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January 31, 2012

Canadian Environmental Assessment Agency
Jim Morrell, Project Manager
Suite 101, 167 Lombard Ave.
Winnipeg, MB R3B 0T6
CANADA

Re: Gull Rapids - Keeyask Generation Project (CEAA Registry Ref. #11-03-64144)

Dear Mr. Jim Morrell:

1. INTRODUCTION

Manitoba Wildlands is providing comments on the proposed Keeyask Generation Project (CEAA Registry Ref. #11-03-64144).

Our efforts in research and review to provide comments are intended to assist the proponent, Manitoba Hydro (MH), Manitoba Environmental Assessment and Licensing Branch (EALB) and the Canadian Environmental Assessment Agency (CEAA). Our efforts and comments are provided in the public interest, to increase certainty, quality of assessment, consultation standards, technical and scientific content for the EIS Guidelines and EIS. Manitoba Wildlands efforts regarding the CEAA "*Background Information Document: Keeyask Generation Project*"[1] (CEEA Background Document) are intended to inform, strengthen, and support the project review, assessment, and licensing process for the proposed hydroelectric generation project.

We take these steps because major public works projects impacting significant areas of Manitoba's lands and waters, that also spend or borrow significant amounts of public funds must have the very highest quality of planning, access to information, environmental effects assessment, public reviews, and licensing processes. In the present case the government is in essence licensing itself through a crown corporation and setting its own licensing and EA standards. We therefore expect an outside critique of the scoping document is not only needed, but welcomed by MH, EALB, and CEAA as well.

Canada and Manitoba have agreed to carry out a cooperative environmental assessment under the *Canada-Manitoba Agreement on Environmental Assessment Cooperation* (2007).[2] Given this is a cooperative environmental assessment in which joint federal and

[1] Canadian Environmental Assessment Agency (Dec. 2011). *Background Information Document: Keeyask Generation Project* (CEEA Background Document). Available online: http://www.ceaa-acee.gc.ca/050/documents/53536/53536E.pdf
[2] *Canada-Manitoba Agreement on Environmental Assessment Cooperation* (2007). Available online: http://www.ceaa.gc.ca/default.asp?lang=En&n=AAA97EB9-1

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provincial Environmental Impact Statement (EIS) guidelines will be used, our comments at this time are largely restricted to the CEAA Background Document, but at times we find it necessary to inform the CEAA review by looking at the *Keeyask Generation Scoping Document* (Scoping Document)[3].

Concurrent Comments & Funding Deadline

The deadline for comments on the CEAA Backgrounder and the deadline to apply for public participant funding would operate better on different days. It is preferable for public participants to review the EA documents and then review comments, before making decisions about applying for funding. And what purposes that funding will by directed to. We note that Manitoba Wildlands, will not be able to benefit from the opportunity to read concerns of other public participants before making decisions about how/if we wish to participate as a funded participant.

2. PROJECT SUMMARY

"Project" in relation to a physical work, such as a hydroelectric generation facility, is defined under the *Canadian Environmental Assessment Act* as "…any proposed construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work."[4]

We are glad to see that the project description identifies that a 93 square kilometre reservoir and 45 square kilometres of initial flooding will occur as a result of the project. This will indeed have significant environmental impacts that will lead to shoreline erosion, and greenhouse gas (GHG) emissions. It is also important the CEAA has noted the need to identify ongoing erosion, and shoreline damage.

We feel the project description could be clearer in defining ancillary related infrastructure. We see no mention of a substation, or transmission facilities that will obviously be required to make the project functional. Nor is the current, previously licensed by Manitoba Conservation Keeyask infrastructure project, noted.

We expect "*Attachment E: List Of Past, Current And Future Projects And Activities*"[5] of the Scoping Document and any other existing, future, connected, or foreseeable projects will be part of the CEAA assessment.

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[3] Keeyask Hydropower Limited Partnership (Dec. 2011). *Keeyask Generation Project Scoping Document*. Available online: http://www.gov.mb.ca/conservation/eal/registries/5550keeyask/scope_doc.pdf

[4] Statutes of Canada. *Canadian Environmental Assessment Act*, SC1992, c. 37, s. 2. Available online: http://laws-lois.justice.gc.ca/eng/acts/C-15.2/page-1.html

[5] *Supra* note 3, Attachment E

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From an access to information perspective this would greatly help to improve public participation, thereby helping to satisfy the requirements of s. 38 of the *Canada–Manitoba Agreement On Environmental Assessment Cooperation*[6], to include cross-references to the *Environment Act*[7] public registry file number and/or CEAA registry reference numbers of these related and/or proximate projects. This is simply a reflection of the fact that making information more easily accessible will help to ensure a more thorough review. In addition to cross-references to the related environmental assessment registries, we would also encourage cross-references to other relevant studies, legislation, regulations, etc. These steps can be taken for both regulators.

Additionally the Background Document directs readers to obtain more information on the Keeyask Hydropower Limited Partnership website [see Background Document p. 4].[8] To this we would also add references to the Manitoba Hydro website, as well as the Manitoba Conservation EALB website.

3. FEDERAL ENVIRONMENTAL ASSESSMENT REQUIREMENTS

3.1 The Canadian Environmental Assessment Act

We recognize that Fisheries and Oceans Canada (DFO) and Transport Canada (TC) have been identified as the responsible authorities, but also wonder why Environment Canada has not also been named given that the Background Document identifies the need to identify species and their critical habitat under s. 79 of the *Species At Risk Act* (SARA)[9] [see Background Document p 4-5].[10]

3.2 Factors To Be Considered

The Background Document does a good job of listing the factors that must be considered under s. 16 of the *Canadian Environmental Assessment Act*. This is a considerable improvement over the proponent's Keeyask Scoping Document, which erroneously claims:

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[6] *Supra* note 2
[7] Statutes of Manitoba. *Environment Act,* CCSM c. E125. Available online: http://web2.gov.mb.ca/laws/statutes/ccsm/e125e.php
[8] *Supra* note 1.
[9] Statutes of Canada. *Species At Risk Act*, SC 2002, c. 29. Available online: http://laws.justice.gc.ca/eng/acts/S-15.3/
[10] *Supra* note 1.

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- It will not be practical to describe in detail the manner in which the Project's permanent facilities will be decommissioned. [See Scoping Document 2-2]
- The EIS will not include an assessment of Manitoba Hydro's markets, the economic feasibility of the Project, or alternatives to the Project. [See Scoping Document 2-1]
- Alternative means refers only to alternate design scenarios of the proposed project rather than true alternatives to the project such as enhanced conservation measures, or alternative means of generating electricity [See Scoping Document 2-4]

Consideration of the eventual need to decommission the project, the justification, needs for the project, and the alternatives to the project, are all explicitly required by the *Canadian Environmental Assessment Act* [see s. 15(3) & 16(3)].[11]

The Scoping Document[12] also erroneously claims:

> The EIS will **describe the scope of the Project, as defined by the Proponent (emphasis added)**, and the scope of the assessment to meet the requirements of both the federal and provincial (Manitoba) approvals processes. [See Scoping Document 1-3]

To this we highlight s. 16(3) of the *Canadian Environmental Assessment Act* which makes it abundantly clear that the "scope of the factors to be taken into consideration" in a comprehensive study review (CSR) "shall be determine by the responsible authority." We therefore would cancel any references to determining the "need for", "purpose of", and "alternatives to" the project from "the perspective of the proponent" [see Background Document p. 7]. The proponent may not understand federal environmental assessment legislation, or in the alternate, is trying to avoid some of the more demanding provisions of the legislation. It is therefore imperative, and the responsibility of the federal authorities, to ensure that a thorough environmental effects assessment, which meets the provisions of the *Canadian Environmental Assessment Act* and other applicable federal and provincial legislation, is undertaken.

3.3 Scope of Factors

Table 1 which provides a list of the Proposed Scope of Factors provides a clear overview of factors to be considered through the comprehensive study of the Project.

[11] *Supra* note 4.
[12] *Supra* note 1.

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There are however a few additional points we would like to make. We assume that GHG emissions from creation of the reservoir, flooding, ongoing erosion, all construction activities, and operation of the project will be covered under "climate and meteorology." We assume studies on the "freshwater aquatic environments" will consider the effects due to changes in temporal dynamics of hydrological flows. We assume that the "wildlife and wildlife habitat" section will include, *inter alia*, an analysis of the potential impacts of the proposed project on various fish, caribou, and moose populations. We assume the consideration of navigation will include analysis of the effects faster water flows have on the ability and safety of crossing rivers, reservoirs, and adjacent waters by winter trapline proprietors, other traditional lands users, and the loss of access to traditional areas due to safety concerns, varying water levels, flooding, etc. We do not see any reference to protected areas, or crown land designations in "human environment" section and assume that this will be included in the EIS guidelines, the EIS and subsequent CSR.

Although independent study will also be required to establish the veracity of the studies performed, it should be acknowledged that according to the Keeyask Hydro Power Limited Partnership website a number of studies have been undertaken, including:

Aquatic Environment Studies
- Aquatic habitat
- Aquatic plants and invertebrates
- Fish community – populations, spawning, and movements
- Lake sturgeon – species of special interest
- Fish quality – mercury

Physical Environment Studies
- Air quality
- Climate and climate change
- Noise
- Geology and soils
- Water levels and flows
- Ice processes
- Shoreline erosion
- Debris
- Peatland disintegration
- Sedimentation
- Groundwater
- Surface water temperature
- Dissolved oxygen

Terrestrial Environment Studies
- Vegetated habitat classification and mapping
- Rare plants
- Insects
- Amphibians
- Songbirds, raptors and waterfowl
- Small mammals (e.g. voles, rabbits, mice)
- Furbearers (e.g. beaver, muskrat, mink, otter)
- Large mammals (e.g. caribou, moose)

Heritage Resource Studies
- Burial sites

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- Heritage resources, such as pottery or bone fragments from pre-contact to the historic period
- Culturally important sites

Socio-Economic Environment and Resource-use Studies

- Land and resource use for traditional, recreational and commercial purposes
- Local and regional economy, including employment and business
- Population, housing, infrastructure and services
- Transportation, navigation safety and access
- Community health
- Culture
- Social well-being and quality of life

Yet, to our knowledge none of the data or study results are available on Keeyask Partnership or Manitoba Hydro websites. For CEAA RAs to undertake their reviews these would need to be available. We would expect these studies - save for any proprietary or confidential information contained therein – to be made publicly available in advance of the EIS Guidelines being released. If public participants are to thoroughly review the project EIS then access to supporting studies and data is imperative.

There is an information gathering duty bestowed on the responsible authority under the *Canadian Environmental Assessment Act*. In *Alberta Wilderness Assn. v. Cardinal River Coals Ltd.*,[13] it was determined that the Joint Review Panel had failed to meet its information gathering duties by not acquiring forestry and mining data which the proponent claimed was either unavailable, or submitted in confidence. The court therefore found that responsible authorities are required to attempt to gather and make public all information available.

We would therefore expect that CEAA and the EALB will undertake to make these reports accessible.

3.4 Additional Matters To Be Considered

Spatial and Temporal Boundaries

It is logical to have different spatial study area boundaries specific to each potential effect or environmental element, however we would stress that the EIS guidelines need to explicit about the boundaries established for each effect/element. We expect requirements for these spatial boundaries to be described in the EIS guidelines. We also expect that the boundaries will be clearly shown on a map of the project area as well. (A chart with the proponent's basis for setting each boundary would be quite relevant in the EIS.)

The establishment of temporal boundaries encompassing the lifespan of the Project, from the initial site preparation to decommissioning, is encouraging and goes to the need for

[13] *Alberta Wilderness Assn. v. Cardinal River Coals Ltd.*, [1999] 3 FC 425. Available online: http://canlii.ca/t/47rs

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the proponent to include the eventual need to decommission the project. We support CEAA's inclusion of decommissioning in the background document, and would point out that organizations and standards which Manitoba Hydro supports include decommission plans for generation stations. The most recent set of public hearings regarding a new generation station in Manitoba discussed the need for a decommissioning plan.

Need For, Purpose Of, Alternatives To & Alternative Means

We expect that the "need for", "purpose of", "alternatives to", and "alternative means" of the Project will not only be defined from the perspective of the proponent as stated in Background Document. As already noted above, pursuant to s. 16(3) of *Canadian Environmental Assessment* Act, the determination of the scope of the factors is to be made by the responsible authority, not the proponent.

According to the Manitoba Hydro Keeyask Scoping Document [see 2-1]:

> ..the Province of Manitoba will have an independent body undertake a review of the need for and alternatives to (NFAT) major new hydroelectric projects. … As such, the EIS will not include an assessment of Manitoba Hydro's market, the economic feasibility of the Project, or alternatives to the Project.

We expect CEAA to make sure that alternatives to the Keeyask Generation Project are included in the EA. A NFAT analysis is clearly required to meet the provisions of *Canadian Environmental Assessment Act* and so CEAA may need to exercise care in delegating of its statutory obligations.

Furthermore there has been no announcement of when, how, or what independent body (presumably Manitoba's Public Utilities Board PUB) will conduct this NFAT review of major new hydroelectric projects – or of the Keeyask Generation Project. The NFAT analysis is needed at the preliminary stages to inform the rest of the environmental effects assessment, so without an open, public, and thorough NFAT analysis an open, public and thorough environmental assessment has not been conducted.

If the Manitoba PUB has been asked to undertake the NFAT analysis there is nothing on the web site to this effect, and no public announcement etc. We would observe that the affected and concerned publics involved in reviews for a new generation station are not necessarily the same publics or organizations who participate in PUB hearings regarding rates for energy in Manitoba.

We expect that the consideration of "need for" and "purpose of" the project includes an analysis of why the proposed generation project would be built; to meet Manitoba's future electricity needs vs. to satisfy contractual export obligations.

We expect that the alternative means considered will not be restricted solely to potential redesign options for the proposed generation station, but will also consider the possibility of meeting future electricity demand through enhanced conservation measures,

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alternative forms of energy production such wind generated electricity, and even building other dams, such as the more cost-effective proposed Conawapa generation facility first, and holding off on building Keeyask.

As stated by Campbell, J. in *Alberta Wilderness Assn. v. Cardinal River Coals Ltd*:[14]

> …simply identifying potential "alternative means" without discussing their comparative environmental effects fails to provide any useful information to decision makers, and fails to meet the requirements of paragraph 16(2)(*b*) of [*Canadian Environmental Assessment* Act] CEAA.

Environmental Effects, Significance of Environmental Effects, & Mitigation Measures
In determining the environmental effects, significance of those effects, and mitigation measures regarding the Keeyask Generation Project it would be helpful to consider environmental effects, significance of those effects, and the success of mitigation measures for Manitoba Hydro hydroelectric generation projects already in operation. This survey of the impacts and effects of operating hydroelectric dams need not be limited to Manitoba bust could also attempt to look acknowledged effects from hydroelectric dams in other jurisdictions. This will also help to establish how well environmental effects can be predicted.

As indicated in the Background Document, the hope is to move forward in a precautionary manner. If a review of existing generation stations shows a high degree of predictive uncertainty then clearly additional precaution and scrutiny will be required before moving forward. We recommend that CEAA consider the proponent's aside as to a precautionary approach in its Scoping Document. Perhaps the EIS Guidelines need to specify the precautionary approach so the proponent will move beyond its aside using definition, examples, and predictive modelling.

Cumulative Environmental Effects
A cumulative effects assessment, that requires an assessment of the environmental effects of the project in combination with other past, present, or reasonably foreseeable future projects or activities, is required in accordance with s. 16(1)(a) of the *Canadian Environmental Assessment Act*. Once again we would highlight *Appendix E* of the Scoping Document, which contains a list of past, present, and future foreseeable projects. In looking at the cumulative effects of this hydroelectric generation project it needs to be acknowledged this project is but one part of the plan to develop the Nelson River system for hydroelectric purposes. Keeyask will also be connected to a set of existing projects, and a set of intended future projects. Cumulative environmental effects content in the EIS should include all past, present, and future projects. This is also consistent with the most recent set of recommendations regarding a generation project from Manitoba's Clean Environment Commission.

[14] *Ibid.*

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In looking at the cumulative environmental effects we would ask that the EIS guidelines require the proponent to provide a map and supporting data which shows all mineral and aggregate dispositions, forestry licenses, road developments, townsites, former townsites or villages, all Manitoba Hydro sites, intended roads/closed roads, reservoirs, trapline districts designated by Manitoba 60 years ago, etc. within the project study area. This information is accessible from the Government of Manitoba and other sources, and the proponent needs to provide this information in its EIS submission. Currently the Scoping Document is silent on many of the elements inside the project area – which may be impacted by this project or have been, or previously experienced environmental effects.

Effects Of The Environment On The Project & Accidents & Malfunctions

It is important to consider the impact that a changing environment will have on the proposed project. In many ways this is a necessary extension on the cumulative effects analysis. Increasing planetary temperatures will result in changing hydraulic flows and increased weather extremes. The impacts therefore that climate changes will have on the future viability of the project, and the likelihood of accidents or malfunctions needs to be assessed.

Follow-up Program

Follow-up measures are extremely important to either validate the environmental assessment of identify problems as early as possible. We stress that CEAA needs to make sure that all information surrounding Manitoba Hydro Keeyask project follow-up activities are publicly available. EALB cannot be relied on for this task, as their current practice does not involve making follow up environmental plans or monitoring information publicly accessible. We therefore expect CEAA to ensure that any follow up monitoring is made publicly accessible, through the EIS and EA process. The EIS guidelines can specify.

4. COMPREHENSIVE STUDY PROCESS OVERVIEW

It is helpful that CEAA is taking the lead on drafting the joint EIS guidelines for the Keeyask Generation Project. However the Background Document indicates that the next round of review will follow after the submission of the EIS and after the compilation Comprehensive Study Report (CSR). We expect opportunities for public review will be made available at all stages, including: after compilation of the draft EIS guidelines, after submissions of the EIS, and after submission of the CSR. The more thorough the public review the more productive the environmental effects assessment can be.

5. COORDINATED ENVIRONMENTAL ASSESSMENT PROCESS

We support the coordinated environmental assessment process, and the concept of one project one environmental assessment. However we would also point out the importance of Manitoba Hydro to the province's economy, potential for adjustments to the efforts of Manitoba Conservation EALB. We urge CEAA to be careful in delegating its statutory

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duties. A joint EA needs to be thorough, especially when a project may be for 100 years, and at great cost to the public.

Given that Clean Environment Commission hearings, under Manitoba's *Environment Act*[15] are likely, we also suggest investigation of a Canada/Manitoba Joint Review Panel/ and hearings.

6. ABORIGINAL CONSULTATION

In looking at the list of Aboriginal groups that have been contacted we notice there are other communities that need to be contacted, who are potentially affected by this project. Shamattawa is conspicuously missing from the list, despite being rather proximate to the other First Nations that have been contacted, and to the project. Additionally there are numerous Northern Affairs Communities (which are predominantly Aboriginal residents) potentially affected by the project.

Moreover, in addition to the public consultation as part of the environmental assessment, and consultation required under s. 35 of the Canadian *Constitution*,[16] it also needs to be recognized that there are provisions in the *Northern Flood Agreement*,[17] which is itself a modern day treaty, which require additional consultations with the five signatory First Nations, as they are considered to be affected by this and other Hydro projects. Canada is of course a signatory to the Northern Flood Agreement.

7. PUBLIC PARTICIPATION

One way that that public participation could be improved is a visit to the proposed Keeyask Generation site An on the ground visit will provide a whole new perspective not available from reviewing EIS or CSR documents. Another option would be for public participants to meet with the Cree Partnership members.

8. CONCLUSION

As a beginning step by Manitoba Wildlands, with respect to Keeyask Generation Project reviews, public processes, and environmental licensing, this letter is not to be taken as a complete set of comments. We urge CEAA to move to EIS Guidelines that expand and identify the responsibilities and requirements for the proponent of this project. We note that the scoping document does not appear to take into consideration: the EIS Guidelines for Wuskwatim Generation Station, the EIS contents for the Wuskwatim Generation

[15] *Supra* note 7.
[16] *The Constitution Act, 1982*. Available online: http://www.canlii.org/en/ca/const/const1982.html
[17] *Northern Flood Agreement* (1977). Available online: http://www.hydro.mb.ca/community/agreements/nfa/t_of_c.htm

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Station, the Clean Environment Commission report and recommendations regarding the Wuskwatim Generation Station or the Wuskwatim Generation Station licence. Surely this recent EA and Licensing process for a generation project currently under construction is relevant at this time. Manitoba Hydro needed to put more before the public, especially given the technical studies, negotiations, engineering studies for Keeyask that have been going on for several years.

We especially are looking for the public policy and regulatory framework for this project to be clearly spelled out, as has been the EIS practice in Manitoba. This means that both federal and provincial public policy, agreements, commitments and regulatory requirements should be identified in the EIS Guidelines so the proponent responds to these in the EIS An example of course is the Climate Change policy, practices, and Act in Manitoba.

Regards,

Gaile Whelan Enns
Director, Manitoba Wildlands

Copy to: Minister G McIntosh, Manitoba Conservation