

Report to Manitoba Clean Environment Commission
Lake Winnipeg Regulation Hearings:
By Manitoba Wildlands April 2, 2015

Governance, Management, Regulation, Monitoring and
Protecting Lake Winnipeg –
With Respect to a Great Lake As Reservoir

Manitoba Wildlands has participated in each stage of regulatory processes for Manitoba Hydro projects since the Wuskwatim process began in 2001. Our activity focuses on public or crown lands and waters in Manitoba: decisions, options, and protection. Use and sustainability of Manitoba lands and waters affected by any hydro project are part of that mandate. See manitobawildlands.org or energymanitoba.org for more information.

Lake Winnipeg has been licensed as a reservoir for the hydro system for forty years. These hearings are the first actual review of the interim licence, and are based on the utility's request for a final licence. Being backdated under the Manitoba Water Power Act means that the 50 year final licence expires in 2026.

We have reviewed the Clean Environment Commission's (CEC) recommendations after the Wuskwatim Generation and Transmission environmental and 'needs for and alternatives to' hearings in 2004. See below.

Its clear to the reader, and those of us who participated in those hearings, that we have not met the standard(s) identified in the CEC recommendations. Certainly with respect to the Churchill River Diversion, Augmented Flow Program and Lake Winnipeg Regulation, the mandate for these hearings falls short. As does the Manitoba Hydro approach during the last 10 years to the three priorities identified by the CEC.

Recommendation 7.6 CEC Wuskwatim Report 2004:

The Clean Environment Commission recommends that:

The Government of Manitoba requires Manitoba Hydro to resolve all outstanding issues with regard to the Churchill River Diversion, the Augmented Flow Program and Lake Winnipeg Regulation. Following resolution of these issues, Manitoba Hydro should apply for the appropriate final licences for these three operations under The Environment Act and The Water Power Act as soon as possible.

Recommendation 7.7 CEC Wuskwatim Report 2004:

The Clean Environment Commission recommends that:

The application for the approval of final licences for Churchill River Diversion, Augmented Flow Program and Lake Winnipeg Regulation should include a review of the terms and conditions, an operational review and any required environmental impact assessments. Clear guidelines should be developed with respect to what constitutes conformance to and/or violation of the terms of the licences.

Re 7.7: There are no independent, clear guidelines with respect to what constitutes conformance and /or violation of the terms of the licences. We hope that the CEC report for the LWR hearings are specific about what constitutes violation of the licences.

Re: 7.6: The CEC recommendation refers to both Environment Act and Water Power Act licences. We are participating in a hearing where the mandate or reference to the CEC falls short. This review, the Aboriginal Consultations regarding the final licence, and the CEC recommendations will only pertain to the licences and regulation of Lake Winnipeg under the Water Power Act.

Manitoba Wildlands is usually aware of or can confirm the public policy context for permits, licences, leases and the use of Manitoba lands and waters. Manitoba Hydro, in its LWR filing from summer 2014, acknowledges certain areas of public policy while ignoring others.

Our aim is to provide the CEC Panel and the participants with an over view of the public policy situation for Lake Winnipeg, as a regulated reservoir for 40 years, and as Manitoba's Great Lake.

We set out to learn:

- What the public policy framework for Lake Winnipeg has been, is, and needs to be especially given the size of the lake, and its state as a reservoir for forty years;
- Whether the public policy was accessible, understandable, and being applied by the utility and Manitoba's governments;
- Whether the utility, and Manitoba government departments, agencies and programs cooperate regarding all aspects of Lake Winnipeg operation as a reservoir, and as an economic engine for several sectors, and home to over 25 communities, and habitat for many species in a range of ecosystems;
- What kind of governance, management, monitoring and protection system is in place for the Lake, especially given it is regulated as a reservoir.
- What role Aboriginal Peoples have played in establishing public policy about the Lake.

The action research involved in answering the questions above has been desk and online research. Capacity did not allow all the public policy research steps we would recommend, including setting up a public data base, additional categories of information relevant to public policy about the Lake, additional western and traditional knowledge based resources, and comparing our results with the assumed repositories of public policy materials in Manitoba.

More questions arose as we started our search:

- What do Manitobans know about Lake Winnipeg, as a regulated reservoir? (very little)
- What is the pattern, and quality of scientific monitoring and assessment of Lake Winnipeg since 1970? (minimal, insufficient over time and 'trivial')
- Has the traditional knowledge held by the communities around the Lake, and downstream of Lake Winnipeg been included and understood in making decisions about regulation, governance, management, monitoring and protection of Lake Winnipeg ? (No)

- How do Aboriginal consultations regarding Crown policies, actions, regulation etc affecting Lake Winnipeg work? (Not known yet)
- Do government staff, consultants and scientists have access to information needed for duties, and services in support of public policy? (Not likely)
- Do the short-term topic specific committees and boards, and their technical reports assist in 'whole lake' 'whole system' decisions and public policy to support governance, management, monitoring, and protection of Lake Winnipeg - especially four decades of being used as a reservoir? (No)
- What is the existing public policy about Lake Winnipeg? (See the public policy chart and topic sheets)
- How many laws and regulations affect the regulation, governance, management, and monitoring of the Lake? (Lots.)
- How do communities around the Lake, including municipalities towns and Aboriginal communities obtain information and participate in the governance, management and regulation of the Lake? (Government website, which has minimal archives)
- How do various levels of government work together with respect to Lake Winnipeg? (Not clear)
- Who reports to who, who funds what, who has access to what information about Lake Winnipeg? (Not clear)
- How many kinds of licences are involved in Lake Winnipeg's operations, and economy - especially does Manitoba Hydro fully understand the steps it needs to take to maintain its social licence to operate and regulate Lake Winnipeg? (Several, and No.)

Definitons Regarding Public Policy:

Understanding Public Policy

Public policy factors in to how decisions are made. When courts and lawmakers consider whether to pass a law, give something priority or rule in a certain way, they do so



because of public policy and they simultaneously shape public policy.

<http://examples.yourdictionary.com/examples-of-public-policy.html>

Public Policy

A principle that no person or government official can legally perform an act that tends to injure the public.

Public policy manifests the common sense and common conscience of the citizens as a whole that extends throughout the state and is applied to matters of public health, safety, and welfare. It is general, well-settled public opinion relating to the duties of citizens to their fellow citizens. It imports something that fluctuates with the changing economic needs, social customs, and moral aspirations of the people. Public policy enters into, and influences, the enactment, execution, and interpretation of legislation.

West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved. <http://legal-dictionary.thefreedictionary.com/Public+Policy>

As recognized

more than a century ago by Holmes, considerations of public policy are "the secret root from which the law draws all the juices of life. . . Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy".

http://www.mccarthy.ca/pubs/The_Doctrine_of_Public_Policy_in_Canadian_Contract_Law.pdf

Government of Canada

"The Government of Canada has recognized that the legitimacy of public institutions, the quality of public policy, and the responsiveness of public services will require new and better mechanisms for engaging citizens and civil society in governance."

"A challenge of all governments is to find a way to find innovative ways to put citizens at the centre of the governing process, to engage youth in public enterprise, and to give voice to those who find themselves on the margins."

The Right Honourable Jean Chrétien,
Speech before the Progressive Governance for the 21st Century

Conference,
Berlin, June 2000

Locate and Organize Public Policy Materials

We also looked at possible ways to locate and organize public policy information about Lake Winnipeg, especially given the Lake has been regulated as a reservoir for forty years. The capacity available for this exercise to inform the Clean Environment Commission Lake Winnipeg Regulation hearings meant a desk research only project was undertaken. Further steps would include putting a database in place, and a public web vault, plus searches in public repositories and the Manitoba Hydro library.

The research is based on the premise that Manitoba and Manitoba Hydro need to move to a whole system, whole basin, whole lake method of governance, regulation, management, monitoring, and protecting Lake Winnipeg.

Public Policy Products for CEC: Initial Tools

We encourage the reader of this report to spend time with the products. The spreadsheet is set up in 12 sheets, topics for these are provided on the Introduction Sheet, attached with the PDF of the spreadsheet. We selected a fairly obvious sequence of kinds of public policy, some of which are endemic to Lake Winnipeg and Manitoba Hydro.

Several additional steps are required in order to provide the past, current public policy regarding LWR and Lake Winnipeg to a wide audience. Making the whole pattern of public policy accessible would ensure movement towards the new 21st century public policy framework for Manitoba's Great Lake, Lake Winnipeg, the reservoir.

We trust the steps we were able to take will inform the CEC and participants in these hearings, and assist in next steps for LWR and the future of Lake Winnipeg.

What We Found Out:

Public policy regarding regulation of Lake Winnipeg, and the establishment of Manitoba's hydro system began in May 1916 when The Conservation

Commission of Canada published Water Powers of Manitoba, Saskatchewan and Alberta. The volume followed an earlier pan Canadian study from 1911. At the time the Dominion Government controlled the water resources of the prairie provinces.

The data showing elevation, discharge, flows, etc, from this detailed study of Manitoba's rivers, is apparently incorporated into the National Water Survey data used by Manitoba Hydro.

In the 1930's when the Depression and its weather extremes tested the economy of Canada, and the natural world across our country, public policy emerged regarding farming practices, drainage, and water drainage and water sharing between provinces. The Prairie Farm Rehabilitation Administration was set up across Alberta, Manitoba, and Saskatchewan. Its role included assisting with new land management methods, managing rivers and drainage, advising on irrigation, and managing public pastures. The drainage methods and approach from the PFRA continues today, and is an ingredient in the current approach of maximizing drainage off the land and into the rivers that flow into Lake Winnipeg.

Then an agreement about water sharing was arrived at in 1948. A water apportionment agreement between the three provinces was signed in 1969. That agreement has been updated 3 times since. Many of the assumptions in these agreements affect how Lake Manitoba, The Red River, The Assiniboine and Souris Rivers are managed, when they are diverted, and how much water flows into Lake Winnipeg. Under the agreement Alberta and Saskatchewan can retain up to one half of the water they receive, with the rest of the water flowing to Manitoba. This agreement and the public policy actions from it affect LWR. In the future this will be especially true should a pattern emerge of continued use of the Portage Diversion and drainage from Lake Manitoba to Lake Winnipeg.

A description of the public policy steps that lead up to the building of Grand Rapids generation station, and decisions to regulate Lake Winnipeg, and build JenPeg Generation Station and other initial generation stations on the Nelson River have been provided in the CEC report. There appears to be no corresponding public policy regarding the health of Lake Winnipeg when these

first decisions for our Hydro generation system were made or since. Even when the damage from flooding emerged across northern Manitoba no public policy emerged to put regulation, management, monitoring and protection policy for Lake Winnipeg and other reservoirs in place.

The Lake Winnipeg Churchill and Nelson Rivers Board undertook extensive studies and assessment, with recommendations for ongoing whole lake, whole system studies, monitoring, remediation, and management. It is a clear fact that our utility, and both federal and provincial governments failed the Lake, other reservoirs and the Nelson River. Follow through was weak, sporadic. For our utility to point fingers at government 40 years later shows they do not hold their social licence to regulate Lake Winnipeg.

The second round of scientific assessments and studies in the 1980s met a similar fate. Also thirty years of new generation stations were built without public environmental assessment and review, without sufficient monitoring and mitigation programs.

Lake Winnipeg Public Policy

Public policy, programs, studies and reports about Lake Winnipeg are a hodge podge of single issue, single location, single species, or single environmental element statements. Some involve other laws and regulations. There is an incremental pattern of new laws, new policies, but most continue to be in relation to one element or one aspect of Lake management, or operation.

All seem to leave the onus on citizens, the environment, and curative rather than preventative management. That is, once a problem exists a public policy process about that problem will be attempted. The current example is zebra mussels in Lake Winnipeg. While this concern, and perhaps this program, are important for the lake, a cohesive approach to Lake Winnipeg is lacking. Often a significant lack of access to information, follow up, report back, and over all planning accompany these single environmental element policies that affect and are affected by our largest reservoir.

The Lake Winnipeg Stewardship Board is an example as its mandate was nutrients coming into the lake, and nutrient reduction. Albeit the reduction sought would benefit other Lake Winnipeg environmental elements, and

ecosystems. But should we continue in this manner, one problem or element at a time?

Manitoba Wildlands concluded that Lake Winnipeg must have a comprehensive governance, regulation, management, monitoring and protection system. The communities, stakeholders, fishers, and ecosystems would benefit. The Manitoba economy would benefit. Manitoba Hydro would benefit, even if they are not convinced. There are simply too many players and not enough accountability, planning, reporting, and beneficial outcomes. It should be noted that the Lake Winnipeg Implementation Committee recommended this approach ten years ago.

The IISD, in its presentation to the hearing, and certain of the CEC's experts who presented in the LWR hearing, are recommending a whole lake, whole basin, whole hydro system approach for the future of Lake Winnipeg, the main reservoir and the hydro system.

The reservoir expert Dr. McMahon, brought to the hearings by the CEC, strongly advised a whole lake, whole basin, whole hydro system approach to both operations and planning. He also advocated access to information far in excess to the approach our utility takes today.

One myth of the public policy discussion about Lake Winnipeg is housed in the regulation licences from 1970 and 1972. It seems that we should all accept actions, decisions, flooding, shoreline erosion, for instance, as all actions being during the licence because the licence is from 40 years ago. That are no objections, concerns, or questions relevant because it is a 40 year old licence. This means, presumably, everything is still based on the thinking and the contents of a 40 year old licence.

Could it be that simple? Do we need to apply a twenty first century lens, and knowhow for the future of the lake? If that is the situation then we cannot wait until some time period after 2026. Systems thinking, planning, and governance is urgently needed. The Lake certainly cannot wait. Has the fact that Lake Winnipeg is a reservoir used by Manitoba Hydro in relation to the entire Nelson River hydro complex blocked the will and the ability to govern, manage, operate and protect the Lake? Are we at the end of 40 years where regulation

and energy generation came first, and everything else about Lake Winnipeg was secondary?

We are convinced that Aboriginal knowledge has been ignored for 40 years with respect to governance, regulation, management, monitoring and protecting Lake Winnipeg. This includes the traditional knowledge of the many First Nation commercial fishers on the lake. We note that the Consumers Association of Canada is providing resources that include essential reading about traditional knowledge for Manitoba Hydro staff. Then it will be clear, as has been articulated in the two previous CEC hearings for Manitoba Hydro project licences, that traditional knowledge is not just stories.

Conclusion:

A lot of current public policy affects Lake Winnipeg. Manitoba's regulatory system has a lot of laws and regulations, which are pertinent and applicable to Lake Winnipeg. Almost none refer to the fact the Lake is a reservoir. Much of the current public policy and regulatory elements also need to be an ingredient in decisions for regulation of the lake.

While Manitoba Wildlands located a great deal of public policy, there appears to be a huge gap or absence of policy and law that would lead to best governance, regulation, management, monitoring and protection of Lake Winnipeg.

We trust the CEC to consider the public policy situation in their review of the proceedings, hearings, filings, and presentations.



MANITOBA
WILDLANDS

565 - 167 Lombard Ave Winnipeg MB Canada R3B 0V3
info@ManitobaWildlands.org Ph 204-944-9593
www. ManitobaWildlands.org Fax 204-947-3076
