowledge studies, including a description of how Manitoba Hydro has revised its CEPP as a result of the completion of Indigenous knowledge studies not completed by the time of the end of the NEB assessment.

***Crown's Conclusion***

The Crown is of the view that Indigenous peoples have unique knowledge that is important for project planning, resource management, and environmental assessment.

The Crown acknowledges that Manitoba Hydro has provided funding to 11 Indigenous communities to undertake self-directed Indigenous knowledge studies, including to identify sensitive sites that require protection under the CEPP, and that discussions are continuing with another Indigenous community over a contribution agreement to fund its own study.

In terms of outstanding studies, the NEB imposed Condition 11, requiring Manitoba Hydro to submit a report outlining a plan for completing Indigenous knowledge studies, including a description of how the CEPP has been revised as a result of each outstanding study's findings.

In addition, the Crown notes Manitoba Hydro has committed to protect further ESS sites under its CEPP as identified by Indigenous Knowledge studies. Manitoba Hydro is also committed to further engagement with Indigenous groups to better understand concerns and values, and to mitigate concerns brought forward through the Environmental Protection Program, including the CEPP. The Crown is also proposing amendment to NEB Condition 3 (Implementation of Commitments) to specifically require Manitoba Hydro to implement all commitments to Indigenous groups that are part of the NEB record.

Further, the Crown notes that a number of Indigenous groups requested funding from the Crown to undertake additional studies. Therefore, NRCan will establish a terrestrial and cultural studies initiative to support Indigenous-led studies to improve understanding of land-based issues such as harvesting plants on the land, hunting of land-based animals, and cultural impacts of changing the landscape and resources.

***Crown Conclusion:*** Based on the Manitoba Hydro's commitments, NEB Condition 11, and the Crown's proposed amendment to Condition 3 (Implementation of commitments), as well as the Crown's commitment to establish a terrestrial and cultural studies initiative, the Crown concludes that Indigenous concerns with respect to inadequate funding of Indigenous knowledge studies are reasonably addressed.

#### **5.1.2.7 Potential for the Project to result in the Fragmentation or Loss of Wetlands**

***Issue:*** During the NEB assessment, and in ensuing meetings with the Crown, five Indigenous group raised concern about potential Project impacts to wetlands, including the ability to exercise section 35 Aboriginal and Treaty rights in relation to wetlands, such as fishing and plan harvesting. Specific concerns included the alteration or loss of wetland cover, class abundance, distribution, structure and function.

#### ***Proponent Commitments & Responses:***

Manitoba Hydro's desktop assessment indicated that 457.7 ha of wetlands would be intersected by the Project (14.9 percent of the ROW), including the Caliento, Sundown, and Piney bog complexes which are located in the southeastern part of the ROW. Permanent wetland loss is expected to occur at the Dorsey station, as well as at locations where transmission tower foundations are placed within wetlands.

With respect to vegetation removal at wetland locations due to the Project, Manitoba Hydro acknowledged that vegetation structure will be affected in swamps, bogs, and fens that are intersected by the Project, but added that the wetlands will not be removed. All other compatible vegetation, including that at tower locations, will be allowed to revegetate naturally. Wetland loss may occur only at tower locations that require foundation excavation (as opposed to screw piles), and only in the immediate area of excavation. Tower siting will be adjusted where possible to avoid wetlands or towers will be located near wetland edges.

Manitoba Hydro has committed to implementing a series of measures to mitigate impacts to wetlands as part of its CEPP:

- Disturbing wetlands under frozen ground conditions. If frozen ground conditions do not exist alternate mitigation measures, such as construction matting, may be used to minimize surface damage, rutting and erosion;
- Establishing 30 metre natural vegetation buffers around wetlands and riparian zones to the extent possible;
- Not placing clearing wastes and other construction debris or waste in wetland areas but leaving existing logs, snags and wood debris in place;
- Equipment use will be limited; and screw or micro pile foundations would be used for the transmission towers to reduce the permanent footprint in wetlands; and,
- Cleared trees and woody debris will not be pushed into (or adjacent) to standing timber, or within the high-water mark of wetlands or waterbodies.

Manitoba Hydro has also committed to considering the feedback from Indigenous Knowledge studies and the MMTP Monitoring Committee when finalizing siting of towers to see if requests can be accommodated

***NEB condition or findings with respect to this issue***

In its Reasons for Decision, the NEB found that Manitoba Hydro's pre-construction survey efforts, environmental protection measures, and monitoring commitments are sufficient to avoid and minimize most effects the Project may cause to wetlands in the Project area.

However, the NEB was also mindful that permanent loss is expected to occur at some wetland locations. The NEB also acknowledged that permanent loss may also occur accidentally at other wetland locations where mitigation efforts are not as effective or successful as predicted.

Therefore, the NEB imposed three conditions on the Project to mitigate the potentially negative impacts to wetlands.

- Condition 3 (Implementation of Commitments) requires that all commitments made in the proceeding be implemented.
- Condition 23 (Post-Construction Monitoring Report) requires Manitoba Hydro to submit a post-construction monitoring report outlining the total area of permanent loss of wetlands resulting from construction of the Project and an explanation of how that loss will be offset or compensated, as per the Wetland Offset Measures Plan
- Condition 26 (Wetland Offset Measures Plan) requires Manitoba Hydro to file with the NEB, within 90 days of commencing operation of the Project, a Wetland Offset Measures Plan that outlines how permanent loss of wetlands resulting from the Project will be offset or compensated. In addition, Condition 26 requires Manitoba Hydro to explain how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands be quantified and reported to the NEB.

### ***Crown's Conclusion***

The Crown notes the NEB found that Manitoba Hydro's environmental protection measures and monitoring commitments are sufficient to avoid and minimize most effects and potential Project impacts to wetlands along the ROW.

It is also recognized that the NEB acknowledged the potential for loss of wetlands at transmission tower locations, at the Dorsey station and elsewhere, and imposed Condition 26 (Wetland Offset Measures Plan) requiring Manitoba Hydro to offset or compensate for the permanent loss of wetlands due to the Project. As a result, the NEB determined that, although likely to extend to the Regional Assessment Area, the residual impacts to wetlands would not be significant and be short to medium term in duration, reversible, and of low magnitude.

The Crown understands Indigenous concerns regarding how Manitoba Hydro will consider Indigenous input in the development of the Wetland Offset Measures Plan. As a result, the Government is modifying NEB Condition 26 (Wetlands Offset Measures Plan) to specifically ensure that Manitoba Hydro engages impacted Indigenous groups regarding the development of the plan as well as ensure that Manitoba Hydro provides the NEB with a summary that includes a description of any issues or concerns raised by impacted Indigenous groups and how Manitoba Hydro addressed or responded to them.

In addition, Manitoba licence Condition 36 (Wetlands) requires Manitoba Hydro to submit within three months of the completion of construction of the Project a plan for approval of the Director of the Environmental Approvals Branch (Manitoba Sustainable Development) to ensure there is no net loss of wetland benefits related to Class 3 (seasonal ponds and lakes), Class 4 (semi-permanent ponds and lakes), and Class 5 (permanent ponds and lakes) wetlands - as defined by the Stewart & Kantrud Classification System) – that are altered or destroyed during construction.

***Crown Conclusion:*** Based on Manitoba Hydro's mitigation measures and commitments, the NEB's findings and conditions, Manitoba licence Condition 36, and the Crown's modifications to Condition 3, the Crown concludes that Indigenous concerns regarding the Project's potential impact to wetlands and associated vegetation, as well as the ability of Indigenous Peoples to exercise section 35 Aboriginal and Treaty in relation to wetlands, such as fishing and plant harvesting, are reasonably accommodated.

#### **5.1.3 Non Project-related concerns**

In addition to the concerns raised by Indigenous groups described in sections 5.1 and 5.2 of this report, the Crown heard several Indigenous concerns unrelated to the Manitoba Minnesota Transmission Project:

- On-reserve infrastructure issues;
- International border crossings;
- Specific claims; and,
- Indian status registration.

The Crown acknowledges that unique and important issues facing Indigenous groups and communities are often wide ranging. Where concerns unrelated to the Project were raised over the course of the Crown consultation process, the Crown consultation team attempted to provide a response to the Indigenous group and connected the Indigenous group with a representative from the relevant federal authority to provide further assistance and information.

## 6.0 Conclusions

The Crown heard a range of concerns from Indigenous groups about the proposed Manitoba-Minnesota Transmission Project. These views reflect the Indigenous groups' commitment to stewardship of the land and traditional territories, as well as a strong desire to ensure development does not impede the ability of future generations to carry out those activities.

The Government has committed to a renewed relationship with Indigenous peoples based on recognition, respect, cooperation and partnership. In relation to Indigenous groups' concerns related to the Project's potential impact on section 35 Aboriginal and Treaty rights, the Crown has assessed those concerns against the conditions proposed by the NEB, commitments made by Manitoba Hydro, and relevant federal legislation.

As a result of concerns raised by multiple Indigenous groups, the Crown is proposing amendments to the following five NEB conditions to ensure Manitoba Hydro follows through on commitments made to Indigenous groups and considers concerns raised by Indigenous groups regarding the impacts of the Project:

1. **Condition 3 (Implementation of Commitments)** - The Crown is proposing that Condition 3 be amended to specifically include all commitments made to Indigenous groups through its Project application or otherwise on the record of the EH-001-2017.
2. **Condition 15 (Commitments to Tracking Table)** – The Crown is proposing that Condition 15 be amended to specifically include all commitments made to Indigenous communities.
3. **Condition 21 (Issues Tracking)** - The Crown is proposing that Condition 21 be amended to specifically include complaints raised through the MMTP Monitoring Committee.
4. **Condition 22 (Crown land Offset Measures Plan)** - The Crown understands Indigenous groups' concern regarding how Manitoba Hydro will consider Indigenous input in the development of the Crown land Offset Measures Plan. As a result, the Government has proposed amendments to NEB Condition 22 to specifically ensure that Manitoba Hydro engages impacted Indigenous groups regarding the development of the plan as well as ensure the plan includes information obtained through Indigenous Knowledge and Land Use Studies, and that Manitoba Hydro provides the NEB with a summary that includes a description of any issues or concerns raised by impacted Indigenous groups and how Manitoba Hydro addressed or responded to them.

5. **Condition 26 (Wetland Offset Measures Plan)** - The Crown understands Indigenous groups' concern regarding how Manitoba Hydro will consider Indigenous input in the development of the Wetland Offset Measures Plan. As a result, the Government has proposed amendments to NEB Condition 26 to specifically ensure that Manitoba Hydro engages impacted Indigenous groups regarding the development of the plan as well as ensure the plan includes information obtained through Indigenous Knowledge and Land Use Studies, and that Manitoba Hydro provides the NEB with a summary that includes a description of any issues or concerns raised by impacted Indigenous groups and how Manitoba Hydro addressed or responded to them.

In response to the three NEB suggestions relating to 1) concerns about the impact of cumulative effects of development in southern Manitoba; 2) the impact of fluctuating water levels on the Lake of the Woods; and 3) the potential need to amend an NEB process to ensure Crown consultation can be meaningful, the Crown proposed the following:

1. NRCan will establish a terrestrial and cultural studies initiative to support Indigenous-led studies to improve understanding of land-based issues such as harvesting plants on the land, hunting of land-based animals, and cultural impacts of changing the landscape and resources.
2. The Crown proposes to convene a working group, led by Environment and Climate Change Canada, including interested Indigenous communities, to assess the process and context for water level regulation in the Lake of the Woods.
3. The Crown is supportive of the NEB's recommendation and will inform the NEB of its support and also note its support in an Press Release that will be posted on the NRCan website, following a decision on the Project

The Crown concludes that the conditions and commitments are responsive to, and reasonably accommodate, the concerns raised. The Crown particularly notes the importance of the MMTP Monitoring Committee, which will support effective and meaningful Indigenous participation in monitoring the construction and operation of the Project.

## **7.0 Annexes**

The following 21 annexes are specific to each rights-holding Indigenous group on the Crown list, outlining the duty to consult owing the group, specific concerns and impacts, and suggested accommodation measures.

### **7.1 Manitoba Groups**

- 7.1.1** Birdtail Sioux First Nation
- 7.1.2** Black River First Nation
- 7.1.3** Brokenhead Ojibway Nation
- 7.1.4** Buffalo Point First Nation
- 7.1.5** Canupawapka Dakota First Nation
- 7.1.6** Dakota Plains Wahpeton Dakota Nation
- 7.1.7** Dakota Tipi First Nation
- 7.1.8** Long First Nation
- 7.1.9** Manitoba Métis Federation
- 7.1.10** Peguis First Nation
- 7.1.11** Roseau River Anishinabe First Nation
- 7.1.12** Sagkeeng First Nation
- 7.1.13** Sandy Bay Ojibway First Nation
- 7.1.14** Sioux Valley Dakota First Nation
- 7.1.15** Swan Lake First Nation
- 7.1.16** Waywayseecappo First Nation

### **7.2 Ontario Groups**

- 7.2.1** Animakee Wa Zhing No. 37
- 7.2.2** Anishnaabeg of Naongashiing
- 7.2.3** Iskatwizaagen 38 Independent First Nation
- 7.2.4** Northwest Angle No. 33
- 7.2.5** Shoal Lake 40 First Nation