

# Working Group on Indigenous Peoples

Representation on Agenda Item number 8 of  
The Pimicikamak Cree Nation of Cross Lake in Manitoba, Canada.

Honourable Chairperson,

I would like to take this time to comment on the Final Report from the perspective of Pimicikamak Cree Nation, specifically in reference to a treaty that it is a party. This treaty is called the Northern Flood Agreement.

However, I have not had the opportunity to adequately prepare this statement as we recently received a copy of the Report. Accordingly, I would like to respectfully request another opportunity in the future to analyze and provide a cohesive response to the report.

I would like to point out on a preliminary review of the document the following:

1. Coercion (para. 224) and Duress (para. 307) is very relevant to Pimicikamak Cree Nation and the actions of the federal government today.
2. The retaining of international judicial status concerning concluded treaties (para. 270) appears to be a positive approach to treaty interpretation, considering that Pimicikamak Cree Nation's rights in the Northern Flood

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Agreement unaltered existing treaty rights made with her Majesty the Queen of England.

Finally, attached is information concerning Pimuckamuk-  
lee Nation which refer to treaty rights and other  
areas of law.

Thank you for your time.

LUKE HERTLEIN

**SUBMISSION TO:  
THE U.N. WORKING GROUP ON INDIGENOUS PEOPLES**

**ON BEHALF OF:  
THE PIMICIKAMAK CREE NATION OF CROSS LAKE, IN MANITOBA, CANADA**

**Regarding the Impacts of  
The Lake Winnipeg, Churchill and Nelson Rivers Hydroelectric Project**

*"We used to make a good living out of our community...[before] the flood. When you look into the future, there is really nothing there for us, for our children [and] grandchildren".*

Testimony of an Elder before the Manitoba Aboriginal Justice Inquiry in 1991<sup>1</sup>

**Introduction**

The Lake Winnipeg, Churchill-Nelson River Hydro Project in northern Manitoba is one of the largest and most complicated hydroelectric projects ever undertaken in Canada.<sup>2</sup> The Project adversely affected approximately 3.3 million acres of environmentally fragile boreal indigenous peoples' lands, as a result of flooding and destruction of access.

The consent of the Cree peoples, in particular the five Cree communities living on the affected rivers<sup>3</sup>, was not obtained before the flooding and destruction of the lands. The Cree peoples were also not consulted nor even given notice of the flooding, which has since caused severe environmental, social and cultural devastation to Cree lands, communities and economies.

**The Community of Cross Lake, Manitoba**

The area of Cross Lake is home to approximately 5000 Pimicikamak Cree Nation citizens, about half of the entire Cree population of the affected lands. Community members' traditional travel routes frequently cross the Nelson River by boat in the summer and by snowmobile over the ice in the winter. Cross Lake is north of Lake Winnipeg and the Jenpeg dam. The waters which used to flow from Lake Winnipeg north into Cross Lake, therefore, are now restricted and dammed at Jenpeg.

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<sup>1</sup> Report of the Aboriginal Justice Inquiry of Manitoba (1991) at p. 174

<sup>2</sup> In "Toward Assessing the Effects of Lake Winnipeg Regulation and Churchill River Diversion on Resource Harvesting in Native Communities in Northern Manitoba" (Winnipeg: Department of Fisheries and Oceans, 1991), Usher and Weinstein describe the project as "one of the largest river diversion and regulation projects anywhere in the subarctic".

<sup>3</sup> The communities of Cross Lake, Split Lake, Norway House, York Landing and Nelson House. Other communities not were also severely affected, such as the community of South Indian Lake.

## **The Project**

The Churchill-Nelson River Hydro Project (the "Project") was conceived in the mid-1960s by the provincially-owned Manitoba Hydro-electric Board and was substantially completed in 1974, the year in which the Cree lands were flooded. It is a massive hydro-electric development project which entails the diversion of two major rivers, the Churchill and Nelson Rivers, which drain almost all of the provinces Manitoba and Saskatchewan.

The Churchill River is diverted just before it naturally would become a waterfall at Missi Falls (see diagram attached). Instead of flowing over Missi falls, 85% of the water is now diverted into large reservoirs along the Nelson River upon which four generators have been constructed to harness the power of the additional flow.<sup>4</sup> At Missi Falls, the flow of the Churchill River was cut from an average of 1,050 cubic metres per second to an average of 150.<sup>5</sup> The Project creates a number of massive reservoirs: one where the Churchill River is dammed; and a second where Lake Winnipeg, which naturally flows into the Nelson River, is dammed, channelled and regulated so that Manitoba Hydro can maximize flow to power plants downstream on the Nelson River during the winter months when demands for hydroelectricity are at a peak and restrict the flow of the River during the summer months.<sup>6</sup>

The Project has caused massive changes to water levels and flows. Some rivers, like the Churchill, have had their flows radically reduced. Other rivers, such as the Nelson, now have radically increased flows. Cross Lake has dropped by more than three metres. In addition, Cross Lake now suffers a complete seasonal reversal of flow pattern: in the summer, hundreds of square kilometres of lake bed are exposed while in the winter, as a result of increased hydroelectric generation, the discharges are approximately twice as great as they normally would be, and ice is rendered unstable and hazardous for travel.<sup>7</sup>

*Canadian Geographic* journal describes Cross Lake as follows:

What used to be a lake is now little more than a muddy pond... You can see the old water line on the rocks. Now fields of willows and weeds grow in the muck. To get to the receded water, residents have built long, fingery docks, some jutting up 50 metres out from the houses like parched tongues seeking moisture.<sup>8</sup>

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<sup>4</sup> P.M. Larcombe (Cobb), "Northern Flood Agreement Case Study in a Treaty Area - Prepared for the Royal Commission on Aboriginal Peoples" (1995) at p.9.

<sup>5</sup> Larry Krotz, "Dammed and Diverted", *Canadian Geographic* (Feb/March 1991) 36-44 at p.39

<sup>6</sup> Larcombe, supra note 4 at p. 10

<sup>7</sup> Larcombe, supra note 4 at p. 10

<sup>8</sup> Krotz, supra, note 5 at p. 38.

## **Impacts of the Project**

### **a. Environmental**

The Project has been severely destructive to the delicate boreal forests and fragile environment of Northern Manitoba.

As a result of the flooding and its interaction with the permafrost, the shorelines of the rivers and lakes have still not stabilized 24 years after the initial flooding. Instead, the lakes have been subjected to a continuous cycle of erosion and slumping with the water thawing the permafrost, the shoreline slumping and the water once again further thawing the newly exposed permafrost.

The vast flooding and changes in water levels and flows have severely altered migration patterns of animals and birds. Waterfowl, for example, have been forced to new feeding and breeding grounds, great distances from their original habitats.<sup>9</sup>

The waters themselves are murky and sediment-filled, drastically reducing water quality for animals and humans.

The sedimentation has caused the release of methyl-mercury into the shoreline areas, lakes and up into the food chain. Methyl-mercury contamination of fish in the affected areas has at times been at levels dangerous to both the fish and to humans who eat them.

### **b. Cultural and Economic**

The environmental damage has drastically affected hunting, fishing and trapping and the subsistence culture of the Cree communities. Methyl-mercury contamination and the reduced quality of fish has destroyed the commercial fishing industry and has made the fish - an integral part of the Cree subsistence diet - dangerous to eat. In Cross Lake, the fishing industry was additionally destroyed by the drying-up of the lake. Commercial fishing on Cross Lake has ceased since 1979.<sup>10</sup>

The inundation of the shorelines and the alteration of the migratory patterns of the animals has fundamentally disrupted hunting and trapping. In many cases, Cree hunters must travel great distances, at prohibitive costs, in order to find fertile hunting grounds.<sup>11</sup>

The changes to water flows and levels have also disrupted traditional Cree travel routes and have made many routes fatally treacherous. At least 13 Cree Nation members have drowned trying to

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<sup>9</sup> James. B. Waldram, "Hydroelectric Development and Dietary Delocalization in Northern Manitoba, Canada" 44(1) *Human Organization* 41-49 (1985) at p.42.

<sup>10</sup> Usher and Weinstein, *supra* note 1, at p.32.

<sup>11</sup> Notzke, Claudia, *Aboriginal Peoples and Natural Resources in Canada* (Capus University Publications, 1994) at p.18.

continue to travel, fish or hunt on unstable reservoir ice and waters. In total, more than 50 members of the community have been killed, directly or indirectly, as a result of the mega-project. A Canadian Treaty arbitration court has found Manitoba Hydro legally liable for a number of these deaths.

In sum, the Cree economy, subsistence culture and traditional way of life have been almost completely destroyed by the hydroelectric project. Pimicikamak Crees can no longer travel on our traditional routes, hunt, trap and eat our traditional foods or survive economically. Cree culture is synonymous with the traditional activities which used to be an integral part of our every day lives. Without these activities, our subsistence culture is fundamentally undermined.

### **c. Psychological**

The destruction of our traditional way of life in Northern Manitoba has caused a state of crisis and despair in the Cree communities. There are few or no cultural or economic prospects for our youth, and youth suicide is epidemic.

### **The Northern Flood Agreement**

In 1974 five Cree communities formed the Northern Flood Committee in order to protect Cree rights to whatever extent was still possible in the wake of the flooding. After prolonged negotiations with the Governments of Canada and Manitoba and Manitoba Hydro (the "Treaty Parties"), the Cree peoples entered into a Treaty agreement, informally known as the Northern Flood Agreement, which was ratified in 1978.

The Northern Flood Agreement provided for four acres of replacement land for each acre flooded, the expansion and protection of wildlife and harvesting rights, and support for economic development and promises of employment opportunities. Manitoba Hydro acknowledged responsibility for any damages which might accrue to the Cree peoples as a result of the flooding and the Crees were promised that the adverse effects of the flooding on the ability of the Crees to pursue our lifestyle and activities would be addressed.<sup>12</sup>

### **Northern Flood Agreement: a Broken Treaty**

Since the NFA was ratified in 1978, the Treaty parties have adopted an adversarial posture and refused to give effect to the NFA. The Treaty parties have taken the position that they will give effect to the NFA only to the extent that they are compelled to do so by legal action. Many important parts of the NFA have not been acted on at all. The Treaty parties refuse to acknowledge that the NFA is a Treaty, with the domestic constitutional protection which this implies.

Two Commissions of Inquiry, the Manitoba Aboriginal Justice Inquiry and the Royal Commission

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<sup>12</sup> Manitoba Aboriginal Justice Inquiry, supra, note 1., at p.173

on Aboriginal Peoples, have found that the Governments of Canada and Manitoba, and the Manitoba Hydro-Electric Board got what they wanted from the NFA Treaty, but that most if not all of the Treaty promises to Pimicikamak Cree Nation have been broken:

“... its [the NFA’s] history has been marked by little or no action in implementation of NFA obligations and a long, drawn-out (and continuing) process of arbitration to force governments to implement their obligations...”<sup>13</sup>

The Cross Lake Crees have received only negligible compensation under the NFA. They have not seen one acre of the promised replacement lands. There have been no initiatives over the years to eradicate mass poverty and unemployment in the Cree communities - poverty and unemployment caused by the flooding. In sum, the Cree of Cross Lake and the other Cree peoples have not been treated fairly and equitably as required under the NFA.

In 1990, the Treaty parties took a cash buy-out offer to one Cree community (Split Lake). Eventually this was accepted by an impoverished people, leading to the breakdown of the collective solidarity of the affected Cree peoples. Under the duress of more than 20 years of mass poverty and desperation, three other Cree communities later took the same path.

In a general statement of policy in January of this year, the federal Minister of Indian Affairs publicly apologized on behalf of the Government of Canada for divide and rule tactics (“disaggregation”) of which this is an example. The Government of Canada however continues to use these tactics against the Crees in Manitoba.

The Cross Lake Crees rejected this path because we believe the NFA is our only hope of maintaining our links with our traditional lands, including their right to their own subsistence, which cannot be replaced by money.

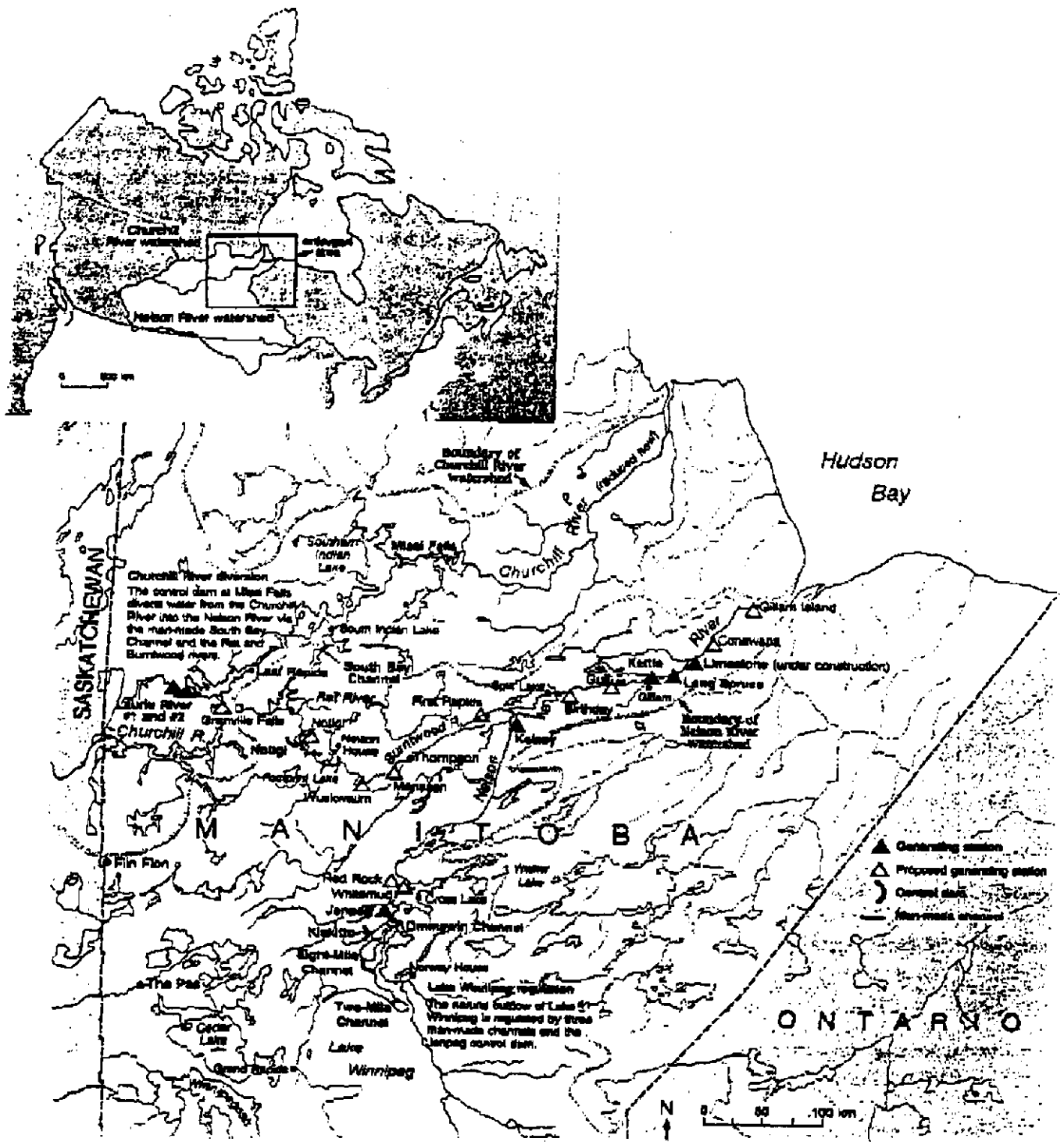
### **Violation of Cree Fundamental Rights**

The Project has devastated the traditional lands and resources of the Cree Nation, and deprived the Cree peoples of our own means of subsistence. The Project constitutes a breach of Pimicikamak Cree Nation’s indigenous, Treaty, domestic constitutional and international human rights. In particular it is a continuing breach of Article 1, paragraph 2, of the International Covenant on Civil and Political Rights, and of Article 1, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights.

July 30, 1998

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<sup>13</sup> [Federal] Royal Commission on Aboriginal Peoples, Final Report, Vol. 2, p. 517 (1996) (Commissioners included Mr Justice René Dussault and Madame Justice Bertha Wilson).



*The Churchill-Nelson hydro project has reshaped the landscape of northern Manitoba, affecting about 12,000 people in half-a-dozen communities. In addition to the seven existing generating stations, 11 more are proposed. At Limestone (right), workers dismantle a cofferdam built to direct the river's flow away from the dam and powerhouse under construction downriver.*



