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Short-Term Recommendation One - Engagement on the CEC Recommendations

What

It is recommended that the Minister of Conservation and Water Stewardship employ his discretionary power under s. 6(5) of the *Water Power Regulation* to designate the Clean Environment Commission to present its findings to the 18 communities where hearings were held. This should be completed by Fall or early Winter 2015.

The purpose of this engagement should be to:

- receive the input of affected communities on the CEC recommendations to the Minister
- identify knowledge gaps and uncertainties in the CEC recommendations
- build trust and foster productive working relationships among policy communities surrounding Lake Winnipeg

To engage those who are directly affected living around Lake Winnipeg. To receive their feedback on the recommendations presented to the Minister. To clarify and scope priority issues. To identify missing research and recommendations.

This additional information could be presented to the Minister in an addendum.

Why

It should be noted that it is common practice to validate research by subjecting draft recommendations to public commentary and involve policy communities prior to finalization of recommendations.¹

If possible, to create buy-in. This would reinforce the message that the CEC is making meaningful efforts to engage.

When

The community engagement should be completed by the Fall or early Winter 2015.

Short-Term Recommendation Two - Establish a Multi-Party Task Force on Water Governance

What

It is recommended that the Minister of Conservation and Water Stewardship establish a Multi-Party Task Force on Water Governance within a period of two years.

A Multi-Party Task Force on Water Governance with representation from:

- a Northern Indigenous community

¹ See CEAA 2012

- a Southern Indigenous community
- the Métis Nation
- a water scientist
- a representative of the rate payer or tax payer interest
- an industry representative (i.e. from the Chamber of Commerce)
- an individual who has an understanding of water governance and management who is familiar with bridging the gap between Western and traditional knowledge

Each organization or community should be responsible for appointing its own representative. Conservation and Water Stewardship should appoint the independent water scientist and water governance experts. A representative of Conservation and Water Stewardship should be appointed as a non-voting member of the Task Force.

This Task Force should be **adequately staffed** with at least four members, including but not limited to a lawyer and public liaison expert.

The Task Force will engage all the policy communities surrounding the watershed (including Manitoba Hydro) on an appropriate watershed governance structure for Manitoba.²

Why

To propose a more holistic and integrated framework to watershed governance. As part of this mandate, the Task Force should consider questions including but not limited to:

- What do policy communities want the watershed to look like in the future? Based on what we already know, what do we need to get us there?
- How can we best integrate a broad range of criteria to create a more inclusive process?
- How, if at all, can consensus be achieved on what is the 'best operating regime'?
- Should benchmarks and operating rules be developed to measure and protect the health of different systems (such as Netley-Libau Marsh or fisheries)?
- Recognizing that some literature suggests that an examination of ecosystem services can provide an effective tool for conservation and method to support effective resource management, how if at all should "natural capital" be valued including ecosystem and cultural services? How can we ensure this valuation considers the spiritual and cultural importance of the water?
- What is an appropriate governance structure to restore public confidence and provide for

² Policy communities are defined as all the groups that may be interested in Lake Winnipeg - including **governments** (federal, provincial, local, First Nation and Métis governments), **business interests** (industry, industrial associations and Unions), and **societal groups** (non-governmental organizations, cottage owners, fishers, farmers, Indigenous people, and the general public affected by LWR).

holistic, forward looking and inclusive governance?³

- What is the appropriate mechanism for meaningful public engagement on an ongoing basis?
- Is there a need for ongoing independent oversight of the watershed? If so, what is the appropriate model?

When

This should be completed within two years.

Short-Term Recommendation Three— Make public statement on whether Manitoba Hydro has Complied with LWR Interim License and Set Clear Expectations for the Future

What

The Minister of Water Stewardship should immediately make a public statement about whether Manitoba Hydro has complied with the terms of the interim license and the basis for that determination. This should be done within one year.

In the event the Minister finds the interim license has been complied with, consideration should be given to:

- whether the final license should be extended for a period that does not run out to 2026 (s. 45 of *Water Power Regulation 25/8*).
- whether additional terms and conditions should be applied pursuant to s. 44 of *Water Power Regulation 25/8* including:
 - enhanced monitoring and reporting as recommended in both the Bipole III and Keeyask hearings
 - a provision allowing for the incorporation of additional restrictions on the license in the event of an Environment Act or CEA review
 - a provision to amend the license in the event of a material change in economic, social or environmental circumstances
 - a provision to review the license every five years (including i.e. safety, effectiveness, conservation purpose etc.)

Research and monitoring might relate to:

- Assessment of priority downstream issues as identified by communities
- Assessment of ecological flows options that might better balance economic, reliability, social and ecological interest
- Independent review analogous to that undertaken Laurentian Great Lakes on impact of

³ See appendix 4 for examples of effective water governance frameworks.

- compression of lake level variability on wetland in Lake Winnipeg including Netley-Libau
- Independent review analogous to that undertaken on Laurentian Great Lakes on the impact of LWR on erosion
- Assessment of Lake level variation options that might better balance flood control, economic, reliability, social and ecological interests

Why

- Under s. 43(1) of the *Water Power Regulation*, the licensee is entitled to a final license upon fulfilment and compliance of the interim license. There is currently no requirement for the Minister to make a public statement on the basis for its decision.
- A public statement in the case of LWR would highlight the importance of transparency in deliberations and assist in future understanding of compliance.
- To provide clear expectations, responsibilities, and timelines for the future licensing process should be set out.

When

This should be completed within one year.

Short Term Recommendation Four – Clarify roles and responsibilities for licensing and assessment in Manitoba

What

The Minister of Conservation and Water Stewardship should clarify the roles and responsibilities for licensing and assessment in Manitoba. The Minister should explain the relationship between key legislative elements as well as administrative duties related to the *Water Protection Act*, the *Environment Act* and the *Water Power Act*. This should be completed within nine months to one year.

For example, consideration should be given to:

- who is responsible for environmental assessment and protection relating to legacy projects
- who is responsible for public processes under the *WPA*
- creation of a legislative mechanism that allows the public to access reasons when a pre-existing development is being considered for possible review under s. 10(2), 11(6) and 12(2) of the *Environment Act*
- more express connections to other natural resource and environmental legislation (*Water Power Act*, *Forestry Act*, *Mining Act*, etc.)
- articulating the responsibility for dam safety in the license

The findings and lingering questions should be referred to the Multi-Party Task Force on Water

Governance.

Why

- It is strongly arguable that an environmental loophole exists with regard to older hydroelectric projects and modern assessment
- To provide direction to public servants
- To assist the public to understand roles and to enhance confidence in the commitment to good environmental regulation
- To better link licenses to other regulatory processes.

When

This should be completed in a nine months to one year period.

Short-Term Recommendation Five- Instruct Manitoba Hydro to initiate an open, transparent process to further develop its planning models

What

The Minister of Conservation and Water Stewardship should instruct Manitoba Hydro to develop a transparent and accessible planning model that would support the evaluation of alternative operating scenarios for Manitoba Hydro. This should be completed within two to three years.

Why

- To create a robust tool for adaptive management
- Consistent with the recommendation of Dr. McMahon, to create an accessible, transparent modelling tool that can be used by Hydro, policy communities and licensors
- To facilitate the participation of the policy community and licensors in developing and evaluating alternatives
- To facilitate collaboration and trust
- To reduce the opaque and exclusive nature of alternative assessment

When

This should be completed within two-three years.

Short-Term Recommendation Six– Articulate the role and connections between s.35 consultations and the Environment Act and the Water Power Act & recognize and reaffirm treaty and Aboriginal rights

What

That the Minister of Water Conservation and Water Stewardship should articulate the role and connections between s.35 consultations and the *Environment Act* and the *Water Power Act* & recognize and reaffirm treaty and Aboriginal rights. This should be completed within two to three years.

Why

- Subsection 35(1) of the Constitution Act 1982, provides that “the existing aboriginal and treaty rights of aboriginal peoples of Canada are hereby recognized and affirmed. Subsection 35(2) defines the aboriginal peoples of Canada as including the Indian (First Nation), Inuit and Métis peoples of Canada.
- The *Environment Act* and *Water Power Act* and Regulations do not contain any provisions requiring consultation of indigenous peoples.
- There is very little coordination between environmental assessment, licensing processes and section 35 consultations.⁴
- To address the sense of exclusion.

When

This should be completed within two-three years.

Short-Term Recommendation Seven – Host a Public Workshop on Ecological Flow Assessment

What

The Minister of Conservation and Water Stewardship should direct and finance the Clean Environment Commission to host a workshop on ecological flow assessment. This should be done within one year.

Why

- The Canadian Science Advisory Secretariat has identified ecological or environmental flow analysis as a critically important but underused tool for investigating and addressing the health of threatened riverine systems⁵

⁴ Manitoba Law Reform Commission, “Manitoba’s Environmental Assessment and Licensing Regime Under The Environment Act” (2015) at p 35

⁵ Canadian Science Advisory Secretariat, “Framework for Assessing the Ecological flow requirements to Support fisheries in Canada” (2013) at p 13. Environment flow is described as “the quantity, quality and timing of water flows required to sustain freshwater ecosystems and the human livelihoods and well-being that depend on these ecosystems.” (after the Brisbane Declaration, 2007).

- There appears to be little ongoing ecological flow analysis undertaken by the Province or Manitoba Hydro
- To increase familiarity with a highly valued and increasingly utilized tool to facilitate riverine and riparian habitat
- To bring together participants including government officials, Manitoba Hydro, academics, policy communities and other regulators

When

Within one year.

Medium Term Recommendation One - Regulate LWR under the *Environment Act*

What

The Minister of Conservation and Water Stewardship should exercise his discretion under s. 12(2) of the *Environment Act* to require Manitoba Hydro to file an environmental act proposal (EAP) with the department as a Class 3 development and subsequently decide that an Environmental Impact Statement should be submitted. This should be completed within five to seven years.

To address interpretive uncertainty and as part of ongoing law reform, consideration should be given immediately to clarifying:

- the obligation of the Minister to consider whether legacy projects should be subject to environmental assessment and licensing
- the definition for "existing development" under the *Environment Act*
- the inclusion of decision making criteria for when an existing development is considered for possible review

Why

- No environmental assessment has been undertaken of legacy operations that have a profound influence on the Nelson River and its people
- The impacts of LWR/CRD on Hydro-operations are cumulative, complex, evolving, significant and adverse
- Given significant uncertainty relating to the effects of Hydro operations, climate change and other human development, a robust baseline for adaptive management must be developed (ie Glen Canyon)
- To allow Manitoba Hydro to engage in a more robust dialogue with policy communities
- To fill knowledge gaps and to identify areas for further research, monitoring, mitigation and adjustment (both Western science and Traditional Knowledge and including cumulative effects monitoring)

When

This should be completed within five to seven years.

Long Term Recommendation One – Reform Manitoba's regulatory framework for water governance

What

The Minister of Conservation and Water Stewardship should modernize Manitoba's governance regime. This should be completed within seven years.

With advice from the Multi-Party Task Force on Water Governance, the Minister of Conservation and Water Stewardship should modernize Manitoba's governance regime by considering the following:

- Greater coordination and clarity of the roles in its water governance and legislative scheme.
- An integrated watershed approach to cumulative effects monitoring and follow-up that would include participation by different industrial users that impact the hydrological system. This should also include the requirement to develop and maintain an inventory of the Province's water resources (both quality and quantity).
- The application of the *Water Protection Act* should be expanded to include Hydro operations. The *Water Protection Act* includes a number of robust provisions to protect ecosystems, but it is not clear that these provisions apply to waterpower operations.
- The development of a clear and well coordinated process for scrutinizing license applications, including
 - criteria to assess previously unlicensed existing projects
 - opening licenses for review and amendment, and clarifying the process for re- licensing
 - an express legislative authority to include the potential for short-term recommendation in licenses
 - establishing license conditions consistent with management plans
 - eliminating silos by making provision for the integrated review of operationally integrated facilities (i.e. CRD, LWR, Kelsey)
- Incorporate the public trust doctrine into Manitoba's environmental and water resource legislation, including an obligation to actively protect, exercise ongoing supervisory control and revisit previous decisions in the face of change
- Identify criteria for balancing economic, reliability, ecological and social values
- Include the opportunity for participant funding for CEC investigations of legacy projects

- Consider making express provision for ecological or environmental flows
- Allow for habitat and wildlife protection in licensing conditions
- Acknowledge equal space for Indigenous Legal Traditions and Traditional Knowledge

Why

- To bring Manitoba's regulatory framework to standards more consistent with good practices elsewhere in Canada and the world.

When

This should be completed within seven years.

Long Term Recommendation Two: Meaningful Ongoing Engagement

What

That the Minister of Water Stewardship and Conservation adopt meaningful ongoing engagement as a key principle and implement changes to legislation including but not limited to the *Environment Act*⁶, the *Water Power Act* and the *Sustainable Development Act*⁷. This should be completed within seven years.

Meaningful ongoing engagement refers to “participatory processes that incorporate all of the essential components of participation, from information sharing to education, and it includes active and critical exchange of ideas among proponents, regulators and participants”⁸

Why

Meaningful engagement is a cornerstone of achieving effective policy decisions. For example, research shows that it:

- strengthens communication among policy communities
- increases the opportunity for learning through the process
- results in better decisions
- increases accountability⁹

⁶ See Recommendations from Manitoba Law Reform Commission, “ Manitoba's Environmental Assessment and Licensing Regime Under the Environment Act” (2015).

⁷ Report of the “Consultation on the Sustainable Development Implementation” (1999).

⁸ Sinclair and Doelle at pp 53-4.

⁹ See for example: Jennifer Stewart and John Sinclair, “Meaningful public participation in environmental assessment: perspectives from Canadian participants, proponents, and government” (2007) Journal of Environmental Assessment Policy and Management.

We anticipate the changes will assist in fostering early activities relating but not to:

- issue scoping
- research priorities
- open access planning and operating model development; and,
- core values and decision making criteria.

When

This should be completed within seven years.

Long Term Recommendation Three – Manage adaptively

What

That the Minister of Water Stewardship and Conservation adopt adaptive management as a key principle and implement changes to legislation including but not limited to the *Environment Act* and the *Water Power Act*. This should be completed within seven years.

Based on the literature, a monitoring program should be flexible and have the capacity to deal with uncertainties. Legislative and regulatory frameworks should include specific provisions for adaptive management in follow up and monitoring programs.

Why

- To bring licensing and assessment practices in Manitoba consistent with recognized good practice elsewhere in Canada and in the world.
- Adaptive management acknowledges the uncertainties inherent in resource management and puts forward a way to acknowledge them. It is a “means of linking learning with policy and implementation”.¹⁰

When

A framework for adaptive management should be completed within seven years.

¹⁰ Alan Diduck, Patricia Fitzpatrick and Jim Robson “ Guidance from Adapative Environmental Management, Monitoring, and Independent Oversight for Manitoba Hydro's Upcoming Development Proposals” (2012) at p 3.

Long Term Recommendation Four – Province Assume responsibility for shoreline management policies and legislation

What

That the Minister of Conservation and Water Stewardship in collaboration with other appropriate governmental departments develop legislation, policies and programmes to regulate and map shoreline development and hazards. This should be completed within five to seven years.

Why

- There appears to be a legislative and policy vacuum relating to the management of shoreline hazards and guidance of new development which may hinder the ability to protect the community, leading to a patchwork quilt of municipal policy responses.¹¹
- To bring Manitoba's practices relating to policies and regulation managing shoreline hazards consistent with jurisdictions elsewhere in Canada and the world.¹²

When

This should be completed within five to seven years.

Long Term Recommendation Five - Establish an Environmental Auditor

What

Manitoba should establish an Environment Auditor to monitor and report publicly on the Provincial government's efforts to protect the environment and foster sustainable development.¹³ This should be completed within five to seven years.

The Environmental Auditor should serve as an Ombudsperson to receive complaints related to the environment, sustainable development, water governance etc.

Why

To address the public comment relating to need for complaints mechanism and foster trust with and between policy communities.

When

This should be completed within five to seven years.

¹¹ As Stated by Baird and Associates (2015), municipalities have the majority of the responsibility to evaluate new development proposals, growth plans, and manage existing hazards (see p 34).

¹² In other jurisdictions the Provincial and State agencies develop legislation, policies and programmes to regulate shoreline development, identify and map shoreline hazards, and protect natural resources: Baird (2015) at p 34.

¹³ This recommendation is based on COSDI Report (1999).

CAC Recommendations

9 months to 1 year 1 year 2 years 2 – 3 years 3 years 5 – 7 years 7 years

Short Term Recommendations

Engagement on the CEC Recommendations
(completed by fall or early winter 2015)

Clarify roles and responsibilities for licensing and assessment in Manitoba

Public statement on whether Manitoba Hydro has complied with LWR interim license and clear expectations for future

Host a public workshop on ecological flow assessment

Establish a Multi-Party Task Force on Water Governance

Articulate the role and connections between s.35 consultations and the *Environment Act* and the *Water Power Act* & recognize and reaffirm treaty and Aboriginal rights

Instruct Manitoba Hydro to initiate an open, transparent process to further develop its planning models

Medium Term Recommendations

Regulate LWR Under the *Environment Act*

Long term Recommendations

Province assume responsibility for shoreline management policies and legislation

Establish an Environment Auditor

Reform Manitoba's Regulatory framework for water governance

Meaningful ongoing engagement

Manage adaptively