

# SOUTHERN CHIEFS ORGANIZATION

## SUBMISSION ON BILL 46

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### "THE SAVE LAKE WINNIPEG ACT"

**GRAND CHIEF MORRIS J. SWAN SHANNACAPPO**

**JUNE 14, 2011**

*UN Declaration, article 32:*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall **consult and cooperate in good faith** with the indigenous peoples concerned through their own representative institutions **in order to obtain their free and informed consent prior to the approval of any project** affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

See also articles. 10, 11, 19, 28 and 29.

The Government of Manitoba announces it will take action to protect the province's water and save Lake Winnipeg through the introduction of Bill 46.

Many Southern First Nations living along the lake are stakeholders and they too need to be included in proposed legislation or act regarding Saving Lake Winnipeg. As traditional managers and users of Lake Winnipeg, which is the 10<sup>th</sup> largest freshwater lake in the world, we have been saying for a long time that the lake is dying. We must take proactive steps to preserve the lake and make it safe for future generations to enjoy.

The five-year study, titled ***"Sudden ecosystem change in Lake Winnipeg, Canada, caused by eutrophication arising from crop and livestock production during the 20<sup>th</sup> century"*** (compiled by Bunting L., P.R. Leavitt, B. Wissel, K.R. Laird, B.F. Cumming, A St. Amand and D.R. Engstrom) and commissioned by the province, recommends a 50 per cent reduction in phosphorous levels to reverse regular algae blooms and return the lake to a pre-1990 state. These recommendations are limited to livestock, agricultural and municipal water and waste systems.

The study does not take into consideration the cumulative impacts and adverse affects of water regulation on Lake Winnipeg and other major bodies of water in Manitoba. The regulation of our lakes has accelerated the decline in water quality, massive shoreline erosion, community flooding that continues year after year, loss of access and loss of use of this great resource by residents, cottagers and for tourism, also increasing and damaging our boreal forests and creating ongoing overland flooding in southern Manitoba in areas such as in the southwest, west, south and eastside of the province. As an example, in the Interlake (33,000 square kilometres) and North East (14,000 square kilometres) area respectively overland flooding is visible utilizing Google earth.

#### **ATTACHMENT 1: images overland flooding characteristics and Interlake and NE Lake Winnipeg affected area**

We the Southern First Nations agree that there is an increase in contaminants entering the waterways and lakes from livestock operations, farming, pollution from cities and a loss of wetland, because we have seen it, experienced it and continue to suffer from the on-going and unregulated drainage ditches and channels that were cut along the perimeters of our reservations, and in some cases purposely designed to drain right into our reservations.

The focus of Bill 46 is "limited" to three key areas to reduce the pollutants;

1. Keeping hog manure out of the lake by:

**banning any new hog industry expansion** that does not use advanced environmental practices to protect water;

**enshrining in legislation a permanent ban on winter spreading of manure;** and

doubling funding for best environmental management practices that protect water and

**introducing a new tax credit** to help farmers acquire new environmental technologies to treat manure responsibly.

2. Modernizing sewage treatment in Winnipeg and throughout Manitoba by:

Requiring the City of Winnipeg to replace its North End Sewage Treatment Plant with a full **Biological Nutrient Removal (BNR) Plant** to keep pollutants out of the lake. Within a year, the city will be required to produce a plan on how it will meet strict limits of pollutant removal. The plan will then have to go to the Clean Environment Commission and the Public Utility Board (PUB) to ensure ratepayers are protected.

**Enshrining in legislation** planning rules to ensure no new subdivisions outside city limits are built without an **approved wastewater management plan**.

3. Protecting Manitoba's wetlands by:

**ATTACHMENT 2:**

**pictures of Netley Creek Marsh 1990 and 2008**

- **restoring natural filters like the Netley-Libau Marsh** that keep pollutants from entering the lake by investing in projects like cattail harvesting that reduce nutrient loading to the lake and rebuilding the marsh through innovative pilot projects;
- putting new powers in place to protect wetlands on Crown land; and
- banning the rapid expansion of peat extraction from wetlands.

Furthermore, we as southern First Nations, see this as another “act” that will restrict, limit and marginalize our people and community(s) from continuing with practicing their traditional pursuits, such as trapping, hunting, fishing and gathering. In addition, it will further restrict and hamper any Treaty Land Selections by those southern First Nations that have outstanding Treaty Land Entitlements.

The Province of Manitoba has allowed third party interests to “grab” as much Crown Land as they can get their hands on, by doing so, violates the TLE Agreement that was signed in 1997. Many of our First Nation community(s) naturally resides along waterways and we see this Bill 46 as another infringement on our Treaty Rights and hurdle to fulfilling the terms of the TLE Agreements.

As southern First Nations we to are concerned with what is happening in our local and collective traditional territories, with regard to ongoing **Environmental and Social Impacts** such as;

- Loss of species habitat and indigenous homelands, particularly in the boreal forests due to large reservoir flooding footprints
- GHG emissions (methane, CO<sub>2</sub>, other GHGs) from boreal reservoirs – that are 60 times more potent compared to the emissions of lake reservoirs.
- Downstream impacts on instream flow and timing, fish habitat, biodiversity, and species composition
- Shoreline erosion, loss of bank stability, changes in turbidity and sediment transport
- Fragmentation of intact forest habitat

Southern First Nations do have legal and recognized rights as a result of the Treaty Making process of the mid-1800's and early 1900's. As many of you around the table are aware, Canada had formally adopted the United Nations Declaration for the Rights of Indigenous Peoples (UNDRIP), which requires states such as Canada to ensure that Indigenous Peoples are participants in any form of natural resource extraction, use or development. Canada requires in this situation an;

- Approach to community engagement
- Approach to consultation with aboriginal communities, and the degree to which the principles of **free, prior and informed consultation** are applied
- An ability to advise on the Impacts on water quality and availability

In saying this, I also want to draw your attention to the several Federal and Provincial legal precedents across Canada that support southern First Nations, should they wish to pursue their legal options.

### **ATTACHMENT 3: Bill 46 Handout # Favourable Treaty Indian Legal Cases**

There will substantial risk to the Manitoba Government as owners of Manitoba Hydro that will include financial; compensation, mitigation, Impact Benefit Agreements to affected individuals and communities. We were denied equal and fair participation in the MPUB Risk Management and Risk Assessment strategy review of Manitoba Hydro's operations, management, administration and corporate strategy.

### **ATTACHMENT 4: MH Important Notice July 2010 and Jenpeg photo May 4, 2011**

A criterion for environmental performance standards includes:

- Maintaining river flows;
- Maintaining water quality;
- Ensuring fish passage;
- Protecting watershed integrity;
- Avoiding impacts on threatened and endangered species;
- Maintaining indigenous and cultural values;
- Avoiding impacts on recreation and navigation;
- Mitigating and reclaiming disturbances, including removal of unnecessary facilities from waterways and landscapes.

Most recently, SCO responded to a letter from K.R.F. Adams, Senior Vice-President, Power Supply to Senator Rich Zipperer, State of Wisconsin regarding Senate Bill 81, suggesting that Manitoba Hydro has met all of the requirements in consultation and accommodation with Manitoba aboriginals.

SCO on behalf of the Southern First Nations have taken many steps to ensure that SCO First Nations' Aboriginal and Treaty rights are represented. These actions include:

1. continual correspondence with Federal and Manitoba Ministers regarding consultation and licensing of Churchill River Diversion, Lake Winnipeg Regulation and Grand Rapids Generating Station 50 year License renewal(s)
2. filing an intervener application with the Manitoba Public Utilities Board for the General Rate Application 2010/2011 and 2011/2012 process, that included a RISK MANAGEMENT AND RISK ASSESSMENT of Manitoba Hydro Operations; SCO was told directly that the MPUB forum was not the place to bring up outstanding environmental cumulative impacts and adverse affects.
3. filed an Environmental Petition with the Auditor General's Office pursuant to *Auditor General Act* R.S.C. 1985 c.A-17 for adverse impacts of Manitoba Hydro Projects and requirement of an environmental audit.
4. Submission to the United Nations Forum on the Rights of Indigenous peoples (UNFRIP) on May 24, 2011, regarding the destruction of Lake Winnipeg, water quality issues and flooding and over land flooding of the boreal forests in Manitoba caused by Government of Manitoba and Manitoba Hydro

SCO First Nations support the 2011 Senate Bill 81 and specifically, the requirement that the 50 year renewal and final licenses for the Churchill River Diversion (CRD), Lake Winnipeg Regulation (LWR) and Grand Rapids Generating Station (GRGS) are in effect under Canadian law and require full participation and inclusion of southern First Nations. In SCO's opinion, the 2011 Senate Bill 81 serves as an extremely important and useful check and balance of Manitoba Hydro and the Government of Manitoba.

The letter by Mr. Adams implies that Manitoba Hydro and Government of Manitoba have met its obligations under Canadian law to consult with Aboriginal First Nations. Resource use allocations, licensing approvals and major resource development project approvals require consultation with Treaty Indians to determine the impact of government and industry decisions on Treaty and Aboriginal rights.

**ATTACHMENT 5: Southern First Nation Images Bloodvein, Sagkeeng, Lake St. Martin to highlight a few.**

Despite numerous requests on behalf of the member First Nations to be consulted regarding the Churchill River Diversion, Lake Winnipeg Regulation and Grand Rapids Generating 50 year renewal license, numerous SCO First Nations have been denied that right.

In the defence of wetlands, SCO has provided many public, private and educational presentations on the impacts and adverse affects that have been created by the Government of Manitoba and Manitoba Hydro Integrated Power System. Our people have always understood the value of the creator's design and that wetlands act to filter pollutants from waterways and help to prevent flooding. We know we have to protect and enhance vital wetlands like Delta and Netley marshes and maintain other important wetlands and riparian areas through educating stakeholders.

Southern First Nations have much to offer in the area of traditional knowledge and want to be part of and included in any further Lake Winnipeg research and education, our elders and people can assist with updating research to allow for better understanding of the challenges and thus the opportunities to saving Lake Winnipeg and guide the province's actions as the lake is brought back to health.

We would like for the province to invest in our research in and around Lake Winnipeg including equal participation with the Lake Winnipeg Research Consortium. As an organization, SCO has also met with our neighbours, south basin Mayors and Reeves to share our knowledge on Lake Winnipeg and issues related to our environment.

As Treaty Indians we knew that Lake Winnipeg's watershed (spans four provinces and two countries;) is vast. Our forefathers travelled this whole area and knew all of its tributaries and landscape. As southern First Nations we suggest that there are solutions, but the willingness of Manitobans to acknowledge that farming and agriculture activities are contributing to the death of the "Lake" and so is the regulation of the water by Manitoba Hydro.

Sustainable management of our water resources requires co-operative action by governments and stakeholders throughout the basin to accomplish this goal and ensure a sustainable future for Lake Winnipeg.

Many southern First Nations have suffered decades of cumulative impacts and adverse affects should be included. As Manitoba communities living around the waterways, we



all need to ensure upgrades of municipal sewage plants and lagoons meet proposed water-quality objectives.

Southern First Nations are stakeholders and need to be consulted when there are proposals to develop such as:

- a surface-water management strategy
- incentives for landowners to retain wetlands and store water,
- drainage and infrastructure planning,
- wetland restoration,
- shoreline and riparian area protection,
- water allocation monitoring and planning,
- watershed planning and
- buyouts for producers in marginal flood-prone areas.
- Southern First Nations need to be included any planned international summit designed to bring together stakeholders and other levels of government throughout the Lake Winnipeg watershed to develop a sustainable development strategy for Lake Winnipeg.

#### **CONCLUDING COMMENTS:**

On behalf of Southern First Nations, I submit the following recommendations on how we can achieve a healthier Lake Winnipeg and also a more predictable environment in which we all can live;

1. Establish an Independent Water Monitoring Structure – take it out of the hands of Manitoba Hydro (refer you back to Attachment 4).
2. Reduce the water levels on Lake Winnipeg to 712.5 asl – this will allow for more manageable water levels on South Indian Lake (CRD), Cedar Lake (Grand Rapids Generating Station) and secondary reservoirs Lake Manitoba, Lake Winnipegosis, Lake of the Woods.
-  3. Put on hold current Bi-Pole III, Keeyask and Conowapa hydro projects (at least until the final licenses for the current and existing hydro projects have been properly and legally vetted through a public process and respecting Treaty Indian interests).
4. Build a bridge from mainland to Hecla Island to allow for a more natural water movement and flow.
-  5. Invest in Wind Energy projects in southern Manitoba as we have an 8100 Megawatt capacity, with an existing 5000 megawatts of run of the river projects available to firm up a minimum of 2500 Mw's of electricity from Wind projects.

6. Restore southern First Nation Whitefish Hatcheries at Dauphin River and Pine Creek First Nation respectively to enhance the local fisheries.
7. Work with Southern First Nations in maximizing the fish resource in Lake Winnipeg and elsewhere in Manitoba, by purchasing the FFMC plant and Licenses, instead of the current fishery management approach to marketing 2 or 3 species. Our fishermen complain that they are dumping 100,000 lbs over the side of their boats to get pickerel and whitefish.
8. Convert Brandon Generating Station from Coal and Natural Gas to a Bio-Mass system, this will assist with issues with Livestock, Agricultural and Industrial waste etc., and possibly open up new markets for disposal across western Canada, Ontario and North Midwest U.S. states.
9. Convert Selkirk Generating Station from Natural Gas to a Bio-Mass system, this will allow to assist with issues with Livestock, Agricultural and Industrial waste etc., and possibly open up new markets for disposal across western Canada, Ontario and North Midwest U.S. states.
10. Establish processes that allow for representation that is equal, fair and open to participation of southern First Nations individual, communities and their designated tribal and political organizations.
11. And a Final Recommendation: change the name of Bill 46 to **“Giving Back Lake Winnipeg Act”**.