

November 13, 2006

Mr. Terry Sargeant
Chair, Manitoba Clean Environment Commission
305-155 Carlton Street
Winnipeg, Manitoba R3C 3H8

fax 204.945.0090

Dear Mr. Sargeant;

Re: Manitoba Wildlands Submission – CEC Hearings for the Pembina Valley Water Cooperative (PVWC) Supplemental Groundwater Supply Project, November 7th and 9th, 2006

This submission is being provided based on my conversation with Cathy Johnson, secretary to the Commission on Thursday, November 9, 2006.

We are writing in support of the Manitoba Eco Network Water Caucus presentation, submission, and closing statement in the CEC hearings. As you know, two Manitoba Wildlands' associates and I participated in a variety of steps in preparation for the hearings with the Water Caucus coordinator. These activities included: research; strategic planning of work products and presentation materials; writing and editing; map design, and production of data and GIS products.

Manitoba Wildlands' mandate includes all aspects of technical review and public policy auditing with respect to Manitoba lands and waters. In this submission we wish to confirm and expand on the contents of the Water Caucus materials provided to the hearings regarding the PVWC proposal.

As our mandate includes working to improve the public review process pertaining to Manitoba's lands and waters under *The Environment Act*, we are also providing comments about challenges to participating in the Environment Act review of this proposal that occurred prior to the CEC's involvement, as these ultimately impact the CEC's recommendations.

We have included a qualifier near the end of this submission regarding my personal relationship with PVWC as property owner in a municipality that uses PVWC water services, and as a recent subscriber to new piped water services based on expansion of PVWC services in our municipality. I appreciate the opportunity to support the researcher providing closing statements on November 9th in the absence of the Eco-Network Water Caucus Coordinator.

For ease of access we are using headers in this submission. We note the emphasis on the Principles and Guidelines for Sustainable Development (SD) in Environmental Impact Statement (EIS) Guidelines (which are absent in the case of the PVWC project) and the CEC Terms of Reference for this project. Almost all Ministerial references to the CEC and sets of EIS Guidelines under the Environment Act

refer to the SD Principles and Guidelines. It is our assumption, based on an assumption of reasonableness that Manitoba's existing legislation concerning water, including *The Sustainable Development Act*, and Manitoba's warehouse of water public policies that pertain to aspects of the PVWC proposal, are consistent with Manitoba's SD Principles and Guidelines. Given the noted lack of EIS Guidelines for this proposal, we all, in our responsibilities in this matter, need to be able to make this assumption.

Protected Areas – Public Policy and Sandilands Aquifer/Complex

We echo the comments made by the Manitoba Eco-Network Water Caucus concerning the significance of the ecosystems above the Sandilands glaciofluvial aquifer complex and its role in sustaining five watersheds in the region. We support the recommendation for protection of lands and waters (surface and subsurface areas), and we wish to add some additional detail regarding the status of protected areas establishment in the natural regions affected by the PVWC proposal.

A variety of potential protected areas (Manitoba Conservation Areas of Special Interest, and Areas Ranked One by the Mining sector consultation) exist in Natural Regions 5b, 5c and 9 (see Attachment 2- Pembina Valley Water Cooperative, Aquifer, RMs, Protected Areas, ASIs, Mining Rank ones-Map No 2), in which the PVWC project and assumed supply area are situated. These potential protected areas are intended to contribute to the protection of habitat, including water sources in these regions. Existing protected sites in these Natural Regions include Manitoba's Tall Grass Prairie Preserve, and various holdings of the Nature Conservancy. The wet complex in Manitoba's tall grass prairie ecosystems could be put at risk by this project. Given less than 1% of the tall grass prairie ecosystem left in North America, and two decades of effort to secure Manitoba's remaining sites, we suggest that scientific work to guarantee no damage now or in the future to this endangered ecosystem is required for any decision regarding the PVWC proposal.

We urge the CEC to recommend that Manitoba Conservation step up action on all the Areas of Special Interest and Mining Sector Ranks Ones in Natural Regions 5b, 5c and 9 so that the lands above the Sandilands glaciofluvial aquifer complex are protected.

Conservation of Water Resources

We are taking this opportunity to wholeheartedly endorse the EcoNetwork Water Caucus submission and presentation prepared by David Brooks. The legislative and public policy submission that is the other aspect of the Eco-Network Water Caucus contribution to these hearings provides a strong rationale for pursuing the conservation approach advocated by Mr. Brooks; Manitoba's legislation and public policy is clear about water conservation being paramount; and the PVWC's proposal does not provide information to conclude that conservation measures have been assessed or explored adequately.

We also urge the CEC to recommend that the EIS Guidelines and Terms of Reference for CEC hearings for future proposals concerning water projects include thorough consideration of water conservation and water conservation plans that can be monitored and evaluated on a regular basis.

The Environment Act Review of the PVWC Proposal

In this section we are highlighting some of the procedural challenges faced by the public in participating in both the review process under *The Environment Act* and the CEC public hearing. We are including these for the record and because the CEC has the opportunity to formalize its own procedures and make recommendations with respect to *The Environment Act* review process.

- The Director of Environmental Assessment and Licencing did not issue Environmental Impact Assessment (EIS) Guidelines for this project; the only provisions to guide the proponent's submission are the general provision in the *Environment Act* and associated regulations. EIS Guidelines that explicitly tell the proponent what areas in public policy in their EIS are required to assist decision making and must be a part of the Environment Act and CEC review process for water projects. We request that the CEC recommend that Manitoba should not consider or review a water project of this nature in the absence of EIS Guideline in the future.
- Despite the deficiencies in the PVWC's December 2005 submission (as evidenced in public comments and the CEC's June 30, 2006 memo to Tracy Braun, Director of Environmental Assessment and Licencing), the Environmental Assessment and Licencing Branch did not avail itself of *Environment Act* provisions to request the PVWC to provide additional information. The September 2006 supplemental filing by the PVWC, as well as other pertinent documents filed and included in the CEC hearing, are not in the PVWC's public registry file. We request the CEC to direct that all PVWC filings be filed together in the public registry.
- Public participants were not provided with adequate notice regarding the opportunity to pose questions to the proponents prior to the commencement of the CEC hearing. Notification that this was an option and then notification within two days that the deadline was the end of that same day does not uphold standards of procedural fairness.
- There are ample opportunities for improvement of the Participant Assistance Program (PAP) procedures. We applaud its existence, however non-government organizations are not able to undertake technical work and contract expert testimony until funding decisions are made and funds are guaranteed to support this work. When the schedule is not adjusted to accommodate a delayed decision on PAP funding, it affects the public participants, which in turn affects the quality of input for the hearings. We would ask the CEC to take steps and/or make recommendations to harmonize the PAP process with the CEC hearings process and schedule in the name of procedural fairness. It is particularly challenging to set the dates of hearings before any of the steps to enable public participants to contribute have been ensured.
- It has largely been standard practice since the Manitoba *Environment Act* was proclaimed for the proponent to respond to public review comments for both Class 3 and Class 2 proposals, and for all their supplementary materials to be filed under the *Act*, so they are available and public together with all other materials. This has not happened in the PVWC review process. Further, the CEC's Terms of Reference for the PVWC hearing specifically references a requirement for the proponent to respond to public concerns. As this did not occur with respect to the review

comments filed under the Environment Act, we request the CEC to require the proponent to do so. (See attached charts.)

- The Environmental Assessment and Licencing Branch needs to ensure that a proposal such as the PVWC's is reviewed internally with respect to essential water policies, with the potential to return the proposal for further technical work etc *before it is filed publicly*. As the submission by the Manitoba Eco-Network Water Caucus demonstrates, this did not occur. Nationally these steps are often referred to as a 'policy' EA and recommended as an internal to government process to decide if a proposal should be accepted.
- All material filed by the proponent must be placed in the public registry file (e.g. including all materials provided as part of the hearing process (supplemental filing, PVWC conservation plan, PVWC 2003 Master Plan, exhibits and presentations, written submissions, etc.)
- We urge the CEC to take the opportunity to recommend that all steps with respect to environmental licensing need to occur before the any other PVWC permits or licences are considered, and that information and technical content, recommendations from *The Environment Act* process be required to be considered in decisions under additional Manitoba legislation. In particular we request that the CEC recommend that no incremental access to water should this proposal be approved be allocated without full public notification and updating data and reporting from PVWC.

Fulfillment of Public Policy and Legislation

Manitoba Wildlands endorses the Manitoba Eco-Network Water Caucus submission and analysis of Manitoba's water legislation and policy as it applies to the PVWC proposal. In particular, we wish to re-emphasize the conclusion that "the Pembina Valley Water Cooperative's proposed project is out of step with Manitoba's stated principles and objectives concerning groundwater" and that the PVWC's proposal is inconsistent with Manitoba's public policies and legislation that "support and emphasize the importance of conservation and the importance of planning that respects and is based on natural boundaries such as watersheds".

Watershed Planning – 'Conservation First' Principle

National conservation and environmental organizations have been calling for 'Conservation First' across Canada for the last several years. Essentially, in the context of the PVWC's proposal, this means that

- protected areas need to be established on the ground above this aquifer
- watershed plans need to be in place prior to considering licensing a proposal of this nature
- water conservation standards and transparent reporting of objectives and results must be in place for the entire PVWC existing services region
- all information concerning water allocation decisions must be transparent and public (see below)

Essentially all Conservation objectives must be met, based on the Conservation First principle. It is our position that sustainability of this aquifer includes future habitat, ecosystem services, and water use from this source for already affected communities and users is a priority. Conservation First in this situation means that the future of the aquifer is dependant on *not* piping it to another sub basin.

Water Allocations and Public Access to Information

Manitobans deserve much better access to information about all aspects of water allocation and decision making in the province. We are calling on the CEC to recommend that all water allocations, with terms of permits and contracts, be posted publicly. Problems with notification and access to information were highlighted in the CEC hearings by the PVWC's customers. Customers in the PVWC services region have indicated that they have not been fully informed of the PVWC's proposal and its implications. Specific examples of issues of concern included information about profits, how capital projects are funded, etc. We request that the CEC recommend a water information system in Manitoba so that all permits, licences, and allocations are publicly posted.

Manitoba Laws – Legislative Precedence re: Water Acts

Manitoba Wildlands calls on the CEC to recommend that the first step needed is for the relationship between water legislation in Manitoba, and in particular with respect to the paramount nature of *The Water Resources Conservation Act* with respect to *The Water Rights Act*, be clarified. Manitoba also then needs to administer these acts and its responsibilities under them accordingly.

Confusion as to which of the Manitoba laws apply with respect to this project proposal limits the quality of decision making. The CEC is urged to recommend that Manitoba Water Stewardship and Manitoba Conservation create a public guide that is approved by Manitoba Justice, for use by all parties with respect to water projects.

Precautionary Principle – Especially Climate Change

See Water Resources Conservation Act

<http://web2.gov.mb.ca/laws/statutes/ccsm/w072e.php>

AND WHEREAS, in light of the fact that future domestic needs and the potential effects of climate change are unknown, such a [water resources management] scheme should be based on the precautionary principle and on sustainable water resource management practices;

The CEC has an opportunity to assist Manitoba in acting on its own principles regarding precautionary in its recommendations on this proposal. The number of national (federal legislation); international conventions and agreements which Canada is party to; and regional instances where Manitoba is party to precautionary principle policy or regulatory requirements is significant. These should have been in EIS Guidelines for this project.

See our assumption above that Manitoba's Sustainable Development Principles and Guidelines are consistent with existing water policies, conventions and agreements which Manitoba is party to. We

request that the CEC recommend that Manitoba take a precautionary approach regarding this proposal, including with respect to the audit of regulatory and policy instruments which Manitoba is party to.

In particular, we request that the CEC consider the lack of climate change content in PWC materials, evidence etc. There is no shortage of information and technical, academic and scientific information for the CEC to consider regarding risks to water supplies in the Prairie due to climate change. We assume the CEC advisors have provided such materials and context to assist in writing your report. It is our position that the precautionary principles, especially with regard to climate change, as identified in The Manitoba Water Resources Conservation Act, is a sound basis to reject this pipeline proposal.

We request the CEC to apply the precautionary principle, especially with regard to climate change and uncertainty regarding future water supplies in Manitoba, to your recommendations.

Precedents & International Issues

The fact that Manitoba is last in line for use in its major water access arrangements requires consideration and study. The Prairie Water Management Agreement between Alberta, Saskatchewan and Manitoba essentially leaves Manitoba with greatest risk in quantity and potentially quality of water from western sources, along the Assiniboine River, through the Lake of the Prairies reservoir and down the rest of the Assiniboine River. The same is essentially true with respect to the Red River (albeit with a different set of players – i.e. the United States).

The argument has been made in other situations, and it holds true here as well; Manitoba must get its own house in order and adhere to the spirit, intent and letter of its own regulations and public policy regarding water. We are not currently doing the best that we can in this regard, and proceeding with the PVWC's proposed project does not further this objective. Water conservation must come first before any sub basin transfers, new pipelines etc. Certainly a water allocation proposal such as this - which adds risk to the region where the aquifer is located while setting a precedent – must wait until all conservation goals have been met and Manitoba had clear water inventories and budgets, plus improved access to water allocation information.

Comments from a PVWC Customer Perspective

The basis for water line in our ward in Morris Municipality included assurances that the water supply was adequate, including in times of drought, that no additional capital projects would be required, including no future new costs. Each resident is paying \$10,000 for services to cover capital costs.

The rates charged for water consumption by Morris Municipality are low; conservation standards were not part of the agreement for each property owner to obtain piped water. (low flow showers, toilets, etc) The PVWC does not have water conservation standards in place in my municipality, to best of my knowledge.

As a concerned customer of the PVWC, I suggest that the CEC recommend an independent review of all water use and needs data and projections for the existing PVWC customer regions. This study should

include an audit of how new customers are added to their distribution system, whether municipalities are putting conservation expectations in place, etc.

Public Utilities Board

The Public Utilities Board (PUB) made a presentation at the PVWC hearing. Manitoba Wildlands concurs that PUB oversight may be relevant and welcome concerning water supply utilities and rates, but it is NOT a substitute for improved conservation standards, review and public hearings under *The Environment Act*, in particular when many communities are involved/affected by a proposal. We recommend that the CEC emphasize this point in its report. It is particularly important for the local communities, and all affected parties to be able to participate in a public hearing regarding water sources. The PUB does not enable this to happen.

First Nations

It was evident during the public review and the hearings that the PVWC had not taken the concerns of First Nations affected by its proposal into consideration. Had PVWC actually responded to public comments then we would have a record of its response to the concerns of Buffalo Point First Nation. There are clearly traditional territory issues regarding the lands above the aquifer and in the vicinity of the proposed well. It is long overdue that Manitoba Conservation consider potential need for or obligation regarding a proposal of this sort *before* commencing these proceedings. We request the CEC to ask Manitoba Conservation's Aboriginal Affairs branch what steps have been taken with regarding to Aboriginal rights and this proposal.

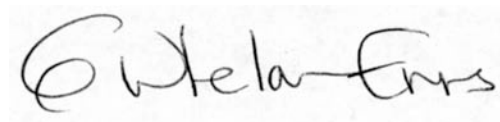
Attachments Provided

We are providing the CEC with a **Suite of Eight Maps** prepared by our offices, both to assist the Manitoba Eco Network Water Caucus in their submission, and for our own understanding of this proposal. A **list of those maps** is also provided as are our **February 2006** review comments.

We have also attached the **Environment Act Review Comments Charts** which were used during the Water Caucus presentation. We have commented above about the need to have formal response from PVWC as to these review comments. These charts were also prepared through our office.

We appreciate the opportunity to provide our input into the CEC hearing process for the Pembina Valley Water Cooperative's proposed Supplemental Groundwater Supply System.

Yours truly,



Gaile Whelan Enns
Director, Manitoba Wildlands

Attachments:

- 1) Pembina Valley Water Cooperative, Aquifer and Water Basins - Map No 1
- 2) Pembina Valley Water Cooperative, Aquifer, RMs, Protected Areas, ASIs, Mining Rank ones-Map No 2
- 3) Pembina Valley Water Cooperative, Aquifer and Natural Regions - Map No 3
- 4) Pembina Valley Water Cooperative, Red River Basin and RMs - Map No 4
- 5) Pembina Valley Water Cooperative, Red River Basin and Watersheds – Map No 5
- 6) Pembina Valley Water Cooperative, Red River Basin Watersheds, RM Boundaries - Map No 6 (labels)
- 7) Pembina Valley Water Cooperative, Red River Basin Watersheds and RM Boundaries - Map No 7
- 8) Pembina Valley Water Cooperative, Proposed Well Site - Map No 8
- 9) PVWC mapping products list – November 14, 2006
- 10) Pembina Valley Water Cooperative Public and Government Review Comments – Proposed Supplemental Groundwater Supply System
- 11) Manitoba Wildlands Comments: Pembina Valley Water Cooperative Proposal, February 6, 2006