

## Contributing Paper

# Lake Winnipeg Regulation Churchill-Nelson River Diversion Project in the Crees of Northern Manitoba, Canada

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# 1. Overview of Hydroelectric Development and Canadian Aboriginal People

The effects and impacts of the Lake Winnipeg Churchill-Nelson River Diversion Project on the local Aboriginal communities has striking similarities with the effects of past hydro-power developments on Aboriginal people in Canada. While every Aboriginal group is unique, the governmental approach to Aboriginal people and hydro development is somewhat similar across the country, whether the impacted Aboriginal people are parties to a treaty, negotiate a treaty or negotiate an agreement to deal with the effects of a hydro project.

Looking at Labrador in Eastern Canada, a hydro development in 1976 severely affected the Innu of Nitassin. At that time, the first two generating units at the Churchill Falls powerhouse flooded vast areas of land in the upper portion of the Churchill River watershed. This project involved the construction of one of the world's largest underground powerhouses and the 5 698 square kilometre Smallwood reservoir. The construction of Churchill Falls resulted in the flooding of Nitassin, the Innu's traditional territory. The Innu were not consulted or warned before construction and flooding. The flooding led to the loss of hunting territory, travel routes, canoes, other property, and Innu burial sites. The flooding also led to an increase in methyl mercury levels in the fish. Compensation has not been offered for the losses suffered by the Innu. Recent announcements have been made for further development of Churchill Falls. The Innu have responded to this ongoing activity by rallying support for their demands that include consultation with the Innu must occur on any further development in Nitassin.<sup>1</sup>

In the neighbouring province of Quebec, the most famous Canadian hydroelectric development to impact Indigenous peoples involves the James Bay Cree. In the early 1970's, work had begun on traditional James Bay Cree territory. In 1972 the James Bay Cree decided to pursue an injunction in Quebec Superior Court to halt the work on that project until the Cree and Inuit rights in the territory had been dealt with. They won that injunction on November 15, 1973 and four days later the Quebec government announced its willingness to negotiate. But three days after that, the injunction halting the work was set aside by the Quebec Appeal Court. Negotiations with the government began in 1974 while the construction proceeded. Construction included a major highway, an airfield, and a town site to house workers. For the James Bay Cree, the ensuing negotiations were conducted under duress and were highly inequitable. In 1975, the modern day treaty *James Bay and Northern Quebec Agreement* was signed on behalf of all James Bay Cree<sup>2</sup>. Over the years, the James Bay Cree have documented the impacts of the hydro project in various fora, continuing to use provincial, federal and international arenas to encourage the parties of the treaty to follow through with their obligations.

Ontario, considered the industrial heartland of Canada, has concentrated mainly on nuclear power for its energy needs. Despite nuclear power, Ontario has its share of hydro projects that have impacted Indigenous peoples. In the 1920s, hydro projects within the Nelson River basin were completed on Lac Seul, including a diversion of the Ogoki River. This resulted in the flooding of graveyards for the Lac Seul Indian Band. In 1958 with the development of the White Dog Falls Dam on the Winnipeg River and the Caribou Falls Dam on the English River, Aboriginal peoples had to be relocated. The Aboriginal people living in the area also suffered loss of fur production and faced water fluctuations that ruined traditional foods, burial grounds and sacred land sites in addition to healing medicines and wild rice fields<sup>3</sup>.

In Manitoba, the 1977 Lake Winnipeg Regulation Churchill-Nelson River Diversion Project was not the first to impact Aboriginal people living in that province. The 1960 completion of the Kelsey generating station was to serve the community of Thompson and the nickel mine. Kelsey caused wide-scale flooding of the Nelson River and Sipiwesk Lake, adversely affecting the Cree's traditional resource areas. In the mid-1960's construction began on the Kettle generating station further downstream within the Split Lake Cree's traditional use area.<sup>4</sup> The Kelsey and Kettle generating

stations, developed along the Nelson River, became pre-existing dams for later development of the Lake Winnipeg Churchill-Nelson River Diversion Project. The impacts involved the Crees living at Split Lake and Cross Lake. The 1964 construction of the Cedar Lake forebay and the construction of the Grand Rapids dam resulted in impacts on the Cree of Grand Rapids, Moose Lake, Chemanawawin and The Pas. At the time there was virtually no political opposition offered due to the isolation of these communities, and they were very much left unaware as to the full extent to which they were going to be impacted, which included flooding and relocation of the Chemawawin Indian Band.<sup>5</sup>

Just west of Manitoba, the province of Saskatchewan has also developed hydro projects with the Nelson River drainage basin that continues to affect Aboriginal people. In 1942, with the completion of the Whitesands Dam, the lives in native communities such as Southend were disrupted. Primarily built to provide more regulated water flow to the Island Falls Dams, Whitesands Dam resulted in a one and half metre increase of Reindeer Lake. The commercial and domestic production of fish and fur and transportation around Reindeer Lake were all impacted. 1964 saw the creation of the Squaw Rapids Dam on the Saskatchewan River. The Native community of Cumberland House was negatively impacted by downstream fluctuations in the water level of the various rivers, streams and channels in the Cumberland Delta region. Despite no resistance during the dam construction, extensive political and legal action ensued, in pursuit of mitigation efforts and compensation.<sup>6</sup>

In the province of Alberta, construction of the Bighorn Dam in the early 1970s affected the graveyard sites of the Stoney Indian Band and flooded other sacred places. The Stoney Indian Band was further impacted by three dams that were constructed on the Stoney Reserve, resulting in some contention over clauses of a signed agreement.

In the most westerly province of British Columbia, the 1956 Kemano I Dam impacted the Haisla Band, Cheslatta Indian Band and the Carrier-Sekani Tribal Council. Designed to provide power to ALCAN's mining and smelting operations, the diversion project affected one river and created an 890 square kilometre reservoir. The results of this project include widespread environmental damage and human dislocation, with the Haisla receiving a one time payment of \$50,000 based on the advice of the federal Department of Indian and Northern Affairs. This resulted in these three groups making a specific claim to the federal government. The W.A.C. Bennett Dam, completed in 1968, created Williston Lake, a 1 600 square kilometre artificial lake. Lawsuits resulted, with a specific claim against the federal government. Recently, the federal Indian Claim Commission found in favour for the Cree Indian Band of Fort Chipewyan. It held that no interpretation of treaty could justify such a massive infringement on the treaty rights of a First Nation or justify the destruction of its economic livelihood. The Indian Claims Commission found that the dam's impact substantially interfered with the exercise of the First Nation's treaty rights and entitlements, and that those rights were never extinguished, since such existing rights are protected by the Constitution of Canada.<sup>7</sup>

## 1.1 The Cree of Northern Manitoba<sup>8</sup>

Like most other Indigenous peoples, the customs, traditions, traditional knowledge, worldview and spiritual life of the Cree of northern Manitoba are all based on the environment. Rivers, lakes, trees, forests and the animals, birds and fish all play an important role in life. The identity of the Cree is based on their relationship with the Creator and all things around them. Therefore, because of their reliance on nature and the environment, any discussion about social impacts related to the construction and operation of dams cannot be separated from the environmental impacts created by such projects. In addition, consideration must be made of the unique historical and legal context concerning their relationship with the Crown. As signatories to a treaty with the Queen of England, their treaty is a sacred treaty, directly confirming their inherent right to live their traditional way of life. The sacredness of the treaty means it is impossible to extricate treaty and Aboriginal rights from any examination of social impacts arising from hydro development.

From time immemorial, long before the colonisers of Europe "discovered" North America, the Cree people lived in and around the area of what is now known as Lake Winnipeg, Churchill River and the Nelson River in the province of Manitoba. Living in and around the boreal forest, the Crees in Northern Manitoba are referred to as Swampy Cree because the land they live on is mostly muskeg. At the time of European contact, the Cree had pre-existing political structures and economies, following seasonal hunting, fishing, trapping and gathering cycles in the area. Like other Aboriginal people in Canada, they lived in "organised societies, occupying the land as their forefathers had done for centuries."<sup>9</sup> The importance of the relationship to the land and the spiritual connection to the Creator, and all things in life, were constantly reinforced. From generation to generation, the Crees pursued their traditional ways of life, recording it through oral tradition in the form of myths, legends, stories and accounts. The high importance of the oral tradition remains the central way in which education, communication of culture and socialisation takes place. Despite their histories, the Cree in northern Manitoba repeatedly faced the imposition of European values and law on their lands and way of life.

First contact between the Cree of northern Manitoba and western society took place during the fur trade in the seventeenth century.<sup>10</sup> For the purposes of pursuit of the fur trade, in 1670 the King of England "granted" the Hudson's Bay Company ownership of all land that drains into Hudson's Bay. The territory covered by the grant included all of present day Manitoba. This land was granted under the assumption that the King had the ability to impose such a European concept on the Aboriginal people, and was done without negotiation or consultation with the Cree. Subsequently, the Cree traditional lands in and around Lake Winnipeg and the Nelson River became very important fur trade routes. Trading posts such as Norway House, Cross Lake, Split Lake, York Factory and Nelson House were built, and Crees started to settle in and around these posts. During this time, positive and negative developments occurred in the relationship between the Cree and the fur traders. While the fur trade could be seen as a time of co-operation, recognition and mutual benefit,<sup>11</sup> it came along with its disadvantages. Questionable trade practices toward the Cree, the introduction of fatal diseases and the introduction of alcohol were some of the less beneficial aspects of this era.

An important legal development for the Cree and all Aboriginal people in Canada occurred with the recognition of the rights of Aboriginal people in the *Royal Proclamation of 1763*. Again, European values were thrust upon the Aboriginal people. The *Royal Proclamation* was without any input or recognition of the Aboriginal people and their existing laws. Based on the European concept of *terra nullius*, the *Royal Proclamation* was based in the European idea that the land was virtually empty, ready for discovery and settlement. While the European based *Royal Proclamation* treated the land as virtually empty, it did recognise the Aboriginal people living on the land. Consequently, as part of the Constitution of Canada, it is an early written source of the recognition of the inherent rights of Aboriginal people including Aboriginal title and land rights. The *Royal Proclamation* states: "And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that the several Nations or Tribes of Indians, with whom We are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds..."<sup>12</sup> Canadian constitutional development led to the federal government obtaining exclusive jurisdiction over lands and lands reserved for Indians, and led to the 1982 (s. 35) recognition and affirmation of Aboriginal and treaty rights.

In 1875, with subsequent adhesions in 1908 and 1910, the rights and lands of the Cree of northern Manitoba were subsequently guaranteed in 1875 by way of *The Lake Winnipeg Treaty, Treaty Number Five* (Treaty 5).<sup>13</sup> After Manitoba became a Province in 1870, many Aboriginal leaders felt the increasing pressures of settlement and the loss of wild game. Treaty 5, like the other numbered treaties, was conducted in the oral tradition of the Cree. Therefore, the interpretation of the spirit and intent of the treaties must go beyond the written text. The Crown followed a pre-existing, well established pattern of approaching Cree nations to surrender large tracts of land in return for annual cash payments. The Crees negotiating the treaty were at least involved and consulted, resulting in an

understanding from their unique perspective of what they were negotiating. For Treaty 5, necessary arrangements were needed for the navigation of the waterways for the purposes of settlement and development. Once an agreement was obtained, a text was produced that was held out to represent the oral promises of the negotiations. Among other things, this included undisturbed access for settlers and traders to specific waters, shores, islands, inlets and tributary streams.<sup>14</sup> The Cree understanding of the negotiations and oral promises is that the treaty was sacred, and through this solemn agreement, they agreed to share the land. Cree negotiations were primarily concerned about retaining and protecting their lands, requiring necessary access to the land and water to pursue their way of life. The treaty, and what it is and represents, is an intimate link to their continued survival and way of life in pursuit of their customs based on hunting, fishing, trapping and gathering that were the basis of their traditional economies.<sup>15</sup>

In 1876, the European pre-treaty practice of not consulting or involving Aboriginal peoples on laws that affect them resulted in the imposition of the first *Indian Act*. Designed to "civilise" and assimilate the Aboriginal people in Canada, it also attempted to represent the fiduciary obligation of the government of Canada to protect Indian lands. The current version of the Act prevents the unauthorised use or taking of the lands reserved for Indians,<sup>16</sup> and restricts Indian people's day to day activities. The Act also provides the Governor in Council "whenever he deems it advisable for the good government of the band" to intrude on the governance of an Indian Band and put the selection of its Chief and Council under the *Indian Act*.<sup>17</sup>

In 1930, the Northern Manitoba Cree's relationship with the federal government fundamentally changed with the introduction of the *Manitoba Natural Resources Transfer Agreement*. Again without the consent of Aboriginal peoples, another law was imposed on them. Reflected in the Constitution of Canada, this agreement transferred federal ownership of Crown land to the province of Manitoba. The effect of this was that any lands not reserved for Indians, such as the traditional lands used by Aboriginal people, were now considered provincial Crown lands. The right for the province to use traditional lands of Aboriginal people for its development purposes included hydroelectric development.

## 1.2 Lake Winnipeg Churchill-Nelson River Diversion Project

The Lake Winnipeg Regulation Churchill-Nelson River Diversion Project (the Project) is a massive ongoing hydroelectric development project in the northern part of the province of Manitoba. When completed, the Project will eventually have the capacity to generate 8,400 MW. Currently, the Project regulates Lake Winnipeg and diverts about 85 percent of the Churchill River through diversion channels and control structures in order to increase outflows to five existing dams on the Nelson River. Nine more dams are planned to develop an additional 5 000MW. The regulation of flows of Lake Winnipeg and both rivers allows for peak river flows to match peak periods of demand for electric power during the winter.

The Project harnesses the northerly water flows of the Nelson River drainage basin and the Churchill River drainage basin. The Nelson River drainage basin, one of the main drainage areas in North America, covers an area of one million square kilometres. The western boundary of the Nelson River drainage basin begins at the Rocky Mountains and covers the provinces of Alberta, Saskatchewan and Manitoba; the southern part covers parts of Minnesota and North Dakota of the United States; and the eastern part of the basin begins in north-western Ontario. Water of the Nelson River drainage basin flows into Lake Winnipeg, then north via the Nelson River into the Hudson Bay. Due to snowmelts in the spring and heavier rainfalls in spring and early summer, the natural inflows to Lake Winnipeg are greatest during the spring and summer. With a surface area of 15 176 square kilometres, Lake Winnipeg is the world's thirteenth largest lake and eleventh largest lake with fresh water, and is the seventh largest lake in North America. Just north of the Nelson River drainage basin is the Churchill River drainage basin with an area of approximately 283 350 square kilometres. The Churchill River flows easterly from the province of Saskatchewan into Manitoba, through Southern Indian Lake, and

then north-easterly, parallel to the Nelson River at about 160 kilometres, eventually emptying in the Hudson Bay at the town of Churchill.<sup>18</sup>

First considered in the 1950's, the Lake Winnipeg Regulation Churchill-Nelson River Diversion Project was founded in a 1966 agreement. In 1966, Manitoba Hydro, a Crown Corporation owned by the province of Manitoba, received the governmental authority to use Lake Winnipeg as a natural reservoir for hydroelectric development on the Nelson River. Part of a northern development scheme, the agreement between the government of Canada and the province of Manitoba permitted the regulation of Lake Winnipeg because it was seen as necessary to match the consumer needs of electrical power. During the winter when energy demand is high, the natural river flow was low, and during the summer when energy demand is lower, the natural river flow was high. Therefore, it was necessary to decrease the outflows in the spring and summer and make available more outflows in the fall and winter by simultaneously dealing with obstruction by ice of the Nelson River channels.

### 1.3 Lake Winnipeg Regulation

The Lake Winnipeg Regulation required the construction of three diversion channels to substantially increase the winter outflow of the lake, a generating station and control dam, and a dam to prevent water from backing up. The three channels, 8-Mile Channel, 2-Mile Channel and the Ominawin Channel, are each approximately 7.6 meters in depth and range from a width of 120 metres to 300 metres. Designed to bypass natural constrictions of the Nelson River, the channels were constructed by excavating over 37.3 million cubic meters of material. From 1972 to 1977, construction of a generating station and control dam created the 126MW Jenpeg Generating Station. With only a 7.3m operating head, Jenpeg was built primarily for the controlling of the water outflow from Lake Winnipeg in the Nelson River. A direct result of this was an increase in the upstream levels, which were somewhat negligible considering the size of the reservoirs created out of Lake Winnipeg and nearby Playgreen Lake. However, significant changes were made downstream, with a reversal of seasonal flow patterns, summer exposure of lakebeds and double the natural winter discharges. To prevent water from backing up into the nearby Kiskitto Lake, a dam had to be built at the outlet of the lake, along with 16 separate dikes at a total length of 14 kilometres, to protect the lake from the highest levels of the Nelson River.<sup>19</sup>

The Cree of Cross Lake and Norway House were most affected by Lake Winnipeg Regulation, with downstream impacts on the Cree of Split Lake and York Landing.

### 1.4 Churchill-Nelson River Diversion

The Churchill River Diversion was so designed as a cost saving measure to divert 85 percent of the river to the Nelson River (and nearby Burntwood River) in order to use the Kelsey and Kettle generating stations already built on the Nelson River. By 1972, the requisite licenses were granted, and the diversion was in operation by 1977. The diversion plan centres on Southern Indian Lake, and includes two control dams and an excavated channel. One control dam at Missi Falls controls the outflow of Southern Indian Lake and raised the level of the lake by three metres. The other control dam regulates the flow into the Burntwood River-Nelson River systems. The excavated channel stems from South Bay of Southern Indian Lake to Issett Lake, creating a new outlet to allow water of the Churchill River to flow into the Rat River-Burntwood River-Nelson River systems.<sup>20</sup>

Diverting the Churchill River provided the groundwork and justification for the construction of three additional dams on the Nelson River. The Nelson River is 656 kilometres long, with its headwaters starting in the northeast corner of Lake Winnipeg. It descends about 217 metres through various falls and rapids before entering the Hudson Bay. The existing five generating stations built on the Nelson River are as follows: Kelsey (first unit in service in 1960, capacity 224MW, operating head 17.1m); Kettle (1971, 1 272MW, 30m); Long Spruce (1977, 980MW, 26m); Jenpeg (1977, 126MW, 7.3m);

and Limestone (1990, 1 330MW, 27.6m). The five generating stations produced 86.3 percent of the total generating capacity of Manitoba Hydro in the year ending March 31, 1998. The 1997-98 year proved a profitable endeavour with gross revenues for Manitoba Hydro of \$1 041.1 million (CAD) of which about \$250 million (CAD) was from exports to the United States, resulting in a net income of \$110 million (CAD). The government of Manitoba received direct revenue from Manitoba Hydro in the form of water rental charges in the amount of \$54.6 million (CAD).<sup>21</sup>

The Cree communities of South Indian Lake and Nelson House were most affected by the Churchill-Nelson River Diversion Project, with downstream impacts felt by Split Lake and York Landing.

## 2. Social impacts from the project

Problems determining the social impacts of the Project on the Cree can be found in the obvious differences of cultural values, necessitating the understanding of what a particular culture finds of value. Any determination made of the Cree people may not truly represent the total social impact if it does not take into account their unique perspectives and circumstances. For instance, the premise of the Project was to "develop the north" for the benefit of all Manitobans by regulating and diverting water levels and flows to correspond with market demand for electricity. Manitoba Hydro presented the 1977 completion of the project as needing to flood some inconsequential areas of land, the water levels and flows in some areas to fluctuate no more than the governmental promised and misleading "length of a pencil."<sup>22</sup>

From a Cree perspective, since time immemorial they have shared in what the Creator has provided, and any flooding of the land would bring impacts on the environment. Because of their reliance on the environment, the Cree way of life would therefore be directly affected. This would not be in pursuit of development of the Cree as a people. Not only were their lands that were set aside as Reserve lands for them flooded, but the traditional Cree lands were also flooded. Contrary to oral tradition and antithetical to the identity of a Cree person that "unbroken and unimpeded access to the very resources from which they drew the entire economic sustenance of their life,"<sup>23</sup> the flooding would lead to the destruction of traditional pursuits and the basis of their traditional economy. Flooding impacts the lakes, rivers and land, directly affecting their traditional pursuits of hunting, fishing and trapping, affecting their inviolable rights solemnly promised in Treaty 5, rights that were never given up. The violation of the sacred treaty rights can be seen as a direct attack on the Cree people themselves, impacting their means to economically sustain them and continue their way of life.

To gauge the social impacts of the Project, the perspective from which one comes to such an analysis is also problematic. To measure the impacts on the Cree caused by the Project, reliance is usually on western-based, scientifically proven studies on non-western societies. The lack of available literature on this subject is proof of the generally regarded notion that there were no adequate and comprehensive pre-project environmental or social impact studies performed to properly base an analysis of social impacts. Ironically, for issues of compensation and mitigation, the very parties that created the Project pursuant to their concept of development rely on their lack of conducting such western-based studies to provide remedies to the Crees. In any event, existing studies, such as they are, did not adequately consider the Cree people, their traditional knowledge, or the importance of the environment to their traditional way of life.

Some studies, like the 1975 eleven-volume study done while construction was already to proceed,<sup>24</sup> were not comprehensive and inadequate to be used for baseline data.<sup>25</sup> The literature that does exist is mainly for only one community, South Indian Lake,<sup>26</sup> done because there was some discussion as to the degree to which water levels were to be fluctuated, necessitating either the complete relocation of a community or partial relocation. In addition to the lack of pre-project studies, the Project is riddled with a lack of comprehensive post-project environmental or social impact studies. Except for the 1996 Split Lake Cree Nation environmental assessment, most studies are disparate studies on discrete scientific matters. The Split Lake study recognised the inadequacies of any social impact assessment because of the lack of baseline data.<sup>27</sup>

Despite the lack of studies conducted from a western, scientific perspective, there exists a wealth of information from the Cree people themselves. Many Elders, in the oral tradition of the Cree, possess traditional knowledge, and are able to relate how things existed before the Project. The Cree perspective has been presented in oral evidence on record, and should be considered as valid and demanding of respect when dealing with social impacts.<sup>28</sup> Unfortunately, over the years that the project has been in place, the living source of information of the social impacts of the project in the form of Elders who possess the traditional knowledge, are passing away. Consequently, addressing

the social impacts continues to get harder to measure from either perspective since the western-based scientific measurement is lacking, and the traditional knowledge of the Cree slowly gets lost.

With the above in mind, the construction of dams changed the water regime resulting in adverse impacts on the ecology that socially affected the Crees. One obvious direct result is the impediment of the navigation of lakes and streams, fundamentally altering the way of life of the Cree in all seasons of the year. Crucial to the continuance of the Cree way of life to fish, trap and hunt, it is essential to travel by water to get to these animals. The changes in the water regime resulted in water level fluctuations, flooding, submerged rocks and vegetation that destroyed boats and motors, and floating debris from flooded vegetation, impeding navigation and trepidation when travelling on the water. In winter, ice formations and hanging ice and slush have caused numerous accidents, loss of property and deaths, along with added insecurity about the safety of travelling on the ice.

The change in water flows brought on by the dams increased erosion and sedimentation within various lakes and rivers. Numerous types of fish, especially sturgeon that was once very numerous in the area but is now an extirpated species, have been impacted by the Project in a variety of ways. Elevated mercury levels in fish, that were then passed onto fish-eating fur-mammals, were found by scientific studies,<sup>29</sup> and the Crees have found that the taste of various animals have changed, becoming soggy, muddy, mouldy or mushy, depending on the animal.<sup>30</sup> Increase of water flows in various spanning grounds resulted in sedimentation, leaving less conducive environs for fish eggs to thrive. In some affected lakes, the quality and number of fish caught were decreased, while in other areas fishing completely ceased to exist. Consequently, fishermen have to travel further and work longer days, to maintain income and harvest yields. Nets and equipment have been damaged and affected in a variety of ways; from being caught on submerged trees to the "catching" of sludge on their nets.<sup>31</sup> Many Cree no longer fish, losing their traditional source of livelihood and maintenance of their cultural identity.<sup>32</sup>

The change in water flows brought on by the creation of diversion channels for the dams brought about its own impacts. For instance, 2-Mile Channel, excavated at the top of Lake Winnipeg into nearby Playgreen Lake had a devastating impact on the surrounding shoreline. Where there were once pristine beaches on the north shore of Lake Winnipeg, the beaches are now gone. The water has washed away the sand and has started to further erode the shoreline. Erosion caused by this diversion channel alone continues at about 50 feet per year.<sup>33</sup>

Fishing has not been the only traditional pursuit impacted, hunting and trapping have also been affected. Moose prefer to eat the food that grows along the shoreline,<sup>34</sup> the flooding effected this environment. While caribou may not have been so affected by such shoreline availability for food, the change in the water regime, lack of availability of foods in flooded areas and the construction of hydro lines ultimately have lead to a change in migratory patterns. Although an economic benefit exists for some trappers to continue to pursue trapping, it is actually carried out fore its cultural or spiritual significance, in recognition of its fundamentals to the Cree way of life.<sup>35</sup> Impacted fur bearing animals include beaver, muskrat, mink, otter, ungulates and rabbits, affecting the traditional trapping of these animals. The commercial hunting of all animals, including waterfowl, along with fishing and berry picking was often done for personal consumption. A decreased amount of the traditional foods resulted in an increase on the reliance of store bought foods which has changed the eating habits, nutrition and health of the Cree.<sup>36</sup> The Cree had further benefit from the eating muskrat and beaver that had themselves eaten plants found in the water, which had medicinal properties.<sup>37</sup> The distrust of the environment due to the impact of the hydro project including its change in the water, which became unsafe to drink, strikes at the core of Cree values and identity. Impacts on health come with the change in ecology, as there is also a change in availability of medicines.

In addition to the impacts on the traditional life of the Cree in general, specific impacts on women include the role of women in the family. Before the flooding, women would accompany the family out on fishing, trapping and camping excursions. With a decline in fishing, hunting and trapping, a

corresponding decline occurred in the domestic harvesting, an activity which involves family interaction and participation in traditional activities. Because of the danger created by the unsafe water and navigational conditions, many women now simply stay at home. Indeed, the recreational opportunities for families to pursue were plentiful prior to the flooding. On pre-existing pristine beaches, swimming was readily available, and the lakes and rivers provided excellent skating, fishing, hunting and boating opportunities for families to enjoy together. After the flooding, beaches and campsites were inundated and washed away, and the rivers became unsafe to navigate and swim. The lack of recreational activities and traditional customary pursuits, coupled with the unusual overrepresentation of women looking after the family and children, had meant the loss of the traditional activities had an overwhelming. As a result, children and others increasingly who were reliant on social assistance, became involved in mischief and law breaking, alcohol abuse, and sometimes suicide.<sup>38</sup>

Finally, all things in life have a spiritual value for the Cree. This spirituality does not give men or women the right to destroy that, which is sacred. Therefore, the trees, fish and animals all have a sacred value. It is in this sense that the damages stemming from the hydro project is as serious as the desecration of temples or places of worship, as the environment is, in a sense, the Cree peoples' "place of worship."<sup>39</sup> It is this spiritual aspect, liked the customs and traditions, that are very hard to measure. Damages that make the payment of money for compensation does not address or mitigate the violence done to spiritual values,<sup>40</sup> and, at times, monetary compensation is an inappropriate way to address these impacts.

## **2.1 Additional impacts: negotiated agreements**

The way in which the Project was dealt with in various communities created its own share of social impacts. The social impacts faced by some communities that were impacted, correspondingly relate to the way they were dealt with by the governments of Manitoba and Canada and Manitoba Hydro. Three situations exist that have lent to their own social impacts: lack of negotiated agreements to address the adverse impacts of the Project; the Northern Flood Agreement; and comprehensive agreements.

### **2.1.1 Lack of negotiated agreements**

The Fox Lake Cree is one example where there was no agreement made to address the adverse impacts of the project.<sup>41</sup> Residing in the area of the town Gillam, the Crees of Fox Lake were living on Crown land which was otherwise unoccupied and unallocated. Fox Lake had unmet entitlement to Reserve lands, and had requested allocation of the lands they were living on. The lack of Reserve lands provided to be disadvantageous for Fox Lake. The town of Gillam was in an ideal geographic location for the transportation of hydro workers necessary for the construction of the Kettle and Kelsey generating stations that occurred in the late 1960's. As a result, the local government district of Gillam was created in order to authorise, plan for and implement the development of the Gillam area in support of the Project. The development of Gillam lead to a greatly expanded town area that included the settlement of the Fox Lake Cree.

Unprotected by the lack of Reserve status and perceived as "squatters" on provincial land, Fox Lake was at the mercy of the town planning of Gillam. Seen as substandard and unworthy of further investment, the existing housing of the people in Fox Lake were judged to be expended for the purposes of the project. Consequently, the town of Gillam proceeded with a plan to demolish and relocate existing Cree residences. The community was relocated, including the moving of gravesites to accommodate the building of a hospital. The relocated housing for the Crees was below the standards set for the new Hydro employees moved to the area.

The Cree of Southern Indian Lake are another example where no agreement was reached to deal with the adverse impacts of the Project. Despite the community being made up of Treaty Indians, like the Fox Lake Cree, they were not living on federal Reserve lands and were treated as "squatters."

However, they were living on Southern Indian Lake, a lake located on the Churchill River that was seen by Manitoba Hydro as essential for the diversion of its waters to the Nelson River. Despite hearings and an attempted court injunction that ultimately failed, the diversion eventually was constructed, resulting in the raising of the lake an additional three metres.<sup>42</sup> On the understanding that they would receive benefits out of the Project, the Cree of Southern Indian Lake moved. Going into negotiations to retroactively deal with the effects of the Project, Southern Indian Lake has received some monetary compensation, but none that they consider enough to adequately "face the harsh realities of trying to make a living off a dying lake."<sup>43</sup>

The lack of any negotiated agreement because of the lack of the *Indian Act* Reserve lands has left these two communities alone to deal with the impacts and future effects of the project. Local attempts to obtain adequate compensation from parties that do not see them as worthy of compensation has continued to be the source of many social problems in the communities.

### 2.1.2 The Northern Flood Agreement

The Northern Flood Agreement (NFA), is an agreement between Canada, the Province of Manitoba, Manitoba Hydro and the Northern Flood Committee, an organisation representing the interests of the five Cree communities impacted by the Project to deal with the effects and future unforeseen effects of the Project. The five Cree communities represented by the Northern Flood Committee are Split Lake, York Landing, Nelson House, Norway House and Cross Lake. Leading up the negotiations of the NFA,<sup>44</sup> in 1971, the governments of Manitoba and Canada jointly agreed to carry out a study to "determine the effects which the regulation and diversion projects (were) likely to have on other water and related resource users, to indicate ways in which the projects (might) prove beneficial to such other uses, to recommend modifications in the design and operation of the works, and to recommend remedial measures where considered necessary to lessen undesirable effects."<sup>45</sup>

Prior to the signing of the NFA, the 1975 Final Report of the Lake Winnipeg, Churchill and Nelson Rivers Study Board that lead up to the negotiation and signing of the NFA only hinted at the devastation to come.<sup>46</sup> The Recommendations called for a settlement that Manitoba Hydro and other resource developers provide just compensation or mitigation for all damages resulting directly from the developments. Following those Recommendations, the NFA created a special appeal mechanism be established to which unresolved compensation issues can be referred for adjudication, and a mechanism to be established to deal with social and related economic issues including

- (a) information and communication problems related to hydroelectric development with particular emphasis on the alleviation of social and psychological stress,
- (b) mitigation and compensation issues, and
- (c) monitoring and analysis on ongoing social and economic changes related to hydroelectric development and, more generally, northern development.

Different cultural perspectives of the parties influenced the negotiations leading up to the signing of the NFA:<sup>47</sup>

- A culturally biased concept of the relationship of the human species to the rest of the environment forms a *leitmotif* woven through the negotiations leading to the NFA and through the Agreement itself. The concept reflects the attitude of mainstream institutions, (including the management of Manitoba Hydro and the governments of Manitoba and Canada), and aggravates the conflict between these institutions and the First Nations. The belief that the untamed Nelson and Churchill rivers flowing unharnessed to the sea constituted a wasting asset and unused resource is entrenched in the Agreement. Established conventional wisdom saw, (and sees) the environment as existing for the use of man, and describes all non-human components of the environment as "resources", i.e., as natural sources of wealth or revenue. It is an established and generally accepted corollary of this view that failure to develop and use such resources would be

improvident and foolish, and in the view of some, a waste of assets proffered by a benevolent providence.

- Manitoba and Manitoba Hydro held to the notion that environmental damage could be mitigated in some measure and that, beyond mitigation, monetary compensation would equate with environmental damage. They also held the view that money paid to adversely affected persons (singly or in communities) would compensate for insults to the environment. The prevailing view was that environmental damage is transactional and that it can be mitigated or compensated by tendering money; the symbol and cipher for all things of material value.
- The Cree view of environment stands in strong contrast to that of the Project proponents. Impacts to the environment are seen as defilement rather than damage. Neither compensation nor mitigation are always acceptable forms of redress. This view is based upon concepts of inter-specific equality and reciprocal behaviour. Moreover, man has no exclusive claim to proprietary right to the environment and consequently, compensation paid to humans does not necessarily balance insults to the environment or insults to other species.
- The importance of Reserve land to Cree people is exemplified in their language where Reserve is called "iskunikun" which literally translated means "the part that is left", the implication being that only a small portion of land remains of the vast territory which was "shared" under Treaty. The insignia on NFC letterhead reads "OUR LAND AND WATER IS OUR LIFE".
- "Our world view is wholistic (sic). Order and balance are two basic and fundamental principles inherent to the Cree cosmology. A lack of order or balance invites chaos and sickness. When you dam and quiet the voice of yet another river system, you have pronounced the death sentence upon ten thousand people. When you transfer, move, re-arrange and change the face of shorelines and the delicate balance of eco-systems, you are playing god; and yet you are not god. First there are four elements, which sustain life: earth, water, air and fire for cosmological order and physical existence to prevail. In the Indian world there is a fifth and more important order of consideration, that of the spiritual dimension. We the human being, consider our place upon mother earth of equal value and importance as these trees you would see standing raped and naked out in the water. We are a people whose lives are inter-woven to the waters and forests of these lakes, of these lands. My ancestors did not consider themselves sophisticated or superior over any other living species." (Chief Norman Linklater, May 27, 1992 in Conawapa Environmental Review Panel, June 1992).
- "It is hard to separate the issues of hunting, fishing and trapping because these issues are our livelihood which are a fundamental part of our land and water. Our land and our water are our way of life. There is no dollar value to the loss of livelihood " (Cross Lake Elders Group, May 29, in Conawapa Environmental Review Panel, June 1992).
- "The land has been provider of our people; a mother. Our people have always been dependent on the land to survive; like a baby depends on its mother to survive. If you continuously change and deplete the resources of the mother, the baby will die. The same people will lose their traditions and will cease to exist as they had once before. We would lose our identity as a people..." (Rusty Beardy, York Landing First Nation, May 30, 1992 in Conawapa Environmental Review Panel, June 1992).

In 1977, the NFA was signed, despite the Crees negotiating under unfair circumstances as the construction was already under way. The NFA represents a progressive response to the impacts of the Project, covering almost all aspect of the possible impacts that could be related to Hydro development, and providing a means to address the property, environmental, and social problems created by the Project, without simply paying out a lump sum of cash for compensation.<sup>48</sup> Considering that construction had already began, the time that the parties were under to negotiate resulted in a lack of

agreed definitions, definitions that could have been worked out if a longer time was available for negotiations. Nevertheless, the requisite open-ended aspects of the terms and definitions allowed for contemplation of the future undetermined adverse effects, but have subsequently led to be one of its greatest weaknesses.

The most prominent aspect of the NFA, sometimes referred to as the heart of the NFA, is Article 16 and Schedule E. Schedule E provides for a community development plan and planning process for the elimination of mass poverty and unemployment caused by the Project.<sup>49</sup> Lands are to be given in exchange for the flooded lands. Free and normal navigation of the waterways by the Crees is guaranteed. Impacts to personal property can be dealt with by making a claim for damages. Protection is provided to cemeteries and objects of cultural significance. Programs are to be developed for addressing the impacts to trapping and fishing. Potable water is to be made available. Employment, education and training are to be provided. Environmental impacts are to be corrected and monitored.

As a solemn agreement between all the parties, the Cree people and Elders view the NFA as a treaty. The people recognised the importance of what they were told orally; that the Project would produce so much revenue that the money would go back into the communities and their lives would be better through the elimination of mass poverty and unemployment. For them, the NFA represents compensation for adverse affects from the Project and the basis for the development of a viable and sustainable Cree livelihood in their traditional lands.<sup>50</sup> The Elder's and Cree people's understanding that the NFA is a treaty has been supported by the 1991 report for the Manitoba Aboriginal Justice Inquiry.<sup>51</sup> In this vein, one of the co-authors of the NFA has explained that it is a uniquely novel, open-ended and long-term social contract of unprecedented rights, benefits and entitlements that binds both the federal and provincial governments, complete with its own private court and court procedures to make it work.<sup>52</sup> This view was supported by the then parties and after its signing the then federal Minister of Indian Affairs who, after the negotiations and ratification, declared the NFA was a "Charter of Rights and Benefits" for those Cree Nations involved.<sup>53</sup>

The NFA reflects the Cree peoples' respect and importance toward land, providing access to their traditional land use territories and granting easements for flooding of their land. It did not require the Cree to surrender their Reserve lands. Compensation lands were to be provided for the land that was flooded, representing the legal, moral and ethical way to deal with Aboriginal people, their land and their rights. The NFA is to last for the duration of the Project, without any definitive termination date and requires continuing obligations on behalf of the government and Manitoba Hydro to respect its spirit and intent for generations to come. In addition, the NFA obligates the Parties to jointly examine ways of managing wildlife resources, with the Crees having a say and encouraging maximum resource harvesting activities and opportunities.

Moreover, the NFA requires the Parties to identify Project related impacts and monitor environmental and socio-economic changes in the communities and surrounding areas. Any disputes are to be resolved by arbitration, potentially a more flexible and less costly approach than litigation, with costs for the NFA Cree communities to be paid for by the other parties to the NFA. With rules of evidence in arbitration not as strict as those in a court of law, the NFA allows for the inclusion of traditional oral testimony when determining impacts of the Project.

Different perspectives on the NFA have lead to the governments and Manitoba Hydro to pursue strategies to restrictively interpret the NFA. Contrary to the view of the Cree that the NFA is a treaty, the governments of Manitoba and Canada and Manitoba Hydro have either not commented on this aspect or denied its status as a treaty, effectively putting at odds the interpretation of its implementation to its full "spirit and intent."<sup>54</sup> The effectiveness of the NFA has been severely compromised by lack of a defined implementation process and a co-ordinated body to oversee implementation. The open-endedness of the NFA has required good will, co-operation, and energetic co-

operation for full implementation. Unfortunately, like some aspects of Treaty 5 itself, some clauses of the NFA are ambiguous and called for further negotiation.

Predictably, the parties other than the Cree had problems with implementing without precise definitions. Thus, considering the time that the parties were under, and the fact that the construction of the Project was taking place, the technicality as to definitions would arguably have been too long to work out during negotiations. The requisite open-ended aspects of the terms and definitions have subsequently been one of its greatest weaknesses. Identified shortcomings of the NFA<sup>55</sup> include undefined terms, a lack of definition or scope, along with a lack of specific time limits or methods for the negotiation of programs of compensation and mitigation in respect of the community traplines and fishing. There is no provision or requirement for monitoring or evaluating the resource harvesting programs. As well, there is a lack of defined funding, timelines, project impact monitoring, and failure of the proposed Wildlife Advisory and Planning Board for the NFA to effectively operate.

As mentioned, one of the most problematic aspects of the NFA is that comprehensive pre and post project environmental assessments were not conducted, and while the NFA require environmental assessments and socio-economic impacts monitoring, they were never established. In a review of the handling of the NFA by the federal Department of Indian and Northern Affairs in 1992, the Auditor General of Canada confirmed a need for a comprehensive environmental impact assessment.<sup>56</sup> While there have been numerous specific scientific studies performed by the governments of Canada and Manitoba and Manitoba Hydro, none of them have studied the social impacts. Only one NFA community in 1996, Split Lake Cree Nation, has finally obtained an environmental assessment, which lacked a comprehensive social impact assessment.<sup>57</sup>

Finally the arbitration process, as a means of settling disputes, has resulted in a lack of implementation, with parties focussing on settling claims and ultimately discharging responsibility under the NFA. While the rules of evidence are not as strict as a court of law, the provision of evidence to support claims has been problematic since there were no adequate pre-project studies done. Nevertheless, in some instances oral testimony has been allowed, but the problem with this is for the Elders and people who know how things were prior to the project are passing on. Ultimately, the adversarial nature of arbitration has left the claims process as a sole benefit to the numerous lawyers and consultants, leaving most Crees without realising much, if anything, from the process. Even the NFA Cree communities' attempts to force implementation through the Arbitrator were thwarted by the government of Canada's legal position that the Arbitrator cannot order the government to do anything except issue recommendations.

As with most agreements and treaties with Aboriginal people in Canada, the government must respect and follow through with such duties, responsibilities and rights accorded to the Aboriginal people. Yet, as in the words of the former federal Minister of Indian Affairs, there has been "no political will on the part of government" to give full force and effect to the NFA, leaving many empty promises.<sup>58</sup> The social ramifications of this has meant that the communities have not seen the promised mitigation and compensation for adverse effects of the project, leading to distrust and frustration with the other NFA parties. In some communities, the frustration has caused animosity, usually amongst those that believe in the solemnity of the NFA and recognise it as a treaty, and others that have been frustrated without seeing much benefit from it.

### **2.1.3 Comprehensive implementation agreements**

Over the years, there has been numerous benefits which have flowed from the Northern Flood Agreement, including millions of dollars paid out in compensation and the provision of water and sewers.<sup>59</sup> Despite these benefits, having such an agreement has not meant that the Northern Flood Committee, as a collective entity of five Cree communities, has been dealt with any better than those communities without such an agreement. The NFA has left those Cree disappointed, with unmet expectations that the other parties would deal with all the necessary remedial, mitigatory and

compensatory aspects of the agreement that arose from the Project. An agreement with such legal obligations in the Northern Flood Agreement contains the best intentions and respect for Aboriginal and treaty rights, but has proved to be difficult to fully implement. Indeed, the arbitration process has been expensive, confrontational and time consuming, with benefits taking years to finally be resolved.

In light of the problems concerning implementation of the NFA, and considering the continuing obligations of the governments and Manitoba Hydro under the NFA, a "Proposed Basis of Settlement" (PBS) was arrived at after negotiations in 1990. All five Cree communities subsequently rejected the PBS. However, the PBS was individually accepted by the Split Lake Cree, with three more of the communities subsequently entering various forms of "comprehensive implementation agreements" to implement the NFA. For those that sign such agreements, compensation land is provided along with monetary compensation, and there already has been payments in excess of \$220 million (CAD), including over \$100 million (CAD) in Manitoba Hydro Bonds to be held in trust.

The comprehensive implementation agreements do not provide for the NFA remedial and mitigatory obligations of the parties. They also limit NFA ongoing liabilities of the parties, and restrictively interpret terms and obligations along with providing numerous indemnity and release clauses in favour of the governments and Manitoba Hydro. In addition, the comprehensive agreements neglect to address the elimination of mass poverty and unemployment and provide for such remedial and mitigatory environmental works. Moreover, the NFA right of first priority to resources for the Cree is taken away, the province of Manitoba has absolute power to regulate the use of lands and waterways enabling the province to impose fees, issue permits and licenses on any person, including First Nations people. The process of reducing the impacts of the Project to cash payments has done exactly the opposite of what was recognised even before the flooding and construction of the Project. The reduction of the environment to a commodity with no spiritual value effectively undermines the Cree cultural identity and can be seen by the governments' and Manitoba Hydro's view that compensation was proposed solely to take care of "damage to the economics of the environment."<sup>60</sup>

Because the NFA has not dealt with the impacts on the 'five Cree communities collective' according to its original spirit and intent a division has been created between the communities. Reflected in the NFA, there were provisions to encourage the Cree to continue their resource harvesting activities to the maximum extent possible, to ensure their traditional way of life would remain intact. This would eventually be reduced to monetary terms by the other parties, contrary to mitigatory and remedial measures preferred in the NFA.<sup>61</sup> Supported by Manitoba Hydro and the province of Manitoba, the social impacts of the Project are reduced to a technical and economic analysis, payable to the Cree Nations to allow them to deal with the money as they seem fit, and justifies their position of paying off and paying out of the NFA obligations.<sup>62</sup> Ironically, while the government and Manitoba Hydro continue to consider monetising impacts from Hydro development, they are against the idea of revenue sharing, a process by which the Cree could receive ongoing financial compensation for ongoing effects of the Project. Manitoba Hydro has restrictively seen this as providing a derived benefit from communities that may be in the right place and at the right time when they are flooded. In addition, they perceive this as unfair to other Manitobans, ultimately affecting the purpose of hydro development for the provision of low hydro costs to all Manitobans as it would require raising the costs of generating electricity in order to pay for such sharing of revenue.<sup>63</sup>

Numerous indemnity and release clauses for the governments and Manitoba Hydro that come along with the comprehensive agreements effectively terminate the ongoing rights of the NFA, and terminate the ongoing fiduciary obligations of Canada. It is noted that while the comprehensive agreements provide money and lands to the Cree communities that sign in, it also provides for an increase in the water levels, a fact that was not disclosed when the draft agreements were being brought to the people. Basically, this means that the compensation for the effects of the Project has been offered contingent on accepting future development while at the same time eliminating the NFA rights to address future impacts of such development.

There is no requirement in the NFA for rights to be lost in order for it to be implemented. The extinguished NFA rights that could address many of the remedial and mitigatory work that still need to be done to address the social impacts and environmental devastation simply perpetuates such problems, promoting the impoverished state of the Cree. Contrary to the government of Canada's practice with the NFA Crees, the report of the Royal Commission on Aboriginal Peoples found that the practice of extinguishing such Aboriginal and treaty rights is not an option. Such extinguishment continues the deprivation of the Cree's own means of subsistence. In this regard, agreements that extinguish such rights are a violation of the human rights of the Indigenous people of Canada, and have been so found by the respective United Nations bodies that consider violations of article 1 of the *International Covenant on Economic, Social, and Cultural Rights*<sup>64</sup> and the *International Covenant on Civil and Political Rights*.<sup>65</sup>

Additional impacts resulting from such agreements exist in the form of violation of the traditions of the Cree and their human rights directly at the local community level. With its fiduciary obligations, the government of Canada must ensure that with such agreements that extinguish rights and affect Aboriginal and treaty rights, it has to consult and obtain the informed consent of the Cree people themselves, not just the political representatives of the community. This should include public meetings, open discussions and explanations of the agreement. For example, in the community of Norway House, this never happened, and the rights associated with conducting such consultations and democratic expression. The way that the government of Canada supported the ratification process in Norway House is an example of the Cree traditions and the violation of human rights that took place.

In Norway House, the traditional way for the community to make decisions was by way of consensus at public meetings. However, through the strict adherence of the *Indian Act*, the Department of Indian Affairs only recognises the decisions of the Chief and Council. After the 1952 imposition of the *Indian Act*, the people of Norway House continued to have a voice in the governing of their affairs. This changed when, in the late 1980's the people did not like what the Chief at the time was doing concerning the NFA. In an attempt to exercise their traditional rights to control what the Chief was doing, they called on the Department to listen to what the people of Norway House had to say. The Department responded by saying that through the *Indian Act*, the democratically elected Chief was the ultimate decision-maker, and no matter what Chief and Council did, it was a local governance issue, and they would only support such decisions. This began a process whereby the people of Norway House lost their right to appeal to the federal government to ensure that its fiduciary obligations are met, and resulted in costly court action to pursue. It also allowed, under the western based concept of democracy, to grant Chief and Council the power to do whatever they want, contrary to Cree traditional forms of governance, but with the support of the federal government.

Prior to the local ratification referendum for the agreement, the Chief and Council destroyed the only free and public venue for public meetings. With the consent of the federal government, democratic expression was stifled.<sup>66</sup> Allegations of human rights violations resulted, which included arbitrary arrests and detentions of Norway House Band members when they tried to use the radio station.<sup>67</sup> Additional allegations of human rights violations include payments of money for votes and the inducements and threats to prevent going to court to challenge the agreement.<sup>68</sup> Discussed in the Canadian House of Commons,<sup>69</sup> and at the Parliamentary Standing Committee on Aboriginal Affairs and Northern Development, these issues are still outstanding. The impact on the people was ostensible a "chill" in pursuing their individual and collective traditional Cree way of life and governance. Not all communities have faced this situation, some communities, such as Split Lake in the study commissioned by the Chief and Council of Split Lake, have identified the strengthening of the local Chief and Council governance.

Alternatively, Cross Lake First Nation, the only NFA Cree community not to sign a comprehensive implementation agreement, is a unique example of the social impact resultant from the treatment of the governments and Manitoba Hydro. Surviving an effort by the government of Canada to divide the Cree communities to accept cash in exchange for termination of their NFA rights, Cross Lake has

suffered the "carefully calibrated governmental policies of impoverishment, indebtedness and dispersal."<sup>70</sup> Cross Lake is now in a position of working with the government and Manitoba Hydro to implement the NFA and not sign an agreement to terminate the NFA.

The ability for the Crees of Cross Lake to implement the Northern Flood Agreement stands out as a model for the pursuit of the inherent right to self-determination. After negotiations for a comprehensive implementation agreement with Cross Lake failed in 1997, the people faced a "confused reawakening in which anger and sorrow over years of unattained grievance mingled uncomfortably with a sense of empowerment."<sup>71</sup> This has led to the galvanised collective democratic expression of the Pimicikamak Cree Nation of Cross Lake. The people of Pimicikamak Cree Nation have since pursued their inherent jurisdiction in determining their inherent right to govern themselves and implement the NFA following its spirit and intent. Grounded in the rights that the Creator has bestowed upon them and reflective of the unwritten, oral traditions of the people, the *First Written Law* of Pimicikamak Cree Nation outlines how they govern themselves. It went much further than the delegated form of governance as reflected through the *Indian Act*. It created Chief and Councils, and imported Cree concepts with respect for human rights. A "legislative assembly" called the Four Councils was created. The Four Councils reflect the people of Cross Lake: the Elders Council, Youth Council, Women's Council and the Chief and Council that acts as the executive arm of the Nation. Not only has this initiative reacquainted the women of Cross Lake with their traditionally important role in the community,<sup>72</sup> it has ensured that the traditional concepts of governance continue to reaffirm their collective Cree identity while protecting the NFA provisions to provide for remedial and mitigatory works.

No long under the ultimate authority the Chief and Council and the Department of Indian and Northern Affairs, the people of Cross Lake now are able to have their say in the local government structure and decide their own destiny. The collective will of the people of Cross Lake is done through an open General Assembly where laws are made. One of the first laws created is the *Hydro Payment Law* which has put hydroelectric bill payments into a trust until the NFA is implemented according to its spirit and intent. Subsequent laws positively reflect their Cree identity and include a citizenship act and an election act.

### 3. Conclusions

The Lake Winnipeg Regulation Churchill-Nelson River Diversion Project resulted in numerous adverse impacts on a number of Cree communities. Some communities were not as fortunate as others to enter into agreements to address those affects, but nevertheless retained their Aboriginal and treaty rights. The Northern Flood Agreement, despite its problematic origins, unfair negotiations and lack of adequate studies of the environmental, social and economic consequences, was a negotiated solemn agreement to deal with the construction of dams. Far from being a perfect agreement, it is an agreement that recognises the legal and moral obligations of the governments and Manitoba Hydro. But for the impacts on the Pimicikamak Cree Nation of Cross Lake, the history of the NFA, including the resulting comprehensive implementation agreements, are a study in how to avoid and get rid of rights and benefits created by a dam project. At the end of the day, the varied experiences of the numerous Crees of northern Manitoba with the Lake Winnipeg Regulation and Churchill-Nelson River Diversion Project lend themselves to the following:

#### 1. Human Rights and Aboriginal and Treaty Rights

Governments should engage in solemn and good faith negotiations to respect the rights of Indigenous peoples, including national and international obligations, and ensure that such rights are protected and promoted in any ongoing or future dam project. In any agreement that may be negotiated, Indigenous peoples should not have to surrender any of their Aboriginal and treaty rights to obtain monetary, remedial or mitigatory compensation.

#### 2. Consultation

Adequate and meaningful consultation, with the informed consent and full involvement of Indigenous communities is essential for any future dam development.

#### 3. Respect

Existing Aboriginal and treaty rights, and differences in worldviews, governance structures and cultural perspectives must be respected when dealing with dam developments, and to this end, the inclusion of traditional knowledge should be incorporated in processes concerning dam planning and ongoing operations.

#### 4. Studies

Pre and post project studies should be performed to provide baseline data and a means to measure the physical, biological, social, economic and cultural impacts. Such studies should not be biased to a western, scientific perspective, and should provide for Indigenous peoples' perspectives, cultures and traditions, acknowledging the importance of traditional knowledge.

#### 5. Remedial and mitigatory efforts

Monetary compensation should not be the sole compensation from the construction of dams, and should be provided in addition to the remedial and mitigatory efforts.

## Endnotes

<sup>1</sup> For more information please see: Innu Nation Mamit Inuit, *Hydroelectric Development in Nitassinan - Développement hydroélectrique au Nitassinan* (www.innu.ca, last update: 7 July 1999).

<sup>2</sup> From Grand Council of the Crees, *Hydro Development* (www.gcc.ca/Environment/hydro/hydro, last update: April 06, 1999).

<sup>3</sup> Waldram, James B., "Hydroelectric Development and Native People in Canada," in *As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada*, The University of Manitoba Press (Winnipeg, Manitoba, 1988) ch. 1, pp. 3-17 at p. 10.

<sup>4</sup> Commission of Inquiry into Manitoba Hydro Commission of Inquiry into Manitoba Hydro Final Report (Winnipeg, Manitoba, 1979); and Northern Manitoba Economic Development Commission, *A Benchmark Report* (Winnipeg, Manitoba, December 1992).

<sup>5</sup> Waldram, *supra.*, at pp. 10-2.

<sup>6</sup> Waldram *supra.*, at ch. 13.

<sup>7</sup> *Athabasca Chipewyan First Nation Inquiry WAC Bennett Dam and Damage to Indian Reserve No.201 Claim* Indian Claims Commission Proceedings (Ottawa, Ontario, March 1998).

<sup>8</sup> Numerous words identify the Cree people in Northern Manitoba. Through the federal *Indian Act*, the Canadian government has imposed its terminology through its legal definition of Canadian Indigenous peoples. The *Indian Act* refers to Indigenous people as "Indians," and refers to Indigenous nations as a "band of Indians." Subsequent words in Canada used to represent an Indigenous person includes "Aboriginal," and words to represent Indigenous nations include "First Nation." In the case of some Cree nations in Northern Manitoba, they are referred to as a "Cree Nation." Accordingly, "Aboriginal," "band member" or "First Nation member" are to refer to an Indigenous person, and "band," "First Nation" or "Cree Nation" refers to an Indigenous nation.

<sup>9</sup> *Calder v. Attorney-General of British Columbia*, [1973] Supreme Court Reports 313 at 328 per Judson J., and referred to in: Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ministry of Supply and Services, Canada 1996) v. 1. p. 44.

<sup>10</sup> See Ray, Arthur J., *Indians in the Fur Trade: their role as hunters, trappers and middlemen in the lands southwest of Hudson Bay 1660-1870* (Toronto: University of Toronto Press, 1974).

<sup>11</sup> Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, Ministry of Supply and Services (Ottawa, Ontario, 1996) v. 1, pp. 101-36.

<sup>12</sup> *Royal Proclamation of 1763*, referred to in Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ministry of Supply and Services, Canada 1996) v. 1, Appendix D at p. 720, derived from Clarence S. Bingham, ed., *British Royal Proclamations Relating to America*, American Antiquarian Society Volume 12, (Worcester, MA, 1911), pp. 212-18.

<sup>13</sup> Morris, Alexander, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*, Facsimile reprint of the 1880 edition published in Toronto by Belfords, Clarke, Fifth House Publishing (Saskatoon, 1991) pp. 342-50; Canada, *Treaty 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren's River and Norway House with Adhesions* (Ottawa: The Queen's Printer, 1969).

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<sup>14</sup> See Morris, Alexander, *supra* at 15, pp. 143-45.

<sup>15</sup> Canada. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ministry of Supply and Services, Canada 1996) v. 1 at pp. 159-76; see also text of Treaty 5

<sup>16</sup> *Indian Act*, R.S.C., 1985, c. I-5; see sections 28, 31 and 35.

<sup>17</sup> *ibid.*, s. 74.

<sup>18</sup> Manitoba Hydro, *The Hydro Province* (Winnipeg, Manitoba, June 1998); and Manitoba Hydro, *A History of Electrical Power in Manitoba* (Winnipeg, Manitoba, June 1998).

<sup>19</sup> Manitoba Hydro, *Lake Winnipeg Regulation* (Winnipeg, Manitoba, October 1997).

<sup>20</sup> Manitoba Hydro, *Churchill River Diversion* (Winnipeg, Manitoba, August 1997).

<sup>21</sup> Manitoba Hydro Electric Board, *47th Annual Report* (Winnipeg, Manitoba, July 1998) at p. 43-57.

<sup>22</sup> Cross Lake Band members' testimony, *Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 22 and 25, 1999).

<sup>23</sup> Ballantyne, P., Brook P., Burns P., et al., *Aski-Puko: The Land Alone A report on the expected effects of the proposed hydro-electric installation at Wintego Rapids upon the Cree of the Peter Ballantyne and Lac La Ronge Bands* (Winnipeg, Manitoba, September 1976).

<sup>24</sup> Lake Winnipeg, Churchill and Nelson Rivers Study Board, *Lake Winnipeg, Churchill and Nelson Rivers Study Final Report* (Winnipeg, Manitoba, 1975).

<sup>25</sup> "Given the doubts that were expressed in the 11-volume report, and the many matters that were not considered, there seemed to be a possibility, or even likelihood, that the development could be an ecological mess and social disaster." Gillespie, Colin, Lawyer, 1975 researcher on the potential impacts of the Project *Speaking Notes for a Public Hearing on Hydro Development and Aboriginal People in Northern Manitoba* June 22, 1999.

<sup>26</sup> For instance, Waldram (1983, 1988) and Wagner (1984), referred to by Larcombe, P.M., *Northern Flood Agreement Case Study in A Treaty Area Phase II Report Contemporary Aboriginal Land, Resource and Environmental Regimes Origins, Problems and Prospects, Prepared For the Royal Commission on Aboriginal Peoples with editorial revisions February, 1995* (Winnipeg, Manitoba, December 17, 1993) at p. 12; Department of Northern Affairs, *Social & Economic Impact of the Nelson River Hydro Development (with emphasis on South Indian Lake) Preliminary Report* (June, 1973); and Manitoba Environmental Council *Southern Indian Lake and Hydro Development* Manitoba Environmental Council (Winnipeg, Manitoba, 1984).

<sup>27</sup> Split Lake Cree Nation, *Split Lake Cree Nation Post Project Environmental Review Volumes 1 to 5* (Split Lake Cree Nation, August 1996). Concerning social, economic and cultural components see v. 5 at page 70; "There has been very little scientific analysis of the socio-economic effects of hydro-development. The lack of pre-project baseline data and comprehensive post-project monitoring, and the difficulties of isolating the effects of other sources of socio-economic change, have been instrumental in this situation."

<sup>28</sup> Along with various studies and reports, the author has been informed by various conversations and interviews with numerous Cree from different communities.

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<sup>29</sup> See Canada-Manitoba Agreement on the Study and Monitoring of Mercury in the Churchill River Diversion, *Summary Report and Technical Appendices of the Canada-Manitoba Agreement on the Study and Monitoring of Mercury in the Churchill River Diversion Submitted to The Minister of Environment and Workplace Safety and Health, Province of Manitoba and The Minister of Environment, Canada* (Winnipeg, Manitoba, March 23, 1987).

<sup>30</sup> Conawapa Environmental Review Panel, *Reports From Community Meetings* Conawapa Secretariat (Winnipeg, Manitoba, June, 1992); and see Elder Sandy Beardy, testimony for hearings on Bill C-56, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, [www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev57-e.htm](http://www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev57-e.htm), March 18, 1999).

<sup>31</sup> Conawapa Environmental Review Panel, *Scoping Workshops, Volume III* Finlayson Reid Reporting Services (Winnipeg, Manitoba, June, 1992), at p. 397-403.

<sup>32</sup> Wagner, M., *Northern Development and the Treaty Rights of Hunting and Fishing: A Conflict* Treaty and Aboriginal Rights Research Centre of Manitoba, Inc. (Winnipeg, Manitoba, 1984) at 25.

<sup>33</sup> Gamblin, Merna from Norway House states: "Now, our Elders have said that they estimated the spit of land separating Playgreen Lake and Lake Winnipeg would disappear in about 20 more years. In talking with people that have worked with the Department of Fisheries and Oceans, they have said the Canadian Coast Guard has been doing studies of the erosion rates in this area on the north shore of Lake Winnipeg since last fall, and also on Playgreen Lake, and what they have found is that the erosion rate is at about 50 feet a year on both sides. And, their estimate for that piece of land separating the two lakes is that it will disappear in 15 years, so the Elders are not that much off the mark" from presentation to the *Inter-Church Inquiry into Northern Hydro Development* (Cross Lake, Manitoba, June 24, 1999).

<sup>34</sup> Inter-Church Task Force, *Report of the Panel Appointed by the Interchurch Task Force to Hold Hearings into the Impact of Flooding Occasioned by Manitoba Hydro's Project to Develop the Electrical Potential of the Nelson and Churchill Rivers* (Winnipeg, Manitoba, 1975) p. 35.

<sup>35</sup> While additional research is needed in determining the socio-cultural significance of trapping to native people, trapping still continues as "It appears that trapping is and will continue to be part of the family and community lifestyles in northern communities. It will likely continue not so much for its economic value but rather for its cultural significance" see Ramsey, Bruce, *The Economic and Social Cultural Situation of Native Trappers in Northern Manitoba*, Thesis, Natural Resource Institute, University of Manitoba (Winnipeg, Manitoba, 1975) at p. 73.

<sup>36</sup> Hunting and fishing has lost its appeal not only because of the reduced availability of meat, but the noticeable difference in the taste of certain meats. The replacement of wild foods has resulted in nutritional affects resultant from relying on different quality and questionable nutritional content of many affordable foods available in northern stores. See for instance Waldram, James. A. *Relocation and Social Change Among the Swampy Cree and Metis of Easterville, Manitoba* University of Manitoba Masters Thesis (Winnipeg, Manitoba, May 1980).

<sup>37</sup> "...the beaver and muskrat are a good example because these animals are a traditional food source us. And they eat certain plants that grow in the water. And these plants are medicinal plants, and I am just going say a couple of names just for the record, "weehess" is one of them, and "waskutamo" that's another one. They eat these plants, and our people would then eat the animals, the beaver, the muskrat, and by eating those animals, we too are eating the medicines. And the growth of those

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medicines have been severely impacted by the hydro project as well." from Gamblin, Merna, Norway House Band member testimony, *Inter-Church Inquiry into Northern Hydro Development* (Cross Lake, Manitoba, June 24, 1999).

<sup>38</sup> Conawapa Environmental Review Panel, *Reports From Community Meetings* (Conawapa Secretariat, Winnipeg, Manitoba, June, 1992), testimonies of Pimicikamak Iskwewak Organization and Council of York Landing and Nisichawasihk Local Child Care Committee.

<sup>39</sup> Gamblin, Merna, Norway House Band member testimony, *Inter-Church Inquiry into Northern Hydro Development* (Cross Lake, Manitoba, June 25, 1999).

<sup>40</sup> Hildebrand-Young & Associates Ltd., *A Proposal to Mitigate Certain Environmental Impacts at Cross Lake, Manitoba Caused by Manitoba Hydro and Affecting Trappers, Hunters and Other Citizens* (Winnipeg, Manitoba, October 1983) pp. 4-6, 19-20.

<sup>41</sup> For a complete analysis on the impacts of the Fox Lake Cree, please see: Fox Lake First Nation, *Forgotten Nation in the Shadow of the Dams Grievance Statement* (Fox Lake First Nation, Manitoba, April 1997).

<sup>42</sup> Waldram, James B., "South Indian Lake and the Churchill River Diversion" in *As Long as the Rivers Run: Hydroelectric Development and Native Communities in Western Canada* The University of Manitoba Press (Winnipeg Manitoba, 1988), pp. 115-70.

<sup>43</sup> Soulier, Joan, Mayor, South Indian Lake, *Inter-Church Inquiry into Northern Hydro*, June 21, 1999.

<sup>44</sup> For a comprehensive review of the NFA negotiations, please see Cobb, Patricia A., *The Northern Flood Agreement History of Negotiation and Implementation, and Recommendations for Improvement*, prepared for the Royal Commission on Aboriginal Peoples (Winnipeg, Manitoba 1993).

<sup>45</sup> Lake Winnipeg, Churchill and Nelson Rivers Study Board, *supra*.

<sup>46</sup> "Given the doubts that were expressed in the 11-volume report, and the many matters that were not considered, there seemed to be a possibility, or even likelihood, that the development could be an ecological mess and social disaster." Gillespie, Colin, Lawyer, 1975 researcher on the potential impacts of the Project *Speaking Notes for a Public Hearing on Hydro Development and Aboriginal People in Northern Manitoba* June 22, 1999.

<sup>47</sup> Larcombe, P.M., *Northern Flood Agreement Case Study in A Treaty Area Phase II Report Contemporary Aboriginal Land, Resource and Environmental Regimes Origins, Problems and Prospects, Prepared For the Royal Commission on Aboriginal Peoples* (Winnipeg, Manitoba 1993, with editorial revisions February, 1995) at pp. 33-5.

<sup>48</sup> Article 24.8 of the Northern Flood Agreement states: "Because mitigatory and/or remedial measures are more likely to have a lasting beneficial effect on the viability of a community and/or on individual residents than monetary compensation, such measures shall be preferred and only where mitigatory and/or remedial measures are not feasible or fail in effectiveness shall monetary compensation be ordered in lieu thereof in respect of any adverse effect."

<sup>49</sup> Article 2, Schedule E of the Northern Flood Agreement states: "The Community Development Plan shall serve as a policy co-ordinating instrument, setting forth the best-case community development scenario and joint action program for the eradication of mass poverty and mass

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unemployment and the improvement of the physical, social and economic conditions and transportation."

<sup>50</sup> Keeper, J.J., *The Northern Flood Agreement as an Instrument for Social and Economic Equity*, Symbion Consultants (Winnipeg, Manitoba) 1990.

<sup>51</sup> "We believe the Northern Flood Agreement is a "land claims agreement" within section 35(3) of the Constitution Act, 1982, and that the rights within the NFA are treaty rights within section 35(1). As a treaty, the Northern Flood Agreement must be interpreted liberally from the Indian perspective so that its true spirit and intent are honoured." The Public Inquiry into the Administration and Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg, Manitoba, 1991) at 174.

<sup>52</sup> B. Nowiki and M. Rehbock, "Manitoba Northern Flood Agreement (NFA), Analysis of Unmet Obligations," *Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 16, 1999).

<sup>53</sup> "To commemorate the signing of the Agreement on behalf the Cross Lake, Nelson House, Norway House, Split Lake and York Factory Bands, this testimonial is presented to the Directors of the Northern Flood Committee for their diligent and earnest efforts, and those of the Committee staff, in negotiating a settlement that sets forth for the Bands a Charter of Rights and Benefits made necessary by the efforts of the Lake Winnipeg Regulation and Churchill River Diversion Project." Ministerial Declaration, Signed by the Honourable Warren Allmand. P.C., M.P. Minister of Indian and Northern Development, August 1977.

<sup>54</sup> See Brennan, Bob, CEO of Manitoba Hydro, *Inter-Church Inquiry into Northern Hydro Development Bob Brennan Presentation*, June 21, 1999 at pp. 10-11; and Newman, David, Manitoba Minister of Northern Affairs, *Speaking notes for Honourable David Newman Minister of Northern Affairs Hearings on Northern Flood Development Manitoba Aboriginal Rights Coalition*, June 25, 1999 at pp. 2-3.

<sup>55</sup> Larcombe, P.M., *supra.* at 47, p. 117.

<sup>56</sup> "...we found no evidence that a comprehensive environmental impact assessment had ever been performed. We believe such an assessment is essential for NFA implementation because the purpose of the Agreement is to compensate for adverse environmental impacts." Auditor General of Canada, *The Report of the Auditor General of Canada* (Ministry of Supply and Services, Ottawa 1992) ch. 15, para. 118.

<sup>57</sup> Split Lake Cree Nation, *Split Lake Cree Nation Post Project Environmental Review Volumes 1 to 5* (Split Lake Cree Nation, August 1996). Concerning social, economic and cultural components, see v. 5 at page 70; "There has been very little scientific analysis of the socio-economic effects of hydro-development. The lack of pre-project baseline data and comprehensive post-project monitoring, and the difficulties of isolating the effects of other sources of socio-economic change, have been instrumental in this situation."

<sup>58</sup> Allmand, Warren, Minister of Indian and Northern Affairs in 1977, currently with the International Centre for Human Rights and Democratic Development; testimony for hearings on Bill C-56, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, [www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev52-e.htm](http://www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev52-e.htm), March 9, 1999).

<sup>59</sup> Manitoba Hydro, *Background Information from Manitoba Hydro to the Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 21, 1999): over \$125 million had been paid out by the governments of Manitoba and Canada and Manitoba Hydro.

<sup>60</sup> Inter-Church Task Force, *Report of the Panel Appointed by the Interchurch Task Force to Hold Hearings into the Impact of Flooding Occasioned by Manitoba Hydro's Project to Develop the Electrical Potential of the Nelson and Churchill Rivers* (Winnipeg, Manitoba, 1975) p. 40-3, compared to p. 55-56.

<sup>61</sup> Article 24.8 of the Northern Flood Agreement states: "Because mitigatory and/or remedial measures are more likely to have a lasting beneficial effect on the viability of a community and/or on individual residents than monetary compensation, such measures shall be preferred and only where mitigatory and/or remedial measures are not feasible or fail in effectiveness shall monetary compensation be ordered in lieu thereof in respect of any adverse effect."

<sup>62</sup> Manitoba Hydro, Technical Report #1, *The Northern Economy, Background Information from Manitoba Hydro to the Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 21, 1999).

<sup>63</sup> Manitoba Hydro, *Background Paper #4 Manitoba Hydro Impacts within Manitoba's Economy, Background Information from Manitoba Hydro to the Inter-Church Inquiry into Northern Hydro Development* (Winnipeg, Manitoba, June 21, 1999) at pp. 4-10 to 4-14.

<sup>64</sup> "The Committee...endorses the Recommendations of RCAP that policies which violate Aboriginal treaty obligations and the extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party." Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights : Canada. E/C.12/1/Add.31* (United Nations, 10/12/98) at para. 18.

<sup>65</sup> "The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the Recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, inter alia, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP Recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant." Human Rights Committee, *Concluding observations of the Human Rights Committee : Canada CCPR/C/79/Add.105* 07/04/99 at para. 8.

<sup>66</sup> Grey, John *Referendum process leaves a House divided* (The Globe and Mail, February 2, 1998) p. A3.

<sup>67</sup> "I received this summons, as did a number of people from Norway House Cree Nation, when we attempted to exercise our traditional right to freedom of speech. This right extends to the use of media facilities located in our Reserve. In this instance we were going to try to express our concerns over the local radio station. I had done a similar thing two weeks before. I wasn't arrested at that time, but then I was talking about different issues. This time around, the people who were there, including myself, were concerned about the lack of band meetings and no discussion on the Northern Flood Agreement

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negotiations as we knew them to be, because we hadn't seen this master implementation agreement at that time." Gamblin, Merna, testimony, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, [www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev57-e.htm](http://www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev57-e.htm), March 18, 1999).

<sup>68</sup> "People wanted money. They were told "If you want your money, sign the petition". Some petitions were blank, but they asked, "Do you want your money? It's right here. You can get your money." There was the suppression of any opposition. There were threats in 1995 at the meeting: "If you don't withdraw your name, or if your name appears on the court docket, perhaps you will not get your money, or you might be taken to court." In the time before the December meeting took place, we had 450 members plus their families. When it was announced that the people could be threatened, we lost 95% of our members" McKay, Leonard, testimony, "An Act respecting an agreement with the Norway House Cree Nation for the settlement of matters arising from the flooding of lands, and respecting the establishment of certain reserves in the province of Manitoba," *Standing Committee on Aboriginal Affairs and Northern Development Evidence March 18, 1999* (Parliament of Canada, [www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev55-e.htm](http://www.parl.gc.ca/InfoComDoc/36/1/AAND/Meetings/Evidence/aandev55-e.htm), March 16, 1999).

<sup>69</sup> "The Norway House band actually held a vote and the band council, I think in partnership with the department of Indian affairs, decided to hold a second vote on exactly the same agreement. Nothing had changed. The second allegation that was made was that the second vote was conducted, but not before a liberal amount of money was used to buy votes." Scott, Mike M.P., *House of Commons Debate* (Edited Hansard No. 160, at [www.parl.gc.ca/36/1/parlbus/chambus/house/debates/160\\_1998-11-26/han160-e.htm#LINK198](http://www.parl.gc.ca/36/1/parlbus/chambus/house/debates/160_1998-11-26/han160-e.htm#LINK198)) November 26, 1998, and "In the light of the role of the federal government in this obviously undemocratic referendum process, how can it then turn around and try to give Quebec lessons on the democratic consultation of its people and the interpretation of the results? Obviously this sort of practice raises some questions. For example, what is the relationship between the federal government and the native peoples? Is vote buying common practice? Is this how the Minister of Indian Affairs consults the native peoples in this country? How can we trust the federal government in the future, when we know that the Department of Indian Affairs supported such an unjust operation?" Savoie, Pierre. M.P., *House of Commons Debate* (Edited Hansard No. 152, at [www.parl.gc.ca/36/1/parlbus/chambus/house/debates/152\\_1998-11-16/han152-e.htm#LINK211](http://www.parl.gc.ca/36/1/parlbus/chambus/house/debates/152_1998-11-16/han152-e.htm#LINK211)) November 26, 1998.

<sup>70</sup> Chief Roland Robinson, *Broken promises litter northern Hydro treaty* (Winnipeg Free Press, July 14, 1998) p. A 11.

<sup>71</sup> Niezen, Ronald, *Treaty Violations and the Hydro-Payment Rebellion of Cross Lake, Manitoba* Cultural Survival Quarterly Magazine (Cambridge, MA, Spring 1999) pp. 18-21.

<sup>72</sup> Crate Kapapakoskew, Emma-Jane, *Reawakening of an Ancient Nation Thanks to the Northern Flood Agreement Including our First Treaty 5 as being lived by Pimicikamak Cree Nation*, Inter-Church Inquiry into Northern Hydro Development (Winnipeg, Manitoba, June 22, 1999).