

April 9, 2015

Statement to the Clean Environment Commission

Honourable Commissioners:

We make this statement to you because the Treaty 2 Territorial Alliance holds the Title recognized by Treaty to most of the lands in waters in “the Narrows” portion of Lake Winnipeg, as well as what might be called the northeastern portion of the South Basin.

After that recognition was clearly set out, our ancestors agreed in a sacred way to share certain lands within the Treaty boundaries for immigration and settlement, provided that compensation was paid for the use.

The remaining lands, waters and resources within the Treaty boundaries were retained by us for our sustenance and livelihood. As a result, it was not necessary to provide any compensation nor necessary for any limitations on our use to be set out nor to specify any special rights. We continued with our possession and use as it was the Day Before the Treaty.

We make it clear that we honour our ancestors and their promises, and gladly and voluntarily respect their agreement to share lands for immigration and settlement, and those lands used for those purposes are excluded from this discussion.

When the boundaries of Treaty 2 Territory were decided as the result of discussions with the Commissioners and the representatives of the “Chippewa Tribe” on 21 August 1871 at Manitoba House, it would have been simple enough to set the eastern boundary on the western shore of Lake Winnipeg. Instead, the boundary was deliberately set to extend across the lake to the eastern shore. In other words, pains were taken to include that significant mass of water within the Treaty boundaries.

As a result, Treaty 2 runs from the eastern shore of the mouth of the Winnipeg River north all the way along the shore to “Beren’s Fort” at today’s Beren’s River First Nation. From there, it crosses Lake Winnipeg to the mouth of the Dauphin River at Anana Bay, carefully including the tip of the peninsula between the two points. From there it runs along the shores and water ways all the way to a point near Duck Bay on Lake Winnipegosis, encompassing a grand territory to the south extending westerly to the northwestern point of Moose Mountain, south to the U.S. border, and from there easterly to the boundary setting out Treaty 1, and following that boundary back to the mouth of the Winnipeg River from which it started. The area in Treaty 2 is clearly seen on the attached map, drawn in 1875.

It is relevant to note that in addition to the hundreds of kilometers of shoreline included in Treaty 2, it also includes almost the entire Interlake area running from Lake Manitoba eastward, an area which very much contributes to and depends upon the health of Lake Winnipeg.

You will also note on the 1875 map the cross-hatching of surveyed lands. Those were the lands which the Treaty 2 First Nations agreed were to be shared for “immigration and settlement”, as the Treaty puts it. These lands were to be sold to the settlers – or to the Crown – for \$1 an acre. The money was to be put in a “capital account” in Ottawa. The interest from the capital account was to go into a “revenue account” for the use of the indigenous nations, and Ottawa would take 10% for its administration fee and thus all expenses of “Indian Affairs”, including salaries, would be paid by “Indian monies”. In Eastern Canada, this system required no “taxpayers’ money”. At the time of Treaty, Indigenous nations had been self-supporting, and it was intended by both parties that they continue to be self-supporting. “You will be richer than the whiteman,” the Crown’s representatives in the Treaty discussions promised. “Neither of us can afford dependency.”

There are approximately 120 townships hatched off on that map, all awaiting settlement. Had the asking price of \$1 an acre for use in all perpetuity been paid for the nearly 3 million acres of Treaty 2 Territory in those 121 townships been put in the capital account, \$2,787,840 would have been credited for all that land. Had we been paid, and had that money been put into the capital account at 6% interest, today our account would be \$2.6-billion, and our annual interest revenues would be \$156,230,554. The failure to follow that agreement is a fraud against both ourselves and the Canadian taxpayers. In 1871, virtually the entire administration of “Indian Affairs” in Eastern Canada had been funded by this method.

We present these facts only for background to other relevant information we wish to set before the Commission, and we go on now with our primary purpose in addressing you.

Back to the map. Note the large area in Treaty 2 Territory which has not been surveyed for settlement. These are the lands which were to be retained for the indigenous peoples to continue to use for their sustenance and livelihood. They constitute approximately 19-million acres. Part of that land is Lake Winnipeg and its islands and shorelands.

Today, four Lake St. Martin First Nations depend heavily on the fishing in Anana Bay and on the northwestern shore of the territory. Then there are the four First Nations on the eastern shore – Beren’s River, Bloodvein, Little Black River and Hollow Water. Kinonjeoshtegon – all located in Treaty 2. Fisher River Cree Nation and Peguis were moved into Treaty 2 Territory after Treaty 2 was entered into and are entitled to join with others in relying on Lake Winnipeg nearby.

These 11 First Nations are closely related to this portion of Lake Winnipeg. They and the Lake have been related, have been family to each other, long before there were “settlers”.

The regulation of the level of Lake Winnipeg does not take these communities or people into account. Neither does it take into account the Lake’s ecosystems, a rich diversity of animal, bird and plant life that extend deep into the lands that surround the lake. It contains all kinds of the Creator’s creatures and their habitat, creatures made by the same Creator who made you and I and who have the same rights – perhaps more – than we do in that territory, creatures whose names we do not even know, much less know their importance to our own lives.

Yet the regulation of the level of Lake Winnipeg by Manitoba Hydro takes into account only economic benefits.

That calculation is strictly human-centric bookkeeping. Raise the lake now, we make more money. Lower the lake next week, we will make more money. Up and down, but always for money. No one even asks what those decisions mean to the animals, birds, fish and habitat that they depend upon. No one asks.

Neither do they ask the First Nations who hold title to the Treaty 2 portion of the Lake and the surrounding lands and whose lives depend upon it. Yet every decision to raise or lower has the potential to affect the rights and interests of Treaty 2 First Nations, particularly those who utilize the Lake for fishing and other pursuits, or who live near the lake.

That omission is all the more glaring because the economic benefits of raise-and-lower are largely not enjoyed by the First Nations mentioned nor others in Treaty 2 Territory. They are benefits intended to be enjoyed primarily by other peoples.

Let’s acknowledge that any regulation of the level of Lake Winnipeg which takes place to the north of Treaty 2 Territory is going to affect the waters and the shores and the complex of ecosystems within Treaty 2 Territory.

Let’s acknowledge the fact that it is known everywhere that artificial regulation of lakes and rivers degrades coastal wetlands ecosystems. We know the wetlands and shore provide critical habitat for birds, fish, wildlife and other creatures. We know raise-and-lower results in loss of biological diversity.

Can compensatory action be taken? Maybe. Even probably. But by whom? Who is responsible to do this? and with what resources?

Let's admit, out loud, that the regulation is done solely, exclusively, to provide the maximum amount of water at precisely the right time for the generation of power. The decision is centred solely on economic concerns, human economic concerns. We know little about the effect on fish, birdlife, other creatures, the habitat that sustains their lives. Who cares?

We know to the penny the benefit to Manitoba Hydro of raising or lowering a block in a dam. Engineers can calculate that in seconds. But we have very little knowledge of the economic cost of that decision elsewhere on the Lake. What that does it cost to the future of a bird who has carefully built a nest at the shore to raise its family and watches it being destroyed? Or maybe it doesn't even matter.

The raising and lowering of the lake makes money. Lots of money for some people. It may even provide jobs, employment. For some people. But in proportion to numbers, not for the people of the First Nations who are primarily effected.

There can be and are studies. Plans. Working groups. A small industry of people is involved in thinking about water levels, planning, researching, worries about climate change, worries about the environment, suggesting that we plant more cattails, or that more studies be done. But the First Nations are not a part of that industry either. "Stakeholders", cottagers, tourism enterprises speak out. But the First Nation voice is not respected or sought out.

The right to regulate the level of Lake Winnipeg.

That's what we're here to talk about. The right to regulate without considering the effects of climate change – with climate change, will water regulation in the interests of the economics of power production become more extreme, more damaging than they are today? Who knows?

And Anana Bay. Today the recipient of all the toxic waters of the Assiniboine River diverted by the Portage Diversion into Lake Manitoba. And the Ojibway people who live around Lake St. Martin, those who were left behind when the provincial government moved others out to higher ground. Thousands of evacuated people deprived of their homes for four years now. Not because of a natural disaster, but rather the result of politicians and engineers saying, "We can't let the people of Winnipeg be flooded – shut the gates and sacrifice the Indians."

As for the evacuees, the Minister says in Ottawa, "We can't solve problems overnight."

The lake which used to sustain our people like a mother feeding her children is now used by Manitobans as a holding tank, an outdoor toilet, without any concern over the effects. They allow fertilizers to run off agricultural lands – fertilizers put there to help someone raise more crops for more money.

And here we are, the title holder to that huge expanse of lands and waters called Treaty 2 Territory where 2/3 of the Treaty 2 children are living below the poverty line. How do you explain the economics of Lake Winnipeg to those children?

What do you say to a lake that has sustained your people for so many generations, how do you tell the lake that you know she is being poisoned and you aren't doing anything about it?

It is important that we make this presentation to you so that the provincial government, Manitoba Hydro, and the people of Manitoba receive this reminder that the descendants of the same people who agreed to share their lands with them for immigration and settlement are still here, that they have rights. They have interests.

And they are being abused.

Closing Submission

Thanks to the Commission for providing this opportunity for the Treaty 2 Territorial Alliance to present these words to it for its consideration.

We ask that you recognize that you may be the only, the last, hope for reconciliation of the sovereignty of the Treaty 2 First Nations as the result of their recognized prior occupation of its territory and the exercise of the sovereignty of the Crown to which we explicitly "consented" in our entering into the Treaty.

You may also be the last hope for the honour of the Crown to be restored regarding this matter.

We have limited our comments to the territory over which we have authority, namely that which is within the boundaries set out by Treaty 2 itself. Obviously the Commission may wish to extrapolate our comments and recommendations to apply over a wider area.

WE ASK THAT THE COMMISSION RECOMMEND TO THE MANITOBA GOVERNMENT THE FOLLOWING:

Because the license requested is a permanent one, in the event that such a license is granted, conditions attached to the license should require that Manitoba Hydro report to and work with a wide variety of public interest groups on a regular basis to remediate any damage done to the environment on a "no net loss basis". By that we mean that if damage is inevitable at Point A, than more-than-sufficient compensatory investment should be made in other areas.

We ask that the Commission recommend that the Manitoba Government ensure that on behalf of the Crown, it consult with the Treaty 2 Territorial Alliance on a regular basis with regard to the collective rights and interests of the Alliance First Nations, as well as with any individual First Nations whose reserve lands and communities will be impacted negatively by Manitoba Hydro's operation of the license.

Our experience has taught us both Manitoba Hydro and the Manitoba Government have an impoverished view of what constitutes consultation, accommodation and reconciliation. To be sure there is no misunderstanding, we will define these terms.

Recommend, honourable Commission, that because our title to our lands and waters has been set out in Treaty 2, the Crown's duty to consult and accommodate is to be regarded as being at the highest end of the spectrum. This puts a heavy burden on the Crown to justify infringements if we should not consent to them.

Recommend that the Government elevate the honour of the Crown to a fiduciary duty, that there shall be no infringements that leaves us, the First Nations, with no meaningful ability to enjoy our rights and interests.

Recommend that there will be no delegation of the Crown's duties, that the Crown will remain integrally involved in ensuring Manitoba Hydro's compliance with its responsibilities and obligations and that the Treaty 2 First Nations will be an integral part of the compliance mechanisms.

Recommend that the provincial government act honourably and fairly and in good faith in fulfilling the Crown's responsibilities. That adequate resources will be provided so there is no imbalance in the ability of the Treaty 2 Territorial Alliance and First Nations to participate in a meaningful process to keep Manitoba Hydro transparent and accountable, and to keep the provincial Crown transparent and accountable for ensuring that Hydro fulfill the conditions which have been set.

Recommend that this honourable Commission be provided with powers to hold hearings when there are allegations that conditions of licensing are not being met, that our rights are being ignored. Recommend that an evaluation of Manitoba Hydro's meeting of conditions be done in four years. Recommend that the Commission have the power to recommend additional conditions, and that the license may be subject to new conditions imposed from time to time by the provincial Crown.

We ask that the Commission recommend that as a condition of license, Manitoba Hydro must work closely with the Treaty 2 Territorial Alliance, consulting with it on at least a quarterly basis, accommodating its reasonable requests, compensating it for any damages to the ecosystems of the lake caused by the raising and lowering of water

levels, and establishing a functional close working relationship between it and the First Nation. Obviously Manitoba Hydro should provide the Alliance with the resources necessary for it to engage in this manner on an on-going basis.

Experience tells us that the Commission should also recommend that as a condition of the license, Manitoba Hydro should agree to engage in a dispute-resolution process so that any conflicts with Treaty 2 Territorial Alliance can be remedied justly, equitable, rapidly and efficiently.

We ask that the Commission recommend that an independent investigative body be created to determine every second year an economic value of the damage done to Treaty 2 Territory by the regulation of Lake Manitoba by Manitoba Hydro, and that no-net-loss reparations for these damages be paid by Hydro as a cost of doing business so as to cover the costs of Treaty 2 First Nations and related environmental groups to carry out the necessary remedial actions.

We ask that you recommend to the Manitoba Government that it require as a condition of the licence that Manitoba Hydro consult with the Treaty 2 First Nation Alliance to develop a means through which the First Nations may be adequately compensated for the use of Lake Winnipeg as a holding basin for the generation of electricity for the prosperity of Manitoba.

We ask that the Commission recommend that the Manitoba Government, on behalf of the provincial Crown, immediately and prior to issuing the license, engage in consultation, accommodation and reconciliation negotiations regarding the implementation of the Commission's recommendations and the conditions which are to be attached to the license provided to Manitoba Hydro.

We wish you clarity of mind, strength, good health, peace and tranquility as you conduct your work and consider our submission and the submissions of others.

Thank you. Chi Meegwetch.

