

SUMMARY OF COMMENTS/RECOMMENDATIONS

PROPONENT: Manitoba Hydro
PROPOSAL NAME: Pinawa Diversion Dam Remediation Project
CLASS OF DEVELOPMENT: Two
TYPE OF DEVELOPMENT: Water Development and Control
CLIENT FILE NO.: 5476.00

OVERVIEW:

The Proposal was received on July 12, 2010. It was dated July 9, 2010. The advertisement of the Proposal was as follows:

“Manitoba Hydro has filed a Proposal for the remediation of the Pinawa Diversion Dam, located at the upstream end of the Pinawa Channel at its confluence with Margaret Lake. The project would involve the placement of rockfill on the downstream side of the existing diversion dam. The rockfill would extend approximately 30 metres downstream of the toe of the existing dam, and would have a downstream slope of 2 horizontal to 1 vertical, with a crest width of 4.8 metres and a crest elevation 1.6 metres above the existing crest to provide safety from overtopping. The short distance from the crest of the existing dam to the crest of the proposed project would be filled and sloped with rockfill. Water flow through the existing structure would be maintained so that flows and levels in the Pinawa Channel would be unaffected by the project. Trail access for the area north of the diversion dam would be maintained by the new structure. Construction of the proposed dam would be undertaken during October and November of 2010, with completion scheduled for early December, 2010.”

The Proposal was advertised in the Lac du Bonnet Leader on Friday, July 23, 2010 and in the Pinawa Paper on Tuesday, July 27, 2010. It was placed in the Main, Millennium Public Library (Winnipeg), and Manitoba Eco-Network public registries, and in the office of the Local Government District of Pinawa as public registry location. It was distributed to TAC members on July 15, 2010. The closing date for comments from members of the public and TAC members was August 25, 2010.

COMMENTS FROM THE PUBLIC:

No public comments were received.

COMMENTS FROM THE TECHNICAL ADVISORY COMMITTEE:

Manitoba Conservation – Sustainable Resource and Policy Management Management Branch No comments.

Manitoba Conservation – Aboriginal Relations Branch

A review of the Environment Act Proposal for the Manitoba Hydro Pinawa Diversion Dam Remediation has been done by the Aboriginal Relations Branch at Manitoba Conservation. A number of comments and recommendations have been made and a summary of those is briefly described here.

The Government of Manitoba has a duty to consult in a meaningful way with First Nations, Metis communities and other aboriginal communities when any proposed provincial law, regulation, decision or action may infringe upon or adversely affect the exercise of a treaty or aboriginal right of the First Nation, Metis community or other aboriginal community.

As Manitoba Conservation is aware, if a thorough, adequate consultation process is not completed by the Government of Manitoba, the possibility of a successful legal challenge from First Nation and Aboriginal communities is significantly increased. The claim could be based on an unjustified infringement(s) of a Treaty or Aboriginal right.

We assume that we do not know all of the aboriginal rights that are beyond the assertions already made and therefore information gathering and consultation results in these issues being brought forward by the people who practice them and use the land. Issues are accommodated and building relationships in a process like this includes assessments on the following; Traditional Ecological Knowledge (TEK), capacity building and education, adequate information sharing and access, environmental impacts, heritage, cultural and significant sites, socioeconomic impacts and public involvement in the process from the start.

This project is upstream from Sagkeeng First Nation and Little Black River First Nation, and the destruction and disruption of fish habitat may be of paramount concern to these communities. In the assessment, Hydro states:

"Remediation practices proposed for the Diversion Dam will alter a minor portion of fish habitat immediately downstream of the Dam and as a result, may be viewed as a "harmful alteration, disruption or destruction" of fish habitat (HADD) by the Department of Fisheries and Oceans Canada (DFO) and Manitoba Conservation."

This admission is of concern, and must be explored fully with Manitoba Conservation's Fisheries Branch to understand the full ramifications of this change in habitat. Any change in fish stock and habitat will be of concern to the First Nations, and they will need to be informed of the consequences of such action.

The site is also within the Lac du Bonnet Trapline District, and alterations to this channel may affect the productivity of the channel for those who use this district. A change in channel dynamics may result in a change in the habits of fur bearing animals relied upon in the District.

This remediation is not a permanent solution to the problem of the deterioration of this dam. Continual ephemeral remediation measures cause successive changes to the channel, which, in turn, adversely affects the First Nation, Metis, and Aboriginal peoples using this area and its resources, as is their right.

We suggest that consultation is conducted with these groups to determine how they are currently using the area and its resources to establish how this remediation project will affect them.

Disposition: The project will affect approximately 1,500 m² of relatively low value fish habitat at the upper end of the Pinawa Channel. As it is designed not to affect flows, levels or channel geometry, the project should not affect traditional use of the channel, almost all of which occurs several kilometres downstream of the dam. Access to the upstream end of the channel for small boats will be marginally improved by the project, which may be advantageous for some traditional users. As the project is located within a power reserve, consultation with First Nations concerning the project will be conducted if necessary by Manitoba Water Stewardship.

Manitoba Conservation - Parks and Natural Areas Branch No comments.

Manitoba Conservation – Wildlife and Ecosystem Protection Branch No concerns.

Manitoba Conservation – Environmental Services Branch No comments.

Manitoba Conservation – Air Quality Management No significant concern on the proposal. The proposed project will generate PM (dust) during construction from earthmoving, material handling/transport and emissions from heavy equipment and vehicles. However, they can be addressed in EA Licence clauses.

Manitoba Water Stewardship – Planning and Coordination Branch

- Manitoba Water Stewardship recommends an *Environment* Act Licence to include the following requirements:
 - The Licencee shall install a silt/turbidity curtain and conduct fish salvage, between the curtain and dam, prior to the placement of rock.

- The Licencee shall install sensors, upstream and downstream of the dam, to measure water levels and downstream channel flow; these measurements shall occur at least once per year.

- The Licencee shall comply with Manitoba Water Stewardship's Wetland Policy:
 - The net loss of semi-permanent or permanent wetlands shall not occur. Wetlands are defined as areas that are periodically or permanently inundated by surface or ground water long enough to develop special characteristics including persistent water, low-oxygen soils, and vegetation adapted to wetland conditions. These include but are not limited to swamps, sleughs, potholes, marshes, bogs and fens.
 - A proponent shall establish and maintain a buffer zone with at least a 3-metre width.

- In order to protect riparian areas, establish and maintain an undisturbed native vegetation area located upslope from the ordinary high water mark and adjacent to all waterbodies and waterways connected to the provincial surface water network:
 - A 15-metre undisturbed native vegetation area is recommended for lands located adjacent to first and/or second order drains;
 - A 30-metre undisturbed native vegetation area is recommended for lands located adjacent to third and/or higher order drains and/or waterbodies;
 - Permanent development is prohibited within an undisturbed vegetation area;
 - The combined alteration—including new and existing structures—within this undisturbed native vegetation area is limited to a maximum of 25 % of the shoreline length (for example: 25 metres per 100 metres of shoreline length) of each lot for a boat house, path, dock, etc.; and,
 - Alteration within this undisturbed native vegetation area—including a dock and/or the removal of near shore or stream aquatic habitat—shall not occur unless an activity conforms to a Department of Fisheries and Oceans Canada Operational Statement or an activity is reviewed by the Department of Fisheries and Oceans Canada.

- Manitoba Water Stewardship submits the following comments:
 - Manitoba Water Stewardship does not object to this proposal, at this time.
 - The Proposal indicates that a silt screen will not be installed downstream of the construction site because total suspended solids are not expected to exceed provincial standards. It is also indicated that total suspended solids sampling will be conducted before and during construction. However, there is no course of action indicated if total suspended solids measurements exceed provincial standards. The Department does not agree with this approach, silt screens should be installed.
 - Section 4.3.3 (Fish) indicates that pike is known to occur between the Diversion Dam and the Old Pinawa site. Appendix 1, section 1.2.3.2, indicates that “seining and electrofishing downstream of the Dam were unsuccessful.” This section states that walleye, pike, mooneye and smallmouth bass have been observed downstream of the Dam though not in the waters near the Diversion Dam. These statements are contradictory.
 - In addition, other fish species are known to occupy the area immediately below the dam as well as other areas of the river between the Diversion and Old Pinawa.
 - Other fish species support a small recreational fishery in the deeper and wider portions of the river further downstream from the Diversion.
 - Burbot, rock bass, smallmouth bass and longnose dace were “incidental” catches noted under Scientific Collection Permit 36-09.
 - In the Pinawa channel reach, the following species were captured in 2005:
 - walleye, yellow perch, johnny darter, rock bass, mottled sculpin, brook stickleback, trout perch, central mudminnows, northern pike, shorthead redhorse, white sucker, long nose dace, bluntnose minnows, northern redbelly dace, mimic shiners, blacknose shiners and emerald shiners.
 - Table A1 in Appendix 1 should be updated to reflect the most current information available.
 - Overall, potential impacts to fish populations are likely to be minimal due to the following: the total area to be affected; the minimal use by fish at the site; and, the type of habitat affected.

- Although a detailed fisheries mitigation plan is not included, the study references potential littoral and reef habitat improvements upstream of the existing Diversion Dam.
 - As in-migration from the upstream does not appear to exist, these habitats improvements will likely not have an effect (positive) or connectivity to fish populations downstream of the Project.
 - Thus, it would appear that implementing mitigation measures for any potential harmful alteration, disruption and destruction (HADD) of fish habitat does not seem warranted; any attempt to replace the potential loss of habitat at this site with similar habitat adjacent to or downstream of the proposed Project site would only alter existing habitat.
- The Manitoba Department of Water Stewardship is mandated to ensure the sustainable development of Manitoba's water resources. Manitoba Water Stewardship is committed to the goals of: protecting aquatic ecosystem health; ensuring drinking water is safe and clean for human health; managing water-related risks for human security; and stewarding the societal and economic values of our waterways, lakes and wetlands; for the best water for all life and lasting prosperity. Manitoba Water Stewardship achieves these goals, in part, through administering legislation, including *The Water Protection Act*, *The Water Rights Act*, and *The Water Power Act*.
 - *The Water Rights Act* requires a person to obtain a valid licence to control water or construct, establish or maintain any "water control works." "Water control works" are defined as any dyke, dam, surface or subsurface drain, drainage, improved natural waterway, canal, tunnel, bridge, culvert borehole or contrivance for carrying or conducting water, that temporarily or permanently alters or may alter the flow or level of water, including but not limited to water in a water body, by any means, including drainage, OR changes or may change the location or direction of flow of water, including but not limited to water in a water body, by any means, including drainage. If a proposal advocates any of the aforementioned activities, a person is required to submit an application for a Water Rights Licence to Construct Water Control Works. A person may contact the following Water Resource Officer to obtain an application and/or obtain information.
 - A contact person is Mr. Geoff Reimer C.E.T., Senior Water Resource Officer, Water Control Works and Drainage Licensing,

Manitoba Water Stewardship, Box 4558, Stonewall, Manitoba
R0C 2Z0, telephone: (204) 467-4450, email:
geoff.reimer@gov.mb.ca.

- The proponent needs to be informed that if the proposal in question advocates any construction activities, erosion and sediment control measures should be implemented until all of the sites have stabilized.
- The Manitoba Department of Water Stewardship's recent policy direction recommending Public Reserves to protect water is founded, in part, on the 135 recommendations in the Lake Winnipeg Stewardship Board's (December 2006) report titled, "Reducing Nutrient Loading to Lake Winnipeg and its Watershed, Our Collective Responsibility and Commitment to Action." All 135 recommendations were accepted in principle by the Minister of the Manitoba Department of Water Stewardship, on behalf of the Government of Manitoba.
- Maintaining an undisturbed native vegetation area immediately adjacent to the shoreline of lakes, rivers, creeks, and streams helps stabilize banks, provides aquatic and wildlife habitat and protects water quality through filtering overland runoff. The width of an undisturbed native vegetation area should be the widest width possible and practical. In conjunction with other best management practices such as eliminating fertilizer use adjacent to surface waters, and the proper management and disposal of waste water, maintaining an undisturbed native vegetation adjacent to waterbodies is important to help prevent degradation of water quality.

Disposition:

In consideration of the size of rockfill proposed for the project and the location in which it will be placed, a downstream silt curtain is not necessary during construction. Water level and flow monitoring were addressed in the Proposal. Manitoba Water Stewardship's Wetland Policy is not applicable to this project as no wetland habitat will be affected. The project will be constructed in a shallow channel with a solid rock bottom, vertical solid rock walls and no emergent or submergent vegetation. No contradictory statements respecting fish presence occur in the Proposal.

Manitoba Innovation, Energy and Mines, Mines Branch

No concerns.

Manitoba Infrastructure and Transportation, Highway Planning Branch

No concerns.

No

Canadian Environmental Assessment Agency

The project information provided by Manitoba Conservation to the Canadian

Environmental Assessment Agency (CEAA) was shared other federal departments. I can confirm I have undertaken a survey of federal departments with respect to determining interest in the project noted above. I am enclosing copies of the relevant responses for your file. Based on the responses to the survey the application of the Canadian Environmental Assessment Act (the Act) by a federal authority may be required for this project.

Transport Canada (TC) has reviewed the project description provided and determined that an Approval pursuant to the Navigable Waters Protection Act may be required. TC has requested the proponent submit an application to the NWP Office. Anita Gudmundson is the contact person for TC. She can be reached by phone at (204) 983-3388 or by email at: anita.champaanequdmundson@tc.gc.ca. A copy of the letter provided by TC is attached.

The Department of Indian and Northern Affairs Canada (INAC) has determined it does not have a responsibility under Section 5(1) of the Act. It has however provided an email requesting further information from the proponent. The email from INAC is appended for your review.

Environment Canada (EC) has reviewed the documents and provided a letter of advice regarding water quality and riparian areas. EC would like to participate in the provincial review process. Please see the attached letter from EC.

Please note that the project information was also shared with the Department of Fisheries and Oceans (DFO) as part of the federal coordination process. DFO is currently reviewing the project information. You will be informed when DFO has made its determination of interests in this project.

ADDITIONAL INFORMATION: No additional information was required to address Technical Advisory Committee comments.

PUBLIC HEARING:

No requests were received for a public hearing. Accordingly, a public hearing is not recommended.

RECOMMENDATION:

All comments received on the Proposal respecting technical or outstanding items can be addressed as licence conditions in an Environment Act Licence. Therefore, it is recommended that the Development be licensed under The Environment Act subject to

the limits, terms and conditions as described on the attached Draft Environment Act Licence. It is further recommended that enforcement of the Licence be assigned to the Eastern Region.

PREPARED BY:

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August 31, 2010

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