

Canadian Environmental Assessment Agency
123 Main Street, Suite 445
Winnipeg, Manitoba
R3C 4W2

Dear Sir or Madam:

Re: DFO Comprehensive Study Report on the Wuskwatim Generation Project

Please accept this submission by CIER on behalf of both the Community Association of South Indian Lake (CASIL) and the Centre for Indigenous Environmental Resources (CIER).

Background

CASIL is a corporation owned and run by the people of South Indian Lake. CASIL's main purpose is to administer and negotiate with Manitoba Hydro in regards to the Churchill River Diversion project. A majority of community members are First Nations and Aboriginal.

South Indian Lake is situated on an arm of the lake that joins South Bay to the main body of the Lake. The most important economic activity for residents of South Indian Lake is commercial fishing.

CIER is a national First Nation-directed environmental non-profit organisation. CIER was established in 1995 by a group of First Nation chiefs from across Canada in response to the need identified by First Nations to increase their capacity to address environmental issues affecting their lands and resources. CIER engage in research, advisory, and education and training projects with Indigenous communities, governments and private companies in four areas: forests, climate change, water, and sustainability.

CIER provided technical advice to CASIL in its participation as funded participant in the Clean Environment Commission's public hearings in 2004-2005 regarding the proposed project. Whereas CIER took no position of its own at those hearings, it has now chosen to submit this statement, in which it now takes a position. This statement represents the consensus statement of CIER and CASIL.

Comments on the Comprehensive Study Report (CSR)

1. **Significance:** Wuskwatim Falls were identified as an Aboriginal heritage site, and are considered a Valued Ecosystem Component in the proponent's EIS. The Proponent identified that the proposed project will result in the permanent loss of these falls. Under no meaningful definition of "significant" could this loss be characterized as insignificant. CIER has broadly canvassed Aboriginal

concepts of significance in previous research conducted by CIER's subsidiary (WAVES) for the Canadian Environmental Assessment Agency. Under no interpretation can it be concluded that the permanent loss of the falls is insignificant, regardless of the use of ceremonies to mitigate their loss. The loss of falls is permanent, and significant. It sets an untenable precedent for DFO to accept the proponent's definition and associated judgments regarding significance on two grounds:

- a. It distorts the commonly held interpretation of "significance" in EA practice; and,
- b. It represents a fundamental misunderstanding of the role of traditional knowledge and spiritual practice as mitigation measures.

2. **Operating Regime:** The proponent has not submitted adequate information about the operating regime that is currently in place in the project region. In public hearings, and all other relevant information provided, the proponent could make no firm commitment as to its intention to apply for final licenses to operate existing projects in the project region, such as regarding the CRD. Therefore, it can make NO claim as to parameters of the future operating regime both up and downstream of the project area. All operating regime information provided by the Proponent is speculative (at best), and may change drastically depending upon the final operating regime in place in the project region. DFO does not have adequate information upon which to base conclusions about the nature of the water regime operating in the project region, and any associated environmental effects relating to the water regime that may be occasioned by the proposed project. Under no circumstances should DFO make any conclusions as to the significance of the environmental effects of the proposed project without full information as to the operating regime upon which it will be finally based (measuring and monitoring procedures, protocols, reporting requirements, and other licensing terms).
3. **Water levels:** In public hearings, CASIL presented extensive information about the use by the Proponent of approaches to measurement of water levels (in particular, the use extensive averaging techniques) with which is disagreed. CASIL the proponent is inconsistent in its current measurement and reporting of water levels. As such, any prediction of water levels, and therefore of the impacts of variability of water values, is of dubious value until these measurement inconsistencies are resolved. CASIL's specific comments on the variability in measurement and their potential significance to assessing impacts was presented in the hearing, and we urge DFO to review this information as part of your consideration of this submission.
4. **Incorporation of Traditional Knowledge:** We strongly disagree with the assertion by DFO and TC that the Proponent has "incorporated" TK in the preparation of its EIS. In our view, the Proponent did not consistently identify the traditional knowledge utilized to determine the environmental effects of the project. CASIL is directly concerned by:
 - a. DFO's response to CASIL's concerns regarding the use of TK. CASIL asserts that this responses are inadequate as they do not specify how TK will be "incorporated" into all mitigation measures such as, in required monitoring programs; and,

- b. The lack of incorporation of the TK of CASIL members despite their use and long relationship with the fish and wildlife resources contained within the project region; and,
 - c. The Proponent did not identify any use of TK to determine the potential cumulative effects of the proposed project, for example, TK regarding the ongoing environmental effects of the CRD on the current use of lands and resources for traditional purposes by Aboriginal people was not included in the proponent's cumulative effects assessment.
5. **Cumulative Effects:** Identification of cumulative effects of the proposed project was not addressed adequately, and in some cases at all, in the EIS. As such DFO does not have adequate information upon which to assess whether or not there will be significant environmental effects as a result of the proposed project. For example, the proponent has engaged in past activities that have ongoing environmental effects within the spatial scale of the proposed project (for example, the Churchill River Diversion). Despite this, the proponent did not identify these effects, but instead chose to incorporate them within their identification of the environmental baseline of the project region. As a result of this failure to identify the actual ongoing "effect", the proponent did not provide adequate information as to the potential of those ongoing environmental effects to interact with the likely effects of the proposed project. As such, the proponent's cumulative effects assessment is inadequate, and DFO has insufficient information upon which to make a determination regarding possible cumulative effects of the proposed project.
6. **Climate Change:** Regarding the effects of the project on climate change, the proponent relied heavily on its assumption that the creation and implementation of the proposed Wuskwatim Generation Project would result in decreased GHG emissions through elimination of more GHG-intensive electricity generation projects in other regions (such as, by eliminating the creation of coal-fired plants in the United States). Despite this, the proponent could offer no evidence or information to support this assertion. Given the Government of Canada's Kyoto Protocol commitments, the need for rigour in determining the actual net GHG effects of all proposed projects is critical. Assumptions must not be relied upon, and DFO should not accept that this proponent has submitted adequate information to justify conclusions about the project's incremental GHG additions.
7. **Consultation:** The issue of consultation is hopelessly confused in the CSR.
- a. **Purpose:** DFO and TC misstate the purpose of the consultation with Aboriginal peoples. The original letter to communities stated that the purpose of the consultation was to hear and understand the views of First Nations and Aboriginal communities "about how their Treaty or Aboriginal rights" might be affected by the granting of certain licenses by the Crown. In the CSR, the purpose is stated as "to hear and understand the concerns of First Nations and aboriginal communities about their traditional use of resources, lands and waterways might be affected by the proposed projects". The latter purpose appears to be more focused upon the requirements under CEAA than those required to fulfill the Crown's duties regarding consultation and accommodation of Treaty and Aboriginal rights. The stated purpose of the consultation is a moving

target. As a result of this confusion, under no circumstances could the concerns of many First Nations and Aboriginal communities be said to be addressed. DFO's consultation efforts would meet no current legal standard of meaningful consultation. The honour of the Crown has not been maintained or demonstrated by DFO through this CSR.

- b. Accommodation of Concerns:** The purpose of consultation is to understand and accommodate the concerns of the Aboriginal peoples consulted. DFO has listed in the CSR a number of concerns of the peoples consulted but has not comprehensively identified how it will accommodate these concerns. The legal standard for justification of impacts to Aboriginal and Treaty rights does not allow for 'most' or 'some' concerns to be addressed, while others are ignored without reason. DFO has the requirement to indicate how it is going to respond to all concerns, even if the response is negative. Numerous concerns listed by Aboriginal communities in Table 2 of the CSR are not responded to by DFO or TC. It is the minimum requirement of the Crown to respond to all concerns raised by Aboriginal peoples and to reasonably accommodate them, which has not happened in this case. Further, the requirement for the provincial Crown to also respond to the concerns of Aboriginal peoples raised in the consultation has been fully ignored.

Finally, CASIL maintains that the financial concerns it raised in the public hearings process have been ignored by both the federal and provincial Crowns. While this is not a matter directly related to the CSR, it is an economic aspect of the project that the Crown must consider prior to making any decision about the project.

Thank you for consideration of our comments. If you desire further elaboration or justification of our assertions please contact us.

Respectfully submitted by,

Merrell-Ann S. Phare, B.A., LL.B., LL.M.
Executive Director / Legal Counsel
Centre for Indigenous Environmental Resources (CIER)
204.956.0660
maphare@cier.ca

Leslie W. Dysart
Chief Executive Officer
On behalf of the Board of Directors of CASIL
204.374.2224
casil1@mts.net