

**Manitoba Wildlands' Comments –
Wuskwatim Generation Project
Canadian Environmental Assessment Act Comprehensive Study Report**
(Department of Fisheries and Oceans (DFO) – Central and Arctic Region, October 2005)

December 21, 2005

Specific Comments by Page

Note: Comments below are not intended to be comprehensive

Re: Executive Summary (pg. ii)

Following analysis of the nature of the project, the description of work, the infrastructures and the proposed changes to the hydraulic regime, Fisheries and Oceans Canada and Transport Canada have assessed the potential impacts that the Wuskwatim Generation Project is likely to have on the environment. This review was completed on the basis of the information provided by the Proponent in their Environmental Impact Study and Supplemental Filings, expert advice provided by federal authorities, results of discussions with provincial regulatory agencies and advice from provincial experts provided through the cooperative review process, and comments provided by Aboriginal groups and other public stakeholders through various consultation exercises..

According to the text quoted above, the basis for DFO's comprehensive study report (CSR) appears to exclude the documents (authored by proponents, the Clean Environment Commission (CEC), the Project Administration Team (PAT), and public participants that were the outcomes of a year-long provincial review that included hearings conducted by the CEC, an Interrogatory process, two Motions hearings, a round of requests for further disclosure, etc.

Re: 1.0 Introduction (pg. 1)

The text refers to "consultation conducted through public hearing by Manitoba's Clean Environment Commission (CEC)" as part of the elements of public consultation considered by the CSR, but in terms of substantive scientific and/or expert input, the list of "used extensively in the writing of this report" contains **only** documents authored by the proponents (Manitoba Hydro and Nisichawayasikh Cree Nation), their consultants, or documents the proponents were involved in preparing, and appears to ignore the report of the CEC on its public hearings, not to mention the documentation resulting from year-long review process led by the chair of the PAT. The listing fails to mention or use the evidence, motions, transcript, interrogatories, presentations, expert witnesses' content etc. from the CEC process.

DFO appears to have determined it could ignore all other aspects of review of the Wuskwatim environmental proposal under the Manitoba Environment Act and avoids any reference to this Act despite the fact that the reference to the Clean Environment

Commission is in respect to this Act. Public review of the EIS, and all supplemental filings by the proponent occurred under Manitoba's Environment Act.

Re: Figure 2: Manitoba Hydro's system in Northern Manitoba (pg. 6)

This map is a low quality snapshot of a pdf. Original versions of these electronic figures were available to DFO.

Re: 2.4.2 Alternative Means of Carrying out the Project (pg. 7)

This section of the CSR, although a requirement under CEAA, should have also included a response to Section 16.(1)(e) of CEAA – consideration for “the need for the project and alternatives to the project”. There is no content here or elsewhere in the CSR regarding alternatives to the project, despite extensive content regarding alternatives to the project in the review conducted under the cooperative environmental assessment (EA) agreement between Canada and Manitoba.

Re: 3.1 Federal Legislation and Policy (pg. 19)

The CSR discusses the referral of the Wuskwatim Generation Project to DFO by the Canadian Environmental Assessment Agency. As a matter of accurate historical reference, and in the spirit of avoiding revisionist content, the CSR should reflect the process by which DFO was referred both projects (Generation and Transmission) and subsequently decided it did not have responsibility as a responsible authority (RA) as per CEAA. There is a separate section for the sequence of events regarding the transmission projects; the process should be described together (see additional comments on the transmission project process below and re: 3.3)

Under Section 15.(2), the RA has the authority to make a determination to review both the Generation Station and Transmission projects as one. In Manitoba Wildlands' view, this should have been the chosen course of action. Alternatively, DFO should have also provided commentary from other potential RAs for the Wuskwatim Transmission Project as to why each of them did not have any responsibilities for this transmission project under CEAA.

The CSR does not fulfill the following:

(pg.21 of the CSR)

“The Wuskwatim Transmission Project was considered when conducting the cumulative effects assessment of the Wuskwatim Generation Project.”

Re: 3.1 Federal Legislation and Policy (pg. 20)

We note that DFO has referenced the fact the Wuskwatim Generation project is likely to affect woodland caribou.

“On August 7, 2004, pursuant to subsection 79(1) of the SARA DFO notified the Minister of the Environment that the Wuskwatim Generation Project was likely to affect woodland caribou, which is a listed species under the SARA.”

Re: 3.3 The Wuskwatim Transmission Project (pg. 21)

With respect to the letters dated April 16, 2002 and October 2003 regarding the Wuskwatim transmission project responsibilities and effects, DFO indicated that it was not likely a responsible authority regarding transmission project, but no information was provided then as to whether other federal agencies were asked at that time if they had responsibilities (i.e. – regarding trap lines). All other federal agencies were assuming that DFO would carry out federal responsibility regarding transmission project as the transmission lines project was part of the projects review when federal agencies were determining whether they had specific responsibilities. Manitoba Wildlands and other public participants continue to questions why this decision to disconnect the transmission project was made given endangered species, Aboriginal access rights, etc.

Re: 4.1 Scope of the Project (pg. 22)

The CSR discusses the proponents' arguments for not including decommissioning of the Wuskwatim Dam in the EIS. The CSR accepts this without mention of the discussions, questions etc. regarding decommissioning of Manitoba Hydro dams that took place in the CEC hearings and through the review of the projects under Manitoba's Environment Act. In particular, given that there are dams in Manitoba that are reaching the age time frame Manitoba Hydro appears to have identified for potential decommissioning – and these dams also have no decommissioning plans – DFO, as lead federal responsible agency, had a responsibility to pursue this issue.

Re: 4.5 Cumulative Effects (pg. 24)

This section is written as if dams do not have transmission lines and other transmission infrastructure. "Projects that "will be carried out" are defined as those projects for which an environmental assessment has been undertaken and where approval has already been provided." To follow this reasoning it is acceptable to ignore the transmission lines that will exist in relation to the Wuskwatim generation station because they have not yet been licensed. The fact that DFO's basic definition of Cumulative Effects Assessment (CEA) is so narrow raises questions as to whether DFO's CEA as part of the CSR is adequate. The heavy reliance of DFO on proponents' information (see our comments re: pg. ii & pg. 1 above) and the apparent lack of consideration of the huge amount of information filed by public participants, not to mention the CEC's report compounds the above concern.

The content of the CSR regarding CEA goes beyond the narrow definition on page 24; the Wuskwatim Transmission Project is included in the list of activities that were considered in the CEA. This does not change that fact that the definition of CEA in DFO's CSR should reflect a broader conceptualization of CEA.

We also question how it is possible that the CSR can claim to have taken the transmission project into account with in its CEA, when at the same, the CSR largely ignores the content

from the CEC hearings, and public participants contributions regarding the transmission project.

Re: Environmental Assessment Methodology - 4.6.3 Cumulative Effects (pg. 27, paragraph 2)

Environmental assessment is about making predictions about potential environmental effects. The CSR cumulative effects section refers only to identified effects and does not say what party would identify those effects. The Manitoba Hydro EIS did not acknowledge environmental effects from the Wuskwatim Transmission line project OR Tolko present and future harvest plans. It appears that DFO needs to be explicit about the identified environmental effects it identified, and about potential environmental effects. In particular, sixty one traplines will be affected by the Generation and Transmission project – though there is no mention of this in the comp study. Please see definitions below, which have not been fulfilled.

Definitions – CEEA Section 2. (1)

"environmental effect" means, in respect of a project,

- (a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,
- (b) any effect of any change referred to in paragraph (a) on
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) the current use of lands and resources for traditional purposes by aboriginal persons, or
 - (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or
- (c) any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada;

Cumulative Effects Assessment Practitioners Guide

2.0 Assessment Fundamentals

http://www.ceaa-acee.gc.ca/013/0001/0004/2_e.htm

Cumulative effects are changes to the environment that are caused by an action in combination with other past, present and future human actions.

Glossary

http://www.ceaa-acee.gc.ca/013/0001/0004/a_e.htm

Cumulative Effects Assessment:

An assessment of the incremental effects of an action on the environment when the effects are combined with those from other past, existing and future actions.

Re: 5.4.5 Mammals – Woodland Caribou (pg. 50)

Manitoba Wildlands continues the work of WWF Canada and Nature Canada for establishment of Manitoba Protected Areas.

The 3rd paragraph on this page indicates that no woodland caribou habitat has been identified, and no SARA recovery plan is in place. DFO's reference for more information is to the EIS from Manitoba Hydro. Substantive information regarding woodland caribou is included in the CEC Hearings transcript, evidence, presentations and cross examination. Expert witnesses contributed up to date woodland caribou information. It is astounding that the CSR makes no reference to this information, leading us to question whether DFO has simply ignored all of the substantive information from the CEC Hearings.

Re: 5.5.7 Protected Areas and Scientific Sites (pg. 56)

As per our technical work, review comments since 2002, closing statement to the CEC hearings, interrogatories, etc., the information in the Hydro EIS is not correct regarding protected areas – either on a technical or public policy basis. This is another instance where DFO appears to have ignored the public record, result of consultations, and hearings, etc. Most surprising is the lack of a public policy context to substantiate the information obtained from Manitoba Conservation. We believe it is the responsibility of DFO as responsible federal authority to clearly state Manitoba's protected areas policy, goals, and provide the ecological context regarding the Wuskwatim generation project. That content is missing from the CSR.

Re: 5.5.8 Heritage Resources (pg. 56, 57)

Again DFO has ignored the CEC record regarding archeological sites, the content of the hearings, and expert presentations, etc. Essentially the CSR implies that all of the known archeological sites have already been lost or damaged; therefore there are no known or significant effects! See quotes below from the *CEC Report on Public Hearings – Wuskwatim Generation and Transmission Projects*.

(pg. 74 of CEC report)

The Commission also acknowledges that TSK was practiced in the identification of burial locations, sacred sites, ceremonial areas, as well as the selection of appropriate mitigation and that TSK will be used in environmental protection plans. However, except for the general references that TSK was used, use of traditional knowledge did not appear to be as evident in the EIS documents for the identification, assessment and mitigation of environmental effects. On this matter, the Commission accepts MH/NCN's explanation that, while TSK was used in the environmental assessments, its use was not effectively communicated in the EIS documents.

(pg. 109 of CEC report)

The Commission accepts that the direct effects of the Projects on culture are adequately reflected for the Nelson House RMA. However, it is concerned that limited attention appears to have been paid to appears to have been paid to potential indirect affects that extend beyond the Nelson House RMA and may exist over a longer time frame. The Commission believes that indirect effects of the Projects may be viewed to be adverse, particularly outside the Nelson House RMA. This may be the case for South Indian Lake, where community members said their concerns were not addressed in a manner similar to those of Nelson House.

Re: 6.2.2 Proponent Consultation with the Manitoba Métis Federation (pg. 59)

Funding was provided by the Proponent to the MMF to conduct research and consult with their members and report to the Proponent regarding their perspectives and findings about the effects of the proposed Wuskwatim Projects on Métis people in the vicinity of the projects . . . A final report was provided on June 27, 2005, and following additional correspondence, a response was provided by the Proponent on September 15, 2005. These reports were submitted to the PAT for their consideration on September 30, 2005.

This is an example of the CSR making reference to reports that have not been made available, and are not public.

Re: 6.2.4 Manitoba Clean Environment Commission Hearings (pg. 60)

DFO refers the reader to the CEC report on these projects, but does not indicate whether the CSR has included the CEC report in its analysis and conclusions. The inclusion of Tables 1, 2 and 3 is odd, given that they are an attempt to summarize issues raised by various publics, groups, yet the CSR explicitly acknowledges their weakness and the fact that they do not remotely reflect all of the input, analysis, comments by these groups. The presentation of this information also seems to imply that the CEC process only consisted of the 9 week hearing process, when in fact the hearings were only a part of a year long review undertaken under the Manitoba Environment Act. We assume that the entire process would be relevant under the cooperative environmental assessment agreement between Canada and Manitoba.

We would suggest that charts are missing – and should exist with respect to the expert witnesses input, interrogatories, cross examination etc. Each of these tracks of environmental review inputs and information should have been included in summary form. The same is true regarding the a summary of the public review comments and appeals regarding the EIS itself, and the Wuskwatim projects Environmental Impact Statements Guidelines.

Re: 6.2.5 Written Input (pg. 60)

There is no mention of the review under the Manitoba Environment Act in this text, and mostly inaccurate references to the process during 2001, 2002, 2003, prior to the CEC hearings.

We find it odd that this section includes considerable discussion of mechanisms for public comments through the Manitoba Hydro web site. Although to us it is an obvious statement, we feel it necessary to point out that *Manitoba Hydro does not conduct the review of its EIS.*

This text, and indeed the CSR as a whole, ignores the fact that 2 review processes were occurring in parallel; both with respect to Manitoba's Environment Act AND with respect to Justification, Need for, and Alternative to (JNFAAT) the Wuskwatim projects.

All 4 assessments are relevant for consideration by the CSR under CEAA. The decision to include the JNFAAT review in Manitoba proceedings was made by Manitoba's Premier spring 2003. Hence the timing and pattern of public written input etc. varies.

Manitoba Wildlands continues the work of WWF Canada and Nature Canada for establishment of Manitoba Protected Areas.

It is also bizarre that DFO comments on the review process for the EIS guidelines, but doesn't reference any of the other various stages of review that occurred prior to the CEC hearings, and largely seems unaware of the content of the hearings (evidence, expert witness testimony, presentations, cross examination, etc). Submitting questions to Manitoba Hydro may be part of the proponents' public consultation program but it is not part of the review under Manitoba's Environment Act. DFO is confusing the two, and ignores the total 3-year period of review, and its stages.

The final sentence on page 60 is simply not clear or accurate (which, whose review is DFO referring to?).

Re: 6.3.1 Crown Consultations with Aboriginal Communities (pg. 65, 66)

This section regarding consultations with Aboriginal Communities is not clear. It needs to indicate the status of Northern Flood Agreement consultations re: section 9(a) and the status of consultations with regard to Section 35 of the Canadian Constitution. As federal responsible agency, DFO was also responsible presumably for any content in these consultations regarding Aboriginal rights with respect to the Wuskwatim projects. No timelines are provided in this information. The reference to Tataskweyak First Nation and Cross Lake First Nation and the Northern Flood Agreement (NFA) is odd, as the obligation to consult regarding new hydro projects under the NFA applies to all NFA First Nations.

Most concerns about effects on Aboriginal rights and activities from the transmission lines project are missing from Table 2, and the other two Tables regarding other consultation results.

See comments by the Manitoba Métis Federation, the Pimicikimak Cree Nation, and Trap Line 18.

Re: 6.3.3 Responses to Concerns Raised by Aboriginals (pg. 71, 72)

The content for response to Aboriginal concerns appears to be without source. The CSR refers to "the Proponent advises", or "the Proponent states" or "According to the Proponent" repeatedly in the text, but it is not clear how, when, or where the Proponent provided this input. This is relevant given our concern that DFO has not considered the transcript, evidence, interrogatories, and cross examination in the CEC hearings.

By this we also mean that Aboriginal and First Nations concerns in the year long CEC proceedings from July 2003 to end of June 2004 are absent from this report.

Also we would suggest that legal analysis is necessary as Manitoba Hydro is NOT the Crown, and presumably all obligations to consult have to be fulfilled by the Crown(s) with respect to a project that has federal responsibility triggers.

Re: 6.3.3 Responses to Concerns Raised by Aboriginals - *System Wide Hydrological Effects* (pg. 74)

The content here contradicts the transcript, and cross examination, motions hearings etc. of the Manitoba Environment Act review. See above.

**Re: 6.4 Other Federal Regulatory Consultation –
6.4.1 Canadian Environmental Assessment Act (pg. 74)**

The flaw in the steps following the release of the comprehensive study regarding the Wuskwatim Generation Project is the assumption that the CSR contains the information needed to substantiate its conclusion. In our considered opinion, it is impossible for this to be so, specifically given the sources and information that appear to have been ignored in the writing of the comprehensive study.

We also note that our requests for access to the DFO public registry were disappointing, given it is NOT available on line or in a digital format. Detail is sparse. For example, despite 3 years of technical and public participation in this project review Manitoba Wildlands' work products are not included. Our earlier requests for the contents of the DFO public registry support our assertion that DFO has omitted a great deal of the information it needed to write a comprehensive study.

Re: Table 4: Predicted changes in Cross Lake water levels under various scenarios as modeled for the load year 2012. (Pg 98)

Table 4 appears to be a repeat of Manitoba Hydro information with no analysis provided. We respectfully suggest that DFO could spend time reviewing the historical posted data regarding water levels in northern Manitoba, including at the Notigi structure, for South Indian Lake, etc.

It also once again appears that DFO has ignored the information in cross examination, especially with respect to effects elsewhere in the CRD. 2005 provided a perfect opportunity for DFO to test the proponents' assumptions given water levels in the CRD during the year. It is evident, as mentioned above, that DFO did NOT review its own data, or previous scientific work when preparing this CSR.

Re: 7.1.6 Compensation Program for Fish Habitat (pg 99, 100)

There appear to be reports from Manitoba Hydro mentioned here that are not publicly available. It is not clear from reading the comprehensive study what is available in the DFO public registry.

Re: 7.3 Species at Risk – Woodland Caribou (pg. 104 - 108)

Once again, DFO seems to consider Manitoba Hydro information as the basis for their assessment. And also once again, the content of the hearings transcript, evidence, expert witness presentation etc. has been ignored.

The 4 woodland caribou herds identified as being at risk in the proponents' EIS are not identified in the CSR. False logic regarding wintering data appears to be the basis for DFO conclusions. There has not been enough study of these 4 herds, to conclude there are not potential significant effects. In particular it looks like DFO did not ask about the wintering grounds of the other 184 woodland caribou. Nor is there any content to see what assessment occurred regarding the use of this ecosystem, this project area, as wintering grounds by arctic caribou.

Each example of proponents' information should be balanced with other information, from a variety of sources with involvement over 3 years in the environmental review. This exercise has not been undertaken in terms of Woodland Caribou effects and as our comments demonstrate, this has not been done for many areas of the CSR.

We are glad to see the plan for monitoring and caring for the woodland caribou that will be impacted by the project. But this plan appears to be a government only committee. Independent stakeholder, and Aboriginal participation is essential for a credible woodland caribou monitoring plan.

The CSR does identify the weakness of the Manitoba Hydro EIS regarding woodland caribou, and its reliance on Habitat Suitability Index work that is literature based only, from a distant natural region. Content in the CEC proceedings is used in this instance. The same kind of analysis needed to be applied to other potential environmental effects and content in the CSR

Re: pg 106, 107

Clearly Parks Canada identified problems with the Woodland Caribou data, similar to the problems in the EIS pointed out by expert witnesses in the CEC hearings. Significant time in the hearings was spent in discussion of the transfer from one eco region and eco system to a distant location these HSI assumptions. Also if an HSI is literature based, with no field work upon which to base it, the degree of accuracy or variance in applying such a tool is much wider. While Parks Canada has identified steps required regarding the future of woodland caribou impacted by the Generation and Transmission projects it is a fact that DFO did not ask about the capacity to deliver this and other measures which Manitoba is tasked with in the comprehensive study.

It would be our observation that the know-how, and staffing does not exist inside Manitoba Conservation to deliver these woodland caribou measures or to monitor Manitoba Hydro's efforts. Manitoba Hydro will need to fund this activity through an independent third party.

DFO has again concluded based on false assumptions that all is well for these Woodland Caribou herds. Such a conclusion flies in the face of the pattern of lost habitat, and effects of roads, corridors etc. over time in Manitoba and impacts / effects on woodland caribou elsewhere in Canada.

Re: 7.6 Use of Renewable Resources –

7.6.3 Protected Areas and Scientific Sites (pg. 120)

There is a substantive error of fact in the first paragraph of Section 7.6.3. The reference to the former Amisk Park Reserve is inaccurate. The Park Reserve is in place and protected, and the regulation to that effect is posted on the Government of Manitoba web site (<http://web2.gov.mb.ca/laws/regs/2003/pdf/087-p020.03.pdf>). Manitoba Hydro's 'support' for establishment of protected areas in northern Manitoba natural regions is symbolic only, and to date has not included any substantive action.

It appears that there is further reporting, documents etc regarding protected areas that are not available to the public. The basis for this content in the CSR should be public.

DFO has ignored or omitted the scientific goal of Manitoba's network of protected areas, the status of the natural region the Wuskwatim generation station site is located in, and clear information as to the definition of an ASI. References to verbal information from Manitoba Conservation are unacceptable without the context in terms of scientific goals, public policy goals, status of delivery of those goals, and the relevance to this project and this comprehensive study.

Re: 7.8 Effects of the Environment on the Project - 7.8.1 Climate Change (pg. 125)

As was clarified during the year long review of the EIS under the Manitoba Environment Act, the EIS Guidelines for these projects are clear about climate change. The EIS requirement is to address both effects of climate change on the project(s) AND the effects of the project(s) on climate change. We assume, given the reference to the EIS guidelines in the comprehensive study, that DFO was applying these guidelines – also accepted by the federal/provincial project administration team – in its analysis. This section of the comprehensive study includes a significant oversight by DFO. Again, the CEC report, hearings, evidence, interrogatories, expert witness in transcript etc. are all available for the DFO to use. We would submit that there is both provincial and federal responsibility for climate change effects. These are not acknowledged or assessed by the CSR.

Re: 7.10.3 Cumulative Effects to Woodland Caribou (pg. 131)

Data for green house gas emissions up to and including 2003 are available. We would be interested to know why DFO only used year 2000 emissions. It also seems evident that all discussion about emissions from Wuskwatim were in relation to the operation of the generation station. As a reminder to DFO about its own references to connected projects, clearly the woodland caribou are quite likely to be affected by the transmission project, which also contributes to GHGs.

The GHGs from the construction phase appear to be missing in the rationale provided here.

We commend Parks Canada and Environment Canada for their thorough questioning of woodland caribou habitat loss and effects. The CEC transcript, interrogatories, evidence,

cross examination etc. are a storehouse of material regarding woodland caribou that we assume will be made use of in the next stages of woodland caribou assessment, and monitoring with respect to the Wuskwatim projects.

Re: 10.0 References (pg. 138-140)

The list of references for the comprehensive study regarding the Wuskwatim Generation Station, and connected projects, does not include any of the materials from environmental review under Manitoba's Environment Act – with the exception of the CEC Report on Public Hearings. None of the public participants' comments, work products, transcript, evidence, or content of the 9 week hearings are included in the list of references. While making reference to the EIS Guidelines, and public comments that are charted in the study, there are no references to any documents from public participants, no inclusive reference to the DFO public registry contents, and no use made of the year long Manitoba Environment Act review of the Manitoba Hydro filings (4 EIS and supplementary filings) conducted. This verifies the concern of public participants that while much has been said of the Manitoba Canada cooperative environmental assessment agreement, the Honourable David Anderson was accurate when he said in a letter, read into the record for the CEC Hearings on June 7, 2004, that in fact this was not a joint environmental review.

*“Under the Canada – Manitoba Agreement on Environmental Assessment Cooperation, federal officials responsible for completing the federal environmental assessment have been cooperating through Manitoba's assessment and licensing process. I understand that the Clean Environment Commission's interrogatories and hearings referenced in your letter are part of the provincial process. However, **as the projects have not been referred to a review panel under the Canadian Environmental Assessment Act, the hearings currently being conducted by the Clean Environment Commission are not part of the cooperative environmental assessment.**”*

“Following a thorough public review of the comprehensive study report and comments received from the public, I will make a determination as to whether to refer the Wuskwatim Generation Project to a review panel under section 29 of the Act.”

It is curious, and noted above, that DFO has not included its own scientific studies and data for the project region in its references.

Unfortunately this means that despite clear federal responsibilities – Aboriginal rights are not satisfactorily dealt with – that the federal authorities have ignored public participation over the 3-year period. As CEAA acknowledges the importance of public concerns – as one of the primary purposes of the Act (Section 4.(1)(d)) – we would point out that much of the information in this document, where public concern should be a focus, simply omits and ignores public concerns!



1000 -191 Lombard Ave Winnipeg MB Canada R3B 0X1
info@ManitobaWildlands.org Ph 204-944-9593
www. ManitobaWildlands.org Fax 204-947-3076
