

Manitoba-Minnesota Transmission Project

Wetland Offset Measures Plan

And

No Net Loss of Wetlands Plan

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Prepared by:

Licensing & Environmental Assessment Department



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Number	Nature of revision	Section(s)	Revised by	Date
1	Provided additional details on accidental permanent wetland loss	4.5	MH	11/27/2020
2	Added a section on accidental permanent wetland loss	4.6	MH	11/27/2020
3	Provided additional details on accidental permanent wetland loss and Indigenous engagement.	5.0	MH	11/27/2020
4	Added an additional reference	8.0	MH	11/27/2020

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Preface

This document presents Manitoba Hydro's proposed Wetland Offset Measures Plan and No Net Loss of Wetlands Plan (the Plan) for the Manitoba-Minnesota Transmission Project (MMTP or Project). This document has been prepared to comply with Condition 26 of Certificate of Public Convenience and Necessity EC-059 for the Project that was issued by the former National Energy Board (NEB). This document has also been prepared to comply with Condition 36 of Environment Act Licence No. 3288 issued by Manitoba Sustainable Development. It was informed by discussion and feedback with Indigenous communities, federal and provincial authorities, and non-government expert bodies.

Indigenous communities, federal and provincial authorities, and non-government expert bodies are encouraged to direct any inquiries about this Plan to their current Manitoba Hydro contact at the Licensing and Environmental Assessment Department or alternatively,

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1.0 Purpose

The purpose of this plan is outline offsets and compensation for permanent loss of wetlands resulting from the Manitoba-Minnesota Transmission Project.

Additional documentation outlining Manitoba Hydro's commitment to wetland protection, mitigation, rehabilitation and monitoring for MMTP are outlined in:

- The MMTP Environmental Impact Statement¹;
- The MMTP Construction Environmental Protection Plan²;
- The MMTP Construction Environmental Protection Plan Mapbook (Part 1 of 2)³ (Part 2 of 2)⁴ ;
- The MMTP Environmental Monitoring Plan⁵; and
- The MMTP Rehabilitation and Invasive species Management Plan⁶

2.0 Legal framework

This Plan follows the legal requirements as outlined under Condition 26 of the National Energy Board's ("NEB") Certificate of Public Convenience and Necessity EC-059; and Condition 36 of the Environment Act Licence #3288 (Government of Manitoba 2019) described below:

Condition #26. Wetland Offset Measures Plan

Manitoba Hydro must file with the Board for approval, within ninety (90) days of commencing operation of the Project, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*

¹ [A81182](#) Manitoba-Minnesota Transmission Project EIS, January 4, 2017.

² [C00033-2](#) MMTP EPP CEnvPP, June 19, 2019.

³ [C00830-2](#) CEnvPP Mapbook (Part 1 of 2), August 2, 2019.

⁴ [C00830-3](#) CEnvPP Mapbook (Part 2 of 2), August 2, 2019.

⁵ [C00033-20](#) MMTP EPP Environmental Monitoring Plan, June 19, 2019.

⁶ [C00830-4](#) MMTP EPP Rehabilitation and Invasive Species Management Plan, August 2, 2019.

- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*
- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

Condition #36 of the Environment Act Licence #3288, states the following:

36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development.

While not legally required, this Plan was developed with information from the Province of Manitoba's *The Water Rights Act* C.C.S.M. c. W80 and the *Water Rights Regulation* 126/87 - Schedule D (Government of Manitoba 2019a) (Appendix A).

3.0 Project description

As outlined in Chapter 2 of the MMTP Environmental Impact Statement⁷, the Manitoba-Minnesota Transmission Project includes a 213 km long, 500 kilovolt alternating current, international power line from the Dorsey Converter Station (located near Rosser, Manitoba) to the United States border crossing near Piney, Manitoba, and modifications to the existing Dorsey Converter Station, the existing Riel international power line and the Riel Converter Station (located near the intersection of Provincial Trunk Highways 101 and 15), and the

⁷ [A81182-4](#) MMTP EIS Chapter 02 project description, January 4, 2017.

existing Glenboro international power line and the Glenboro Station (located south of Glenboro, Manitoba). An understanding of potential changes to wetland function is described in Chapter 10 of the MMTP Environmental Impact Statement⁸.

4.0 Wetland compensation measures

4.1 Defining wetlands

Wetland descriptions, classification and mapping⁹ are described in Chapter 10 of MMTP Environmental Impact Statement¹⁰. Digitally mapped wetland polygons and classifications were refined based on available information including the Land Cover Classification Imagery, Forest Resource Inventory database, the Agriculture and Agri-Food Radar imagery, and in-field data gathered while preparing the MMTP Environmental Impact Statement. This analysis was used to identify environmentally sensitive wetland sites for the MMTP Construction Environmental Protection Plan¹¹. Wetland types defined under this dataset include: mineral wetland marsh, peatland fen, mineral wetland swamp and peatland bog. This dataset was used to calculate wetland type and area (ha) for this plan. Wetlands are defined in Maps 1,2,3 and Appendix B of this Plan.

4.2 How wetland function will be measured

Wetland function will be measured during the post-construction monitoring program as outlined in Section 4.4.1 and Section 7.2.1 of the MMTP Environmental Monitoring Plan¹². To validate environmental impact statement predictions, verify implementation of mitigation measures, and to allow for adaptive management, pre-construction, construction and post-construction monitoring will identify any changes to wetland area affected (ha), and species composition and abundance. This monitoring program will be conducted by a wetland specialist for two years post-construction. Any resulting accidental permanent loss to wetlands will be quantified and reported annually to the Commission and Manitoba Conservation and Climate as per Section 6.0 of the MMTP Environmental Monitoring Plan¹³ and in collaboration with Indigenous monitors.

⁸ [A81182-18](#) MMTP EIS Chapter 10 vegetation and wetlands, January 4, 2017.

⁹ [A81182-19](#) MMTP EIS Chapter 10 vegetation and wetlands maps, January 4, 2017.

¹⁰ [A81182-18](#) MMTP EIS Chapter 10 vegetation and wetlands, January 4, 2017.

¹¹ [C00033-2](#) MMTP EPP CEnvPP, June 19, 2019.

¹² [C00033-20](#) MMTP EPP Environmental Monitoring Plan, June 19, 2019.

¹³ [C00033-20](#) MMTP EPP Environmental Monitoring Plan, June 19, 2019.

4.3 Description of compensation measures

Manitoba Hydro proposes to provide compensation to address the permanent loss of wetlands resulting from the Project. To achieve this Manitoba Hydro will be using an approach modeled on the Province of Manitoba's *The Water Rights Act* C.C.S.M. c. W80 and the Water Rights Regulation 126/87 Section D (Government of Manitoba 2019a). This legislation is the only legislation applicable to wetland offsets and recently underwent a multi-year government led consultation process (Hansard Transcript May 9th, 2018). A monetary payment by Manitoba Hydro in fulfillment of this wetland offset for the Project will be made to the Province of Manitoba, or designated agency, such as the Manitoba Habitat Heritage Corporation, this method for payment of compensation is similar to that specified under Section 5.1(2) of *The Water Rights Act*. This will be achieved through the implementation of a legal agreement with the Province of Manitoba and/or designated Agency that specifies that this funding is to be held in trust for projects dedicated to restoring or enhancing wetlands in the same watersheds as MMTP; as well as Manitoba or its designated agency shall be responsible for planning, implementation, monitoring and evaluation of the projects; and a requirement to make the project Information available to the public through a website. Such projects would be carried out within 5 years of signing the agreement by accredited third parties and may include restoration of wetlands in the same, watersheds; or enhancement of existing wetlands and wetland complexes.

4.4 Measuring permanent wetland loss

To calculate permanent wetland loss, all environmentally sensitive sites classified as wetlands in the MMTP construction environmental protection plan mapbook (Part 1 of 2)¹⁴ and (Part 2 of 2)¹⁵ were overlain with the locations of MMTP transmission infrastructure.

Of the 503 new tower structures required for the Project, 54 are located in wetlands (Table 1, Map 1). To calculate wetland loss, the dimensions of each tower foundation in a wetland were determined. On average, the foundations of self-supporting tower structures resulted in 27.45 m² of wetland loss, and foundations for guyed tower structures resulted in an average of 36.4 m² of wetland loss. A visual representation can be found in appendix E. Wetland loss was calculated using the understanding that wetland function can continue to occur under a tower, but not where foundations are installed. Total wetland loss from all 54 tower structures foundations is 0.186 hectares.

¹⁴ C00830-2 CEnvPP Mapbook (Part 1 of 2), August 2, 2019.

¹⁵ C00830-3 CEnvPP Mapbook (Part 2 of 2), August 2, 2019.

Permanent wetland loss can be further categorized by wetland classification. 27 of the 54 tower structures in wetlands are located in Class 3,4,5 mineral wetland marsh, resulting in loss of 1020 m² (0.102 ha) of wetlands. The other 27 tower structures are located in peatland fen, mineral wetland swamp or peatland bog. The tower structure type, tower number, foundation sizes, and wetland classification used in calculations are outlined in Appendix B.

Expansion at the Dorsey Converter Station for the Project resulted in the loss of 0.140 ha of Class 3 mineral wetland marsh (Table 1, Map 2).

Table 1. Permanent Wetland Loss (ha) by MMTP component

Project Component	Description	Wetland Classification	Wetlands Loss
Tower structure foundations	20 towers	Peatland Fen (Land Cover Classification Imagery)	0.056 ha (0.138 ac)
	3 towers	Mineral Wetland Swamp (Land Cover Classification Imagery)	0.016 ha (0.040 ac)
	2 towers	Peatland Bog (Land Cover Classification Imagery)	0.006 ha (0.015 ac)
	27 towers	Mineral Wetland Marsh (Stewart and Kantrund Wetland Class 3,4,5)	0.102 ha (0.252 ac)
	2 towers	Other wetlands	0.006 ha (0.015 ac)
Dorsey Converter Station Site	Development expansion	Mineral Wetland Marsh (Stewart and Kantrund Wetland Class 3)	0.140 ha (0.350 ac)
Total			0.326 ha (0.810 ac) (3260 m²)

The estimated total area of permanent wetland loss associated with all Project components is **0.326 ha (0.810 ac)**. Of this total, **0.242 ha (0.602 ac)** are classified as Class 3, 4 or 5 mineral wetland marsh.

4.5 Calculating wetland offset compensation

Manitoba Hydro has determined that an estimated 0.326 hectares of wetlands will be permanently lost as a result of the Project (Table 2). For the loss of these wetlands or any accidental permanent wetland loss, a compensation ratio of 3:1 has been determined with a valuation of \$14,820 per hectare as per the Water Rights Regulation 126/87 - Section D (Government of Manitoba 2019a)(Table 2). Manitoba Hydro will schedule to pay this compensation within 12 months after commencing Project operation. Manitoba Hydro will schedule to pay offset compensation for accidental permanent wetland loss within 8 months of reporting.

Table 2. MMTP Wetland Loss Offset Calculation

Project Component	Wetlands Loss	Ratio (3:1)	Valuation/(ha)	Total Offset
Tower Foundations	0.186 ha (0.460 ac)	3	\$14,820	\$8,270
Dorsey Converter Station	0.140 ha (0.350 ac)	3	\$14,820	\$6,224
Total	0.326 ha (0.810 ac)			\$14,494

Full Calculation= 0.326 (ha) x 3 (compensation ratio) x \$14,820 = **\$14,494** wetland offset calculation.

4.6 How accidental permanent wetland loss will be quantified and reported

The decision-making thresholds and criteria that will be used by Manitoba Hydro during post-construction monitoring to determine accidental permanent loss may be further refined by the monitoring results provided by the wetland specialist. The criteria used by Manitoba Hydro to determine if accidental loss has occurred is if the wetland has changed its classification; or it has been determined to have poor function as a result of vegetation change, or a reduction in wetland area as detected in the post construction monitoring program. The decision-making threshold to determine that an accidentally lost wetland becomes permanent and requires an offset, is any wetland that continues to be lost after two years of mitigation and monitoring. The wetland specialist will measure and detect accidental wetland loss through changes in aquatic plant species composition and abundance or through follow up investigations of reported environmental incidents in a wetland.

All accidentally lost wetlands detected in the two-year post-construction monitoring program will be mitigated as per the thresholds for action/decision triggers, the approach of adaptive management, and by implementing the steps of the mitigation hierarchy (Table 3).

Accidental permanent wetland loss could result from an accidental fuel spill in a wetland or change in wetland area from project activities. For example, in the event of an accidental fuel spill in a wetland the mitigation hierarchy would include:

- Avoidance – Implement spill mitigation measures such as fuelling greater than 100m from a wetland.
- Minimization- Contain and/or clean-up site to reduce spread.
- Rehabilitation – Plant or allow for natural re-vegetation of site and monitor for two growing seasons to determine if rehabilitation is successful.
- Offset – Compensate with a monetary payment if previous steps still result in poor wetland function after two years of mitigation and monitoring.

All accidentally lost wetlands detected in the post construction monitoring program will be reported in the Projects annual environmental monitoring report. The report will include a detailed explanation of how the mitigation hierarchy was applied to each accidentally lost wetland. If required to determine mitigation effectiveness at an accidentally lost wetland site,

the wetland monitoring program will be extended beyond two years. All accidentally lost wetlands deemed by the wetland specialist as continuing to be lost or have poor wetland function after two years of mitigation and monitoring, will be considered permanently lost and require an offset.

Where accidental wetland losses are observed within the monitoring program, the wetland specialist will use ground transects to confirm the extent of wetland loss. In addition, archival and current digital ortho-rectified imagery will be used to map, compare and quantify permanent wetland loss. Maps will be produced in a similar fashion to what was provided in this plan.

Wetland offset compensation for accidental permanent loss as measured during the post-construction monitoring program will be calculated in the same manner as is as outlined in Section 4.5. Manitoba Hydro will schedule to pay offset compensation for accidental permanent wetland loss within 8 months of reporting.

5.0 Effectiveness, selection criteria and schedule of Plan measures

Manitoba Hydro believes that the proposed compensation measures, together with its previously developed mitigation measures for Project impacts to wetlands, will be effective in achieving the principle of "no-net-loss".

Manitoba Hydro proposes to organize a meeting with Manitoba or its designated agency and Cultural representatives from Indigenous Communities as identified in Section 3.3 of the Crown Land Offset Measures Plan (Manitoba Hydro 2020). Cultural representatives can share characteristics of wetlands that support rights-based activities. These characteristics can inform Manitoba or its designated agency when making decisions about wetland projects to support. Once a wetland offset project has been implemented by Manitoba or its designated agency, Manitoba Hydro will conduct annual follow-up monitoring of the project until the project's objective of restoring or enhancing wetlands is achieved to ensure the effectiveness of proposed compensation measures. This follow-up monitoring will be conducted by reviewing reports created by Manitoba or its designated agency outlining results of any wetland offset project once implemented, these reports will also be shared with the MMTP Monitoring Committee for review and feedback.

Achieving no-net-loss follows the wetlands mitigation hierarchy (Manitoba Sustainable Development 2018, BC Ministry of Environment 2010, Alberta Environment 2007, Alberta Government 2019) outlined in Table 3 below. This table provides a description of the expected

effectiveness of the Plan measures and previously developed measures, in order to illustrate the mitigation hierarchy. Table 3 also includes the associated site-specific details and maps showing the locations of permanent wetland loss, selection criteria and a schedule for each measure as required by Certificate EC-059 Condition 26 a) b) and c) through f).

Table 3. Description and Analysis of Plan and Other Mitigation Measures to Address Loss of Wetlands						
Mitigation category of measure for no-net loss of wetlands	Application of measure	Site-specific details and maps ¹	Mitigation measures to be implemented include (but are not limited to) the following ²	Explanation of expected effectiveness and the relative value of each mitigation/offset measure towards achieving the objective of no net loss of wetlands ³	Decision-making criteria for selecting specific offset measures and offset ratios ⁴	Schedule for when measure is implemented and completed ⁵
Avoidance	Applied as part of the MMTP EIS as part of the MMTP routing process (Chapter 5 of the MMTP Environmental Impact Statement ¹⁶)	Throughout the Project planning area.	<ul style="list-style-type: none"> Route selection and constraint mapping considered the location and importance of wetlands 	<p>This mitigation measure is expected to be very effective.</p> <p>Explanation: If wetland is avoided there is no permanent loss. This is this highest relative value mitigation measure.</p>	Identified as industry best practice by Manitoba Sustainable Development 2018, BC Ministry of Environment 2010, Alberta Environment 2007	Pre-construction phase (completed)
Minimization	Applied as part of the MMTP EIS (MMTP Construction Environmental Protection Plan ¹⁷ , MMTP Construction Environmental Protection Plan Mapbook (Part 1 of 2) ¹⁸ (Part 2 of 2) ¹⁹ MMTP Clearing Management Plan ²⁰)	All wetlands identified as environmentally sensitive sites within the MMTP Construction Environmental Protection Plan Mapbook (Part 1 of 2) ²¹ (Part 2 of 2) ²² .	<ul style="list-style-type: none"> Riparian buffers Disturbance of wetlands will only be carried out under dry or frozen ground conditions. Construction matting will be used to protect the area from rutting and exposure to soil during non-frozen ground conditions The application of herbicides is prohibited Maintain shrub and herbaceous vegetation to the extent possible during project clearing Installation of bird diverters at high risk sites 	<p>These mitigation measures are expected to be very effective.</p> <p>Explanation: Mitigation measures outlined in plans meet or exceed industry best practices, will be inspected by qualified personnel, and have been reviewed and approved by Provincial and Federal regulators. This is the 2nd highest relative value mitigation measure.</p>	Identified as industry best practice by Manitoba Sustainable Development 2018, BC Ministry of Environment 2010, Alberta Environment 2007, Alberta Government 2019	Construction phase (on-going)

¹⁶ [A81182-9](#) MMTP EIS Chapter 5 transmission line routing, January 4, 2017.

¹⁷ [C00033-2](#) MMTP EPP CEnvPP, June 19, 2019.

¹⁸ [C00830-2](#) CEnvPP Mapbook (Part 1 of 2), August 2, 2019.

¹⁹ [C00830-3](#) CEnvPP Mapbook (Part 2 of 2), August 2, 2019.

²⁰ [C00033-6](#) MMTP EPP Clearing management plan, June 19, 2019.

²¹ [C00830-2](#) CEnvPP Mapbook (Part 1 of 2), August 2, 2019.

²² [C00830-3](#) CEnvPP Mapbook (Part 2 of 2), August 2, 2019.

Rehabilitation	Applied as part of the MMTP EPP and post-construction endeavours (MMTP Rehabilitation and Invasive Species Management Plan ²³ , MMTP Construction Environmental Protection Plan ²⁴ , MMTP Environmental Monitoring Plan ²⁵)	All wetlands identified as environmentally sensitive sites in the MMTP Construction Environmental Protection Plan Mapbook (Part 1 of 2) ²⁶ (Part 2 of 2) ²⁷ that are identified as requiring rehabilitation as per the Environmental Monitoring Plan ²⁸ .	<ul style="list-style-type: none"> • Flag or place barriers to mitigate further disturbance • Implementation of erosion and sediment control measures where required • Allow passive revegetation through natural regrowth of native/traditional species • If passive revegetation is not successful, implement active revegetation through planting or seeding of native/traditional species • Debris removal 	<p>This mitigation measure is expected to be effective.</p> <p>Explanation: Rehabilitation measures follow industry best practices, will be conducted and inspected by qualified personnel, and have been reviewed and approved by Provincial and Federal regulators. This is the 3rd highest relative value mitigation measure.</p>	Identified as industry best practice by Manitoba Sustainable Development 2018, BC Ministry of Environment 2010, Alberta Environment 2007	Construction phase and within 12 months of start of post-construction phase.
Offsets	Applied to meet Condition 26 of the National Energy Board's ("NEB") Certificate of Public Convenience and Necessity EC-059	<p>All wetlands identified in Map 1 and Map 2 and Appendix B, and accidental permanent wetland loss⁶.</p> <p>This includes the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations.</p>	<ul style="list-style-type: none"> • Measure permanent wetland loss, including accidental permanent wetland loss⁶ • Calculate wetland loss compensation • Monetary compensation provided to the Province of Manitoba, or designated agency, at ratio of 3:1 with a valuation of \$14,820 per hectare to restore or enhance wetlands in the same watersheds as MMTP 	<p>This offset measure is expected to be effective towards achieving the objective of no-net-loss of wetlands, including accidental permanent wetland loss⁶.</p> <p>Explanation: Monetary compensation as a wetland offset as specified under the Province of Manitoba's <i>The Water Rights Act</i> C.C.S.M. c. W80 and the Water Rights Regulation 126/87 has been deemed an effective measure in the Province of Manitoba. This regulation underwent public consultation process. The government of Manitoba has endorsed the effectiveness of a no-net-loss program such as described in the Water Rights Regulation by its adoption. This plan is modeled after the process put forth in the regulation and is therefore considered effective.</p> <p>A compensation ratio and per hectare wetland valuation provide an effective means to achieve no-net-loss of wetlands. More wetland area than was permanently lost due to the Project will be created, restored, or enhanced in the same watersheds as MMTP. This is the lowest relative value mitigation measure.</p>	<ul style="list-style-type: none"> • Wetland offsets and compensation rates are outlined in the Province of Manitoba's <i>The Water Rights Act</i> C.C.S.M. c. W80 and the Water Rights Regulation 126/87. • This legislation was developed to address wetland loss and offsets in Manitoba and has a defined compensation structure. • This legislation recently came into force and recently underwent a public consultation process. 	<p>Within 12 months of plan approval (Estimated to be October 2021)</p> <p>Accidental permanent loss within 8 months of reporting as outlined in section 4.5.⁶</p> <p>Monetary compensation to be expended by Manitoba or designated agency on wetland projects within 5 years of agreement signing</p>

1. To meet requirements of NEB EC-059 Condition 26 a)
2. To meet requirements of NEB EC-059 Condition 26 c)
3. To meet requirements of NEB EC-059 Condition 26 d)
4. To meet requirements of NEB EC-059 Condition 26 e)
5. To meet requirements of NEB EC-059 Condition 26 f)
6. To meet requirements of NEB EC-059 Condition 26 b)

²³ C00830-4 MMTP EPP Rehabilitation and Invasive Species Management Plan, August 2, 2019.

²⁴ C00033-2 MMTP EPP CEnvPP, June 19, 2019.

²⁵ C00033-20 MMTP EPP Environmental Monitoring Plan, June 19, 2019.

²⁶ C00830-2 CEnvPP Mapbook (Part 1 of 2), August 2, 2019.

²⁷ C00830-3 CEnvPP Mapbook (Part 2 of 2), August 2, 2019.

²⁸ C00033-20 MMTP EPP Environmental Monitoring Plan, June 19, 2019.

6.0 Summary of engagement regarding wetlands

6.1 Seeking Feedback from Indigenous communities

6.1.1 Method of seeking feedback

Manitoba Hydro shared a draft Wetland Offset Measures Plan with Indigenous communities on November 26, 2019. Manitoba Hydro reached out to all 21 communities included in the MMTP Monitoring Committee to request review of the draft offset plans for both Condition 22 and 26 (see list in Appendix C). Both draft plans were posted online and a link to these online plans was included in the email. A summary document was also prepared with visuals and a description of the proposed approach provided in non-technical language. Over the following four months (December 2019 to March 2020) Manitoba Hydro sought feedback through a variety of mechanisms, including through letters, phone calls, emails, the MMTP Monitoring Committee, and in-person meetings.

6.1.2 What we heard and how it influenced the Plan

Appendix C describes detailed feedback provided by communities and Manitoba Hydro's response. A summary of feedback provided follows below:

Animakee Wa Zhing #37 shared concerns regarding:

- funding for consultation
- a lack of baseline data from First Nation's land use, relationship to and responsibilities to lands and wetlands
- how Manitoba Hydro hasn't outlined how all permanent loss to wetlands resulting from the Project will be offset
- how the Plan does not actually set out *any* offset measures for the permanent wetland losses it identifies. Rather, it simply provides that Manitoba Hydro will make a payment to the Manitoba Government for the loss of wetlands
- the fact that a payment is not being made to First Nations
- that there is no assurance that the funds will be used to restore the lost wetlands
- the agency receiving funds and that under the *Water Rights Act*, payments for the permanent loss of wetlands must be made to the Manitoba Habitat Heritage Corporation, not the Manitoba Government directly

MMF shared concerns regarding the below with specific wording provided in Appendix C

- funding for and adequacy of consultation

- completeness of plan details in order to meet Condition 26
- monitoring of wetland function
- the benefit of the plan is experienced by the Crown, and not Indigenous communities
- why was no net loss was selected over a net gain of wetlands

Sagkeeng First Nation shared recommendations regarding

- funding a traditional land and resource use study
- revising governance structure of plan to enable meaningful Sagkeeng engagement and participation
- selecting criteria for offsetting measures and locations based on Indigenous knowledge, perspectives and priorities
- employing Sagkeeng cultural experts, knowledge holders and Guardians to identify and protect cultural resources
- the calculation of wetland loss should represent the area of physical disturbance associated with Project construction, operation, and maintenance that overlaps with sensitive wetland habitat (Manitoba Hydro 2019b, p.10-46)
- Manitoba Hydro should work with Sagkeeng to develop a framework for assessing ecological and cultural components that integrates Indigenous knowledge, science, and the values identified by Sagkeeng community members
- Using an offsetting ratio of at least 4:1 for wetland habitat, and a higher offset ratio where equivalency is low and/or uncertainty is high
- More Sagkeeng involvement in the identification of offsetting areas, the selection of restoration treatments, monitoring and adaptive management measures
- Adopt an Indigenous knowledge-based approach to monitoring impacts and offsetting results with a meaningful role for Sagkeeng
- identify sufficient funding to cover all costs of long-term management and monitoring, including a role for Sagkeeng Guardians.

Responses to the groups commenting on the draft documents related to Condition 26 are provided in Appendix C. In summary, Manitoba Hydro has been responsive to initial feedback by:

- confirming that future engagement on draft offset plans will occur directly with individual communities;
- offering funding to communities to support review of documents related to Condition 26;
- Manitoba Hydro funded traditional knowledge studies for each of the communities noted above for the Project; and

- Manitoba Hydro provides an explanation of expected effectiveness of measures that will benefit all Manitobans in Table 3.

6.1.3 Next steps

All comments and concerns received by August 17th, 2020 have been included in Appendix C described above, and a final plan will be sent back out to all participants in the First Nation and Metis Engagement Process (which includes the MMTP monitoring committee).

6.2 Seeking feedback from federal and provincial authorities and non-government expert bodies

6.2.1 Method of seeking feedback

Manitoba Hydro shared a draft of the Wetland Offset Measures Plan and No Net Loss Plan with federal and provincial authorities and non-government expert bodies in late November 2019. Manitoba Hydro reached out to four federal and provincial authorities, and three non-government expert bodies to request review of the draft offset plan for Condition 26 (see list in Appendix D). The draft plan was posted online and a link to the plan was included in the email. The formal emails were followed up with a phone call to clarify any questions, if required.

6.2.2 What we heard and how it influenced the Plan

Feedback was received through emailed responses. Manitoba Hydro created a table included in Appendix D of this plan that includes a summary of engagement with provincial and federal authorities and non-government expert bodies. The table includes a column that provides a description of how Manitoba Hydro addressed or responded to issues or concerns raised regarding the plan. A summary of feedback follows below:

Provincial authorities shared concerns regarding:

- wetland loss outside of the tower footprints;
- clarifications on the type of wetland system being used; and
- accidental or unforeseen loss of wetlands

Federal authorities expressed the following:

- encourage the considerations of view from Indigenous communities; and
- recommend other federal departments receive the Plan.

Non-government expert bodies shared concerns regarding:

- considering bird strikes as loss of wetland function;
- constructing the Project under frozen ground in wetland areas;
- restricting maintenance activities in class 3,4,5 wetlands during the waterfowl breeding season; and

- that the wetland plan should cover a broader wetland area and consider a higher compensation ratio than was outlined.

Manitoba Hydro has considered feedback and adapted the Plan based on comments received, and precedence to similar programming in other jurisdictions. No major changes were made to the final plan. Responses are provided in Appendix D. In summary, Manitoba Hydro has been responsive to feedback by:

- addressing concerns regarding wetland loss outside of the tower footprints by outlining existing wetland commitments in the construction environmental protection plans;
- providing clarifications on the type of wetland system being used;
- making amendments regarding reporting accidental or unforeseen loss of wetlands; and
- providing clarification on how the Plan aligned with Provincial legislation regarding wetland loss.

6.2.3 Next steps

All comments and concerns received by August 17th, 2020 have been included in Appendix D. A final plan will be sent back out to all participants.

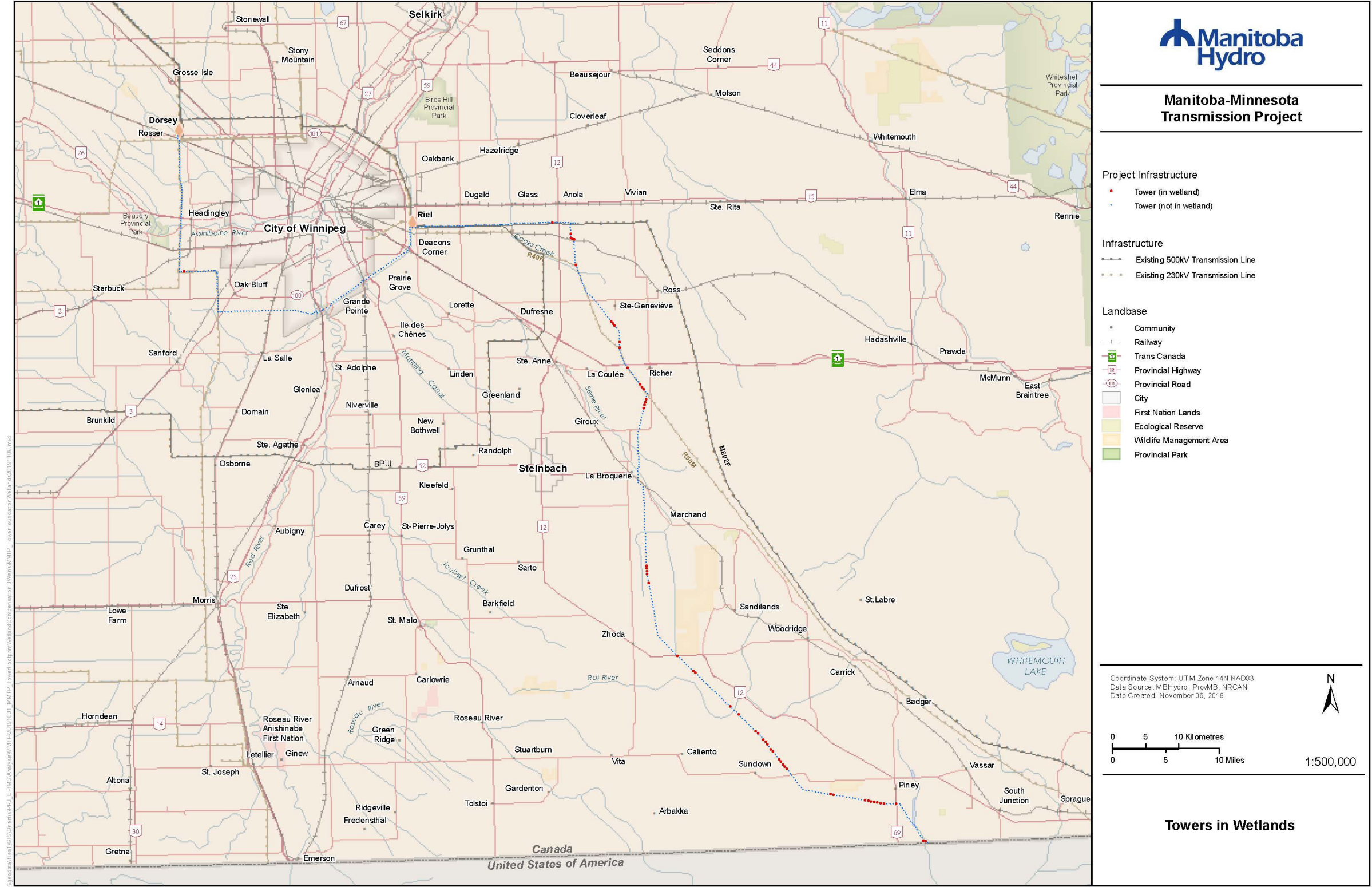
7.0 Summary

An assessment was conducted of the Manitoba-Minnesota Transmission Project to determine the extent of permanent loss of wetlands. Extent of permanent wetland loss was calculated based on Project intersection with wetlands after applying avoidance, minimization, and restoration. There are an estimated 0.326 hectares (0.810 ac) (3,260 m²) of permanent wetland loss. Manitoba Hydro has developed an approach modeled on the Province of Manitoba's *The Water Rights Act* C.C.S.M. c. W80 and the Water Rights Regulation 126/87, valuing wetlands at \$14,820 per hectare at a 3:1 ratio to calculate a compensation amount of \$14,494 to be provided to the Province of Manitoba, or designated agency, as a wetland offset. The funds will be provided through the implementation of a legal agreement that specifies that this funding is to be held in trust for projects dedicated to creating, restoring or enhancing wetlands in Manitoba. This process demonstrates Manitoba Hydro's commitment towards the goal of no net loss of wetlands for the Project.

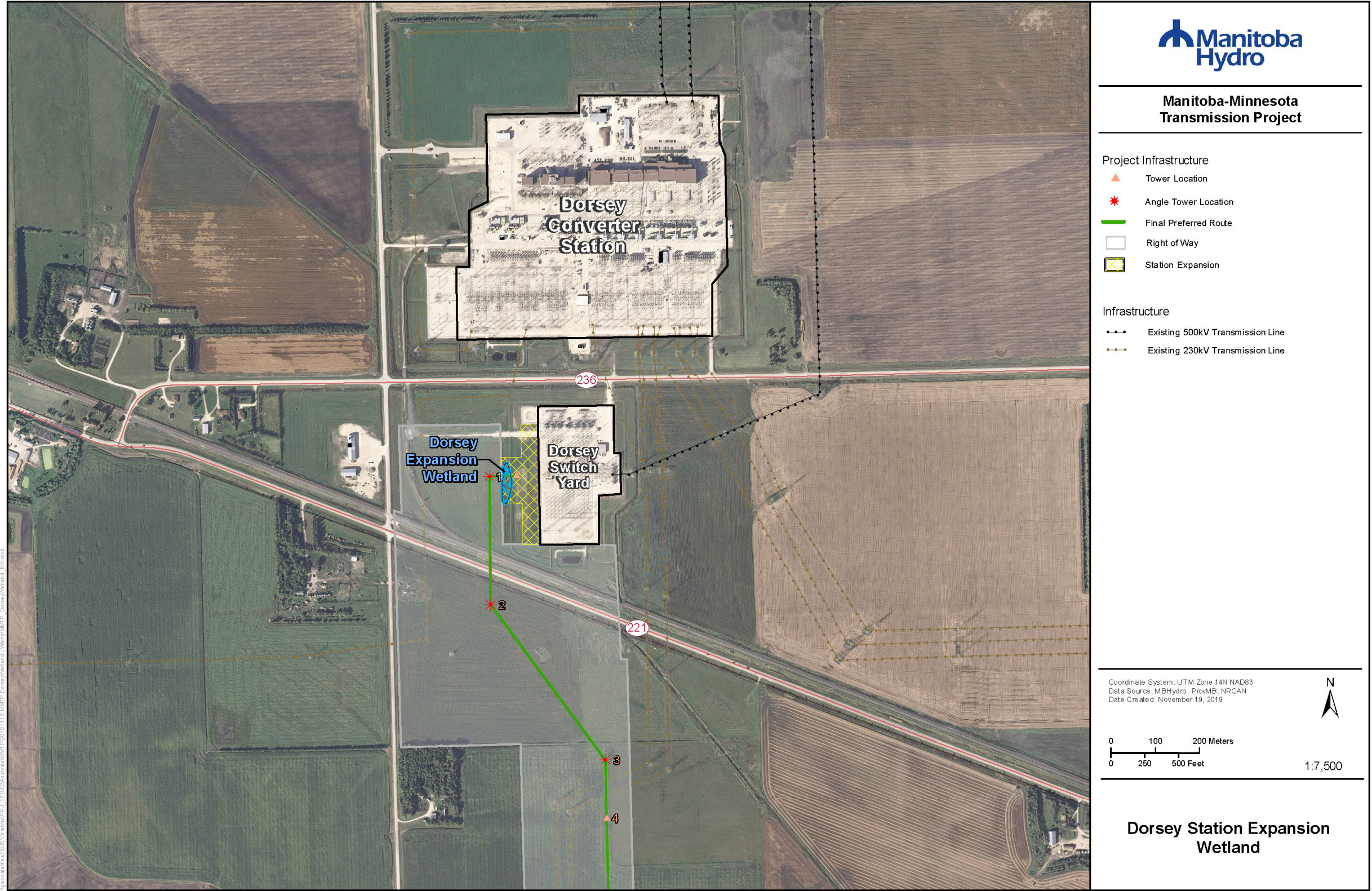
8.0 References

- Alberta Environment. 2007. Provincial Wetland Restoration/Compensation Guide. Available online: http://environment.alberta.ca/documents/Provincial_Wetland_Restoration_Compensation_Guide_Feb_2007.pdf
- Alberta Government. 2019. Code of Practice for Powerline Works Impacting Wetlands. Available online: <https://open.alberta.ca/publications/code-of-practice-for-powerline-works-impacting-wetlands>
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- Manitoba Hydro. 2019. Manitoba-Minnesota Transmission Project Environmental Impact Statement and Document Library. Winnipeg, Manitoba. Available online: https://www.hydro.mb.ca/projects/mb_mn_transmission
- Manitoba Hydro. 2020. Manitoba-Minnesota Transmission Project Crown Lands Offset Measures Plan. Winnipeg, Manitoba. Available online: https://www.hydro.mb.ca/projects/mb_mn_transmission
- Manitoba Sustainable Development. 2018. Consultation on Manitoba's New Water Rights Regulation. Available online: https://www.gov.mb.ca/sd/consultations/water_rights.html

Map 1. MMTP Tower Structures in Wetlands

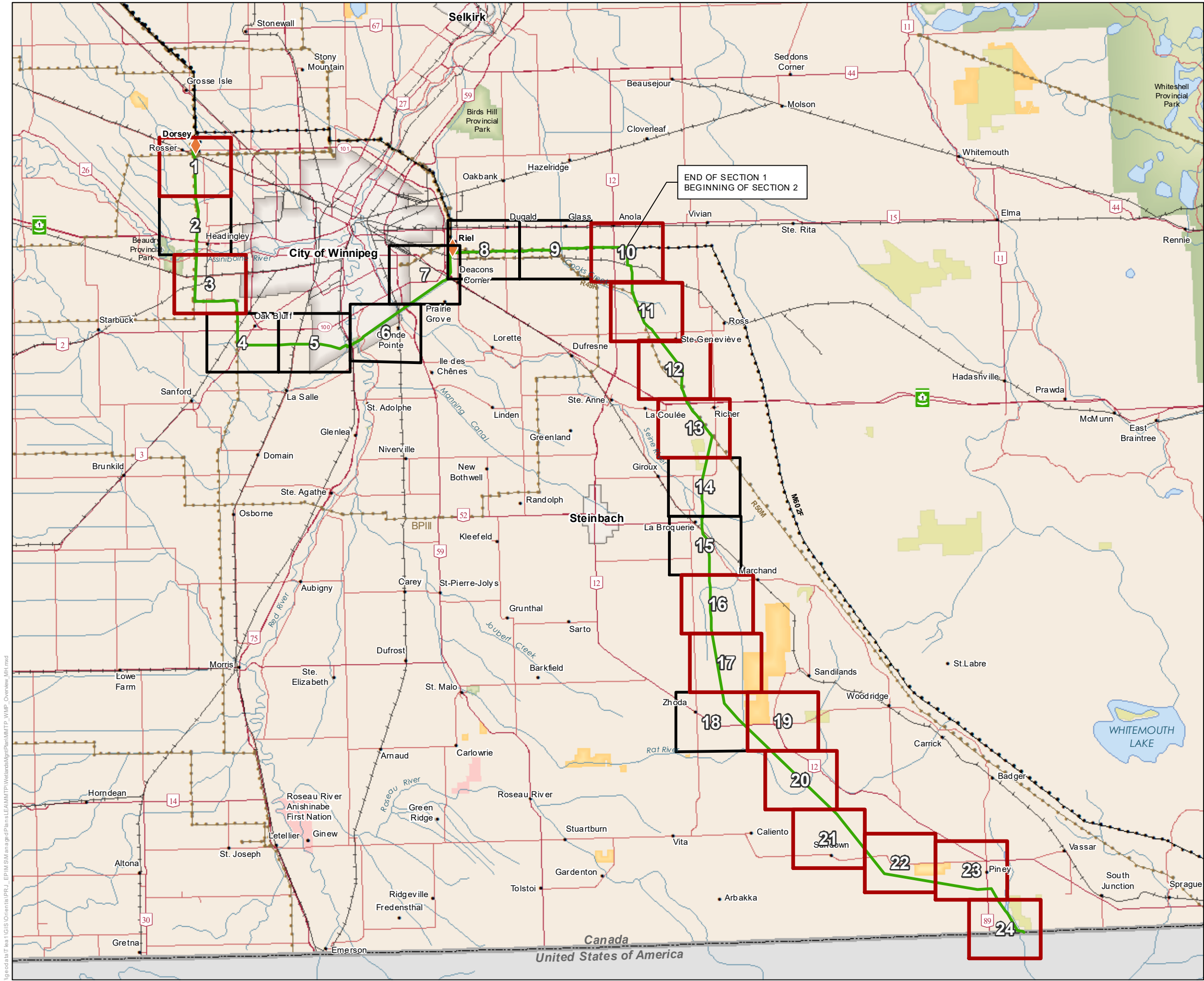


Map 2. Expansion of the Dorsey Converter Station



Map 3. MMTP Tower Structures in Wetlands Mapbook

The MMTP tower structures in wetlands can be found on the following 15 pages.



Manitoba-Minnesota
Transmission Project

Project Infrastructure

- ◆ Converter Station (Existing)
- MMTP Final Preferred Route

Infrastructure

- Existing 500kV Transmission Line
- Existing 230kV Transmission Line

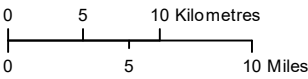
Map Tile Index - 1:30,000

- Map Series Tile with Transmission Infrastructure Intersecting Wetlands
- Map Series Tile

Landbase

- Community
- Railway
- Trans Canada
- Provincial Highway
- Provincial Road
- City
- First Nation Lands
- Ecological Reserve
- Wildlife Management Area
- Provincial Park

Coordinate System: UTM Zone 14N NAD83
Data Source: MBHydro, ProvMB, NRCan
Date Created: November 08, 2019



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Index of Map Series
Transmission Infrastructure
Intersecting Wetlands

Manitoba - Minnesota Transmission Project

Project Infrastructure

- Tower Location in Wetland
- Tower Location
- Angle Tower Location
- Final Preferred Route
- Right of Way
- Station Expansion
- Converter Station

Wetland

- Wetland

Landbase

- Trans-Canada Highway
- Provincial Trunk Highway
- Provincial Road
- Municipal Road
- Rail
- Electrical Station
- Rural Municipality

Coordinate System: UTM Zone 14N NAD83
Data Source: MBHydro, ProvMB
Date Created: November 08, 2019

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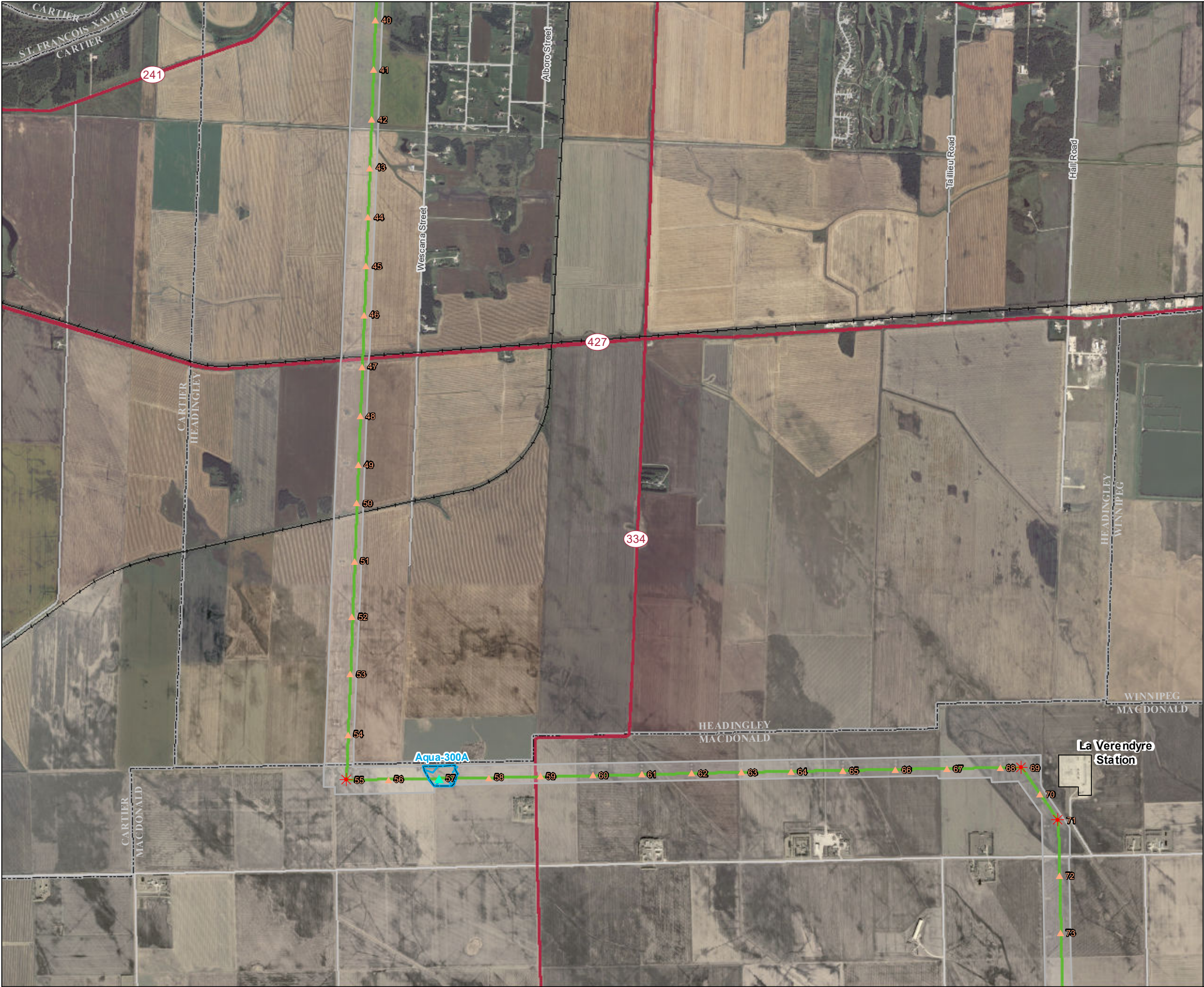


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Transmission Infrastructure Intersecting Wetlands

Draft: For Discussion Purposes Only

Map 1



**Manitoba - Minnesota
Transmission Project**

Project Infrastructure

- Tower Location in Wetland
- Tower Location
- Angle Tower Location
- Final Preferred Route
- Right of Way
- Station Expansion
- Converter Station

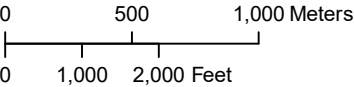
Wetland

- Wetland

Landbase

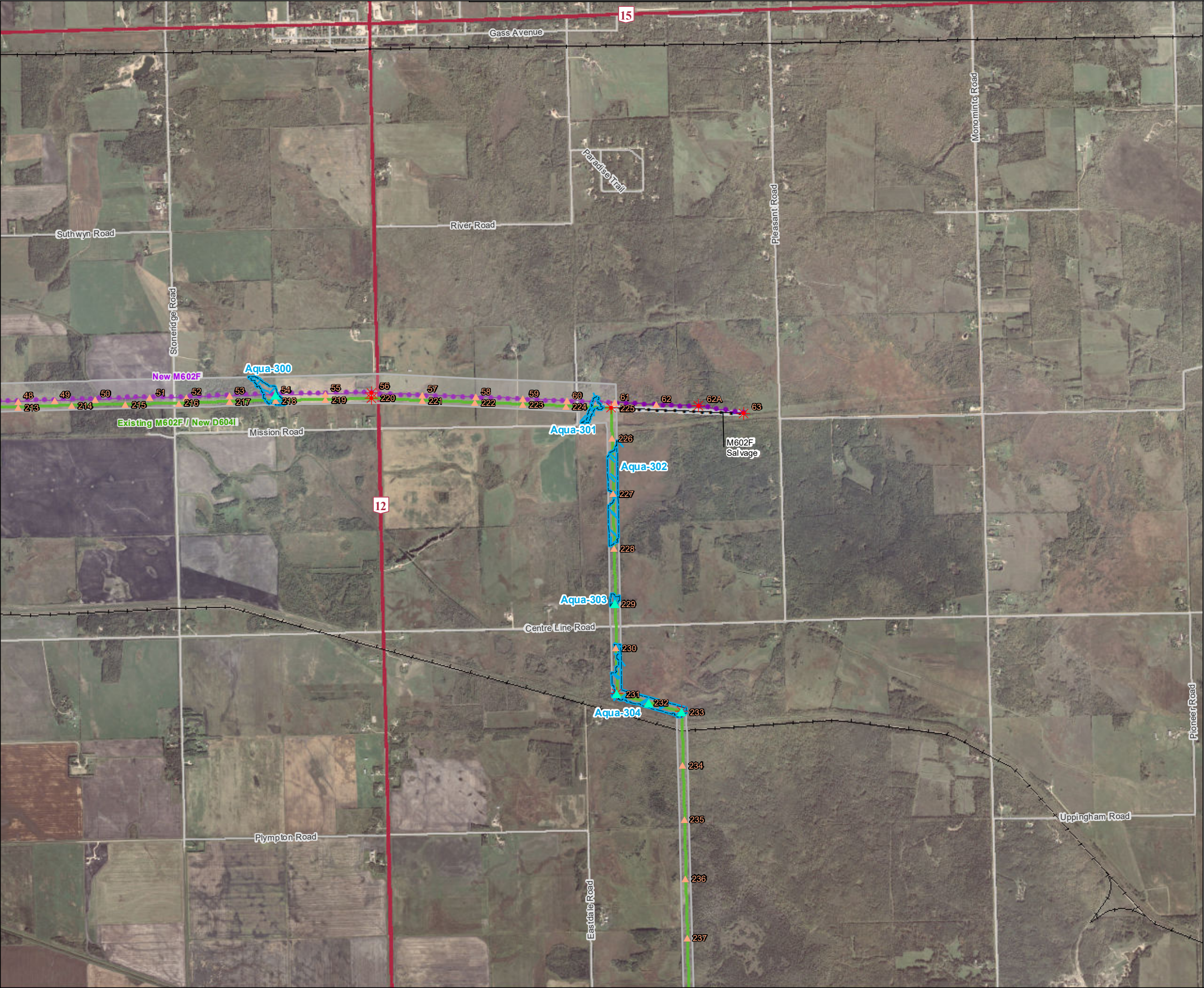
- Trans-Canada Highway
- Provincial Trunk Highway
- Provincial Road
- Municipal Road
- Rail
- Electrical Station
- Rural Municipality

Coordinate System: UTM Zone 14N NAD83
Data Source: MBHydro, ProvMB
Date Created: November 08, 2019



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**Transmission Infrastructure
Intersecting Wetlands**



Manitoba - Minnesota
Transmission Project

Project Infrastructure

- Tower Location in Wetland
- Tower Location
- Angle Tower Location
- Final Preferred Route
- Right of Way
- Station Expansion
- Converter Station

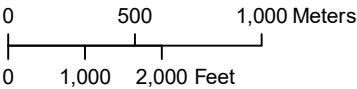
Wetland

- Wetland

Landbase

- Trans-Canada Highway
- Provincial Trunk Highway
- Provincial Road
- Municipal Road
- Rail
- Electrical Station
- Rural Municipality

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Transmission Infrastructure
Intersecting Wetlands

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Manitoba - Minnesota Transmission Project

Project Infrastructure

- Tower Location in Wetland
- Tower Location
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- Final Preferred Route
- Right of Way
- Station Expansion
- Converter Station

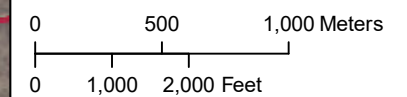
Wetland

- Wetland

Landbase

- Trans-Canada Highway
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Transmission Infrastructure Intersecting Wetlands








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Map 11



Manitoba - Minnesota
Transmission Project








Project Infrastructure

-  Tower Location in Wetland
-  Tower Location
-  Angle Tower Location
-  Final Preferred Route
-  Right of Way
-  Station Expansion
-  Converter Station

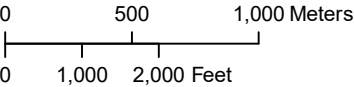
Wetland

-  Wetland

Landbase

-  Trans-Canada Highway
-  Provincial Trunk Highway
-  Provincial Road
-  Municipal Road
-  Rail
-  Electrical Station
-  Rural Municipality

Coordinate System: UTM Zone 14N NAD83
Data Source: MBHydro, ProvMB
Date Created: November 08, 2019










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Transmission Infrastructure
Intersecting Wetlands



**Manitoba - Minnesota
Transmission Project**








Project Infrastructure

-  Tower Location in Wetland
-  Tower Location
-  Angle Tower Location
-  Final Preferred Route
-  Right of Way
-  Station Expansion
-  Converter Station

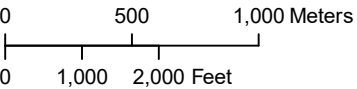
Wetland

-  Wetland

Landbase

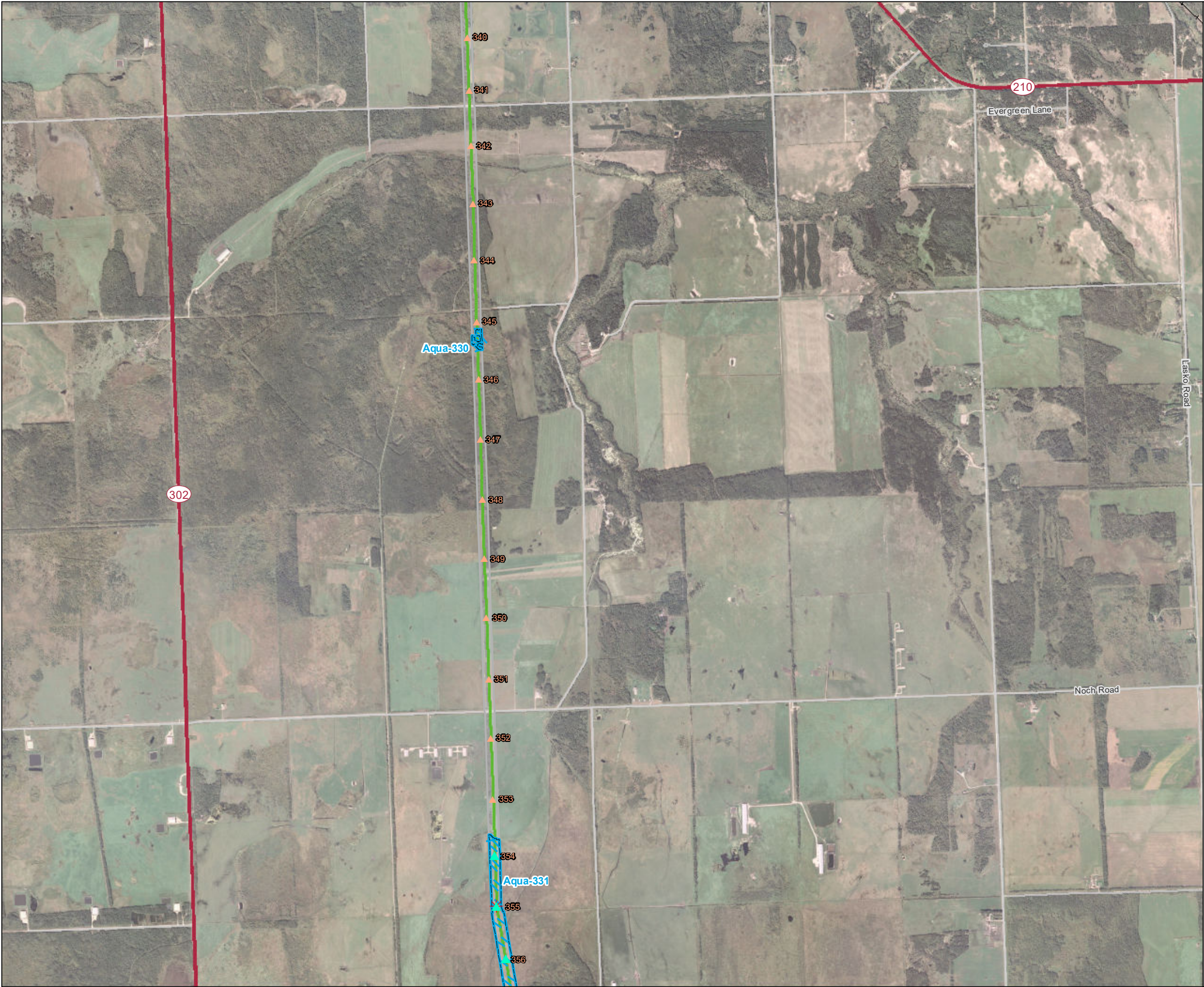
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-  Provincial Trunk Highway
-  Provincial Road
-  Municipal Road
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Coordinate System: UTM Zone 14N NAD83
Data Source: MBHydro, ProvMB
Date Created: November 08, 2019










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**Transmission Infrastructure
Intersecting Wetlands**



**Manitoba - Minnesota
Transmission Project**


Project Infrastructure

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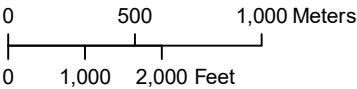
Wetland

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Landbase

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-  Municipal Road
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**Transmission Infrastructure
Intersecting Wetlands**



Manitoba - Minnesota
Transmission Project

Project Infrastructure

- Tower Location in Wetland
- Tower Location
- Angle Tower Location
- Final Preferred Route
- Right of Way
- Station Expansion
- Converter Station

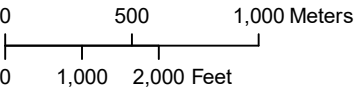
Wetland

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Landbase

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Transmission Infrastructure
Intersecting Wetlands

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Manitoba - Minnesota Transmission Project








Project Infrastructure

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Coordinate System: UTM Zone 14N NAD83
Data Source: MBHydro, ProvMB
Date Created: November 08, 2019

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Transmission Infrastructure Intersecting Wetlands

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Map 19

Manitoba - Minnesota Transmission Project








Project Infrastructure

-  Tower Location in Wetland
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-  Angle Tower Location
-  Final Preferred Route
-  Right of Way
-  Station Expansion
-  Converter Station

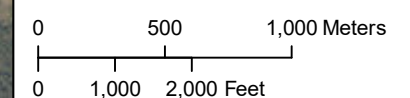
Wetland

-  Wetland

Landbase

-  Trans-Canada Highway
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Transmission Infrastructure Intersecting Wetlands








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Map 20

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Manitoba - Minnesota Transmission Project








Project Infrastructure

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Transmission Infrastructure Intersecting Wetlands

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Map 21

Manitoba - Minnesota Transmission Project








Project Infrastructure

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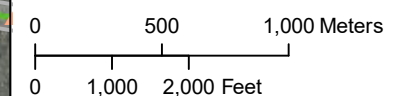
Wetland

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Landbase

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Coordinate System: UTM Zone 14N NAD83
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Transmission Infrastructure Intersecting Wetlands








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Map 22

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Manitoba - Minnesota Transmission Project








Project Infrastructure

-  Tower Location in Wetland
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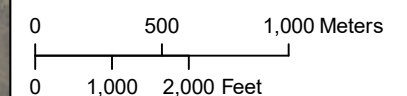
Wetland

-  Wetland

Landbase

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Transmission Infrastructure Intersecting Wetlands








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Map 23



Manitoba - Minnesota
Transmission Project








Project Infrastructure

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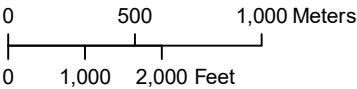
Wetland

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Transmission Infrastructure
Intersecting Wetlands

Appendix A: The Water Rights Act and Regulations



MANITOBA

THE WATER RIGHTS ACT

C.C.S.M. c. W80

LOI SUR LES DROITS D'UTILISATION DE L'EAU

c. W80 de la *C.P.L.M.*

As of 24 Aug 2020, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 24 août 2020. Son contenu était à jour pendant la période indiquée en bas de page.

LEGISLATIVE HISTORY***The Water Rights Act***, C.C.S.M. c. W80**Enacted by**

RSM 1988, c. W80

Amended by

SM 1989-90, c. 90, s. 40

SM 1999, c. 17, s. 5

SM 2000, c. 11

SM 2000, c. 18

SM 2001, c. 43, s. 30

SM 2005, c. 26, s. 42

SM 2006, c. 8

SM 2015, c. 4, s. 29

SM 2017, c. 26, s. 32

SM 2018, c. 6, Part 4

Proclamation status (for provisions in force by proclamation)

in force on 1 Jan 2006 (Man. Gaz.: 31 Dec 2005)

in force on 1 Oct 2015 (proc: 22 Sep 2015)

s. 67 to 69, 71 to 73 and 75, 76(1), 79(1) and 79(2), 82, 83 and 85: in force on 1 Oct 2019 (proc: 1 Oct 2019)

HISTORIQUE***Loi sur les droits d'utilisation de l'eau***, c. W80 de la C.P.L.M.**Édictée par**

L.R.M. 1988, c. W80

Modifiée par

L.M. 1989-90, c. 90, art. 40

L.M. 1999, c. 17, art. 5

L.M. 2000, c. 11

L.M. 2000, c. 18

L.M. 2001, c. 43, art. 30

L.M. 2005, c. 26, art. 42

L.M. 2006, c. 8

L.M. 2015, c. 4, art. 29

L.M. 2017, c. 26, art. 32

L.M. 2018, c. 6, partie 4

État des dispositions qui entrent en vigueur par proclamationen vigueur le 1^{er} janv. 2006 (Gaz. du Man. : 31 déc. 2005)en vigueur le 1^{er} oct. 2015 (proclamation : 22 sept. 2015)les art. 67 à 69, 71 à 73 et 75, les par. 76(1), 79(1) et 79(2), les art. 82, 83 et 85 : en vigueur le 1^{er} oct. 2019 (proclamation : 1^{er} oct. 2019)

CHAPTER W80

THE WATER RIGHTS ACT

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- 2 Water rights vested in the Crown
- 3 Prohibitions
- 4 Renumbered as section 18.4
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- 4.2 Registration of a registrable project
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- 5.2 Wetlands restoration and enhancement agreements
- 6 Application for licence
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CHAPITRE W80

LOI SUR LES DROITS D'UTILISATION DE L'EAU

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- 3 Interdictions
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- 13 Réservation de l'eau
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- 15 Non-usage de la licence
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- 17.1 Nomination des agents
- 18 Pouvoir de visite
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24.1	Protection from liability
25	Crown bound
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CHAPTER W80

THE WATER RIGHTS ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act,

"agricultural purposes" means the use of water at a rate of more than 25,000 litres per day for the production of primary agricultural products, but does not include the use of water for irrigation purposes; (« fins agricoles »)

"aquatic ecosystem" means the components of the earth related to, living in or located in or on water or the beds or shores of a water body, including but not limited to

(i) all organic and inorganic matter, and

(ii) all living organisms and their habitat,

and their interacting natural systems; (« écosystème aquatique »)

"construct", in relation to works and water control works, includes alter, reconstruct or improve; (« construire »)

CHAPITRE W80

LOI SUR LES DROITS D'UTILISATION DE L'EAU

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

« **agent** »

a) Agent nommé en vertu de l'article 17.1;

b) agent de conservation nommé en vertu de la *Loi sur les agents de conservation*. ("officer")

« **construire** » En ce qui concerne les ouvrages et les ouvrages de régularisation des eaux, procéder, notamment, à des travaux de modification, de reconstruction ou d'amélioration. ("construct")

« **dériver** » S'entend de bloquer, d'endiguer, d'obstruer, d'entraver, d'enlever, de modifier ou de changer le cours ou la position de l'eau qui s'écoule ou qui est stagnante, d'en disposer ou de troubler cette eau, en totalité ou en partie. ("divert")

« **détenteur d'une licence** » Personne qui possède une licence valide. ("licensee")

« **détenteur d'un enregistrement** » Personne qui détient un enregistrement valide et en vigueur. ("registrant")

"divert" includes block, dam, impound, obstruct, interfere with, remove, dispose of, alter or change the course or position of, or disturb, whether wholly or partially, any water whether flowing or at rest; (« dériver »)

"domestic purposes" means the use of water, obtained from a source other than a municipal or community water distribution system, at a rate of not more than 25,000 litres per day, for household and sanitary purposes, for the watering of lawns and gardens, and the watering of livestock and poultry; (« fins domestiques »)

"industrial purposes" means the use of water obtained from a source other than a municipal or community water distribution system, for the operation of an industrial plant producing goods or services other than primary agricultural products, but does not include the sale or barter of water for those purposes or the use of water for recreational purposes; (« fins industrielles »)

"irrigation purposes" means the use of water at a rate of more than 25,000 litres per day for the artificial application to soil to supply moisture essential to plant growth; (« fins d'irrigation »)

"licence" means a licence issued under this Act; (« licence »)

"licensee" means a person who holds a valid and subsisting licence; (« détenteur d'une licence »)

"maintain", in relation to works or water control works, includes keep in existence; (« entretenir »)

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"municipal purposes" means the use of water by a municipality or a community for the purpose of supplying a municipal or community water distribution system for household and sanitary purposes, for industrial use or uses related to industry, for the watering of streets, walks, paths, boulevards, lawns and gardens, for the protection of property, for the flushing of sewers, and for other purposes usually served by a municipal or community water distribution system; (« fins municipales »)

« détenteur d'un permis » Personne qui possède un permis valide. ("permittee")

« eau » Eau se trouvant sur la surface du sol ou en dessous. ("water")

« écosystème aquatique » L'ensemble des éléments d'un lieu donné qui vivent ou se trouvent dans un plan d'eau, sur ses rives ou dans son lit, ou qui y sont liés, notamment toute matière organique et inorganique, tous les organismes vivants et leur habitat, ainsi que tous leurs systèmes naturels interactifs. ("aquatic ecosystem")

« enregistrement » Certificat d'enregistrement délivré en vertu de l'article 4.2. ("registration")

« entretenir » En ce qui concerne les ouvrages et les ouvrages de régularisation des eaux, assurer, notamment, le maintien en état. ("maintain")

« fins agricoles » Utilisation de l'eau à raison de plus de 25 000 litres par jour pour la production de produits agricoles de base. La présente définition ne comprend pas l'utilisation de l'eau à des fins d'irrigation. ("agricultural purposes")

« fins d'irrigation » Utilisation de l'eau à raison de plus de 25 000 litres par jour pour son application artificielle sur le sol, afin de fournir l'humidité essentielle à la croissance des plantes. ("irrigation purposes")

« fins domestiques » Utilisation de l'eau obtenue à partir d'une source autre qu'un système de distribution d'eau municipal ou collectif, à raison d'un maximum de 25 000 litres par jour, à des fins domestiques et sanitaires, pour l'arrosage des pelouses et des jardins et pour l'abreuvement du bétail et de la volaille. ("domestic purposes")

« fins industrielles » Utilisation de l'eau obtenue à partir d'une source autre qu'un système de distribution d'eau municipal ou collectif, pour l'exploitation d'une industrie de biens ou de services autres que des produits agricoles de base. La présente définition ne comprend pas la vente ou l'échange d'eau à ces fins ou l'utilisation de l'eau à des fins de récréation. ("industrial purposes")

"officer" means

(a) an officer appointed under section 17.1, and

(b) a conservation officer appointed under *The Conservation Officers Act*; (« agent »)

"permit" means a permit issued under this Act; (« permis »)

"permittee" means a person who holds a valid and subsisting permit; (« détenteur d'un permis »)

"prescribed" means prescribed by regulation;

"registrable project" means works or water control works belonging to a class designated by regulation under section 4.1; (« projet admissible »)

"registrant" means a person who holds a valid and subsisting registration; (« détenteur d'un enregistrement »)

"registrar" means a person designated under section 1.1; (« registraire »)

"registration" means a registration certificate provided under section 4.2; (« enregistrement »)

"water" means all water on or below the surface of the ground; (« eau »)

"water body" means any location where water flows or is present, whether the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes wetlands and aquifers; (« plan d'eau »)

"water control works" means any dyke, dam, surface or subsurface drain, drainage, improved natural waterway, canal, tunnel, bridge, culvert borehole or contrivance for carrying or conducting water, that

(a) temporarily or permanently alters or may alter the flow or level of water, including but not limited to water in a water body, by any means, including drainage, or

« **fin s municipales** » Utilisation de l'eau par une municipalité ou une collectivité dans le but de fournir un système de distribution d'eau municipal ou collectif, à des fins domestiques et sanitaires, pour un usage industriel ou pour des usages relatifs à l'industrie, pour l'arrosage des rues, des trottoirs, des chemins, des boulevards, des pelouses et des jardins, pour la protection de la propriété, le curage des égouts, et pour les autres objets fournis généralement par un système de distribution d'eau municipal ou collectif. ("municipal purposes")

« **licence** » Licence délivrée en vertu de la présente loi. ("licence")

« **ministre** » Le membre du Conseil exécutif chargé par le lieutenant-gouverneur en conseil de l'application de la présente loi. ("minister")

« **ouvrages** » S'entend de toute excavation, construction, installation, exploitation ou de tout puits ou dispositif qui fait dériver l'eau, qui peut la faire dériver ou qui est de nature à produire un tel effet. ("works")

« **ouvrages de régularisation des eaux** » Dignes, barrages, drains de surface ou souterrains, drainages, cours d'eau naturels améliorés, canaux, tunnels, ponts, buses ou autres dispositifs de drainage servant au transport ou à la régularisation de l'eau et qui :

a) modifient ou peuvent modifier temporairement ou en permanence le cours ou le niveau de l'eau, notamment l'eau d'un plan d'eau, y compris le drainage;

b) changent ou peuvent changer l'emplacement ou la direction de l'écoulement de l'eau, notamment l'eau d'un plan d'eau, par quelque moyen que ce soit, y compris le drainage. ("water control works")

« **permis** » Permis délivré en vertu de la présente loi. ("permit")

« **plan d'eau** » Tout endroit où se trouve de l'eau, qu'elle soit stagnante ou courante, que son écoulement ou sa présence soit continue, intermittente ou sporadique, comme pendant des inondations. Sont assimilées à un plan d'eau les terres humides et les nappes aquifères. ("water body")

(b) changes or may change the location or direction of flow of water, including but not limited to water in a water body, by any means, including drainage; (« ouvrages de régularisation des eaux »)

"well" means an artificial orifice in the ground constructed for the purpose of obtaining water; (« puits »)

"wetland" means

(a) a marsh, bog, fen, swamp or ponded shallow water, and

(b) low areas of wet or water-logged soils that are periodically inundated by standing water and that are able to support aquatic vegetation and biological activities adapted to the wet environment in normal conditions; (« terre humide »)

"works" includes any excavation, well, structure, plant, operation or contrivance that diverts, or may divert, or is likely to divert water. (« ouvrages »)

S.M. 2000, c. 18, s. 2; S.M. 2005, c. 26, s. 42; S.M. 2006, c. 8, s. 2; S.M. 2015, c. 4, s. 29; S.M. 2018, c. 6, s. 67.

Designation of registrar

1.1 The minister may designate one or more persons as registrars for the purpose of this Act.

S.M. 2018, c. 6, s. 68.

Property in water

2 Except as otherwise provided in this Act, all property in, and all rights to the use, diversion or control of, all water in the province, insofar as the legislative jurisdiction of the Legislature extends thereto, are vested in the Crown in right of Manitoba.

S.M. 2000, c. 18, s. 3.

Prohibition against use of water

3(1) Except as otherwise provided in this Act or the regulations, no person shall

(a) in any manner whatsoever use or divert water, unless he or she holds a valid and subsisting licence to do so; or

« **prescribed** » Version anglaise seulement

« **projet admissible** » Ouvrage ou ouvrage de régularisation des eaux faisant partie d'une catégorie désignée par règlement en vertu de l'article 4.1. ("registrable project")

« **puits** » Orifice artificiel situé dans le sol et construit afin que soit obtenue de l'eau. ("well")

« **registraire** » Personne désignée en vertu de l'article 1.1. ("registrar")

« **terre humide** » :

a) Étang, marais, marécage, tourbière ou mare d'eau peu profonde;

b) terres basses où se trouvent des sols humides ou saturés d'eau qui sont périodiquement inondées par des eaux stagnantes et où, dans des conditions normales, la végétation aquatique peut croître et des activités biologiques adaptées aux milieux humides peuvent survenir. ("wetland")

L.M. 2000, c. 18, art. 2; L.M. 2005, c. 26, art. 42; L.M. 2006, c. 8, art. 2; L.M. 2015, c. 4, art. 29; L.M. 2017, c. 26, art. 32; L.M. 2018, c. 6, art. 67.

Désignation d'au moins un registraire

1.1 Le ministre peut désigner au moins un registraire pour l'application de la présente loi.

L.M. 2018, c. 6, art. 68.

Propriété de l'eau

2 Sauf disposition contraire de la présente loi, la propriété de l'eau de la province et tous les droits se rapportant à son utilisation, à sa dérivation ou à sa régularisation sont assignés à la Couronne du chef du Manitoba, dans la mesure où la compétence législative de la Législature s'y étend.

L.M. 2000, c. 18, art. 3.

Interdiction visant l'utilisation de l'eau

3(1) Sauf disposition contraire de la présente loi ou des règlements, il est interdit, selon le cas :

a) d'utiliser ou de dériver de l'eau, de quelque manière que ce soit, à moins d'être titulaire d'une licence valide et en vigueur;

(b) construct, establish, operate or maintain any works, unless he or she holds a valid and subsisting licence to do so; or

(c) control water or construct, establish, operate or maintain any water control works, unless he or she holds a valid and subsisting licence to do so.

Registered projects

3(1.1) In lieu of a licence, a person may construct, establish, operate or maintain works or water control works registered under section 4.2.

Exception

3(2) Subsections (1) and (1.1) do not apply

(a) to a person exercising a right under any other Act of the Legislature or any Act of the Parliament of Canada; or

(b) to a person using water for domestic purposes, where the person has lawful access to the water; or

(c) to a person who constructs a well to obtain water for domestic purposes.

S.M. 2000, c. 18, s. 4; S.M. 2018, c. 6, s. 69.

4 Renumbered as section 18.4.

Regulations re registrable projects

4.1(1) The Lieutenant Governor in Council may make regulations respecting registrable projects and registration under section 4.2, including designating one or more classes of works or water control works as registrable projects.

Restriction on designated classes

4.1(2) A class of works or water control works is not eligible to be designated under subsection (1) if, in the opinion of the Lieutenant Governor in Council, works or water control works of that class are likely to

b) de construire, d'établir, d'exploiter ou d'entretenir des ouvrages, à moins d'être titulaire d'une licence valide et en vigueur;

c) de régulariser l'eau ou de construire, d'exploiter ou d'entretenir des ouvrages de régularisation des eaux, à moins d'être titulaire d'une licence valide et en vigueur.

Projets enregistrés

3(1.1) La personne qui ne détient pas une licence peut construire, établir, exploiter ou entretenir un projet admissible qui est enregistré conformément à l'article 4.2.

Exception

3(2) Les paragraphes (1) et (1.1) ne s'appliquent pas à l'une quelconque des personnes suivantes :

a) une personne exerçant un droit en vertu d'une autre loi de la Législature ou d'une loi du Parlement du Canada;

b) une personne qui utilise l'eau à des fins domestiques, lorsque celle-ci a un accès légitime à cette eau;

c) une personne qui construit un puits pour obtenir de l'eau à des fins domestiques.

L.M. 2000, c. 18, art. 4; L.M. 2018, c. 6, art. 69.

4 Nouvelle désignation numérique : article 18.4

Règlements relatifs aux projets admissibles

4.1(1) Le lieutenant-gouverneur en conseil peut, par règlement, régir les projets admissibles et leur enregistrement conformément à l'article 4.2, notamment désigner une ou plusieurs catégories d'ouvrages ou d'ouvrages de régularisation des eaux à titre d'ouvrages admissibles.

Restriction — catégories désignées

4.1(2) Les catégories d'ouvrages ou d'ouvrages de régularisation des eaux qui, selon le lieutenant-gouverneur en conseil, sont susceptibles d'avoir l'un des effets suivants ne peuvent être désignées conformément au paragraphe (1) :

- (a) significantly alter the flow or level of water;
- (b) result in a significant change in the location or direction of flow of water;
- (c) result in the loss or alteration of a prescribed class of wetland; or
- (d) have significant adverse environmental effects.

- a) une modification importante du débit ou du niveau des eaux;
- b) une modification importante de l'emplacement des eaux ou de la direction de leur débit;
- c) une perte ou une modification d'une catégorie de terres humides désignée par règlement;
- d) des conséquences néfastes importantes sur l'environnement.

Public consultation in regulation development

4.1(3) In the formation or substantive review of regulations made under subsection (1), the minister must provide an opportunity for public consultation regarding the proposed regulation or amendment.

S.M. 2018, c. 6, s. 71.

Consultation publique préalable à la prise de règlements

4.1(3) Lors de l'élaboration de règlements visés au paragraphe (1) ou de leur réexamen sur le plan du fond, le ministre donne la possibilité au public de présenter ses observations sur les projets de règlement ou de modifications réglementaires.

L.M. 2018, c. 6, art. 71.

Registration of a registrable project

4.2(1) A person may apply to the registrar, in a form approved by the minister, to register works or water control works under this section.

Enregistrement des projets admissibles

4.2(1) Toute personne peut demander au registraire, en la forme approuvée par le ministre, d'enregistrer sous le régime du présent article des ouvrages ou des ouvrages de régularisation des eaux.

Information required

4.2(2) A person applying for registration must provide to the registrar

- (a) the information required by the application form and the regulations;
- (b) the prescribed documentation or other information necessary to establish that the proposed works or water control works are a registrable project of a particular class; and
- (c) any additional information required by the registrar.

Renseignements exigés

4.2(2) Toute personne qui fait une demande d'enregistrement fournit au registraire :

- a) les renseignements exigés sur le formulaire d'enregistrement et par les règlements;
- b) les documents exigés par les règlements ou les autres renseignements permettant de démontrer que les ouvrages ou les ouvrages de régularisation des eaux projetés sont des projets admissibles d'une catégorie donnée;
- c) tout renseignement additionnel qu'il demande.

Registration if application satisfactory

4.2(3) If the registrar determines that the application is satisfactory, the registrar must register the proposed works or water control works and provide the applicant with a registration certificate in a form approved by the minister.

Enregistrement — demandes acceptables

4.2(3) S'il juge que la demande est acceptable, le registraire enregistre les ouvrages ou les ouvrages de régularisation des eaux projetés et remet à son auteur un certificat d'enregistrement en la forme approuvée par le ministre.

Terms and conditions of registration

4.2(4) Every registration is subject to the terms and conditions prescribed in the regulations and any further terms and conditions imposed by the registrar.

S.M. 2018, c. 6, s. 71.

Issue of licences

5(1) Subject to sections 5.1 and 7, the minister may issue a licence to any person who applies therefor, authorizing

- (a) the use or diversion of water for any purpose; or
- (b) the construction, establishment, operation or maintenance of works for any purpose; or
- (c) the control of water and the construction, establishment, operation or maintenance of water control works.

Terms and conditions of licences

5(2) Every licence is subject to such terms and conditions as may be prescribed in the regulations and such further terms and conditions as may be required by the minister.

5(3) [Repealed] S.M. 1989-90, c. 90, s. 40.

Form of licences

5(4) Every licence shall be in a form prescribed in the regulations or, where that form is not so prescribed, in a form prescribed by the minister.

S.M. 1989-90, c. 90, s. 40; S.M. 2000, c. 18, s. 6; S.M. 2018, c. 6, s. 72.

Restoring wetland as condition of issuing licence

5.1(1) Before the minister issues a licence that authorizes activities that would result in the loss or alteration of a prescribed class of wetland, the applicant must have taken one of the actions specified in subsection (2) to ensure that there is no net loss of wetland benefits.

Conditions de l'enregistrement

4.2(4) Les enregistrements sont assortis des conditions prévues par les règlements et de toute autre condition fixée par le registraire.

L.M. 2018, c. 6, art. 71.

Délivrance de licences

5(1) Sous réserve des articles 5.1 et 7, le ministre peut délivrer, à toute personne qui en fait la demande, une licence autorisant :

- a) l'utilisation ou la dérivation de l'eau à toute fin que ce soit;
- b) la construction, l'établissement, l'exploitation ou l'entretien des ouvrages à toute fin que ce soit;
- c) la régularisation de l'eau et la construction, l'établissement, l'exploitation ou l'entretien des ouvrages de régularisation des eaux.

Termes et conditions des licences

5(2) Toute licence est assujettie aux termes et conditions prévus par les règlements et aux termes et conditions supplémentaires exigés par le ministre.

5(3) [Abrogé] L.M. 1989-90, c. 90, art. 40.

Forme des licences

5(4) Toute licence doit être sous une forme prescrite par les règlements ou par le ministre, lorsque la forme des licences n'est pas prévue par les règlements.

L.M. 1989-90, c. 90, art. 40; L.M. 2000, c. 18, art. 6; L.M. 2018, c. 6, art. 72.

Délivrance de licences conditionnelle à la restauration des terres humides

5.1(1) Avant que le ministre délivre une licence autorisant des activités qui entraîneraient la perte ou la modification d'une catégorie réglementaire de terres humides, l'auteur de la demande prend l'une des mesures visées au paragraphe (2) pour garantir qu'il n'y ait aucune perte nette de terres humides.

Required actions before licence issued

5.1(2) The applicant must, in accordance with the regulations,

- (a) pay a specified amount to The Manitoba Habitat Heritage Corporation, or to another person or organization designated by the minister, for the purpose of restoring or enhancing a wetland in another location; or
- (b) restore or enhance a wetland in a location specified or approved by the minister.

Proof of compliance

5.1(3) A licence must not be issued unless

- (a) the applicant provides the minister with proof of payment of the amount required under clause (2)(a); or
- (b) an officer inspects the wetland that the applicant restored or enhanced and gives written confirmation to the minister that the wetland has been restored or enhanced in an acceptable manner.

S.M. 2018, c. 6, s. 73.

Wetlands restoration and enhancement agreements

5.2(1) The minister may enter into an agreement with The Manitoba Habitat Heritage Corporation or any other person or organization respecting the restoration or enhancement of wetlands using amounts paid by licence applicants under clause 5.1(2)(a).

Reporting

5.2(2) The agreement must include a requirement to provide the minister with an annual report that sets out the total amounts received from licence applicants and details of all wetland restoration or enhancement work performed.

S.M. 2018, c. 6, s. 73.

Mesures obligatoires préalables à la délivrance de la licence

5.1(2) Conformément aux règlements, l'auteur de la demande :

- a) soit paie une somme précise à la Société protectrice du patrimoine écologique du Manitoba ou à une autre personne ou à un autre organisme désignés par le ministre en vue de la restauration ou de l'amélioration des terres humides à un autre endroit;
- b) soit restaure ou améliore des terres humides à un endroit précisé ou approuvé par le ministre.

Respect des conditions

5.1(3) Les licences sont délivrées uniquement si l'une des conditions suivantes est respectée :

- a) l'auteur de la demande remet au ministre une preuve de paiement de la somme visée à l'alinéa (2)a);
- b) un agent a inspecté les terres humides que l'auteur de la demande a restaurées ou améliorées et confirme par écrit au ministre que les travaux sont acceptables.

L.M. 2018, c. 6, art. 73.

Accord de restauration ou d'amélioration de terres humides

5.2(1) Le ministre peut conclure un accord avec la Société protectrice du patrimoine écologique du Manitoba ou avec une autre personne ou un autre organisme concernant la restauration ou l'amélioration de terres humides au moyen des sommes payées au titre de l'alinéa 5.1(2)a).

Rapports

5.2(2) L'accord prévoit le dépôt auprès du ministre d'un rapport annuel qui indique les sommes totales reçues des auteurs de demande et le détail de tous les travaux de restauration ou d'amélioration des terres humides effectués.

L.M. 2018, c. 6, art. 73.

Application for licence

6(1) An application for a licence shall be submitted to the minister and shall contain or have enclosed therewith such information, particulars and plans as may be prescribed in the regulations.

Form of application for licence

6(2) An application for a licence shall be in a form prescribed in the regulations or, where that form is not so prescribed, in a form prescribed by the minister.

Publication of application

6(3) Where, by reason of the scope and nature of the use, diversion or control of water or the construction, establishment, operation or maintenance of works or water control works proposed in an application for a licence and their possible impact on other persons, the minister so directs, the applicant shall, forthwith after submitting the application, publish or cause to be published in a newspaper having general circulation in the area affected, a notice of the application, and the notice shall state

- (a) the nature of the licence applied for;
- (b) that any person wishing to object to the application may do so in writing to the minister within 15 days of the publication of the notice; and
- (c) any other information or particulars that the minister may require.

Public hearing

6(4) Upon expiry of the 15 days provided in subsection (3) in respect of any application, and before the minister determines whether or not to grant the application, a public hearing shall be held before the Municipal Board at which any person may make representations, either himself or through counsel, for or against the application.

S.M. 2000, c. 18, s. 7.

Demande de licence

6(1) Une demande de licence est soumise au ministre et contient les renseignements, les précisions et les plans prescrits par les règlements.

Forme d'une demande de licence

6(2) Une demande de licence est présentée selon une forme prescrite par les règlements ou par le ministre, lorsque celle-ci n'est pas prescrite par ces règlements.

Publication de la demande

6(3) Si en raison de l'ampleur et de la nature de l'utilisation, de la dérivation ou de la régularisation de l'eau ou de la construction, de l'établissement, de l'exploitation ou de l'entretien des ouvrages ou des ouvrages de régularisation des eaux et de son impact éventuel sur d'autres personnes, le ministre l'ordonne ainsi, l'auteur de la demande doit, immédiatement après avoir soumis sa demande, publier ou faire publier un avis de cette demande dans un journal ayant une diffusion générale dans la région concernée. L'avis indique :

- a) la nature de la licence faisant l'objet d'une demande;
- b) que toute personne voulant s'opposer à la demande peut écrire au ministre dans les 15 jours de la publication de l'avis;
- c) tout autre renseignement ou précision que le ministre peut exiger.

Audience publique

6(4) Une audience publique est tenue devant la Commission municipale, à l'expiration du délai de 15 jours prévu au paragraphe (3) relativement à toute demande et avant que le ministre décide de faire droit à celle-ci ou de la refuser. Toute personne, à l'égard de la demande, peut y faire des observations favorables ou défavorables, personnellement ou par l'entremise de son avocat.

L.M. 2000, c. 18, art. 7.

Preliminary work

7(1) Where it is necessary to carry out any preliminary work prior to the use, diversion or control of water or the construction or establishment of works or water control works, the minister shall not issue a licence authorizing the use, diversion or control of the water or the construction or establishment of the works or water control works until the preliminary work has been completed.

Permit for preliminary work

7(2) No person shall commence or carry out any preliminary work required under subsection (1) unless and until he obtains a permit authorizing the preliminary work.

Issue of permits

7(3) The minister may issue a permit to any person who applies therefor, authorizing any preliminary work required under subsection (1), and the permit may also authorize the permittee to enter upon public or private lands to make surveys and do such other things as the minister deems necessary to carry out the preliminary work.

Terms and conditions of permits

7(4) Every permit is subject to such terms and conditions as may be prescribed in the regulations and such further terms and conditions as may be required by the minister.

Application for permit

7(5) An application for a permit required under subsection (2) shall be submitted to the minister and shall contain or have enclosed therewith

- (a) such information, particulars and plans relating to the proposed use, diversion or control of water or the proposed construction or establishment of works or water control works as the minister may require; and

Ouvrage préliminaire

7(1) S'il est nécessaire d'exécuter un ouvrage préliminaire avant l'utilisation, la dérivation ou la régularisation de l'eau ou avant la construction ou l'établissement d'ouvrages ou d'ouvrages de régularisation des eaux, le ministre, jusqu'à ce que l'ouvrage préliminaire ait été achevé, ne peut délivrer une licence autorisant ces opérations.

Permis exigé pour un ouvrage préliminaire

7(2) Nul ne peut commencer ou exécuter un ouvrage préliminaire exigé en vertu du paragraphe (1) jusqu'à ce qu'il obtienne un permis autorisant cet ouvrage.

Délivrance de permis

7(3) Le ministre peut délivrer à toute personne qui en fait la demande, un permis autorisant tout ouvrage préliminaire exigé en vertu du paragraphe (1). Ce permis peut aussi autoriser son détenteur à pénétrer dans des biens-fonds publics ou privés afin d'y faire des études et toutes autres choses que le ministre estime nécessaires pour l'exécution de l'ouvrage préliminaire.

Termes et conditions des permis

7(4) Tout permis est assujéti aux termes et conditions prévus par les règlements et aux termes et conditions supplémentaires exigés par le ministre.

Demande de permis

7(5) Une demande de permis exigé en vertu du paragraphe (2) est soumise au ministre et contient ce qui suit :

- a) les renseignements, les précisions et les plans que le ministre exige et qui se rapportent à l'utilisation, à la dérivation ou à la régularisation proposées de l'eau, ou à la construction ou à l'établissement proposés des ouvrages ou des ouvrages de régularisation des eaux;

(b) if required by the minister, an agreement in writing, made between and executed by both the applicant and the owner of the lands to be affected, whereby the applicant undertakes to pay to the owner compensation for any damage that may result to the lands or any buildings or other improvements thereon in the course of and arising out of the preliminary work to be authorized by the permit.

b) si le ministre l'exige, un accord par écrit conclu entre l'auteur de la demande et le propriétaire des biens-fonds concernés et signé par ceux-ci, en vertu duquel l'auteur de la demande s'engage à payer au propriétaire une compensation pour les dommages pouvant être causés aux biens-fonds, aux immeubles ou à toutes autres améliorations, au cours de l'ouvrage préliminaire devant être autorisé par le permis et survenant lors de cet ouvrage.

7(6) [Repealed] S.M. 1989-90, c. 90, s. 40.

7(6) [Abrogé] L.M. 1989-90, c. 90, art. 40.

Form of permits and applications

7(7) Every permit and every application for a permit shall be in a form prescribed in the regulations or, where that form is not so prescribed, in a form prescribed by the minister.

S.M. 1989-90, c. 90, s. 40; S.M. 2000, c. 18, s. 8.

Forme des permis et des demandes

7(7) Les permis et les demandes de permis sont sous une forme prescrite par les règlements ou par le ministre, lorsque celle-ci n'est pas prescrite par les règlements.

L.M. 1989-90, c. 90, art. 40; L.M. 2000, c. 18, art. 8.

Application of sections 8 to 11

7.1 Sections 8 to 11 do not apply to licences for the control of water and the construction, establishment, operation or maintenance of water control works.

S.M. 2000, c. 18, s. 9; S.M. 2006, c. 8, s. 4.

Application des articles 8 à 11

7.1 Les articles 8 à 11 ne s'appliquent pas aux licences relatives à la régularisation de l'eau ni aux licences relatives à la construction, à l'établissement, à l'exploitation ou à l'entretien des ouvrages de régularisation des eaux.

L.M. 2000, c. 18, art. 9; L.M. 2006, c. 8, art. 4.

Precedence of licences

8(1) Licences have precedence in relation to one another according to the date of submission of the application for each licence.

Priorité des licences

8(1) Les licences ont priorité entre elles suivant la date du dépôt de la demande de chaque licence.

Where no preliminary work

8(2) For the purposes of subsection (1), the date of submission of an application for a licence, where no preliminary work is required prior to the issuance of the licence, is

(a) the date on which the application, together with such information, particulars and plans as may be required under section 6, is submitted to the minister; and

(b) where any information, particulars or plans, or a part of any information, particulars or plans, required under section 6 are not submitted to the minister together with the application but at a subsequent time, the date on which the information, particulars or plans or the part thereof are so submitted.

Aucun ouvrage préliminaire

8(2) Pour l'application du paragraphe (1), si aucun ouvrage préliminaire n'est exigé avant la délivrance d'une licence, la date du dépôt de la demande de licence correspond à la date suivante :

a) la date à laquelle la demande, accompagnée des renseignements, des précisions et des plans exigés en vertu de l'article 6, est soumise au ministre;

b) la date à laquelle les renseignements, les précisions, les plans, ou une partie de ceux-ci sont soumis au ministre, si ces renseignements, ces précisions, ces plans, ou une partie de ceux-ci, exigés en vertu de l'article 6, ne sont pas soumis au ministre avec la demande, mais à un moment ultérieur.

Where preliminary work completed

8(3) For the purposes of subsection (1), the date of submission of an application for a licence issued after the completion of preliminary work pursuant to a permit is

- (a) the date on which the application for the permit, together with such things as may be required under section 7, is submitted to the minister; and
- (b) where any thing, or a part of any thing, required under section 7 is not submitted to the minister together with the application for the permit but at a subsequent time, the date on which the thing or the part thereof is so submitted.

Where submission dates identical

8(4) Where the date of submission established under subsection (2) or (3) in respect of any licence is identical with the date of submission established under subsection (2) or (3) in respect of any other licence, the licences have precedence in relation to one another according to the priority of purpose established for each licence in the order of priority prescribed in section 9.

Where priority of purpose identical

8(5) Where the priority of purpose established in respect of any licence under subsection (4) is identical with the priority of purpose established in respect of any other licence under subsection (4), the licences have precedence in relation to one another as the regulations may provide.

Precedence of renewed licences

8(6) A licence that is renewed in accordance with the regulations retains the precedence originally established for it under this section.

Priorities

9 The order of priority of the purposes for which water may be used or diverted, or works constructed, established or maintained, in accordance with this Act is as follows:

- 1. domestic purposes;
- 2. municipal purposes;
- 3. agricultural purposes;
- 4. industrial purposes;

Cas où un ouvrage préliminaire est achevé

8(3) Pour l'application du paragraphe (1), la date du dépôt de la demande d'une licence délivrée après l'achèvement d'un ouvrage préliminaire exécuté conformément à un permis, correspond à la date suivante :

- a) la date à laquelle la demande de permis, accompagnée des choses exigées en vertu de l'article 7, est soumise au ministre;
- b) la date à laquelle une chose ou une partie de celle-ci est soumise au ministre, si cette chose ou une partie de celle-ci, exigée en vertu de l'article 7, n'est pas soumise au ministre avec la demande de permis, mais à un moment ultérieur.

Cas où les dates de dépôt sont identiques

8(4) Si la date de dépôt d'une licence, fixée en vertu du paragraphe (2) ou (3), est identique à celle d'une autre licence, ces licences ont priorité entre elles suivant la priorité des fins établie pour chaque licence, dans l'ordre prévu à l'article 9.

Cas où la priorité des fins est identique

8(5) Si la priorité des fins relative à une licence, fixée en vertu du paragraphe (4), est identique à celle d'une autre licence, ces licences ont priorité entre elles, conformément à ce qui est prévu par les règlements.

Priorité des licences renouvelées

8(6) Une licence renouvelée conformément aux règlements conserve la priorité qui lui est d'abord fixée en vertu du présent article.

Priorités

9 L'ordre de priorité des fins pour lesquelles l'eau peut être utilisée ou dérivée, ou pour lesquelles les ouvrages peuvent être construits, établis ou entretenus, conformément à la présente loi, est le suivant :

- 1. les fins domestiques;
- 2. les fins municipales;
- 3. les fins agricoles;
- 4. les fins industrielles;

5. irrigation purposes;

6. other purposes.

Protecting and maintaining aquatic ecosystems

9.1(1) In considering an application for a licence

(a) to use or divert water; or

(b) to construct, establish, operate or maintain works, other than works relating to the drainage of water;

the minister shall consider scientific and other information relating to the groundwater and water body levels, and the in-stream flows, that are necessary to ensure that aquatic ecosystems are protected and maintained.

Licence may be denied

9.1(2) The minister may refuse to issue a licence if, in the opinion of the minister, the action authorized by the licence would negatively affect an aquatic ecosystem.

S.M. 2005, c. 26, s. 42.

Suspending licence for aquatic ecosystem purposes

9.2 The minister may suspend or restrict the rights under a licence for a specified period if

(a) in the minister's opinion,

(i) a groundwater level,

(ii) a water body level, or

(iii) an in-stream flow,

is insufficient to ensure that aquatic ecosystems are protected and maintained; and

(b) the minister's opinion is based on scientific information about protecting and maintaining an aquatic ecosystem of the type under consideration.

S.M. 2005, c. 26, s. 42.

5. les fins d'irrigation;

6. les autres fins.

Protection des écosystèmes aquatiques

9.1(1) Lors de l'examen d'une demande de licence d'utilisation ou de dérivation d'eau ou de licence de construction, d'établissement, d'exploitation ou d'entretien d'ouvrages, exception faite des ouvrages de drainage, le ministre prend en compte les renseignements, notamment scientifiques, portant sur le niveau des eaux souterraines et des plans d'eau ainsi que sur le débit des cours d'eau qui sont nécessaires pour garantir la survie et la protection des écosystèmes aquatiques.

Possibilité de refus de la licence

9.1(2) Le ministre peut refuser une licence si, à son avis, les activités qu'elle autoriserait porteraient atteinte à un écosystème aquatique.

L.M. 2005, c. 26, art. 42.

Suspension liée à un écosystème aquatique

9.2 Le ministre peut, pour une période limitée, suspendre une licence ou restreindre les droits qu'elle confère à son titulaire si, à son avis, le niveau des eaux souterraines, le niveau d'un plan d'eau ou le débit d'un cours d'eau est insuffisant pour garantir la survie et la protection des écosystèmes aquatiques. L'avis du ministre est fondé sur des renseignements scientifiques concernant la survie et la protection des écosystèmes aquatiques du type visé.

L.M. 2005, c. 26, art. 42.

Application for use in the future

10 If the minister is satisfied that an applicant for a licence does not intend to use or divert the water or to construct or establish the works to which the application relates for at least one year after the date the application was submitted, the minister may refuse to issue the licence or defer issuing the licence.

S.M. 2000, c. 18, s. 10; S.M. 2018, c. 6, s. 74.

Change of title to land

11 Where an estate or interest in land is transferred, any subsisting licence relating to the estate or interest expires automatically as of the date of the transfer, unless the minister, upon the application of the transferee, transfers the licence to the transferee.

Subsidiary use for domestic purposes

12 Subject to the approval of the minister, a person who has a licence to use or divert water for industrial, agricultural or irrigation purposes may use or divert, or permit others, with or without a fee or charge therefor, to use or divert part of the water for domestic purposes.

Reservation of water

13(1) Notwithstanding any other provision of this Act, the minister may reserve any unlicensed water

(a) in order that a survey may be made as to how the water may be used or diverted to the greatest advantage of the residents of the province; or

(b) for such uses and purposes specified by the minister as in his opinion will be of the greatest advantage to the residents of the province;

and may fix a period of time within which the reservation may be utilized.

Restriction on licences

13(2) Where water has been reserved under subsection (1), the minister shall not issue a licence in respect thereof except in accordance with the terms of the reservation.

Demande d'utilisation de l'eau pour l'avenir

10 S'il est convaincu que l'auteur de la demande de licence reportera à plus d'un an après son dépôt l'utilisation ou la dérivation de l'eau ou la construction ou l'établissement des ouvrages qu'elle vise, le ministre peut refuser de délivrer la licence ou différer sa délivrance.

L.M. 2000, c. 18, art. 10; L.M. 2001, c. 43, art. 30; L.M. 2018, c. 6, art. 74.

Changement de propriété

11 Si un domaine ou un intérêt dans un bien-fonds est cédé, toute licence valide concernant ce domaine ou cet intérêt expire automatiquement à la date de la cession, sauf si le ministre, suite à la demande du cessionnaire, lui cède ladite licence.

Utilisation accessoire de l'eau à des fins domestiques

12 Sous réserve de l'approbation du ministre, une personne qui possède une licence pour utiliser ou faire dériver l'eau à des fins industrielles, agricoles ou à des fins d'irrigation, peut utiliser ou faire dériver une partie de l'eau à des fins domestiques ou permettre à d'autres personnes, avec ou sans droit ou frais de leur part, d'agir ainsi.

Réservation de l'eau

13(1) Par dérogation à toute autre disposition de la présente loi, le ministre peut réserver toute eau ne faisant pas l'objet d'une licence, pour l'une des fins suivantes :

a) afin qu'une étude soit faite sur la manière d'utiliser ou de faire dériver l'eau au mieux des intérêts des résidents de la province;

b) pour les usages et les fins précisés par le ministre et qui, à son avis, seront au mieux des intérêts des résidents de la province.

Il peut fixer un délai durant lequel la réservation de l'eau peut être effectuée.

Licences non délivrées

13(2) Si l'eau a été réservée en vertu du paragraphe (1), le ministre ne peut délivrer une licence à cet égard, sauf conformément aux conditions de la réservation.

Cancellation of licence

14(1) Where a person applies to the minister for a licence to use or divert water at any place or point and all the water available for use or diversion at that place or point has already been allocated to other licensees or in the opinion of the minister further allocation would negatively affect an aquatic ecosystem, if the purpose for which the applicant will use the water is higher in priority in the order of priority established therefor under section 9 than that of the purpose of one or more of those other licensees, the minister may issue the licence to the applicant and, subject to section 19, may cancel or restrict the rights under the licence of any one or more of those other licensees ranking lower than the applicant in priority of purpose.

Compensation

14(2) A person whose existing licence is cancelled or whose rights under his existing licence are restricted under subsection (1) in favor of a new applicant for a licence is entitled to receive from and shall be paid by the applicant compensation for any loss or damage suffered by him as a consequence of the cancellation or restriction.

Agreement respecting compensation

14(3) The minister shall not issue a licence to an applicant under subsection (1) until he receives from the applicant an agreement, executed by both the applicant and the person whose licence is cancelled or restricted under that subsection, containing the applicant's undertaking to pay to the person the compensation for which provision is made in subsection (2), and the amount of the compensation and the terms of the payment thereof shall be set out in the agreement or determined in accordance with subsection (4), as the case may be.

Arbitration

14(4) Where an applicant for a licence and a person whose licence is cancelled or whose rights under a licence are restricted fail to agree on the amount of the compensation payable by the applicant under subsection (2), the amount thereof shall be determined in accordance with the provisions of *The Arbitration Act*.

Annulation d'une licence

14(1) Lorsqu'une personne fait une demande au ministre pour obtenir une licence afin d'utiliser ou de faire dériver l'eau de tout lieu ou point, et que toute l'eau disponible pour l'utilisation ou la dérivation en ce lieu ou ce point a déjà été attribuée à d'autres détenteurs de licences ou que, à son avis, toute autre attribution porterait atteinte à un écosystème aquatique, le ministre peut délivrer la licence à l'auteur de la demande et, sous réserve de l'article 19, peut annuler ou restreindre les droits, aux termes de la licence, d'un ou de plusieurs de ces autres détenteurs dont la priorité des fins prend rang après celle de l'auteur de la demande, si les fins pour lesquelles celui-ci utilisera l'eau ont préséance sur celles d'un ou de plusieurs de ces autres détenteurs, dans l'ordre de priorité établi à cet effet en vertu de l'article 9.

Compensation

14(2) Une personne dont la licence actuelle est annulée ou dont les droits aux termes de cette licence sont restreints, en vertu du paragraphe (1), en faveur d'un nouvel auteur d'une demande de licence, a le droit de recevoir, de l'auteur de la demande, une compensation devant être payée par ce dernier, pour tout dommage ou toute perte qu'elle a subi en raison de cette annulation ou de cette restriction.

Accord relatif à la compensation

14(3) Le ministre ne peut délivrer une licence à l'auteur de la demande en vertu du paragraphe (1), jusqu'à ce qu'il reçoive de celui-ci un accord signé par lui et par la personne dont la licence est annulée ou dont les droits sont restreints en application de ce paragraphe, contenant l'engagement de l'auteur de la demande de payer à la personne la compensation pour laquelle une disposition est établie en vertu du paragraphe (2). Le montant de la compensation ainsi que les conditions de paiement de celle-ci sont établis dans l'accord ou déterminés conformément au paragraphe (4).

Arbitrage

14(4) Si l'auteur d'une demande de licence et une personne dont la licence est annulée ou dont les droits aux termes d'une licence sont restreints ne se mettent pas d'accord sur le montant de la compensation payable en vertu du paragraphe (2), le montant est déterminé conformément aux dispositions de la *Loi sur l'arbitrage*.

Compensation where no renewal or transfer

14(5) Where a licensee applies for a renewal or transfer of his licence and the minister declines to renew or transfer the licence by virtue of an application for a higher priority use, compensation is payable by the new user as provided in this section.

S.M. 2005, c. 26, s. 42.

Investigations re levels and in-stream flows

14.1 Using scientific methods, the minister may undertake investigations into groundwater or water body levels, or in-stream flows, anywhere in Manitoba, to determine whether aquatic ecosystems are being negatively affected by insufficient levels or flows.

S.M. 2005, c. 26, s. 42.

Non-use of licence

15 Where a licensee fails to use or divert water under the authority of and for the purposes authorized by the licence, or fails to use or divert water to the extent authorized by the licence, for a continuous period of 1 year or more, the minister may, subject to section 19, make an order

- (a) amending the licence to reduce the amount of water that may be used or diverted thereunder; or
- (b) cancelling the licence.

Unsafe works or water control works

16 Where in the opinion of the minister works or water control works constructed, established or maintained under a licence or registration are unsafe, the minister may make an order requiring the licensee or registrant

- (a) to make repairs or additions to the works or water control works or any part thereof; or
- (b) to demolish, or to demolish and reconstruct, the works or water control works or any part thereof;

Non-renouvellement ou cession

14(5) Lorsque le détenteur d'une licence demande le renouvellement ou la cession de sa licence et que le ministre refuse ce renouvellement ou cette cession en raison d'une demande d'utilisation ayant préséance sur celle du détenteur, une compensation doit être payée par le nouvel usager, conformément au présent article.

L.M. 2005, c. 26, art. 42.

Enquêtes sur les niveaux d'eau et sur les débits

14.1 À l'aide de méthodes scientifiques, le ministre peut entreprendre des enquêtes sur le niveau des eaux souterraines ou d'un plan d'eau, ou sur le débit d'un cours d'eau, en tout lieu au Manitoba afin de déterminer si des niveaux ou des débits insuffisants portent atteinte à des écosystèmes aquatiques.

L.M. 2005, c. 26, art. 42.

Non-usage de la licence

15 Si un détenteur d'une licence néglige d'utiliser ou de faire dériver l'eau en vertu de la licence et pour les fins qui y sont consenties, ou dans la mesure permise par celle-ci, pour une durée continue d'un an ou plus, le ministre peut, sous réserve de l'article 19, prendre un arrêté qui, selon le cas :

- a) modifie la licence afin de diminuer la quantité d'eau pouvant y être utilisée ou dérivée;
- b) annule la licence.

Ouvrages ou ouvrages de régularisation des eaux dangereux

16 Si le ministre est d'avis que des ouvrages ou ouvrages de régularisation des eaux construits, établis ou entretenus en vertu d'une licence ou d'un enregistrement sont dangereux, il peut, afin de les rendre sûrs, prendre un arrêté demandant au détenteur de la licence ou de l'enregistrement, selon le cas :

- a) de faire des réparations ou des agrandissements aux ouvrages ou ouvrages de régularisation des eaux ou à toute partie de ceux-ci;
- b) de démolir ou de démolir et de reconstruire les ouvrages ou ouvrages de régularisation des eaux ou toute partie de ceux-ci.

to put the works or water control works in a safe condition and, if the licensee or registrant fails to comply with the order, the minister may, subject to section 19, suspend or cancel the licence or registration in whole or in part.

S.M. 2000, c. 18, s. 11; S.M. 2018, c. 6, s. 75.

Removal or acquisition of works or water control works

17(1) Where a licence or registration authorizing the construction, establishment or maintenance of works or water control works

(a) expires, and the licensee or registrant fails to apply for its renewal in accordance with the regulations; or

(b) is cancelled by the minister under this Act;

the minister may

(c) make an order requiring the person who owns or is occupying the land in respect of which the licence or registration was issued or on which the works or water control works are situated to breach, block, fill, demolish or remove the works or water control works; or

(d) for and on behalf of the government and in accordance with the regulations, assume ownership and control of the works or water control works.

Removal of works or water control works

17(2) Where a person fails to comply with an order made under subsection (1) in respect of any works or water control works, the minister may, subject to section 18.4, which applies with such modifications as the circumstances require, cause the works or water control works to be disposed of or removed, in such manner, and may impose such terms and conditions with respect to the works or water control works, as the minister deems necessary.

Si le détenteur de la licence ou de l'enregistrement néglige de se soumettre à l'arrêté, le ministre peut, sous réserve de l'article 19, suspendre ou annuler la licence ou l'enregistrement, en totalité ou en partie.

L.M. 2000, c. 18, art. 11; L.M. 2018, c. 6, art. 75.

Enlèvement ou acquisition des ouvrages ou ouvrages de régularisation des eaux

17(1) Lorsqu'une licence ou un enregistrement autorisant la construction, l'établissement ou l'entretien des ouvrages ou ouvrages de régularisation des eaux :

a) soit expire et que son détenteur omet d'en demander le renouvellement conformément aux règlements;

b) soit est annulé par le ministre en vertu de la présente loi,

ce dernier peut, selon le cas :

c) prendre un arrêté demandant au propriétaire ou à l'occupant du bien-fonds à l'égard duquel la licence ou l'enregistrement a été délivré ou sur lequel les ouvrages sont placés, de bloquer, de remplir, de démolir ou d'enlever ces ouvrages ou ouvrages de régularisation des eaux ou d'y ouvrir une brèche;

d) prendre en main la propriété et la direction des ouvrages ou ouvrages de régularisation des eaux, pour le gouvernement et en son nom, et conformément aux règlements.

Enlèvement des ouvrages ou des ouvrages de régularisation des eaux

17(2) Si une personne omet d'observer un arrêté rendu en vertu du paragraphe (1) à l'égard d'ouvrages ou d'ouvrages de régularisation des eaux, le ministre peut, sous réserve de l'article 18.4 qui s'applique avec les adaptations nécessaires à l'égard d'ouvrages, faire en sorte qu'il en soit disposé ou qu'ils soient enlevés de la façon qu'il estime nécessaire, et imposer, à l'égard de ceux-ci, les termes et conditions qu'il juge indispensables.

Compensation

17(3) Where the minister assumes ownership and control of works or water control works under subsection (1) upon the expiry of a licence or registration, the government shall compensate the licensee or registrant therefor.

Failure to agree on compensation

17(4) Where the parties cannot agree as to the amount of the compensation payable under subsection (3), the amount of the compensation shall be determined in accordance with the provisions of *The Arbitration Act*.

S.M. 2000, c. 18, s. 12; S.M. 2006, c. 8, s. 5; S.M. 2018, c. 6, s. 76.

Appointing officers

17.1 The minister may appoint officers for the purpose of administering and enforcing this Act.

S.M. 2006, c. 8, s. 6.

Inspection authority

18(1) When reasonably required to administer or determine compliance with this Act, an officer or a person authorized by the minister may enter upon any land without a warrant at any reasonable time to inspect the land and any works or water control works that have been maintained or are being constructed there.

Additional inspection powers

18(1.1) When conducting an inspection under subsection (1), an officer or a person authorized by the minister may

- (a) require any thing to be produced for inspection, examination, testing or analysis;
- (b) take samples of any thing;
- (c) take photographs or video recordings of the land, or any works, water control works or any other thing on the land;
- (d) take measurements or make surveys; and

Compensation

17(3) Le gouvernement doit compenser le détenteur d'une licence ou d'un enregistrement lorsque le ministre, en application du paragraphe (1) et à l'expiration de cette licence ou de cet enregistrement, prend en main la propriété et la direction des ouvrages ou ouvrages de régularisation des eaux.

Défaut d'accord quant à la compensation

17(4) Si les parties ne peuvent s'entendre sur le montant de la compensation payable en vertu du paragraphe (3), celui-ci doit être déterminé conformément aux dispositions de la *Loi sur l'arbitrage*.

L.M. 2000, c. 18, art. 12; L.M. 2001, c. 43, art. 30; L.M. 2006, c. 8, art. 5; L.M. 2017, c. 26, art. 32; L.M. 2018, c. 6, art. 76.

Nomination des agents

17.1 Le ministre peut nommer des agents pour l'application de la présente loi.

L.M. 2006, c. 8, art. 6.

Pouvoir de visite

18(1) Un agent ou une personne autorisée par le ministre peut, à toute heure raisonnable, pénétrer sans mandat sur un bien-fonds pour procéder à son inspection et à celle des ouvrages ou des ouvrages de régularisation des eaux qui y ont été entretenus ou y sont construits, si cette mesure est nécessaire afin d'appliquer la présente loi ou d'en contrôler l'observation.

Pouvoirs de visite additionnels

18(1.1) Lorsqu'il effectue une visite visée au paragraphe (1), l'agent ou la personne autorisée par le ministre peut :

- a) exiger que toute chose soit présentée en vue de faire l'objet d'une inspection, d'un examen, d'un test ou d'une analyse;
- b) prélever des échantillons de toute chose;
- c) prendre des photos ou une vidéo du bien-fonds ou des ouvrages, notamment des ouvrages de régularisation des eaux, ou des choses qui s'y trouvent;
- d) prendre des mesures ou des levés;

(e) bring any equipment required to carry out any action related to the inspection.

e) apporter le matériel nécessaire pour prendre toute mesure liée à la visite.

Identification

18(2) An officer or a person authorized by the minister must produce identification if requested to do so while conducting an inspection.

S.M. 1989-90, c. 90, s. 40; S.M. 2000, c. 18, s. 13; S.M. 2006, c. 8, s. 7; S.M. 2018, c. 6, s. 77.

Pièce d'identité

18(2) Lorsqu'il procède à une inspection, l'agent ou la personne autorisée par le ministre produit, sur demande, une pièce d'identité.

L.M. 1989-90, c. 90, art. 40; L.M. 2000, c. 18, art. 13; L.M. 2006, c. 8, art. 7; L.M. 2018, c. 6, art. 77.

Warrant for search and seizure

18.1 A justice, upon being satisfied by information on oath that there are reasonable grounds to believe that

(a) an offence under this Act is being or has been committed; and

(b) there is to be found in any place or premises any thing that will afford evidence of the offence;

may at any time issue a warrant authorizing an officer and any other person named in the warrant to enter and search the place or premises for any such thing, and to seize it and as soon as practicable bring it before a justice, or report on it to a justice, to be dealt with according to law.

S.M. 2006, c. 8, s. 7.

Mandat de perquisition

18.1 Un juge peut, s'il est convaincu sur la foi d'une dénonciation faite sous serment qu'il existe des motifs raisonnables de croire qu'une infraction à la présente loi est ou a été commise et que se trouve dans un lieu une chose qui permettra de prouver une telle infraction, décerner à tout moment un mandat autorisant un agent et toute autre personne qui y est nommée à procéder à une perquisition dans ce lieu pour rechercher cette chose et à la saisir et, dès que possible, à l'apporter devant un juge ou à lui en faire rapport afin qu'il en soit disposé conformément à la loi.

L.M. 2006, c. 8, art. 7.

No obstructing officers

18.2 A person must not obstruct or hinder, or make a false or misleading statement to, an officer who is exercising powers or performing duties under this Act.

S.M. 2018, c. 6, s. 78.

Entrave

18.2 Il est interdit d'entraver l'action d'un agent dans l'exercice des attributions que lui confère la présente loi ou de lui faire une déclaration fausse ou trompeuse.

L.M. 2018, c. 6, art. 78.

No false or misleading statements

18.3 A person must not make a false or misleading statement in any application for a licence, permit or registration or in any return or report required under this Act or the regulations.

S.M. 2018, c. 6, s. 78.

Déclarations fausses ou trompeuses

18.3 Nul ne peut faire une déclaration fausse ou trompeuse dans une demande de licence, de permis ou d'enregistrement ou dans un relevé ou un rapport exigé en vertu de la présente loi ou des règlements.

L.M. 2018, c. 6, art. 78.

Removal of unauthorized works or water control works

18.4(1) Where a person is using, diverting or controlling water or has constructed or established or is operating or maintaining any works or water control works in breach of section 3, the minister may make an order requiring the person, within a period of time stated in the order,

- (a) to cease using or diverting the water; or
- (b) to remove the works or water control works; or
- (b.1) to cease controlling the water; or
- (c) to repair or reconstruct or alter the works or water control works in a manner stated in the order;

as the case may be, and the order shall further state that if the person to whom it is directed fails to comply with the order, an officer or another person authorized by the minister may, without further notice or legal process and at the expense of the person, take or cause to be taken the steps set out in subsection (3).

Service of order

18.4(2) An order made under subsection (1) shall be served on the person to whom it is directed

- (a) by personal service; or
- (a.1) by registered mail addressed to the last known address of the person to whom it is directed; or
- (b) by leaving a copy of the order with an adult person on the affected land; or
- (c) by posting a copy of the order in a conspicuous place on the affected land, if no adult person is found thereon.

Removing works or water control works

18.4(3) Where after service in accordance with subsection (2) of an order made under subsection (1) the person to whom it is directed fails to comply therewith, an officer or a person authorized by the minister may, without further notice or legal process and at the expense of the person, do or cause to be done such

Enlèvement d'ouvrages ou d'ouvrages de régularisation des eaux non autorisés

18.4(1) Le ministre peut, si une personne utilise, dérive ou régularise de l'eau ou qu'elle a construit ou établi des ouvrages ou des ouvrages de régularisation des eaux ou les exploite ou les entretient en violation de l'article 3, prendre un arrêté enjoignant la personne de se conformer, dans un délai donné, à l'une ou l'autre des dispositions suivantes :

- a) cesser d'utiliser ou de dériver l'eau;
- b) enlever les ouvrages ou les ouvrages de régularisation des eaux;
- b.1) cesser de régulariser l'eau;
- c) réparer, reconstruire ou modifier les ouvrages ou les ouvrages de régularisation des eaux de la manière qu'il précise dans l'arrêté.

L'arrêté doit de plus indiquer que si la personne qui y est visée omet de l'observer, un agent ou toute autre personne autorisée par le ministre pourra, sans autre avis ou acte de procédure légale et aux frais de la personne visée, prendre ou faire prendre les mesures prévues au paragraphe (3).

Signification de l'arrêté

18.4(2) L'arrêté visé au paragraphe (1) est signifié à la personne selon l'un des modes de signification suivants :

- a) par signification à personne;
- a.1) par courrier recommandé envoyé à la dernière adresse connue du destinataire;
- b) par remise d'une copie de l'arrêté à un majeur qui se trouve sur le bien-fonds visé;
- c) par affichage d'une copie de l'arrêté en des endroits bien en vue du bien-fonds, à défaut de majeur sur le bien-fonds.

Enlèvement des ouvrages ou des ouvrages de régularisation des eaux

18.4(3) Si après la signification, conformément au paragraphe (2), d'un arrêté pris en vertu du paragraphe (1), la personne qui y est visée omet de l'observer, un agent ou une personne autorisée par le ministre peut, sans autre avis ou acte de procédure légale

things as he or she deems necessary to stop the use, diversion or control of the water, or cause the works or water control works to be breached, blocked, filled, demolished or removed or to be otherwise dealt with as he or she deems necessary or advisable to enforce the order, as the case may be.

Power to enter lands

18.4(4) An officer or a person authorized by the minister may enter upon or cross any lands for the purpose of taking any of the steps authorized under subsection (3).

Recovery of expense

18.4(5) Any expense incurred in taking or causing to be taken the steps authorized under subsection (3) for the purpose of enforcing an order made under subsection (1) is a debt due to the Crown. The minister may issue a certificate as to the amount of the debt and file it in the Court of Queen's Bench, and, once filed, it may be enforced as if it were a judgment of the court.

S.M. 1989-90, c. 90, s. 40; S.M. 2000, c. 18, s. 5; S.M. 2005, c. 26, s. 42; S.M. 2006, c. 8, s. 3; S.M. 2018, c. 6, s. 70.

Suspension and cancellation of licence, permit or registration

19(1) In addition to any suspension or cancellation of a licence, permit or registration that may be authorized under any other provision of this Act, the minister may, for cause,

- (a) suspend a licence, permit or registration for any stated period of time or until a condition is met;
- (b) where in the opinion of the minister it is in the public interest to do so, cancel a licence, permit or registration whether or not it has first been suspended under clause (a).

et aux frais de la personne visée, faire toute chose qu'il juge nécessaire ou les faire faire, afin d'arrêter l'utilisation, la dérivation ou la régularisation de l'eau, faire démolir ou faire enlever les ouvrages ou les ouvrages de régularisation des eaux ou y faire ouvrir une brèche, les bloquer ou les remplir ou faire en sorte qu'ils en soient disposés autrement, dans la mesure où il le juge nécessaire ou opportun, afin que l'arrêté soit exécuté.

Pouvoir de pénétrer dans les biens-fonds

18.4(4) Un agent ou une personne autorisée par le ministre peut pénétrer dans un bien-fonds ou le traverser afin de prendre l'une quelconque des mesures autorisées en vertu du paragraphe (3).

Recouvrement des dépenses

18.4(5) Les dépenses engagées lors de la prise des mesures autorisées en vertu du paragraphe (3) afin que l'arrêté pris en vertu du paragraphe (1) soit exécuté, constituent une créance de la Couronne. Le ministre peut délivrer un certificat indiquant le montant de la créance et le déposer à la Cour du Banc de la Reine. Une fois déposé, ce certificat peut être exécuté au même titre qu'un jugement de la Cour.

L.M. 1989-90, c. 90, art. 40; L.M. 2000, c. 18, art. 5; L.M. 2005, c. 26, art. 42; L.M. 2006, c. 8, art. 3; L.M. 2017, c. 26, art. 32; L.M. 2018, c. 6, art. 70.

Suspension et annulation de la licence, du permis ou de l'enregistrement

19(1) En plus de la suspension ou de l'annulation d'une licence, d'un permis ou d'un enregistrement pouvant être autorisée en vertu de toute autre disposition de la présente loi, le ministre peut, si les motifs le justifient :

- a) suspendre une licence, un permis ou un enregistrement pour tout délai fixé ou jusqu'à ce qu'une condition soit remplie;
- b) annuler une licence, un permis ou un enregistrement, que ceux-ci aient été suspendus ou non en premier lieu en vertu de l'alinéa a), s'il est d'avis qu'il est dans l'intérêt public d'agir ainsi.

Notice and hearing before cancellation

19(2) A licence, permit or registration shall not be cancelled under subsection (1) or any other provision of this Act until after notice and a hearing in accordance with subsections (3), (4) and (5).

No hearing if consent

19(2.1) Despite subsection (2), the minister may cancel a licence, permit or registration without a hearing if the licensee, permittee or registrant consents to the cancellation.

Notice of hearing

19(3) The notice required under subsection (2) shall require the person to whom it is directed to attend before the Municipal Board upon a day specified in the notice which shall not be less than 30 days after the date of service of the notice, to show cause why the licence, permit or registration should not be cancelled.

Service of notice

19(4) The notice referred to in subsection (3) shall be served personally, or by registered mail addressed to the last known address of the person to whom it is directed.

Notice of cancellation

19(5) If the minister cancels a licence, permit or registration, the minister must give the person affected notice of the cancellation by ordinary mail sent to the person's last known address. The notice is deemed to have been received by the person five days after the day it was mailed.

S.M. 2006, c. 8, s. 8; S.M. 2018, c. 6, s. 79.

Removal of obstructions

20 An officer or another person authorized by the minister may open up, remove or destroy, or cause to be opened up, removed or destroyed,

- (a) any dam constructed by beaver; or

Avis et audience avant l'annulation

19(2) Une licence, un permis ou un enregistrement ne peut être annulé en vertu du paragraphe (1) ou de toute autre disposition de la présente loi, qu'après un avis et une audience, conformément aux paragraphes (3), (4) et (5).

Annulation sans audience

19(2.1) Malgré le paragraphe (2), le ministre peut annuler une licence, un permis ou un enregistrement sans la tenue d'une audience si le détenteur concerné consent à l'annulation.

Avis d'audience

19(3) L'avis exigé en vertu du paragraphe (2) ordonne à la personne qui y est mentionnée de comparaître devant la Commission municipale à la date fixée dans l'avis, afin de faire valoir les raisons pour lesquelles la licence, le permis ou l'enregistrement ne devrait pas être annulé. La date de comparution ne peut être fixée moins de 30 jours suivant la date de signification de l'avis.

Signification de l'avis

19(4) L'avis prévu au paragraphe (3) est signifié à personne ou par courrier recommandé adressé à la dernière adresse connue de la personne qui y est mentionnée.

Avis d'annulation

19(5) S'il annule une licence, un permis ou un enregistrement, le ministre en avise la personne concernée par courrier ordinaire envoyé à sa dernière adresse connue. L'avis est réputé avoir été reçu cinq jours après sa mise à la poste.

L.M. 2006, c. 8, art. 8; L.M. 2018, c. 6, art. 79.

Enlèvement d'obstacles

20 Un agent ou toute autre personne autorisée par le ministre peut défaire, enlever, démolir ou faire défaire, enlever ou démolir, selon le cas :

- a) les barrages de castors;

(b) any natural obstruction howsoever caused that diverts a flow of water existing prior to the obstruction;

and for that purpose may enter upon or cross any lands.

S.M. 2006, c. 8, s. 9.

Interprovincial boundary waters

21(1) The minister, for and on behalf of the government, may enter into an arrangement or agreement with the government of any other province of Canada or with the Government of Canada or with the Government of Nunavut for the establishment and constitution of a board that, when established and constituted, shall, to the extent permitted by the legislative powers of the governments that are parties to the arrangement or agreement, have jurisdiction and such power and authority as is vested in it by the arrangement or agreement, to regulate and control the use of interprovincial waters, or the use of the boundary waters between the province and the Northwest Territories or between the province and Nunavut, or the use of waters in any stream or streams flowing through more than one of the provinces or through one or more than one of the provinces and the Northwest Territories or Nunavut.

Representative on board

21(2) The Lieutenant Governor in Council may appoint a representative or representatives of the government to the board established under subsection (1).

S.M. 1999, c. 17, s. 5.

Agreements with other governments

22 The minister may enter into an arrangement or agreement with the government of any other province of Canada or the Government of Canada or any agency for the making of water measurements, the carrying out of investigations and the collection and publication of data respecting water resources and the best methods of utilizing them.

b) les obstacles naturels causés de quelque manière que ce soit et qui font dériver un écoulement d'eau existant avant ledit obstacle.

Il peut, à cette fin, pénétrer dans tout bien-fonds ou le traverser.

L.M. 2006, c. 8, art. 9.

Commission de contrôle

21(1) Le ministre, agissant pour le gouvernement et en son nom, peut conclure une entente ou un accord avec le gouvernement d'une autre province du Canada, avec le gouvernement du Canada ou avec le gouvernement du Nunavut, pour l'établissement et la constitution d'une commission qui, lorsqu'elle est établie et constituée dans la mesure où les pouvoirs législatifs des gouvernements étant parties à l'entente ou à l'accord le permettent, a la compétence, ainsi que les pouvoirs et l'autorité qui lui sont confiés par cette entente ou cet accord, pour régir et contrôler l'utilisation des eaux interprovinciales ou des eaux frontalières entre la province et les Territoires du Nord-Ouest ou entre la province et le Nunavut, ainsi que l'utilisation des eaux d'un ou de plusieurs cours d'eau s'écoulant dans plusieurs provinces, ou dans une ou plusieurs des provinces et dans les Territoires du Nord-Ouest ou le Nunavut.

Représentants du gouvernement

21(2) Le lieutenant-gouverneur en conseil peut nommer un ou plusieurs représentants du gouvernement afin qu'il fassent partie de la Commission constituée en vertu du paragraphe (1).

L.M. 1999, c. 17, art. 5.

Accords avec les autres gouvernements

22 Le ministre peut conclure une entente ou un accord avec le gouvernement d'une autre province du Canada ou avec le gouvernement du Canada ou de tout organisme pour le mesurage de l'eau, la conduite d'enquêtes ainsi que pour le rassemblement et la publication de données quant aux ressources hydriques et aux meilleures méthodes d'utilisation de celles-ci.

No interfering with monuments or instruments

22.1 A person must not deface, alter or remove a survey monument, bench mark, water gauge, or other instrument or device placed by a person who is authorized to make a survey in connection with any works or water control works.

S.M. 2018, c. 6, s. 80.

Interdiction

22.1 Il est interdit de dégrader, de modifier ou d'enlever une borne d'arpentage, un repère de nivellement, un indicateur de niveau d'eau ou tout autre instrument ou appareil placé par une personne dûment autorisée à procéder à des levés relativement à des ouvrages ou à des ouvrages de régularisation des eaux.

L.M. 2018, c. 6, art. 80.

Offences

23(1) A person is guilty of an offence who

- (a) contravenes a provision of this Act or the regulations;
- (b) fails to comply with an order made under this Act; or
- (c) fails to comply with a term or condition of a licence, permit or registration under this Act.

Infractions

23(1) Commet une infraction quiconque :

- a) contrevient à une disposition de la présente loi ou des règlements;
- b) ne se conforme pas à un arrêté pris en vertu de la présente loi;
- c) ne respecte pas une condition relative à une licence, à un permis ou à un enregistrement visés par la présente loi.

Penalties

23(1.1) A person who is guilty of an offence is liable on conviction

- (a) in the case of an individual, to a fine of not more than \$50,000 or imprisonment for up to three months, or both; and
- (b) in the case of a corporation, to a fine of not more than \$500,000.

Peines

23(1.1) Quiconque commet une infraction à la présente loi encourt, sur déclaration de culpabilité :

- a) dans le cas d'un particulier, une amende maximale de 50 000 \$ et un emprisonnement maximal de trois mois, ou l'une de ces peines;
- b) dans le cas d'une personne morale, une amende maximale de 500 000 \$.

Liability of directors and officers

23(1.2) If a corporation commits an offence, a director or officer of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence and is liable on conviction to the penalties set out in clause (1.1)(a), whether or not the corporation has been prosecuted or convicted.

Administrateurs et dirigeants de personnes morales

23(1.2) En cas de perpétration par une personne morale d'une infraction, ceux de ses administrateurs et dirigeants qui l'ont autorisée ou qui y ont consenti commettent également une infraction et encourtent, sur déclaration de culpabilité, les peines prévues à l'alinéa (1.1)a), que la personne morale ait ou non été poursuivie ou déclarée coupable.

23(2) and (3) [Repealed] S.M. 2018, c. 6, s. 81.

23(2) et (3) [Abrogés] L.M. 2018, c. 6, art. 81.

Continuing offence

23(4) Each day's continuance of any act or default that is an offence under this Act constitutes a separate offence for the purposes of this section.

Infraction continue

23(4) Pour l'application du présent article, il est compté une infraction distincte pour chaque jour au cours duquel se poursuit un acte ou une omission constituant une infraction en vertu de la présente loi.

Time limit for prosecution

23(5) A prosecution for an offence under this Act may not be commenced later than two years after the day on which evidence sufficient to justify a prosecution for the offence came to the knowledge of an officer. The certificate of the officer as to the day on which the evidence came to his or her knowledge is evidence of that date.

S.M. 1989-90, c. 90, s. 40; S.M. 2000, c. 18, s. 14; S.M. 2006, c. 8, s. 10; S.M. 2018, c. 6, s. 81.

Appeal

24(1) Any person who is affected by an order or decision of the minister or the registrar under this Act may, within 30 days of the making of the order or decision, appeal the order or decision to the Municipal Board, and the decision of the Municipal Board, notwithstanding anything to the contrary in *The Municipal Board Act*, is final and not subject to further appeal.

Appeal does not act as a stay

24(2) An appeal of an order or decision does not stay the order or decision, or affect the power of the minister or the registrar to take authorized steps pending the appeal. But if the appeal is successful the minister may enter into an agreement with the appellant to compensate him or her for any loss or damage that the appellant incurred as a result of the order or decision.

S.M. 2005, c. 26, s. 42; S.M. 2018, c. 6, s. 82.

Protection from liability

24.1 No action or proceeding may be brought against an officer or any other person acting under authority of this Act for anything done, or not done, or for any neglect,

(a) in the performance or intended performance of a duty under this Act; or

(b) in the exercise or intended exercise of a power under this Act;

unless the person was acting in bad faith.

S.M. 2006, c. 8, s. 11.

Prescription

23(5) Les poursuites pour infraction à la présente loi se prescrivent par deux ans à compter du jour où une preuve permettant de justifier une poursuite a été portée à la connaissance d'un agent; le certificat de l'agent quant au jour où la preuve a été portée à sa connaissance fait foi de cette date.

L.M. 1989-90, c. 90, art. 40; L.M. 2000, c. 18, art. 14; L.M. 2006, c. 8, art. 10; L.M. 2018, c. 6, art. 81.

Appel

24(1) Toute personne qui est visée par un arrêté ou une décision du ministre ou du registraire en vertu de la présente loi peut, dans les 30 jours de l'arrêté ou de la décision, en appeler à la Commission municipale. Par dérogation à toute disposition contraire de la *Loi sur la Commission municipale*, la décision de celle-ci est finale et sans appel.

Non-suspension d'exécution

24(2) L'appel d'un arrêté ou d'une décision n'emporte pas suspension de leur exécution, ni ne porte atteinte aux pouvoirs du ministre ou du registraire de prendre les mesures autorisées pendant que l'appel est en instance. Toutefois, si l'appel est accueilli, le ministre peut conclure un accord avec l'appelant quant au paiement à celui-ci d'une indemnisation pour tout dommage ou perte découlant de l'exécution de l'arrêté ou de la décision.

L.M. 2005, c. 26, art. 42; L.M. 2018, c. 6, art. 82.

Immunité

24.1 Bénéficient de l'immunité les agents et les autres personnes agissant sous l'autorité de la présente loi pour les actes accomplis ou les omissions ou manquements commis de bonne foi dans l'exercice effectif ou censé tel des attributions qui leur sont conférées en vertu de la présente loi.

L.M. 2006, c. 8, art. 11.

Crown bound

25 The Crown is bound by this Act.

Water Resources Conservation Act takes precedence

25.1 This Act is subject to the provisions of *The Water Resources Conservation Act*.

S.M. 2000, c. 11, s. 8; S.M. 2005, c. 26, s. 42.

Regulations

26 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations as are ancillary thereto and are not inconsistent therewith; and every regulation made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations,

(a) prescribing the information, particulars and plans to be submitted with any application for a licence or registration;

(a.1) respecting the requirements under section 5.1, including

(i) specifying the amounts, or the method of determining the amounts, to be paid by applicants, or

(ii) the amount of wetland to be restored or enhanced by applicants;

(b) respecting the duration and renewal of licences, permits and registrations and prescribing the terms and conditions to which they are subject;

(c) prescribing forms for use under this Act and the information and particulars to be contained therein;

(d) respecting returns, reports and statements to be submitted by licensees and permittees;

(e) prescribing fees and charges that shall be paid in respect of applications, licences, permits and registrations;

(f) authorizing the establishment or placing or construction of devices for computing or measuring the volume and discharge of water in any place;

Couronne liée

25 La Couronne est liée par la présente loi.

Préséance de la *Loi sur la conservation des ressources hydriques*

25.1 La *Loi sur la conservation des ressources hydriques* a préséance sur la présente loi.

L.M. 2000, c. 11, art. 8; L.M. 2005, c. 26, art. 42.

Règlements

26 Le lieutenant-gouverneur en conseil peut prendre des règlements d'application compatibles avec la présente loi et conformes à son esprit; ces règlements ont force de loi. Il peut notamment, par règlement :

a) prescrire les renseignements, les précisions et les plans devant être soumis avec une demande de licence ou d'enregistrement;

a.1) prescrire les exigences visées à l'article 5.1, y compris préciser :

(i) soit les sommes à payer par les auteurs de demandes ou la méthode utilisée pour déterminer les sommes,

(ii) soit l'étendue de terres humides qu'ils doivent restaurer ou améliorer;

b) prévoir la durée et le renouvellement des licences, des permis et des enregistrements et fixer les modalités s'y rattachant;

c) prescrire les formules devant être utilisées en vertu de la présente loi ainsi que les renseignements et les précisions qui doivent y être contenus;

d) prévoir les relevés, les rapports et les énoncés devant être présentés par les détenteurs de licences et de permis;

e) prescrire les droits et les frais devant être payés quant aux demandes, aux licences, aux permis et aux enregistrements;

f) autoriser l'établissement, la mise en place ou la construction d'appareils en vue du calcul ou du mesurage du volume et de l'écoulement d'eau dans un lieu;

(g) respecting the approval and inspection of works and water control works;

(h) respecting the use and disposition of water by licensees;

(i) respecting the measurement of water generally;

(j) regulating the passage of logs, timber and other products of the forest through waters and through or over works;

(k) regulating the water rates that may be charged by licensees, and the publication of tariffs of rates;

(l) respecting the construction of fishways to permit the free and unobstructed passage of fish up and down stream;

(m) respecting the storage, pondage, regulation, diversion or utilization of water for any purpose and for the protection of any source of water;

(m.1) respecting the control of water;

(n) respecting the construction, maintenance, operation and purchase, and the assumption of ownership and control, of any works or water control works, as may be necessary or desirable, and for the regulation and control, in the interests of all water users, of the flow of water that may from time to time pass through, by or over the works or water control works;

(o) exempting or excluding from the application of all or any part of this Act any class of works, water control works or activity;

(p) defining any word or phrase that is used but not defined in this Act;

(q) prescribing anything referred to in this Act as being prescribed.

S.M. 2000, c. 18, s. 15; S.M. 2018, c. 6, s. 83.

g) prévoir l'approbation et l'inspection des ouvrages ou des ouvrages de régularisation des eaux;

h) prévoir l'utilisation et l'évacuation de l'eau par les détenteurs de licences;

i) prévoir le mesurage de l'eau en général;

j) régir le passage de billes, de bois en grume et d'autres produits forestiers sur les eaux et à travers ou au-dessus des ouvrages;

k) régir les taux relatifs à l'eau pouvant être imposés par les détenteurs de licences, ainsi que la publication des tarifs concernant les taux;

l) prévoir la construction de passages à poissons, de façon à rendre libres et non obstrués ces passages, en amont et en aval;

m) prévoir la réserve, le volume de retenue, la régularisation, la dérivation ou l'utilisation de l'eau à toutes fins et pour la protection de toute source d'eau;

m.1) prendre des mesures concernant la régularisation de l'eau;

n) prévoir la construction, l'entretien, l'exploitation et l'achat d'ouvrages ou d'ouvrages de régularisation des eaux, ainsi que la prise en charge de la propriété et de la direction de ces ouvrages ou ouvrages de régularisation des eaux, dans la mesure où ces opérations sont nécessaires ou souhaitables, et prévoir la régularisation et le contrôle, dans l'intérêt de tous les consommateurs d'eau, de l'écoulement de l'eau pouvant passer près des ouvrages ou ouvrages de régularisation des eaux, à travers ou au-dessus de ceux-ci;

o) exempter ou exclure de l'application de la totalité ou d'une partie de la présente loi toute catégorie d'ouvrages, d'ouvrages de régularisation des eaux ou d'activités;

p) définir les termes qui sont utilisés dans la présente loi, mais qui n'y sont pas définis;

q) prendre toute mesure d'ordre réglementaire prévue par la présente loi.

L.M. 2000, c. 18, art. 15; L.M. 2001, c. 43, art. 30; L.M. 2018, c. 6, art. 83.

Regulations may establish classes

26.1 A regulation under this Act may be general or particular in its application and may apply to one or more classes of persons, activities or things and to the whole or any part of the province.

S.M. 2018, c. 6, s. 84.

Priority over Municipal Act

27 Where there is a conflict between this Act and *The Municipal Act*, this Act prevails.

S.M. 2000, c. 18, s. 16.

Portée des règlements

26.1 Les règlements pris en vertu de la présente loi peuvent être d'application générale ou particulière et viser l'ensemble ou une partie de la province. De plus, ils peuvent s'appliquer à une ou plusieurs catégories de personnes, d'activités et de choses en cause.

L.M. 2018, c. 6, art. 84.

Préséance sur la *Loi sur les municipalités*

27 Les dispositions de la présente loi l'emportent sur les dispositions incompatibles de la *Loi sur les municipalités*.

L.M. 2000, c. 18, art. 16.

THE WATER RIGHTS ACT
(C.C.S.M. c. W80)

Water Rights Regulation

Regulation 126/87
Registered April 7, 1987

LOI SUR LES DROITS D'UTILISATION DE L'EAU
(c. W80 de la C.P.L.M.)

Règlement sur les droits d'utilisation de l'eau

Règlement 126/87
Date d'enregistrement : le 7 avril 1987

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SCHEDULES

INTERPRETATION

Definitions

1(1) The following definitions apply in this regulation.

"**Act**" means *The Water Rights Act*. (« *Loi* »)

"**approved watershed plan**" means a watershed management plan that has been approved under *The Water Protection Act*. (« plan approuvé d'un bassin hydrographique »)

"**certified engineering technician**" and "**certified engineering technologist**" have the same meaning as in *The Certified Applied Science Technologists Act*. (« technicien agréé en ingénierie » et « technologue agréé en ingénierie »)

"**conservation agreement**" means an agreement entered into under *The Conservation Agreements Act*. (« accord de conservation »)

"**director**" means the Director of the Drainage and Water Rights Licensing Branch. (« directeur »)

"**invert elevation**" means the elevation of the lowest point of a culvert or control structure. (« niveau du radier »)

"**natural prairie level**" means the existing level of the ground before any excavation, filling or building work occurs. (« niveau de la prairie naturelle »)

"**professional engineer**" means a person who holds a valid certificate of registration or temporary licence under *The Engineering and Geoscientific Professions Act*. (« ingénieur »)

"**registrable project**" means a project described in section 11. (« projet admissible »)

- 18 Exigences supplémentaires — projets de catégorie F
- 19 Exigences supplémentaires — projets de catégorie G
- 20 Durée de validité de l'enregistrement
- 21 Exigences relatives à la réalisation du projet

ANNEXES

INTERPRÉTATION

Définitions

1(1) Les définitions qui suivent s'appliquent au présent règlement.

« **accord de conservation** » Accord conclu en vertu de la *Loi sur les accords de conservation*. ("conservation agreement")

« **classe de sol** » Classe de sol établie à l'aide de la méthode mentionnée sous la rubrique concernant la classification des sols selon leurs aptitudes à la production agricole dans *l'Inventaire des terres du Canada, rapport n° 2*, publié en 1972 par le ministère de l'Environnement du gouvernement du Canada. ("soil class")

« **directeur** » Le directeur de la Direction des licences en matière de drainage et de droits d'utilisation de l'eau. ("director")

« **ingénieur** » Titulaire d'un certificat d'inscription valide ou d'un permis temporaire valide délivré en vertu de la *Loi sur les ingénieurs et les géoscientifiques*. ("professional engineer")

« **Loi** » La *Loi sur les droits d'utilisation de l'eau*. ("Act")

« **niveau de la prairie naturelle** » Niveau du sol avant tout travail d'excavation, de remplissage ou de construction. ("natural prairie level")

« **niveau du radier** » Niveau du point le plus bas d'une buse ou d'un ouvrage de régularisation. ("invert elevation")

« **plan approuvé d'un bassin hydrographique** » Plan de gestion d'un bassin hydrographique qui a été approuvé en vertu de la *Loi sur la protection des eaux*. ("approved watershed plan")

"soil class" means a class of soil classified using the approach described under the heading "Soil Capability Classification for Agriculture" in *The Canada Land Inventory Report No. 2*, published in 1972 by the Government of Canada, Department of the Environment. (« classe de sol »)

"urban area" means

- (a) the City of Winnipeg;
- (b) a city named in Schedule A of the *Municipal Status and Boundaries Regulation*, Manitoba Regulation 567/88 R;
- (c) a town or village named in Schedule B of the *Municipal Status and Boundaries Regulation*, Manitoba Regulation 567/88 R as that Schedule read on December 31, 2013;
- (d) a local urban district named in Schedule A or B of the *Local Urban Districts Regulation*, Manitoba Regulation 174/99; and
- (e) the Local Government District of Pinawa. (« zone urbaine »)

1(2) The following definitions apply for the purpose of the Act and this regulation.

"alter a wetland" means

- (a) reducing the area of the wetland by changing its natural boundaries; or
- (b) changing the wetland in a manner that results in a reduction in the wetland's classification. (« modification d'une terre humide »)

"enhance a wetland" means

- (a) increasing the area of the wetland;
- (b) improving the hydric soil functions, hydrology and vegetation of the wetland or the upland area surrounding the wetland; or
- (c) providing permanent legal protection to a wetland through a conservation agreement. (« amélioration d'une terre humide »)

« projet admissible » Projet indiqué à l'article 11. ("registrable project")

« technicien agréé en ingénierie » et **« technologue agréé en ingénierie »** S'entendent au sens de la *Loi sur les technologues agréés des sciences appliquées*. ("certified engineering technician" and "certified engineering technologist")

« zone urbaine »

- a) La ville de Winnipeg;
- b) toute ville dont le nom figure à l'annexe A du *Règlement sur le statut et les limites des municipalités*, R.M. 567/88 R;
- c) toute ville ou tout village dont le nom figure dans la version du 31 décembre 2013 de l'annexe B du *Règlement sur le statut et les limites des municipalités*, R.M. 567/88 R;
- d) tout district urbain local dont le nom figure à l'annexe A ou B du *Règlement sur les districts urbains locaux*, R.M. 174/99;
- e) le district d'administration locale de Pinawa. ("urban area")

1(2) Les définitions qui suivent s'appliquent aux fins de la *Loi* et du présent règlement.

« amélioration d'une terre humide » Selon le cas :

- a) accroissement de la superficie d'une terre humide;
- b) amélioration des fonctions du sol hydrique, de l'hydrologie et de la végétation d'une terre humide ou de la zone sèche qui l'entoure;
- c) protection juridique permanente accordée à une terre humide au moyen d'un accord de conservation. ("enhance a wetland")

« modification d'une terre humide » Selon le cas :

- a) changement qui est apporté aux limites naturelles d'une terre humide et qui a pour conséquence de réduire sa superficie;

"restore a wetland" means returning the wetland to a close approximation of its condition before it was drained or otherwise altered. (« restauration d'une terre humide »)

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b) changement qui est apporté à une terre humide et qui a pour conséquence de lui conférer un niveau de classification inférieur. ("alter a wetland")

« **restauration d'une terre humide** » Remise d'une terre humide dans un état relativement semblable à celui dans lequel elle était avant d'être drainée ou modifiée. ("restore a wetland")

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Wetland classes

1.1 For the purposes of this regulation, the classes of wetlands are set out in Schedule C.

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Catégories de terres humides

1.1 Pour l'application du présent règlement, les catégories de terres humides sont indiquées à l'annexe C.

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LICENCES AND PERMITS

2(1) Every application for a licence or permit under the Act shall be made on a form or in a manner approved by the minister.

2(2) Every licence or permit under the Act shall be issued in a form approved by the minister.

M.R. 3/2003; 130/2019

3(1) Each fee set out in Schedule B — other than the additional annual fee to divert water — is the application fee payable in respect of the licence described opposite to it.

3(2) Each fee prescribed under subsection (1) in respect of a licence shall be paid by the applicant for the licence upon submitting the licence application, and in the case of a licence to divert water, the additional fee for each year shall be paid by the applicant by January 31 of the next ensuing year.

3(3) No fee is payable under this section in respect of a licence for which application is made by or on behalf of the Government of Manitoba or the Government of Canada.

LICENCES ET PERMIS

2(1) Les demandes de licence et de permis que vise la *Loi* sont présentées au moyen de la formule approuvée par le ministre ou selon les modalités qu'il prévoit.

2(2) Les licences et les permis que vise la *Loi* sont délivrés au moyen de la formule approuvée par le ministre.

R.M. 3/2003; 130/2019

3(1) Chaque droit prévu à l'annexe B — à l'exception du droit annuel supplémentaire pour le détournement de l'eau — est le droit lié à la présentation d'une demande exigible à l'égard de la licence indiquée vis-à-vis celui-ci.

3(2) Chaque droit prévu au paragraphe (1) à l'égard d'une licence est payé par l'auteur de la demande au moment de la présentation de sa demande. Dans le cas des licences pour le détournement de l'eau, le droit additionnel pour chaque année est payé par l'auteur de la demande au plus tard le 31 janvier de l'année suivante.

3(3) Il n'y a pas de droit exigible en vertu du présent article à l'égard de toute licence demandée par le gouvernement du Manitoba ou le gouvernement du Canada ou en leur nom.

3(4) No fee paid under this section is refundable unless the refund is authorized by the minister.

M.R. 107/90; 167/2013

4(1) An application for a licence or permit under the Act shall include all plans, documents, information and particulars specified in the applicable application form.

4(2) In the case of an application for a licence for water control works, the application must be accompanied by

(a) an aerial photograph of the site of the proposed water control works that shows the specific location of each proposed water control work and their drainage area and which also contains a legal description of the parcel of land on which the water control works are to be located;

(b) a detailed plan that describes the proposed project and includes design specifications of all water control works associated with the project;

(c) if the applicant is not the owner of the land on which the proposed water control works are to be located, written approval from the owner on a form approved by the director;

(d) written approval from all landowners whom the applicant has determined may be significantly affected by the proposed water control works;

(e) where any other existing or proposed works authorized under the Act are likely to be affected by the proposed water control works, information showing any anticipated effects of the operation of the water control works upon the effectiveness or operation of those other works;

(f) information showing any anticipated effects of the operation of the proposed water control works upon irrigation or water supply generally and upon any future development for the purposes of irrigation or water supply generally;

3(4) Aucun des droits payés en vertu du présent article n'est remboursable, à moins que le remboursement ne soit autorisé par le ministre.

R.M. 107/90; 3/2003; 167/2013; 130/2019

4(1) Les demandes de licence et de permis que vise la *Loi* comprennent les plans, les documents, les renseignements et les précisions qu'indique la formule de demande applicable.

4(2) Doivent être joints aux demandes visant l'obtention d'une licence pour un ouvrage de régularisation des eaux :

a) une photographie aérienne du site qui montre l'emplacement exact de cet ouvrage et de sa zone de drainage, accompagnée d'une description officielle de la parcelle de bien-fonds sur laquelle il sera situé;

b) un plan détaillé qui explique le projet et qui indique les spécifications de conception de tous les ouvrages de régularisation des eaux qui y sont liés;

c) si l'auteur de la demande n'est pas le propriétaire du bien-fonds sur lequel l'ouvrage doit être situé, l'approbation écrite du propriétaire sur la formule approuvée par le directeur;

d) l'approbation écrite des propriétaires fonciers qui, selon ce qu'a établi l'auteur de la demande, pourraient être touchés de façon importante par l'ouvrage;

e) si l'ouvrage est susceptible d'avoir des répercussions sur d'autres ouvrages existants ou projetés qu'autorise la *Loi*, des renseignements sur celles qui se rapportent à l'efficacité et à l'exploitation de ces autres ouvrages;

f) des renseignements au sujet des répercussions que l'exploitation des ouvrages projetés est susceptible d'avoir sur l'irrigation ou l'approvisionnement en eau en général ou sur de futurs travaux entrepris à des fins d'irrigation ou d'approvisionnement en eau en général;

(g) certification from the applicant that the proposed water control works

(i) are not inconsistent with an approved watershed plan, and

(ii) will not violate any restrictions on the use of land that is the subject of a conservation agreement; and

(h) such other plans, documents, information and particulars as may be required under subsection (1).

4(3) When an application has been submitted, an officer must inspect or assess the site where the water control works are to be located as well as other lands in the area and review the approvals submitted by the applicant under clause (2)(d). If the officer determines that there are additional landowners whose land may be significantly affected by the proposed water control works who have not submitted an approval, the officer must give the applicant a written notice that identifies those landowners and indicates that the application will not be approved unless those landowners give written approval to the proposed water control works.

4(4) When an applicant receives a notice under subsection (3), the applicant must obtain written approval of the proposed water control works from all landowners specified in the notice and submit those approvals to the officer in order to obtain a licence.

R.M. 3/2003; 130/2019

Requirement for licences affecting class 3 wetlands

4.1(1) For the purpose of section 5.1 of the Act, an applicant for a licence that would result in the loss or alteration of a Class 3 wetland must take one of the actions set out in Schedule D.

4.1(2) The action to be taken in Schedule D is in addition to all other applicable requirements of this regulation that must be satisfied in order to obtain a licence.

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g) une déclaration de l'auteur de la demande indiquant que l'ouvrage de régularisation des eaux projetés :

(i) n'est pas incompatible avec un plan de bassin hydrographique approuvé,

(ii) respectera les restrictions concernant l'utilisation d'un bien-fonds qui fait l'objet d'un accord de conservation;

h) les autres plans, documents, précisions et renseignements exigés en application du paragraphe (1).

4(3) Lorsqu'une demande est présentée, un agent inspecte ou évalue le site où doit être situé l'ouvrage de régularisation des eaux projeté ainsi que des biens-fonds avoisinants et examine les approbations présentées par l'auteur de la demande en application de l'alinéa (2)d). S'il détermine que les biens-fonds d'autres propriétaires fonciers n'ayant pas présenté d'approbation risquent d'être touchés de façon importante par l'ouvrage, il en avise l'auteur de la demande par écrit en indiquant les noms de ces propriétaires fonciers et en précisant que la demande ne sera pas approuvée tant que ceux-ci n'auront pas remis une approbation écrite à l'égard de l'ouvrage.

4(4) L'auteur de la demande qui souhaite obtenir une licence et qui reçoit l'avis prévu au paragraphe (3) obtient et soumet à l'agent une approbation écrite de chacun des propriétaires fonciers dont le nom figure dans l'avis à l'égard de l'ouvrage.

M.R. 3/2003; 167/2013; 130/2019

Exigences relatives aux licences ayant une incidence sur les terres humides de catégorie 3

4.1(1) Aux fins de l'article 5.1 de la Loi, l'auteur d'une demande de licence dont la délivrance entraînerait la perte ou la modification d'une terre humide de catégorie 3 est tenu de prendre l'une des mesures indiquées à l'annexe D.

4.1(2) Cette mesure s'ajoute aux autres exigences applicables du présent règlement qui doivent être remplies pour l'obtention d'une licence.

M.R. 130/2019

5(1) Except as provided in subsection (2), a licence shall be for a term determined by the minister, but no term shall exceed 20 years.

5(2) A licence to construct water control works may be issued in perpetuity.

5(3) The holder of a licence may apply for a renewal not more than 365 days and not less than 90 days prior to the expiry of the licence.

M.R. 107/90; 3/2003

When licence or registration not required

5.1 A person does not require a licence or registration

(a) to construct, establish, operate or maintain water control works that are the subject of a licence issued under *The Environment Act*;

(b) to construct, establish, operate or maintain water control works in urban areas, as long as those water control works do not drain class 3, 4 or 5 wetlands or outlet onto areas outside of the urban area; or

(c) to replace a culvert with a culvert of the same size, as long as there is no change in invert elevation or the location of the culvert.

M.R. 130/2019

6 A permit shall be for a term determined by the minister, but no term shall exceed 12 months.

M.R. 107/90

7 A separate licence is required for each stream or other source of water supply from which water is to be diverted.

8 Every holder of a licence under the Act shall keep records of his or her water use on a form approved by the minister.

M.R. 3/2003

5(1) Sauf stipulation contraire au paragraphe (2), la durée d'une licence est déterminée par le ministre, mais ne saurait dépasser 20 ans.

5(2) Une licence visant la construction d'ouvrages de régularisation des eaux peut être accordée à perpétuité.

5(3) Le titulaire d'une licence peut demander le renouvellement de sa licence dans la période s'étendant entre le 365^e jour et le 90^e jour précédant l'expiration de celle-ci.

R.M. 107/90; 3/2003

Licence ou enregistrement non requis

5.1 Il n'est pas nécessaire d'obtenir une licence ou un enregistrement pour faire ce qui suit :

a) construire, établir, exploiter ou entretenir un ouvrage de régularisation des eaux qui fait l'objet d'une licence délivrée en vertu de la *Loi sur l'environnement*;

b) construire, établir, exploiter ou entretenir un ouvrage de régularisation des eaux situé dans des zones urbaines, à condition que celui-ci n'assèche pas de terres humides de catégorie 3, 4 ou 5 et n'occasionne pas de déversement d'eaux à l'extérieur de la zone urbaine;

c) remplacer une buse par une autre de même taille, à condition que le niveau du radier ou l'emplacement de la buse ne changent pas.

R.M. 130/2019

6 La durée d'un permis est déterminée par le ministre, mais ne saurait dépasser 12 mois.

R.M. 107/90

7 Il faut obtenir une licence pour chaque cours d'eau ou autre source dont on se propose de détourner l'eau.

8 Chaque titulaire d'une licence que vise la *Loi* consigne des renseignements concernant l'utilisation qu'il fait de l'eau sur la formule approuvée par le ministre.

R.M. 3/2003

9 Any applicant for a licence to divert and use ground water shall conduct aquifer pumping tests in accordance with instructions of the department over which the minister presides, as a condition precedent to the issue of the licence.

M.R. 3/2003; 167/2013

9 Avant qu'une licence pour détourner et utiliser des eaux souterraines lui soit délivrée, l'auteur de la demande doit procéder à des essais de pompage de nappe aquifère conformément aux instructions du ministère dont le ministre est responsable.

R.M. 3/2003; 167/2013; 130/2019

REGISTRABLE PROJECTS

Registrable projects

10(1) Subject to subsections (2) and (3), the projects described in section 11 are designated as projects that are eligible for registration under section 4.2 of the Act.

10(2) A proposed project may be registered only if the applicant and the proposed project satisfy all of the applicable requirements set out in sections 12 to 17.

10(3) A proposed project must not be registered if the project

- (a) would result in the loss or alteration of a Class 3, 4 or 5 wetland;
- (b) would result in the drainage of Class 6 or 7 soils or unimproved organic soils;
- (c) would result in the transfer of water between watersheds;
- (d) would have a negative impact on fish spawning or rearing habitats or would interfere with fish passage;
- (e) is inconsistent with an approved watershed plan; or
- (f) would violate any restrictions on the use of land that is the subject of a conservation agreement.

M.R. 130/2019

PROJETS ADMISSIBLES

Projets admissibles

10(1) Sous réserve des paragraphes (2) et (3), les projets indiqués à l'article 11 sont admissibles à l'enregistrement en vertu de l'article 4.2 de la *Loi*.

10(2) Un projet ne peut être enregistré que si l'auteur de la demande et le projet remplissent toutes les exigences applicables énoncées aux articles 12 à 17.

10(3) Ne peut être enregistré un projet qui, selon le cas :

- a) entraînerait la perte ou la modification d'une terre humide de catégorie 3, 4 ou 5;
- b) provoquerait le drainage de sols de classe 6 ou 7 ou de sols organiques non cultivés;
- c) entraînerait un transfert d'eau entre des bassins hydrographiques;
- d) aurait des effets néfastes sur les habitats de frai et de grossissement des poissons ou nuirait au passage des poissons;
- e) serait incompatible avec un plan de bassin hydrographique approuvé;
- f) ne respecterait pas les restrictions concernant l'utilisation d'un bien-fonds faisant l'objet d'un accord de conservation.

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Description of registrable projects

11 The following projects are designated as registrable projects:

Class A — minor surface drains construction

Construction of surface drains with a depth not exceeding 12 inches below natural prairie level.

Class B — agricultural subsurface tile drain construction

Construction of subsurface tile drains and all associated water control works that have a drainage coefficient equal to or less than 3/8 inch over a 24-hour period on agricultural lands.

Class C — water control works for new crossings

Construction of water control works related to new access crossings that do not constrict water flow.

Class D — minor culvert changes

Replacing an existing culvert with a culvert that does not change the hydraulic capacity of the culvert by more than 15%, as long as there is no change in the invert elevation of the culvert.

Class E — water control works involved in wetland restoration or enhancement

Construction of water control works that are not higher than natural prairie level and retain less than 25 acre-feet of water that are constructed to restore a wetland or increase the area of an existing wetland.

Class F — construction of small dams

Construction of dams less than 2.5 m in height that retain less than 25 acre-feet of water.

Class G — construction of small dry dams

Construction of dams for the purpose of flood control that

- (a) do not exceed 1 m in height;
- (b) retain less than 25 acre-feet of water on a temporary basis; and
- (c) have an outlet that allows for a continuous flow of water.

M.R. 130/2019

Projets admissibles

11 Les projets qui suivent sont admissibles :

Catégorie A — construction d'un drain de surface mineur

Construction d'un drain de surface dont la profondeur est d'au plus 12 pouces sous le niveau de la prairie naturelle.

Catégorie B — construction d'un drain agricole souterrain en tuyaux

Construction sur une terre agricole d'un drain souterrain en tuyaux et d'ouvrages de régularisation des eaux connexes dont le coefficient de drainage est d'au plus 3/8 pouce en 24 heures.

Catégorie C — ouvrage de régularisation des eaux pour de nouveaux passages

Construction d'un ouvrage de régularisation des eaux qui n'entrave pas l'écoulement de l'eau pour de nouveaux passages.

Catégorie D — modification mineure des buses

Remplacement d'une buse par une autre dont la capacité hydraulique ne diffère pas de plus de 15 % de la précédente, à condition que le niveau du radier ne change pas.

Catégorie E — ouvrage de régularisation des eaux lié à la restauration ou à l'amélioration de terres humides

Construction d'un ouvrage de régularisation des eaux dont la hauteur ne dépasse pas le niveau de la prairie naturelle, qui retient moins de 25 acres-pieds d'eau et qui a pour but de restaurer une terre humide ou d'accroître la superficie d'une terre humide existante.

Catégorie F — construction d'un petit barrage

Construction d'un barrage de moins de 2,5 mètres de haut qui retient moins de 25 acres-pieds d'eau.

Catégorie G — construction d'un petit barrage sec

À des fins de lutte contre les inondations, construction d'un barrage qui ne dépasse pas un mètre de haut, qui retient moins de 25 acres-pieds d'eau de façon temporaire et qui est doté d'une sortie permettant un écoulement continu de l'eau.

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General application requirements**12(1)** An application for registration must

- (a) be made on a form or in a manner approved by the minister;
- (b) include all plans, documents, information and particulars specified in the applicable application form; and
- (c) be accompanied by an application fee of \$100, unless the application is made by or on behalf of the Government of Manitoba or the Government of Canada.

12(2) In addition to the applicable requirements set out in sections 13 to 19, every application for registration of a project must include

- (a) an aerial photograph of the project site that shows the specific location of the project and also contains a legal description of the parcel of land on which the project is located;
- (b) a detailed plan that describes the proposed project and includes design specifications of all works and water control works associated with the project;
- (c) if the applicant is not the owner of the land on which the project is located, written approval from the owner on a form approved by the director;
- (d) if the project will result in the drainage of water onto land owned by another person,
 - (i) written approval from the owner of that land on a form approved by the director, or
 - (ii) written exemption from an officer issued under subsection (3) that confirms that the applicant is not required to obtain the approval required by subclause (i); and
- (e) certification from the applicant that the proposed project
 - (i) is not inconsistent with an approved watershed plan,

Exigences générales — demande d'enregistrement**12(1)** La demande d'enregistrement :

- a) est présentée par écrit au moyen de la formule approuvée par le ministre ou selon les modalités qu'il prévoit;
- b) comprend les plans, documents, précisions et renseignements indiqués sur la formule de demande applicable;
- c) est accompagnée des droits de demande de 100 \$, sauf si elle est faite par le gouvernement du Manitoba ou le gouvernement du Canada, ou au nom d'un de ces gouvernements.

12(2) En plus de satisfaire aux exigences applicables prévues aux articles 13 à 19, la demande d'enregistrement d'un projet comprend ce qui suit :

- a) une photographie aérienne du projet qui montre l'emplacement exact de son site, accompagnée d'une description officielle de la parcelle de bien-fonds sur laquelle il est réalisé;
- b) un plan détaillé qui explique le projet et qui indique les spécifications de conception de tous les ouvrages et ouvrages de régularisation des eaux qui y sont liés;
- c) si l'auteur de la demande n'est pas le propriétaire du bien-fonds sur lequel le projet est réalisé, l'approbation écrite du propriétaire sur une formule qu'approuve le directeur;
- d) s'il est prévu que le projet entraînera un écoulement d'eau sur un bien-fonds appartenant à une autre personne :
 - (i) soit l'approbation écrite du propriétaire du bien-fonds sur une formule qu'approuve le directeur,
 - (ii) soit l'exemption écrite accordée par un agent en vertu du paragraphe (3) qui confirme que l'auteur de la demande n'est pas tenu d'obtenir l'approbation exigée au sous-alinéa (i);
- e) une déclaration de l'auteur de la demande indiquant que le projet :
 - (i) n'est pas incompatible avec un plan de bassin hydrographique approuvé,

(ii) will not result in the loss or alteration of a Class 3, 4 or 5 wetland, and

(iii) will not violate any restrictions on the use of land that is the subject of a conservation agreement.

12(3) An officer may exempt an applicant from the requirement to obtain approval from the owner of land under subclause (2)(d)(i) if the officer is satisfied that the proposed project will not have a significant impact on that owner's land or property.

M.R. 130/2019

Additional requirements — class A projects

13 An application for registration of a Class A project must include certification from the applicant that the proposed project will not result in the drainage of Class 6 or 7 soils or unimproved organic soils.

M.R. 130/2019

Additional requirements — class B projects

14 An application for registration of a Class B project must include the following:

(a) proof that the proposed project was designed by a person who successfully completed a tile drainage course approved by the minister;

(b) a plan of the proposed project, signed by the project designer, that demonstrates the following:

(i) the project has a drainage coefficient equal to or less than 3/8 inch over a 24-hour period,

(ii) the project is located at least 50 m from the normal edge of a Class 3, 4 or 5 wetland or any other wetland that is the subject of a conservation agreement,

(iii) the average depth of all lateral pipe must not exceed 36 inches,

(iv) the header pipe is not perforated,

(v) all outlets will be equipped with control devices that can control or stop drainage flows out of the tile; and

(ii) n'entraînera pas la perte ou la modification de terres humides de catégorie 3, 4 ou 5,

(iii) respectera les restrictions concernant l'utilisation d'un bien-fonds faisant l'objet d'un accord de conservation.

12(3) L'agent peut exempter l'auteur de la demande de l'obligation d'obtenir l'approbation exigée au sous-alinéa (2)d)(i) s'il est convaincu que le projet n'aura pas d'incidence importante sur le bien-fonds ou la propriété du propriétaire visé.

R.M. 130/2019

Exigences supplémentaires — projets de catégorie A

13 La demande d'enregistrement d'un projet de catégorie A est accompagnée d'une déclaration de l'auteur de la demande indiquant que le projet ne provoquera pas le drainage de sols de classe 6 ou 7 ni de sols organiques non cultivés.

R.M. 130/2019

Exigences supplémentaires — projets de catégorie B

14 La demande d'enregistrement d'un projet de catégorie B est accompagnée des éléments suivants :

a) la preuve que le projet a été conçu par une personne qui a terminé avec succès un cours sur les drains en tuyaux approuvé par le ministre;

b) le plan du projet signé par son concepteur et démontrant :

(i) que le coefficient de drainage du projet est d'au plus 3/8 pouce en 24 heures,

(ii) que le projet est réalisé à au moins 50 mètres de la bordure normale d'une terre humide de catégorie 3, 4 ou 5 ou de toute autre terre humide faisant l'objet d'un accord de conservation,

(iii) que la profondeur moyenne des tuyaux latéraux ne dépasse pas 36 pouces,

(iv) que le tuyau collecteur n'est pas perforé,

(v) que toutes les sorties seront munies d'un dispositif de régularisation permettant de régulariser ou d'arrêter les écoulements hors du tuyau;

(c) certification from the applicant that the proposed project will not result in the drainage of Class 6 or 7 soils or unimproved organic soils.

M.R. 130/2019

Additional requirements — class C projects

15 The project plan for an application for registration of a Class C project must

- (a) show the size of the immediate upstream and downstream culverts; and
- (b) demonstrate that the culvert in the proposed project will
 - (i) be equal in size to the upstream and downstream culverts, or if one of those culverts is a larger size, be equal in size to the larger culvert, and
 - (ii) have its invert elevation at the bottom of the drain.

M.R. 130/2019

Additional requirements — class D projects

16 An application for registration of a Class D project must include a pre-construction topographical survey that shows the location, size and invert elevation of existing culverts.

M.R. 130/2019

Additional requirements — class E projects

17(1) An application for registration of a Class E project must include

- (a) a pre-construction topographical survey of the site of the proposed water control works that also shows the maximum flooding associated with the water control works;
- (b) if the water control works will flood land owned by other persons at full supply level, a flood easement or other agreement from those owners consenting to the flooding;

c) une déclaration de l'auteur de la demande indiquant que le projet ne provoquera pas le drainage de sols de classe 6 ou 7 ni de sols organiques non cultivés.

R.M. 130/2019

Exigences supplémentaires — projets de catégorie C

15 Le plan accompagnant une demande d'enregistrement de projet de catégorie C :

- a) précise la taille des buses immédiatement en aval et en amont;
- b) démontre que le niveau du radier de la buse sera au fond du drain et qu'elle aura la même taille que les buses en aval et en amont, ou que si l'une de celles-ci est plus grande, elle aura la même taille que la plus grande buse.

R.M. 130/2019

Exigences supplémentaires — projets de catégorie D

16 La demande d'enregistrement d'un projet de catégorie D est accompagnée d'un levé topographique fait avant la construction qui indique l'emplacement, la taille et le niveau du radier des buses existantes.

R.M. 130/2019

Exigences supplémentaires — projets de catégorie E

17(1) La demande d'enregistrement d'un projet de catégorie E est accompagnée des documents suivants :

- a) un levé topographique du site de l'ouvrage de régularisation des eaux projeté fait avant la construction qui indique notamment l'inondation maximale liée à l'ouvrage;
- b) s'il est prévu qu'au plus haut niveau d'exploitation, l'ouvrage entraînera l'inondation de biens-fonds appartenant à d'autres personnes, une servitude ou une entente indiquant qu'elles acceptent que leurs biens-fonds soient inondés;

(c) written approval from any owner of land immediately downstream of the project whose land would see a reduction in water flow due to the project, unless the applicant has obtained a written exemption from an officer issued under subsection (2).

17(2) An officer may exempt an applicant from the requirement to obtain approval from the owner of land under clause (1)(c) if the officer is satisfied that the proposed project will not have a significant impact on that owner's land or property.

M.R. 130/2019

Additional requirements — class F projects

18(1) An application for registration of a Class F project must include

- (a) a pre-construction topographical survey of the dam site;
- (b) a design plan for the dam that is stamped by a professional engineer or signed by a certified engineering technician or certified engineering technologist which
 - (i) confirms that the dam structure and all related water control works are able to safely accommodate a 1:100 year flood event, and
 - (ii) shows the maximum anticipated flooding associated with the dam;
- (c) if the dam will flood land owned by other persons at full supply level, a flood easement or other agreement from those owners consenting to the flooding;
- (d) written approval from any owner of land immediately downstream of the dam whose land would see a reduction in water flow due to the operation of the dam, unless the applicant has obtained a written exemption from an officer issued under subsection (2).

c) une approbation écrite de tout propriétaire dont le bien-fonds situé immédiatement en aval du projet subirait une réduction du débit de l'eau en raison de la réalisation du projet, à moins que l'auteur de la demande ait obtenu une exemption écrite d'un agent en vertu du paragraphe (2).

17(2) L'agent peut exempter l'auteur de la demande de l'obligation d'obtenir l'approbation exigée à l'alinéa (1)c) s'il est convaincu que le projet n'aura pas d'incidence importante sur le bien-fonds ou la propriété du propriétaire visé.

R.M. 130/2019

Exigences supplémentaires — projets de catégorie F

18(1) La demande d'enregistrement d'un projet de catégorie F est accompagnée des documents suivants :

- a) un levé topographique du site du barrage fait avant la construction du barrage;
- b) un plan de conception du barrage qui porte le sceau d'un ingénieur ou la signature d'un technicien agréé en ingénierie ou d'un technologue agréé en ingénierie et qui :
 - (i) confirme que la structure du barrage et les ouvrages de régularisation des eaux connexes peuvent supporter de façon sécuritaire une inondation centennale,
 - (ii) indique l'inondation maximale prévue à l'emplacement du barrage;
- c) s'il est prévu qu'au plus haut niveau d'exploitation, le barrage entraînera l'inondation de biens-fonds appartenant à d'autres personnes, une servitude ou une entente indiquant qu'elles acceptent que leurs biens-fonds soient inondés;
- d) une approbation écrite de tout propriétaire dont le bien-fonds situé immédiatement en aval du barrage subirait une réduction du débit de l'eau en raison de l'exploitation du barrage, à moins que l'auteur de la demande ait obtenu une exemption écrite d'un agent en vertu du paragraphe (2).

18(2) An officer may exempt an applicant from the requirement to obtain approval from the owner of land under clause (1)(d) if the officer is satisfied that the proposed project will not have a significant impact on that owner's land or property.

M.R. 130/2019

Additional requirements — class G projects

19 An application for registration of a Class G project must include

- (a) a pre-construction topographical survey of the dam site that also shows the maximum flooding associated with the dam; and
- (b) if the dam will flood land owned by other persons at full supply level, a flood easement or other agreement from those owners consenting to the flooding.

M.R. 130/2019

Duration of registration

20 A registration is valid for the period set out in the registration certificate. A registration may be valid in perpetuity.

M.R. 130/2019

Construction requirements

21(1) Subject to subsection (2), it is a condition of every registration that the project is constructed in accordance with the plans and design specifications submitted with the application for registration.

21(2) If, during the construction of a subsurface tile drainage project, it becomes apparent that it is not feasible to complete construction of the project in accordance with the design plan submitted with the application, the installer may deviate from the design plan

- (a) if the project, when completed, will continue to meet the requirements of clause 14(b); and
- (b) a revised plan of the project as constructed is filed with the registrar.

M.R. 130/2019

18(2) L'agent peut exempter l'auteur de la demande de l'obligation d'obtenir l'approbation exigée à l'alinéa (1)d) s'il est convaincu que le projet n'aura pas d'incidence importante sur le bien-fonds ou la propriété du propriétaire visé.

R.M. 130/2019

Exigences supplémentaires — projets de catégorie G

19 Toute demande d'enregistrement d'un projet de catégorie G comprend les éléments suivants :

- a) un levé topographique du site du barrage fait avant la construction qui indique notamment l'inondation maximale liée au barrage;
- b) s'il est prévu qu'au plus haut niveau d'exploitation, le barrage entraînera une inondation de biens-fonds appartenant à d'autres personnes, une servitude ou une entente indiquant qu'elles acceptent que leurs biens-fonds soient inondés.

R.M. 130/2019

Durée de validité de l'enregistrement

20 L'enregistrement est valide pendant la période indiquée sur le certificat d'enregistrement, celle-ci pouvant être d'une durée illimitée.

R.M. 130/2019

Exigences relatives à la réalisation du projet

21(1) Sous réserve du paragraphe (2), l'enregistrement est assujéti à la condition que le projet soit réalisé conformément aux spécifications de conception et aux plans soumis avec la demande d'enregistrement.

21(2) Dans le cas où, pendant la construction d'un drain souterrain en tuyaux, il appert que le projet ne pourra être achevé conformément au plan de conception soumis avec la demande, l'installateur peut déroger à ce plan si les deux conditions suivantes sont remplies :

- a) une fois achevé, le projet continuera de satisfaire aux exigences de l'alinéa 14b);
- b) le plan révisé du projet tel qu'il est réalisé est déposé auprès du registraire.

R.M. 130/2019

SCHEDULE A

[Repealed]

M.R. 107/90; 3/2003

SCHEDULE B

LICENCE FEES

1. Licence to construct water control works \$500.00
2. Licence to divert water \$100.00
3. Additional annual fee for licence to divert water for industrial purposes and other purposes as those purposes are set out in Items 4 and 6 of section 9 of the Act (based on volume of water diverted multiplied by the corresponding rate per cubic decametre)

<i>Volume</i>	<i>Rate per cubic decametre</i>
(a) for the first 100 cubic decametres per year	\$1.00
(b) for each cubic decametre over 100 but not exceeding 500 cubic decametres per year	1.25
(c) for each cubic decametre over 500 but not exceeding 10,000 cubic decametres per year	1.50
(d) for each cubic decametre over 10,000 but not exceeding 20,000 cubic decametres per year	1.75
(e) for each cubic decametre over 20,000 but not exceeding 100,000 cubic decametres per year	2.00
(f) for each cubic decametre over 100,000 cubic decametres per year	(See Note 1)

4. Any other licence \$50.00

Note 1: The rate per cubic decametre for volumes in excess of 100,000 cubic decametres shall be such as may be fixed from time to time by regulation under section 26 of the Act.

M.R. 19/90; 107/90; 3/2003; 167/2013; 130/2019

SCHEDULE C
(Section 1.1)

CLASSES OF WETLANDS

Class 1: ephemeral wetlands

A wetland that usually holds surface water caused by melting snow, high water table or precipitation for one week or less during years with average moisture conditions. Class 1 wetlands frequently have low prairies species of vegetation such as Kentucky bluegrass, goldenrod and forbs.

Class 2: temporary wetlands

A wetland that usually holds surface water caused by melting snow, high water table or precipitation for a period between one week and one month during years with average moisture conditions. Water is frequently retained in a Class 2 wetland for long enough to enable the establishment of wetland vegetation. Class 2 wetlands frequently have wet meadow vegetation such as fine stemmed grasses, sedges and associated forbs.

Class 3: seasonal wetlands

A wetland that usually holds surface water caused by melting snow, high water table or precipitation for a period between one month and three months. Class 3 wetlands are often dry by mid-June in years with average moisture conditions. However, in years with above-average moisture conditions, Class 3 wetlands may hold water for the entire year. Water is frequently retained in a Class 3 wetland for long enough to enable the establishment of wetland vegetation and gleysolic soils. Class 3 wetlands frequently have shallow marsh vegetation, such as emergent wetland grasses, sedges and rushes.

Class 4: semi-permanent wetlands

A wetland that usually holds surface water caused by melting snow, high water table or precipitation for more than three months, but not on a permanent basis. Class 4 wetlands will hold some water in years with average to above-average moisture conditions but can go dry in years with below-average moisture conditions. Class 4 wetlands typically have gleysolic soils. Class 4 wetlands frequently have marsh vegetation or submerged aquatic vegetation such as cattails, bulrushes and pond weeds in the central area of the wetland.

Class 5: permanent wetlands

A wetland that holds surface water caused by melting snow, high water table or precipitation permanently in years with average moisture conditions. Class 5 wetlands may go dry in years with well below-average moisture conditions. Class 5 wetlands typically have gleysolic soils. Class 5 wetlands have permanent open water in the central area that is generally free of emergent vegetation. Submerged plants may be present in the deepest part of the wetland with emergent plants on the edges of the wetland.

M.R. 130/2019

SCHEDULE D
(Section 4.1)

REQUIRED MEASURES FOR LICENCES
AFFECTING CLASS 3 WETLANDS

Required actions

1(1) An applicant seeking a licence that would result in the loss or alteration of a Class 3 wetland must take one of the actions set out in this Schedule.

1(2) Before an applicant takes any of the actions set out in this Schedule, an officer must inspect or assess the wetland that is the subject of the licence application and provide the applicant with written confirmation of the area and classification of that wetland.

Calculating required payment

2 Subject to section 3, the payment required under clause 5.1(2)(a) of the Act is to be calculated in accordance with the following formula:

$$RP = 2 \times A \times \$6,000$$

In this formula,

RP is the required payment;

A is the area of the Class 3 wetland that is the subject of the licence application, as measured in acres.

Payments under agreement with approved service provider

3(1) Instead of making the payment required by section 2, an applicant may enter into an agreement with an approved service provider to pay for the restoration or enhancement of one or more wetlands by the service provider in accordance with section 5.

3(2) The agreement must set out the specific restoration or enhancement actions to be taken by the approved service provider and the amount to be paid by the applicant. The applicant must submit the agreement along with the other documents required to be filed with the application.

Performance of restoration or enhancement by applicant

4(1) An applicant may restore or enhance one or more wetlands in accordance with section 5 and the requirements of this section.

4(2) The applicant must submit a written proposal to the director that sets out the specific restoration or enhancement actions to be performed by the applicant.

4(3) The director may approve the proposal, or may require specified changes to be made to the proposal as a condition of approval.

4(4) The applicant must restore or enhance the wetlands specified in the proposal in accordance with the requirements set out in the approved proposal.

Ratios

5 The size of the area to be restored or enhanced under section 3 or 4 is based on the applicable ratio set out in the following Table:

Action	Restore prescribed wetland or increase the area of an existing prescribed wetland	Permanent legal protection of wetland enhancements	Permanent legal protection of prescribed wetlands
Required ratio (size of area restored or enhanced to the size of wetland that is the subject of the licence application)	2:1	3:1	3:1

Definitions

6 The following definitions apply in this Schedule.

"**approved service provider**" means a person or organization that has been approved by the minister to perform wetland restoration or enhancement projects under section 5.1 of the Act. (« fournisseur de services approuvé »)

"**permanent legal protection of prescribed wetlands**" means the permanent legal protection of a Class 1 or 2 wetland through a conservation agreement. (« protection juridique permanente de terres humides de catégorie 1 ou 2 »)

"**permanent legal protection of wetland enhancements**" means

(a) improving the hydric soil functions, hydrology and vegetation of a wetland and the uplands surrounding the wetland in a manner approved by the director; and

(b) providing permanent protection of those enhancements by entering into a conservation agreement respecting those enhancements. (« protection juridique permanente des améliorations apportées à des terres humides »)

"**restore prescribed wetland or increase the area of an existing prescribed wetland**" means restoring a Class 3, 4 or 5 wetland or increasing the area of an existing Class 3, 4 or 5 wetland. (« restauration d'une terre humide de catégorie 3, 4 ou 5 ou accroissement de la superficie d'une telle terre existante »)

M.R. 130/2019

ANNEXE A

[Abrogée]

R.M. 107/90; 3/2003

ANNEXE B

DROITS DE LICENCE

1. Licence de construction d'ouvrages de régularisation des eaux 500,00 \$
2. Licence pour détourner l'eau 100,00 \$
3. Droit annuel supplémentaire à l'égard de la licence pour détourner l'eau à des fins industrielles ou à d'autres fins, ainsi qu'il est indiqué aux numéros 4 et 6 de l'article 9 de la *Loi* (calculé en fonction du volume d'eau détourné multiplié par le taux par décamètre cube correspondant)

<i>Volume</i>	<i>Taux par décamètre cube</i>
a) pour les 100 premiers décamètres cubes par année	1,00 \$
b) pour chaque décamètre cube entre 101 et 500 décamètres cubes par année	1,25 \$
c) pour chaque décamètre cube entre 501 et 10 000 décamètres cubes par année	1,50 \$
d) pour chaque décamètre cube entre 10 001 et 20 000 décamètres cubes par année	1,75 \$
e) pour chaque décamètre cube entre 20 001 et 100 000 décamètres cubes par année	2,00 \$
f) pour chaque décamètre cube en sus de 100 000 décamètres cubes par année	(Voir note 1)

4. Toute autre licence 50,00 \$

Nota 1 : Le taux par décamètre cube pour les volumes supérieurs à 100 000 décamètres cubes est établi par règlement en application de l'article 26 de la *Loi*.

R.M. 19/90; 107/90; 3/2003; 167/2013; 130/2019

ANNEXE C
(article 1.1)

CATÉGORIES DE TERRES HUMIDES

Catégorie 1 : terres humides éphémères

Terres humides qui retiennent habituellement l'eau de surface provenant de la fonte des neiges, de nappes d'eau près de la surface du sol ou de précipitations pendant au plus une semaine au cours des années caractérisées par des conditions d'humidité moyenne. Elles comptent souvent des espèces végétales des basses prairies comme le pâturin des prés, la verge d'or et les herbes non graminéennes.

Catégorie 2 : terres humides temporaires

Terres humides qui retiennent habituellement l'eau de surface provenant de la fonte des neiges, de nappes d'eau près de la surface du sol ou de précipitations pendant une période allant d'une semaine à un mois au cours des années caractérisées par des conditions d'humidité moyenne. L'eau est souvent retenue assez longtemps par les terres de cette catégorie pour permettre à la végétation de terres humides de s'établir. Les terres humides de catégorie 2 comportent souvent une végétation de prairie humide comme les graminées à tiges fines, le carex et les herbes non graminéennes connexes.

Catégorie 3 : terres humides saisonnières

Terres humides qui retiennent habituellement l'eau de surface provenant de la fonte des neiges, de nappes d'eau près de la surface du sol ou de précipitations pendant une période allant d'un à trois mois. Elles sont souvent sèches à la mi-juin au cours des années caractérisées par des conditions d'humidité moyenne. Cependant, elles peuvent parfois retenir l'eau toute l'année au cours des années où l'humidité est supérieure. L'eau est souvent retenue assez longtemps par les terres de cette catégorie pour permettre à la végétation de terres humides et aux sols gleysoliques de s'établir. Les terres humides de catégorie 3 comportent souvent des espèces végétales propres aux marais peu profonds comme les herbes émergentes, le carex et les joncs.

Catégorie 4 : terres humides semi-permanentes

Terres humides qui retiennent habituellement l'eau de surface provenant de la fonte des neiges, de nappes d'eau près de la surface du sol ou de précipitations pendant plus de trois mois, mais pas en permanence. Elles retiennent un peu l'eau les années où l'humidité est moyenne ou supérieure, mais peuvent s'assécher les années où l'humidité est inférieure. Elles comportent habituellement des sols gleysoliques. Au centre, elles comportent souvent de la végétation palustre ou une végétation aquatique submergée comme la massette, le scirpe et le potamot.

Catégorie 5 : terres humides permanentes

Terres humides qui retiennent en permanence l'eau de surface provenant de la fonte des neiges, de nappes d'eau près de la surface du sol ou de précipitations au cours des années caractérisées par des conditions d'humidité moyenne. Elles peuvent s'assécher les années où l'humidité est de beaucoup inférieure à la moyenne. Elles comportent habituellement des sols gleysoliques. Au centre, elles sont dotées d'une nappe d'eau libre qui est généralement exempte de végétation émergente. Il peut y avoir des plantes submergées dans la partie la plus profonde et des plantes émergentes sur le contour des terres humides.

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ANNEXE D
(article 4.1)MESURES OBLIGATOIRES POUR LES LICENCES AYANT
UNE INCIDENCE SUR DES TERRES HUMIDES DE CATÉGORIE 3**Mesures obligatoires**

1(1) L'auteur d'une demande de licence qui entraînerait la perte ou la modification d'une terre humide de catégorie 3 est tenu de prendre l'une des mesures indiquées dans la présente annexe.

1(2) Avant que l'auteur prenne cette mesure, un agent inspecte ou évalue la terre humide et lui confirme par écrit sa superficie et la catégorie dont elle fait partie.

Calcul de la somme à payer

2 Sous réserve de l'article 3, la somme exigible en vertu de l'alinéa 5.1(2)a) de la *Loi* est calculée conformément à la formule ci-dessous :

$$E = 2 \times S \times 6\,000 \$$$

Dans cette formule :

E représente la somme exigible;

S représente la superficie en acres de la terre humide de catégorie 3 qui fait l'objet d'une demande de licence.

Accord avec un fournisseur de services approuvé

3(1) Au lieu de verser la somme prévue à l'article 2, l'auteur de la demande peut conclure un accord avec un fournisseur de services approuvé et le payer pour qu'il restaure ou améliore une ou plusieurs terres humides conformément à l'article 5.

3(2) L'accord précise la somme que l'auteur de la demande versera au fournisseur et les mesures particulières de restauration ou d'amélioration que prendra ce dernier. L'auteur de la demande présente l'accord avec les autres documents exigés.

Restauration ou amélioration par l'auteur de la demande

4(1) L'auteur de la demande peut restaurer ou améliorer une ou plusieurs terres humides conformément à l'article 5 et aux exigences prévues au présent article.

4(2) Il soumet au directeur une proposition écrite précisant les mesures de restauration ou d'amélioration qu'il prendra.

4(3) Le directeur peut approuver la proposition ou exiger, comme condition à l'approbation, que des changements précis y soient apportés.

4(4) L'auteur de la demande restaure ou améliore les terres humides conformément aux exigences figurant dans la proposition approuvée.

Ratios

5 La superficie à restaurer ou à améliorer en application de l'article 3 ou 4 est basée sur le ratio applicable indiqué dans le tableau ci-dessous :

Mesure	Restauration d'une terre humide de catégorie 3, 4 ou 5 ou accroissement de la superficie d'une telle terre existante	Protection juridique permanente des améliorations apportées à des terres humides	Protection juridique permanente de terres humides de catégorie 1 ou 2
Ratio exigé (superficie restaurée ou améliorée par rapport à la superficie de la terre humide visée par la demande de licence)	2:1	3:1	3:1

Définitions

6 Les définitions qui suivent s'appliquent à la présente annexe.

« **fournisseur de services approuvé** » Personne ou organisme autorisé par le ministre à réaliser des projets de restauration ou d'amélioration de terres humides en vertu de l'article 5.1 de la *Loi*. ("approved service provider")

« **protection juridique permanente des améliorations apportées à des terres humides** » Amélioration des fonctions du sol hydrique, de l'hydrologie et de la végétation d'une terre humide ainsi que de la zone sèche qui l'entoure d'une manière qu'approuve le directeur et protection permanente de ces améliorations assurée au moyen de la conclusion d'un accord de conservation. ("permanent legal protection of wetland enhancements")

« **protection juridique permanente de terres humides de catégorie 1 ou 2** » Protection juridique permanente de terres humides de catégorie 1 ou 2 au moyen de la conclusion d'un accord de conservation. ("permanent legal protection of prescribed wetlands")

« **restauration d'une terre humide de catégorie 3, 4 ou 5 ou accroissement de la superficie d'une telle terre existante** » Restauration d'une terre humide de catégorie 3, 4 ou 5 ou accroissement de la superficie d'une terre humide existante de catégorie 3, 4 ou 5. ("restore prescribed wetland or increase the area of an existing prescribed wetland")

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Appendix B: MMTP Wetland Loss Calculation Dataset

MMTP Wetland Loss Calculation Dataset

MMTP Structure Number¹	Tower Structure Type²	Environmentally Sensitive Site Number¹	Wetland Type³	Stewart and Kantrud Wetland Class	Land Cover Classification Wetland Class	Wetland Loss (m²)
54	A-550-0+3	Aqua-300	Mineral Wetland Marsh	Class III / Class IV		36.4
57	A-550-0+6	Aqua-300A	Mineral Wetland Marsh	Class III / Class IV		36.4
229	A-550-0+6	Aqua-303	Mineral Wetland Marsh	Class V		36.4
231	D-550-0+0	Aqua-304	Mineral Wetland Marsh	Class V		86
232	A-550-0+0	Aqua-304	Mineral Wetland Marsh	Class V		36.4
233	D-550-0+6	Aqua-304	Mineral Wetland Marsh	Class V		86
242	A-550-0+3	Aqua-308	Mineral Wetland Marsh	Class V		36.4
265	A-550-0+3	Aqua-312	Mineral Wetland Marsh	Class V		36.4
266	A-550-0+0	Aqua-312	Mineral Wetland Marsh	Class V		36.4
267	A-550-0+3	Aqua-312	Mineral Wetland Marsh	Class V		36.4
273	A-550-0+9	Aqua-318	Mineral Wetland Marsh	Class V		36.4
275	A-550-0+6	Aqua-321	Mineral Wetland Marsh	Class V		36.4
283	A-550-0+6	Aqua-322A	Mineral Wetland Swamp		Shrub	36.4
290	A-550-0+6	Aqua-324	Peatland Fen		Shrub	36.4
291	A-550-0+6	Aqua-324	Peatland Fen		Shrub	36.4
292	A-550-0+6	Aqua-324	Mineral Wetland Swamp		Shrub	36.4
296	A-551-0+3	Aqua-325	Peatland Fen		Shrub	27.45
297	A-551-0+6	Aqua-325	Peatland Fen		Shrub	27.45
298	A-551-0+6	Aqua-325	Peatland Fen		Shrub	27.45
299	A-551-0+6	Aqua-326	Peatland Fen		Shrub	27.45
354	A-550-0+3	Aqua-331	Mineral Wetland Marsh	Class V		36.4

MMTP Structure Number¹	Tower Structure Type²	Environmentally Sensitive Site Number¹	Wetland Type³	Stewart and Kantrud Wetland Class	Land Cover Classification Wetland Class	Wetland Loss (m²)
355	B-550-0+3	Aqua-331	Mineral Wetland Marsh	Class V		36.4
356	A-551-0+9	Aqua-331	Mineral Wetland Marsh	Class V		27.45
357	A-551-0+6	Aqua-331	Mineral Wetland Marsh	Class V		27.45
360	A-551-0+6	Aqua-332	Mineral Wetland Marsh	Class V		27.45
386	A-551-0+9	Aqua-333A	(undefined) Pasture			27.45
393	B-551-0+0	Aqua-335	Peatland Bog		Shrub	31.2
394	B-551-0+6	Aqua-336	Peatland Bog		Shrub	31.2
410	B-551-0+0	Aqua-339	Mineral Wetland Marsh	Class V		31.2
414	A-551-0+3	Aqua-342	(undefined) Coniferous Forest			27.45
422	A-551-0+9	Aqua-344	Mineral Wetland Marsh	Class V		27.45
423	A-551-0+6	Aqua-344	Mineral Wetland Marsh	Class V		27.45
426	A-551-0+6	Aqua-347	Mineral Wetland Marsh	Class V		27.45
427	A-551-0+3	Aqua-347	Mineral Wetland Marsh	Class V		27.45
428	A-551-0+6	Aqua-347	Mineral Wetland Marsh	Class V		27.45
430	A-551-0+6	Aqua-348	Peatland Fen		Herbaceous / Gramminoid	27.45
431	A-551-0+9	Aqua-348	Peatland Fen		Herbaceous / Gramminoid	27.45
434	A-551-0+6	Aqua-349	Peatland Fen		Herbaceous / Gramminoid	27.45
435	A-551-0+9	Aqua-349	Peatland Fen		Herbaceous / Gramminoid	27.45
436	A-551-0+6	Aqua-349	Peatland Fen		Herbaceous / Gramminoid	27.45
437	A-551-0+6	Aqua-349	Peatland Fen		Herbaceous / Gramminoid	27.45
438	A-551-0+6	Aqua-349	Peatland Fen		Herbaceous / Gramminoid	27.45
456	A-551-0+6	Aqua-351	Mineral Wetland Marsh	Class V		27.45

MMTP Structure Number¹	Tower Structure Type²	Environmentally Sensitive Site Number¹	Wetland Type³	Stewart and Kantrud Wetland Class	Land Cover Classification Wetland Class	Wetland Loss (m²)
457	A-551-0+9	Aqua-351	Mineral Wetland Marsh	Class V		27.45
467	A-551-0+6	Aqua-352	Peatland Fen		Treed	27.45
468	A-551-0+6	Aqua-352	Peatland Fen		Treed	27.45
469	A-551-0+6	Aqua-352	Peatland Fen		Treed	27.45
470	A-551-0+6	Aqua-352	Peatland Fen		Treed	27.45
471	A-551-0+6	Aqua-352	Peatland Fen		Treed	27.45
472	A-551-0+9	Aqua-352	Peatland Fen		Treed	27.45
473	A-551-0+9	Aqua-352	Peatland Fen		Treed	27.45
477	G-550-0+0	Aqua-352A	Mineral Wetland Swamp		Shrub	86
494	C-550-0+6	Aqua-353	Mineral Wetland Marsh	Class V		70
495	A-550-0+0	Aqua-353	Mineral Wetland Marsh	Class V		36.4

1. Refer to the MMTP Construction Environmental Protection Plan Mapbook
2. Tower Structure Type dictates number and size of foundations in wetland area
3. Refer to Chapter 10 of the MMTP Environmental Impact Statement. Based on Land Cover Classification Imagery, Forest Resource Inventory database, the Agriculture and Agri-Food Radar Imagery, and in-field data

Appendix C: Summary of engagement with Indigenous communities

Table C-1. Communities included and communication log related to Condition 26

Community	Date calls made/emails sent, status as of August 20, 2020
Animakee Wa Zhing #37 First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro staff called the community and left a message with Chief and Council.</p> <p>December 6, 2019: Manitoba Hydro staff called and spoke to a community representative to confirm receipt of their email. Manitoba Hydro staff sent an email to a community representative including a copy of the November 26 email and asked them to let Manitoba Hydro know if they had any incorrect addresses.</p> <p>December 12, 2019: Animakee Wa Zhing #37 First Nation representatives sent a letter with preliminary thoughts on the conditions and requested funding.</p> <p>January 7, 2019: Manitoba Hydro sent an email to a community representative asking for a meeting to discuss Conditions 22 and 26</p> <p>January 22, 2020: Manitoba Hydro representatives responded to Animakee Wa Zhing #37 First Nation's request.</p> <p>February 21, 2020: Manitoba Hydro and Animakee Wa Zhing sent emails confirming the meeting planned for February 24.</p> <p>February 24, 2020: Manitoba Hydro met with Chief and Council and community representatives to give an overview of the draft offset plans for the conditions and listen to any initial feedback they had. Those in attendance shared concerns and ideas that were noted by Manitoba Hydro. At this meeting a community representative indicated the entire area under the transmission line should be considered loss of Crown land.</p> <p>Animakee Wa Zhing #37 representatives noted that they will be reviewing the conditions in more detail and will provide a formal written response to Manitoba Hydro in early March.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
Anishinaabeg of Naongashiing	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro emailed a community representative to confirm Anishinaabeg of Naongashiing's receipt of Manitoba Hydro's email regarding MMTP Conditions 22 & 26, as well as an upcoming Monitoring meeting. A community representative received the information who shared that no one from the community will be attending the next Monitoring Committee meeting.</p> <p>December 11, 2019: Manitoba Hydro staff sent an email asking if representatives from Anishinaabeg of Naongashiing are planning to review and provide feedback on the plans.</p> <p>January 14, 2020: Manitoba Hydro emailed a community representative to inquire if anyone from Anishinaabeg of Naongashiing reviewed the condition documents.</p> <p>January 24, 2020: A community representative emailed Manitoba Hydro inquiring about their community's review of Conditions 22 & 26 (timeline & funding).</p> <p>January 28, 2020: Manitoba Hydro responded to community representative's inquiry about their community's review of Conditions 22 & 26.</p> <p>January 29, 2020: Manitoba Hydro received an email from community representative requesting more information regarding the review of MMTP Conditions 22 & 26.</p> <p>January 29, 2020: Manitoba Hydro responded to community representative's request for more information regarding the review of MMTP Conditions 22 & 26.</p>
Birdtail Sioux Dakota Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro emailed a community representative to confirm Birdtail Sioux Dakota Nation's receipt of Manitoba Hydro's email regarding MMTP Conditions 22 & 26, as well as an upcoming Monitoring meeting and to inquire about their community reviewing the conditions document. A community</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>representative received the information who indicated that no one from Birdtail Sioux Dakota Nation will be at the next MMTP Monitoring Committee Meeting.</p> <p>January 8, 2019: Manitoba Hydro followed up via email to Chief and community representatives about input on License conditions 22 & 26.</p> <p>January 30, 2020: Manitoba Hydro called the Band office to inquire about the emails sent to Chief about Conditions 22 & 26. There was no answer or voicemail.</p> <p>January 30, 2020: Manitoba Hydro called a community representative to inquire about the emails sent to them and the Chief about Conditions 22 & 26. There was no answer.</p> <p>April 6, 2020: Manitoba Hydro called a community representative to inquire about the community's review of Condition #22. The community representative indicated that the community will not be providing any input on conditions 22 or 26.</p>
Black River First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro emailed a councillor to confirm Black River First Nation's receipt of Manitoba Hydro's email regarding MMTP Conditions 22 & 26, as well as an upcoming Monitoring meeting. The councillor confirmed receipt of the information and confirmed that they will be attending the next MMTP Monitoring Committee meeting.</p> <p>December 19, 2019: Manitoba Hydro sent Council an email asking for some potential dates for Manitoba Hydro to come to Black River First Nation to further discuss Conditions 22 & 26.</p> <p>January 8, 2020: Manitoba Hydro sent an email to Council regarding MMTP License conditions 22 & 26.</p> <p>January 14, 2020: Manitoba Hydro arranged a meeting in Black River First Nation to discuss Conditions 22 & 26. The meeting was cancelled due to the weather and rescheduled for February 4th, 2020.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>February 4, 2020: Manitoba Hydro met with the Black River First Nation Elders Committee in Black River First Nation to explain the conditions and request any feedback they may have. Members of the Elders Committee indicated that they would review the documents and respond to Manitoba Hydro regarding how they wish to move forward.</p> <p>February 5, 2020: Manitoba Hydro sent an email including a copy of the notes from the meeting for review.</p> <p>February 6, 2020: Manitoba Hydro received a phone call from Council. Council called to get an update on how things went at the February 5 meeting in Black River First Nation. Manitoba Hydro gave an update and indicated that Manitoba Hydro hopes to receive any additional feedback from their community in the next two weeks.</p> <p>April 6, 2020: Manitoba Hydro called a community representative to inquire about the community's review of Condition 22 & 26. The community representative indicated that the community has similar comments to what was discussed previously – that offsets should include more than just the area that the towers cover. The offset should include the entire ROW. The community representative indicated that they have no issues or concerns with how Manitoba Hydro has gone about obtaining feedback on the conditions and that Manitoba Hydro should stick to the timelines presented to them.</p>
Brokenhead Ojibway Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 4, 2019: Manitoba Hydro staff confirmed receipt of the November 26 email at a meeting with Brokenhead Ojibway Nation Lands Department representatives. Brokenhead Ojibway Nation staff acknowledged that the email was received. The representatives have not had a chance to consider the offset plans yet. The Lands Department will consider setting up a meeting to discuss the plans in January and let Manitoba Hydro know. The Lands Department representatives are not able to attend the December 16 meeting but will ask Council if they can.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>December 4, 2019: Manitoba Hydro emailed the Lands Department to recap the discussions at the December 4th meeting. Brokenhead Ojibway Nation noted they have not reviewed the draft offset plans so not sure of next step but may be interested in meeting in January 2020.</p> <p>January 10, 2020: Manitoba Hydro emailed the Lands Department to see if there is interest in meeting to discuss the draft offset plans and if Brokenhead Ojibway Nation will provide feedback.</p> <p>January 21, 2020: Manitoba Hydro called the Lands Department to follow-up on the request for a meeting to discuss the draft offset plans. The Lands Department indicated they have not reviewed the information yet so unsure about next steps.</p> <p>January 28, 2020: Manitoba Hydro called the Lands Department to follow-up on the request for a meeting to discuss the draft offset plans for the Conditions. The Lands Department indicated that discussing the Conditions is not a priority at this time. Manitoba Hydro noted that if resourcing is an issue Manitoba Hydro could make arrangements to support the community's review.</p> <p>February 13, 2020: Manitoba Hydro emailed the Lands Department and Council to see if there is interest in meeting to discuss the draft offset plans for the Conditions and see if Brokenhead Ojibway Nation intends to provide feedback. No response.</p>
Buffalo Point First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>November 27, 2019: A councillor responded to the November 26 email from Manitoba Hydro.</p> <p>December 6, 2019: Manitoba Hydro followed up on the councillor's email on December 6 asking if they would like to meet to discuss the draft conditions. Manitoba Hydro tried to call the councillor on December 5 and December 6, January 15 and January 29.</p> <p>January 29, 2020: Manitoba Hydro sent a follow-up email to Council.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>February 3, 2020: A Buffalo Point First Nation Councillor sent a follow up email to their December 6 email.</p> <p>February 7, 2020: Manitoba Hydro responded to the email from Buffalo Point First Nation asking if the community would like to meet to discuss the draft offset conditions</p>
Canupawakpa Dakota First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro tried to call the Chief, but they were out of the office. Manitoba Hydro sent a follow up email.</p> <p>January 29, 2020: Manitoba Hydro sent a follow-up email to the Chief to see if they would like to meet to discuss the Project and the draft offset plans.</p>
Dakota Plains Wahpeton First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro called the Chief and left a message.</p> <p>December 6, 2019: Manitoba Hydro sent a follow up email, which the Chief returned with a phone call. The Chief noted they received the November 26 email and intend to review and provide feedback on the draft offset plans. The community will also consider a meeting to specifically discuss the plans. A community representative is scheduled to attend the Dec 16 meeting.</p> <p>January 10, 2020: Manitoba Hydro emailed the Chief to see if there is interest in meeting to discuss the draft offset plans and if the community will be providing feedback.</p> <p>January 21, 2020: Manitoba Hydro left a message for the Chief to call about the request for a meeting to discuss the draft offset plans. The call was not returned.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>February 4, 2020: Manitoba Hydro sent an email to the Chief to see if there is interest in meeting to discuss the draft offset plans and if the community intends to provide feedback. Manitoba Hydro representatives did not receive a response.</p> <p>February 13, 2020: Manitoba Hydro sent an email to the Chief to see if there is interest in meeting to discuss the draft offset plans and if the community intends to provide feedback. Manitoba Hydro representatives did not receive a response.</p> <p>February 14, 2020: Manitoba Hydro left a message for the Chief to call to discuss their interest in meeting to discuss the draft offset plans and if they are planning to provide feedback. The call was not returned.</p>
Dakota Tipi First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro texted the Chief and followed up via email.</p> <p>December 6, 2019: The Chief called and said they received the November 26th email and that Council will be discussing how to proceed with the draft offset plans. Based on this they will let Manitoba Hydro know if a meeting to further discuss the Conditions is required. They said one or two representatives will attend the Dec 16 meeting but not sure who yet. Manitoba Hydro staff followed up the phone call with an email.</p> <p>January 10, 2020: Manitoba Hydro emailed the Chief to see if there is interest in meeting to discuss the draft offset plans and if the community will be providing feedback.</p> <p>January 14, 2020: Dakota Tipi First Nation and Manitoba Hydro representatives met to discuss draft offset plans. The Chief noted community will review but need more time.</p> <p>January 15, 2020: Manitoba Hydro emailed Chief and Council the draft meeting notes from January 14 for review.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>January 21, 2020: Manitoba Hydro emailed the Chief to follow up on community's intent to provide feedback on the draft offset plans and how Manitoba Hydro can support this review.</p> <p>January 30, 2020: The Chief sent a text to a Manitoba Hydro representative requesting an extension to February 17 to review and provide feedback on the draft offset plans. The Chief also approved the meeting notes from January 14.</p> <p>January 30, 2020: Manitoba Hydro staff sent a text to the Chief to acknowledge that getting feedback on the draft offset plans by February 17 is fine.</p> <p>February 13, 2020: Manitoba Hydro sent a text to the Chief to get an update on the review of the draft offset plans.</p> <p>February 13, 2020: The Chief sent a text to Manitoba Hydro staff noting that they will send a response early next week.</p> <p>February 20, 2020: Manitoba Hydro texted the Chief to see if Dakota Tipi First Nation will be providing feedback on the draft plans for the Conditions.</p> <p>February 20, 2020: The Chief texted Manitoba Hydro apologizing for not providing feedback as they ran out of time to meet the deadline of February 17 and shared that they do not have a formal issue with the plans. They intend to send a letter.</p> <p>March 3, 2020: A Manitoba Hydro representative texted the Chief to see if they are still interested in providing feedback on the draft plans associated with Conditions 22 and 26.</p>
Iskatewizaagegan No. 39 Independent First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro emailed a community representative to confirm Iskatewizaagegan No. 39 receipt of Manitoba Hydro's email regarding MMTP Conditions 22 & 26, as well as an upcoming Monitoring</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>meeting. A community representative confirmed receipt of the information. A representative from the community will attend the next MMTP Monitoring Committee meeting.</p> <p>January 14, 2020: Manitoba Hydro emailed a community representative to follow up to see if anyone from the community has reviewed the conditions.</p> <p>January 30, 2020: Manitoba Hydro called the Band office and spoke to a community representative about the conditions. Manitoba Hydro followed up on the conversation by forwarding them the emails previously sent to community representatives related to the conditions.</p> <p>January 30, 2020: Manitoba Hydro received an email from a community representative acknowledging receipt of an email sent to them and other community representatives regarding the review of Conditions 22 & 26. The community representative committed to discussing the matter with other community representatives and getting back to Manitoba Hydro.</p> <p>February 13, 2020: Manitoba Hydro received an email from community representatives indicating that they would like to attend the Tour/BBQ in the Lonesand area on March 18. Manitoba Hydro followed up on the email via a phone call and a community representative confirmed that they had reviewed the Conditions, had no concerns about them, and forwarded them on to Chief & Council for their review. If Chief & Council have any concerns with the conditions, they will reach out to Manitoba Hydro directly.</p>
Long Plain First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>November 29, 2019: Manitoba Hydro sent an email to a community representative asking if they would like to meet.</p> <p>January 8, 2020: Manitoba Hydro left a message with the Land Management Office. Long Plain First Nation staff returned Manitoba Hydro's call and let them know that they would be attending the meeting today and were working on setting up a meeting with Chief and Council to discuss the draft conditions.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>January 10, 2020: A representative from Long Plain First Nation sent an email proposing January 22 for a leadership meeting. Manitoba Hydro responded to the email and confirmed that the date works for the meeting.</p> <p>January 22, 2020: Manitoba Hydro met with community representatives. A follow-up meeting was planned for February 25.</p> <p>January 28, 2020: Manitoba Hydro sent an email to a Long Plain First Nation representative including a copy of the draft notes from the meeting</p> <p>February 25, 2020: Manitoba Hydro met with members of Chief and Council along with Program Managers to discuss the draft offset plans. Discussion of the plans did not occur as the Chief had concerns related to their legal proceedings related to MMTP and thought it best that no specific discussion on MMTP or the Conditions occur. Manitoba Hydro respected the decision and ended the meeting.</p>
Manitoba Metis Federation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the Manitoba Metis Federation.</p> <p>December 5, 2019 and December 6, 2019: Manitoba Hydro staff left a message for a representative on December 5 and 6th.</p> <p>December 17, 2019: The Manitoba Metis Federation sent an email expressing significant concerns about the draft plan.</p> <p>December 19, 2019: Manitoba Hydro sent a response to the MMF's December 17th email.</p> <p>February 14, 2020: The Manitoba Metis Federation sent a letter providing comments on Manitoba Hydro's draft plans for Condition 22 and 26.</p> <p>March 11, 2020: Manitoba Hydro sent a letter in response to the MMF's February 14th letter.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>March 16, 2020: Manitoba Hydro sent an email including a letter to follow up on a letter sent from the Manitoba Metis Federation about a review of Conditions 22 and 26 and requesting further details on a budget</p> <p>April 22, 2020: The MMF submitted a budget and workplan for MMTP Condition 22 and 26 Plan Review</p> <p>July 29, 2020: A Manitoba Hydro representative sent an email with links to previous versions of Condition 22 and 26 and the most recent version of the plan under review.</p> <p>July 31, 2020: Manitoba Hydro sent a link to Condition 26 to the MMF, as requested. The MMF requested a one week extension to the August 17, 2020 deadline to provide comments on Condition 22 and Condition 26.</p> <p>August 6, 2020: Manitoba Hydro agreed to the one week extension and asked that the MMF provide a draft prior to August 17, 2020.</p> <p>August 18, 2020: The MMF sent Manitoba Hydro preliminary comments on Condition 22 and Condition 26.</p>
Northwest Angle No.33 First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro staff spoke to the Chief and re-sent the email sent to them. The Chief was going to think about attending the meeting on December 16th. Manitoba Hydro re-sent the email to the band office as well.</p>
Peguis First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>November 24, 2019: Manitoba Hydro sent an email requesting a meeting with Peguis First Nation about the proposed plans so they can be reviewed in person and we can listen to any concerns directly from the community. Manitoba Hydro contacted a community representative via email and text. A meeting to discuss Conditions was set up for December 9. The meeting was confirmed with band administrative staff.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>December 9, 2019: Representatives from Chief and Council and Manitoba Hydro met to discuss the Project. Community representatives wanted Manitoba Hydro to meet with the Land office. A second meeting was set up for January 15 that did not occur.</p> <p>December 19, 2019: Manitoba Hydro sent a copy of the notes from the meeting to Peguis First Nation for review</p> <p>January 7, 2020: Manitoba Hydro staff left a voicemail for a Peguis First Nation representative about setting up a meeting to discuss the draft offset plans for Condition 22 and 26</p> <p>March 31, 2020: Manitoba Hydro and Peguis First Nation representatives had a conference call to discuss the draft offset plans</p> <p>April 6, 2020: Manitoba Hydro sent an email including draft notes from the conference call on March 31, 2020 and asked if the land's office has additional comments on the draft plans</p>
Roseau River Anishinabe First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 6, 2019: Manitoba Hydro tried to call a councillor, but they were away. Manitoba Hydro sent the Chief an email asking if they had received the email from Manitoba Hydro and if they would like to meet.</p> <p>January 15, 2020: Manitoba Hydro left a voicemail message for the Chief.</p> <p>January 15, 2020: Manitoba Hydro left a voicemail message for a councillor.</p> <p>January 28, 2020: Manitoba Hydro tried to call a councillor.</p> <p>January 30, 2020: Manitoba Hydro tried to call a councillor.</p> <p>June 10, 2020: A Manitoba Hydro representative tried to call the Chief, but he was not in. The Manitoba Hydro representative left a message with the receptionist.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
Sagkeeng First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>November 28, 2019: Sagkeeng First Nation sent a letter requesting funding to review the draft conditions.</p> <p>December 4, 2019: Manitoba Hydro responded to a request for funding to review plans with a letter sent via email. Manitoba Hydro sent a text message and called to follow up. The chief said they would get back to Manitoba Hydro.</p> <p>January 7, 2020: Manitoba Hydro representative called the band office and sent an email to follow up on the December 4, 2019 letter.</p> <p>March 16, 2020: Manitoba Hydro sent an email responding to Sagkeeng First Nation's request for funding for honoraria to support knowledge holders and Elders to attend meetings and share their traditional knowledge and help in providing feedback on Manitoba Hydro's offset plan</p> <p>March 26, 2020: Manitoba Hydro sent an email to the community to follow up on whether Sagkeeng First Nation is able/planning to provide feedback at this time and suggesting potential next steps</p> <p>April 3, 2020: Manitoba Hydro sent an email including a letter providing approval to fund review of Conditions 22 and 26 related to Manitoba-Minnesota Transmission Project Certificate (EC-059) as per the community's proposal</p> <p>April 8, 2020: Manitoba Hydro sent an email to approve a request for an extension on review of Conditions 22 and 26</p> <p>April 22, 2020: Sagkeeng First Nation submits "Sagkeeng First Nation Preliminary Comments on the Draft Crown Land and Wetland Offset Measure Plans for the Manitoba-Minnesota Transmission Project"</p>
Sandy Bay Ojibway First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 6, 2019: Manitoba Hydro sent the Chief an email.</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>January 17, 2020: Manitoba Hydro called a community representative, scheduled a meeting for January 31 and sent a link to the draft plans.</p> <p>January 31, 2020: Manitoba Hydro staff met with staff from Sandy Bay Ojibway First Nation, including representatives from Chief and Council. Manitoba Hydro explained the conditions and requested that Sandy Bay Ojibway First Nation review the plans in further detail and get back to Manitoba Hydro with any suggested ways for moving forward.</p> <p>February 5, 2020: Manitoba Hydro sent community representatives a copy of the draft meeting notes from the January 31st meeting to discuss Conditions 22 & 26.</p> <p>February 20, 2020: Manitoba Hydro sent community representatives an email inquiring if anyone from Sandy Bay Ojibway First Nation had the chance to review the information provided related to License Conditions 22 & 26.</p> <p>April 6, 2020: Manitoba Hydro called a community representative to inquire if the community had any input on Conditions 22 & 26. The community representative had no issues or concerns, but they were going to check with one of their colleagues to see if they had any additional input. They committed to getting back to Manitoba Hydro with information by the end of the week and if they did not, there were no concerns related to the conditions to be noted.</p>
Shoal Lake No. 40 FN	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 6, 2020: Manitoba Hydro staff tried to call a community representative, but they were in a meeting in Winnipeg, so Manitoba Hydro sent them an email.</p> <p>January 30, 2020: Manitoba Hydro spoke with a community representative who shared that they have an election in early March and would like to have Manitoba Hydro either attend a community meeting or meet with Chief and Council after the election. Manitoba Hydro shared that they have requested an extension from</p>

Community	Date calls made/emails sent, status as of August 20, 2020
	CER, but they do not know if they will receive the extension and that comments are currently expected by February 17. The community representative indicated that there has not been a lot of interest from community members in reviewing the draft plans as it is a discussion for leadership.
Sioux Valley Dakota Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 5, 2019: Manitoba Hydro left a phone message for the Chief. Manitoba Hydro emailed the band office to confirm correct addresses and receipt of the email.</p> <p>Two additional follow up calls were made in January with no response received.</p>
Swan Lake First Nation	<p>November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.</p> <p>December 6, 2019: Manitoba Hydro tried to call a councillor, but they were away. Manitoba Hydro sent the councillor an email asking if they had received the email from Manitoba Hydro and if they would like to meet. Swan Lake First Nation representatives sent an email in response.</p> <p>December 9, 2019: Manitoba Hydro sent an email to Swan Lake First Nation in response to their December 6 email.</p> <p>January 24, 2020: Manitoba Hydro met with Swan Lake First Nation Chief and Council.</p> <p>March 16, 2020: Manitoba Hydro sent an email to Swan Lake First Nation to cancel a meeting that was scheduled for March 25th, 2020 due to travel restrictions.</p>
Waywayseecappo First Nation	November 26, 2019: Manitoba Hydro shared a draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan with the community.

Community	Date calls made/emails sent, status as of August 20, 2020
	<p>December 6, 2019: Manitoba Hydro emailed the Chief to confirm Waywayseecappo First Nation's receipt of Manitoba Hydro's email regarding MMTP Conditions 22 & 26, as well as an upcoming Monitoring meeting. The Chief confirmed receipt of the information. Someone from the community may be attending the next MMTP Monitoring Committee meeting.</p> <p>January 16, 2020: Manitoba Hydro emailed the Chief to follow up to see if anyone has reviewed the MMTP conditions.</p> <p>January 30, 2020: Manitoba Hydro called the Band office and the Chief's cell to inquire about the previous emails sent regarding the conditions and to get feedback the community may have on them. There was no answer at either number and the mailboxes were full or out of service.</p> <p>April 6, 2020: Manitoba Hydro called Chief to inquire if the community had any additional input on Conditions 22 & 26. Chief indicated that their community is fine with the conditions and that they have no additional input to provide.</p>

Table C-2. Preliminary review from Animakee Wa Zhing #37 First Nation regarding the November 2019 draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan.

Category of Concern	Description of any issues or concerns raised regarding the plan from Animakee Wa Zhing #37 First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
Funding to review draft plans	That AWZ does not have the financial or technical resources to meaningfully review the offset plans. To enable that review AWZ is requesting \$15,000 in preliminary capacity funding to retain technical support to review the plans and engage with members (December 11, 2019 Letter to Manitoba Hydro)	Manitoba Hydro has provided funding to AWZ to support a meeting to consult on Condition 26 (February 24 th , 2020). <ul style="list-style-type: none"> • An honorarium as per the Manitoba Hydro Reimbursement Policy to those Elders or knowledge holders who are interested in reviewing the draft plans • Funding to support a community meeting to discuss the draft plans • A request for AWZ to submit a more detailed budget of their proposed \$15,000 request to support review of the draft plans.
No baseline data from First Nation	The draft plans have been submitted without baseline data from First Nation's land use, relationship to and responsibilities to lands and wetlands (December 11, 2019 Letter to Manitoba Hydro)	From a technical memo submitted by AWZ on March 11, 2019 Manitoba Hydro understands the following are important to AWZ: <ul style="list-style-type: none"> • The gathering of plants and medicines on land and the harvest of wild rice in the water • Hunting for deer, waterfowl, and other animals, • Fishing for multiple species is important.

Category of Concern	Description of any issues or concerns raised regarding the plan from Animakee Wa Zhing #37 First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
Definition of Permanent Loss	We have similar concerns about the Wetland Offset Measures Plan as it does not appear to offset all permanent wetlands losses. In particular, it does not set out any measures for restoring wetlands which are lost or harmed by clearing a right of way. Condition 26 of the Canadian Energy Regulator's decision requires Manitoba Hydro to outline how all "permanent loss to wetlands resulting from the Project will be offset". The Canadian Energy Regulator found that "permanent loss may occur accidentally" at locations other than the transmission tower and Dorsey Station (December 11, 2019 Letter to Manitoba Hydro)	<p>Manitoba Hydro describes mitigation measures aimed at reducing impacts to wetlands in Chapter 10 Assessment of Potential Environmental Effects on Vegetation and Wetlands of the MMTP EIS¹. These measures are further described in Table 3 of this document.</p> <p>Manitoba Hydro has updated this plan to include the concern described here to address how wetlands will be offset should an accident cause further permanent loss (see Section 4.2. and Table 3).</p>
Effectiveness of Offset Measure	Second, the Wetlands Offset Measures Plan does not actually set out <i>any</i> offset measures for the permanent wetland losses it identifies. Rather, it simply provides that Manitoba Hydro will make a payment to the Manitoba Government for the loss of wetlands (December 11, 2019 Letter to Manitoba Hydro)	<p>The rationale for providing monetary compensation as a wetland offset is modeled on the approach used in the Province of Manitoba's <i>The Water Rights Act</i> and Water Rights Regulation. The Province describes how this program is an effective measure by government regulators. Manitoba Hydro maintains that compensation is the least effective measure following avoidance, rehabilitation, then offsetting.</p> <p>Monetary compensation as a wetland offset as specified under the Province of Manitoba's <i>The Water Rights Act</i> C.C.S.M. c. W80 and the Water Rights Regulation 126/87 has been deemed an effective measure in the Province</p>

¹ [A81182-18](#) MMTP EIS Chapter 10 vegetation and wetlands, January 4, 2017.

Category of Concern	Description of any issues or concerns raised regarding the plan from Animakee Wa Zhing #37 First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
		of Manitoba. A compensation ratio and per hectare wetland valuation provide an effective means to achieve no-net-loss of wetlands. More wetland area than was permanently lost due to the Project will be created, restored, or enhanced in the same watersheds as MMTP Manitoba.
Effectiveness of Offset Measure / Process of Funding	1. No payment is being made to the First Nation: Many of the transmission towers which are negatively impacting wetlands are within AWZ's traditional territory. In particular, at least a dozen towers creating permanent losses are located in or around Piney, Manitoba. Our First Nation has relied on this area to practice our traditional activities. Further, wetlands are essential for our ongoing ability to exercise our Aboriginal and Treaty rights as they provide habitat for species we look to for sustenance and culture. Moreover, we have stewardship obligations to the land and its inhabitants (December 11, 2019 Letter to Manitoba Hydro)	Manitoba Hydro is unclear on how a payment directly to AWZ will offset for those wetland losses.
Effectiveness of Offset Measure /	2. There is no indication that the payment will be used to rehabilitate wetlands: The Wetland Offset	Manitoba Hydro understands that the payment made to the Province of Manitoba, or a designated agency, will be held in trust for projects dedicated to restoring and

Category of Concern	Description of any issues or concerns raised regarding the plan from Animakee Wa Zhing #37 First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
Process of Funding	Measures Plan simply states that it will make a payment to the Manitoba Government. There is no plan in place or assurance that the funds will be used to restore the lost wetlands. Moreover, Manitoba Hydro has not explained why making a payment to the Manitoba Government is a more effective way of rehabilitating the wetlands than actually undertaking such work (December 11, 2019 Letter to Manitoba Hydro)	enhancing wetlands in the same watersheds as MMTP.
Process of Funding	3. Payment cannot be made to the Government of Manitoba: Under the <i>Water Rights Act</i> , payments for the permanent loss of wetlands must be made to the Manitoba Habitat Heritage Corporation, not the Manitoba Government directly (December 11, 2019 Letter to Manitoba Hydro)	Manitoba Hydro has updated section 2 and 4.3 that the <i>Water Rights Act</i> and its regulations were used as a model for its compensation approach and that it is not applicable to a transmission project. As such payment will be made to the Province of Manitoba, or a designated agency, such as the Manitoba Habitat Heritage Corporation.
Calculation	No comments have been provided to date regarding the offset calculation	The offset calculation is described in Section 4.5.

Table C-3. Manitoba Metis Federation's August 24, 2020 Preliminary Comments on Manitoba Hydro's draft Wetland Offset Measures Plan for Condition 26 of Certificate EC-059

Concern #	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section (MNP, August 24, 2020)	Outstanding comment, concern, or question (MNP, August 24, 2020)	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
1	4.0 Wetland offset measures 4.1 Defining wetlands Page 4	<p>This section does not contain the necessary details required by Condition 26. Condition 26 requires a description of site-specific details (and maps) of permanent wetland loss as a result of Project activities. This is not described and not mapped.</p> <p>There are maps available in the appendices which indicate where tower locations intersect wetlands but there is no connection between this information and where there will be permanent wetland loss as a result of Project activities following avoidance measures.</p>	<p>Section 4.1 defines wetlands and Section 4.4 describes how Manitoba Hydro has defined the permanent loss of wetlands. It is Manitoba Hydro's understanding that wetlands can continue to function in all locations along the Right-of-way except in locations where tower footings exist.</p> <p>Wetlands are shown on maps 1, 2 and 3 of this plan. Appendix B includes a table that describes the size, location and classification of each wetland permanently lost by the Project. Site-specific details related to wetland function will be monitored as described under Section 4.2. A suite of wetland function metrics will be monitored as described under the CER-approved Environmental Monitoring Plan².</p>

² [C00033-20](#) MMTP EPP Environmental Monitoring Plan, June 19, 2019.

		<p>Further, no site-specific details are provided of the wetlands potentially lost including downstream drainage, peak flow following rainfall, water flow, sediment loading anticipated, nitrogen and phosphorus load anticipated, and waterfowl production.</p> <p>Please provide updated information that includes the above details, and also the maps, as required by Condition 26.</p>	
2	<p>4.0 Wetland offset measures</p> <p>4.2 How wetland function will be measured</p> <p>Page 4 –Page 5</p>	<p>Condition 26 indicates that the plan must include an explanation of how wetland function will be measured during the post-construction monitoring program. Currently there is no discussion of monitoring in the Plans. This cannot be deferred to post-construction monitoring and must be provided as part of this plan, for review and approval by the CER.</p> <p>In addition, there has been no discussion with the MMF about its involvement in monitoring or co-management measures aimed to ensure that any damage or loss of wetlands is appropriately mitigated. MMF Citizens and harvesters have</p>	<p>Please see Section 4.2 of this document and refer to the Section 4.4.1 and Section 7.2.1 of the MMTP Environmental Monitoring Plan³ for a description of monitoring plans for wetlands.</p> <p>Monitoring has already been initiated as part of pre-construction field work and the above described Environmental Monitoring Plan will build on this existing data.</p> <p>Manitoba Hydro will not be engaging with the MMF in developing a co-management plan or agreement at this time as it has finalized its monitoring plans as described above. The MMF was provided an opportunity to review and provide input into Environmental Monitoring Plan in an October 10, 2018 meeting, and Manitoba Hydro then followed up with Indigenous communities in emails on October 19, 2019, December 7, 2018, and February 11, 2019.</p>

³ [C00033-20](#) MMTP EPP Environmental Monitoring Plan, June 19, 2019.

		<p>clearly identified ongoing monitoring of wetlands as a distinct concern that requires addressing, yet the Plans are silent on this point.</p> <p>The Plans should be updated to include a detailed explanation of how wetland function will be monitored during post-construction. In addition, Manitoba Hydro should engage with the MMF to develop a co-management plan or agreement for the MMF's participation in ongoing monitoring of wetlands. Funding for the MMF's participation in this co-management plan (and the negotiations of the plan) should be provided by Manitoba Hydro</p>	
3	<p>4.3 Achieving not net loss of wetlands</p> <p>Table 1. List of Offset of Mitigation Measures that will be Implemented to Address Permanent Loss of Wetlands</p> <p>Page 6</p>	<p>The MMF previously outlined extensive concerns with an offset measures plan that effectively provides the full benefit to the provincial Crown while Indigenous communities continue to bear the burdens and impacts of loss of wetlands to traditional practices (see MMF February 14, 2020 letter and also MMF's comments on the draft final Crown Land Offset Measures Plan). These concerns have not been resolved or addressed by Manitoba Hydro regarding the Plans.</p> <p>It is interesting to note that monetary</p>	<p>Manitoba Hydro is using an approach modeled on the Province of Manitoba's The Water Rights Act and Water Rights Regulation. This legislation recently underwent a multi-year government led consultation process (Hansard Transcript May 9th, 2018). A monetary payment by Manitoba Hydro in fulfillment of this wetland offset for the Project will be made to the Province of Manitoba, or designated agency, to be held in trust for projects dedicated to restoring or enhancing wetlands in Manitoba.</p> <p>It continues to be Manitoba Hydro's position that the mitigation hierarchy applies, in that avoidance is more effective than rehabilitation and rehabilitation is more effective than offsetting.</p>

		<p>compensation is identified as an effective mitigation measure to address the permanent loss of wetland when the financial compensation is being provided to the Crown but was dismissed as an option in the draft final Crown Land Offset Measures Plan, where Manitoba Hydro said that “...compensation ... is viewed as a way for proponents to purchase a license to damage the environment.” We agree that monetary compensation is an effective mitigation measure and would encourage Manitoba Hydro to apply this metric consistently to its offset measures proposed, including the Crown Land Offset Measures Plan.</p> <p>This does not, however, address the MMF’s concern that the compensation for impacts on Metis section 35 rights in this Condition is being provided, in full, to the provincial Crown. Manitoba Hydro acknowledged the inappropriateness of this approach when it revised the Crown Land Offset Measures Plan following the November 2019 draft (that, similar to these Plans, provided monetary compensation to the Government of Manitoba). As noted above, the November 2019 draft of the wetland Plans has not likewise been</p>	
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		<p>revised.</p> <p>The Plans must be revised so that the offset or compensation measures that are accommodating for impacts on Metis rights are not being provided to the Government of Manitoba. In making these revisions, Manitoba Hydro should have regard to the MMF's comments provided on the draft Crown Land Offset Measures Plan.</p>	
4	<p>4.4 Measuring permanent wetland loss</p> <p>Page 7</p>	<p>How will Manitoba Hydro propose to monitor wetland function post construction to ensure that wetlands disturbed during construction of the towers (assumed to be a greater area than the tower footprint itself) will be restored to previous function and not contribute to the permanent loss of wetland?</p> <p>In addition, the assumption that because "wetland function can continue to occur under a tower" does not necessarily mean that harvesting or other uses of wetlands will not be lost to Indigenous communities beyond the</p>	<p>Please see Section 4.2 of this document and refer to the Section 4.4.1 and Section 7.2.1 of the MMTP Environmental Monitoring Plan⁴ for a description of monitoring plans for wetlands.</p> <p>Manitoba Hydro assessed effects to vegetation and wetlands, and the related changes to traditional land and resource use in Chapter 10 Assessment of Potential Environmental Effects on Vegetation and Wetlands⁵ and Chapter 11 Assessment of Potential Environmental Effects on Traditional Land and Resource Use⁶. In these chapters effects to traditional use are described as a result of the Project. Manitoba Hydro recognizes that there are multiple functions that will be lost at tower footing locations. This document puts forth a plan to offset for those permanent losses to wetlands. The accidental loss of wetlands has been contemplated and updated in section 4.2 of the Plan.</p>

⁴ [C00033-20](#) MMTP EPP Environmental Monitoring Plan, June 19, 2019.

⁵ [A81182-18](#) MMTP EIS Chapter 10 vegetation and wetlands, January 4, 2017.

⁶ [A81182-20](#) MMTP EIS Chapter 11 traditional land and resource use, January 4, 2017.

		<p>tower structure foundations. Condition 26 was modified by the federal Crown during its supplemental Crown consultation undertaken on the project and as part of fulfilling the duty to consult and accommodate for impacts of the project on Metis rights. The area of wetlands lost must include the area of wetlands lost to Indigenous communities as a result of the project, which is larger than only the area of the tower foundations (or footprints).</p> <p>The calculation of permanent loss of wetlands must be updated to reflect the area of wetlands lost to Indigenous communities, including the MMF, as a result of the project activities.</p> <p>In addition, this baseline calculation should then be increased through the use of an appropriate multiplier to account for various uncertainties (e.g. such as the accidental loss of wetlands as contemplated by Condition 26 (b) or damages through maintenance activities). The MMF should be consulted on the updated calculation and proposed multiplier.</p>	
5	4.4 Measuring permanent wetland loss	How does Manitoba Hydro intend to ensure that the funds provided are used for “restoring or enhancing wetlands in	Section 4.3 has been updated to describe the implementation of a legal agreement with the Province of Manitoba and/or a designated agency, which specifies that this funding is to be held in trust for

	Page 8 and Table 1	<p>Manitoba”? How are Metis section 35 rights and Metis use of/interests in wetlands being factored into the Plans?</p> <p>In addition, this description and Table 1 does not provide any decision-making criteria for selecting specific offset measures or identify what criteria will be used under what circumstances. When is a restoration project being implemented versus an enhancement project? Will offsetting impacts on wetlands lost or impacted in the same watershed as the project be prioritized? When will other Manitoba watersheds be considered? It is entirely unclear.</p> <p>The Plans should be updated to include decision-making criteria for selecting specific offset measures and identify under what circumstances each measure will be considered/used. These criteria should be developed through consultation with the MMF that takes into account Metis specific uses and interests in wetlands.</p>	<p>projects dedicated to restoring or enhancing wetlands in the same watershed(s) as MMTP. Once a wetland offset project has been implemented by Manitoba or its designated agency, Manitoba Hydro will conduct annual follow-up monitoring of the project until the project’s objective of restoring or enhancing wetlands is achieved to ensure the effectiveness of proposed compensation measures.</p>
6	4.5 Calculating wetland offset compensation Page 9 and Table 1	<p>How was the ratio of 3:1 determined by Manitoba Hydro to be effective? To what extent did Manitoba Hydro consider Metis rights and Metis-specific interests in wetlands when determining this offset ratio?</p>	<p>In its decision to utilize a 3:1 ratio, Manitoba Hydro has relied on</p> <ul style="list-style-type: none"> the recent review and consultation by Manitoba with Indigenous communities on mitigation and compensation measures when developing the Water Rights Act and regulations; Manitoba Hydro’s experience developing no net loss agreements

		<p>The Plans do not include any details regarding the estimated completion date for the offset measures. Where compensation is being provided, how long is it from when Manitoba Hydro pays this compensation to when it is actually used to offset impacts on wetlands and create a no net loss situation? Given that the compensation is being provided to third parties, Manitoba Hydro cannot control this timeline; the funds could sit in the hands of the Government of Manitoba or other third parties for years, or potentially be reallocated to another purpose entirely. The Plans, as currently written, risk the accommodation provided through this Condition becoming an empty shell of a promise to the Metis.</p> <p>Additional engagement with the MMF regarding the suitability of the offset ratio is required. As a first step, please answer the above questions regarding how Manitoba Hydro determined the proposed 3:1 offset ratio.</p> <p>The Plans must be updated to include offset or compensation measures that are enforceable and can be</p>	<p>on other projects with Manitoba, and</p> <ul style="list-style-type: none"> • ratios used in adjacent jurisdictions. <p>Manitoba Hydro is of the understanding that the offset and compensation measures proposed in this plan would, once approved by federal and provincial regulators, be enforceable and that Manitoba Hydro will be held accountable if they are not implemented.</p> <p>Section 4.3 has been updated to include that terms in the legal agreement between Manitoba Hydro and Manitoba will ensure monies are spent as intended and projects are to be reported on publicly within 5 years of the signing of the agreement. The agreement is expected to be signed within 12 months of approval of the Plan.</p>
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		<p>implemented.</p> <p>The Plans must also be updated to include an accurate estimated completion date (as required by Condition 26 (f)), as the timelines for implementing the offset/compensation measure must be reviewed by the CER as part of determining whether the Plans meet what is required to uphold the honour of the Crown.</p>	
7	<p>5.1 Indigenous Engagement</p> <p>5.1.1 Method of Engagement</p> <p>Page 8 and Page 9</p>	<p>This section of the plan is forward looking whereas the Condition indicates that the plan must include evidence and summary of consultations with any impacted Indigenous communities regarding the plan. There is no information included on the existing concerns of the MMF which were provided to Manitoba Hydro in MMF's letter dated February 14, 2020. This letter specifically indicated that "While this letter focuses on Condition 22, the MMF has equal concerns with Hydro's draft plan for Condition 26. The language of Condition 22 and Condition 26 is nearly identical and there is substantial overlap of the MMF's concerns regarding both draft plans. The focus and citations to Condition 22 in this letter should not be taken as</p>	<p>Changes to Section 6.1 have been updated along with Appendix C which contains all of the MMF concerns. Manitoba Hydro is sharing those concerns with federal and provincial authorities through the submission of this Plan.</p> <p>Manitoba Hydro considers the numerous funding agreements and correspondence it has with MMF as evidence of consultation as defined by the CER.</p>

		<p>minimizing the MMF’s concerns with Hydro’s approach and draft plans for Condition 26, which contains many of the same fatal flaws in design, approach and execution.”</p> <p>This includes issues related to limited consultation on the draft offset plans to date. As a way forward, MMF requested a meaningful process moving forward with sufficient capacity for MMF to be involved. Capacity to undertake a review of the Plans was not provided to the MMF until July 31, 2020 and in the intervening period there was no consultation or discussion about the MMF’s outstanding concerns regarding the Plans (as is evidenced by the fact that the Plans remain unchanged since November 2019).</p> <p>In addition, it is not clear if Manitoba Hydro shared the MMF’s concerns with the provincial and federal authorities or what their responses were.</p> <p>The Plans should be updated to include the lack of consultation with the MMF and clarify whether the MMF’s feedback and concerns were ever shared with the provincial and federal Crown.</p>	
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		In addition, the Plans should clearly outline the MMF's concerns identified in its February 14, 2020 letter and in this chart. These concerns should be noted as "unaddressed." This revised information should be provided to the MMF for review and comment to ensure its accuracy.	
8	5.1 Indigenous Engagement 5.1.3 Next Steps Page 9	When can the MMF expect a final plan as referenced, particularly as the Plan must be filed with the Board for approval within 90 days of commencing operation of the Project?	Manitoba Hydro has provided the MMF with a draft Wetland Offset Measures Plan on November 26, 2019. A link to this draft plan was resent July 31, 2020. This final Plan has been shared with the MMF on August 28, 2020.
9	6.0 Summary Page 10	Please articulate why 'no net loss' was selected rather than 'net gain' for wetland; particularly as wetland loss is a serious issue in Manitoba that is at the forefront for many environmental organizations (e.g., Ducks Unlimited Canada).	Manitoba Hydro has adopted the wording put forward in Condition #36 of the Environment Act Licence #3288, which outlines the following: "36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development."

Table C-4. Sagkeeng First Nation's April 22, 2020 Preliminary Comments on the draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan

Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
Indigenous engagement	Manitoba Hydro has not meaningfully engaged Sagkeeng First Nation to identify residual adverse effects of the Project and to develop appropriate offset measures.	<p>To identify residual adverse effects, Manitoba Hydro has continued to engage Sagkeeng First Nation throughout the routing and environmental assessment process for the Project and during construction by:</p> <ul style="list-style-type: none"> • Funding a Traditional Knowledge study for the (O-Pimatiziiwin 2) including a supplementary report • Offering funding to support a community meeting to discuss in detail the Environmental Protection Plan⁷ for the Project including and any potential mitigation measures that may be required • Funding a community coordinator position • Organization of a field tour • Offering funding to review various plans for the Project including the Environmental Protection Plan⁸ • Opportunities to participate in the MMTP Monitor Committee <p>Manitoba Hydro has engaged with Sagkeeng First Nation in the following ways to get any feedback on the draft plan including input on what appropriate offset measures might be:</p> <ul style="list-style-type: none"> • Various communication (phone calls, emails)

⁷ [C00033-2](#) MMTP EPP CEnvPP, June 19, 2019.

⁸ [C00033-2](#) MMTP EPP CEnvPP, June 19, 2019.

Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
		<ul style="list-style-type: none"> Offering funding to support a community meeting to discuss the draft plans Funding a proposal from Sagkeeng First Nation to hire a consultant to do a review of Conditions 22 and 26 and work with the community to develop feedback for Manitoba Hydro.
	Recommendation 1: <i>“Manitoba Hydro to work with Sagkeeng to provide the time and resources necessary to conduct a comprehensive Traditional Land and Resource Use Study for the Project-affected area, with appropriate methodology and confidentiality agreements.”</i>	Sagkeeng First Nation had the opportunity to undertake a TK study and design it as they saw fit. Following conclusion of that study, a supplemental study was completed. The concerns and input provided by Sagkeeng First Nation resulting from that study as well as other engagement has been taken under consideration in the development of this plan.
	Recommendation 2: <i>“Manitoba Hydro to revise the governance structure for the Crown land and wetland offset plans to include for meaningful Sagkeeng engagement and participation.”</i>	Manitoba Hydro is using an approach modeled on the Province of Manitoba’s The Water Rights Act and Water Rights Regulation. This legislation recently underwent a multi-year government led consultation process (Hansard Transcript May 9th, 2018). A monetary payment by Manitoba Hydro in fulfillment of this wetland offset for the Project will be made to the Province of Manitoba, or designated agency, to be held in trust for projects dedicated to restoring or enhancing wetlands in the same watersheds as MMTP.
	Recommendation 3: <i>“Manitoba Hydro to work with Sagkeeng to develop a collaborative approach to identify criteria for selecting</i>	Please refer to the response to Recommendation 2

Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
	<i>offsetting measures and locations based on Indigenous knowledge, perspectives, and priorities."</i>	
	Recommendation 4: <i>"Manitoba Hydro to employ Sagkeeng cultural experts, knowledge holders, and Guardians in the project team to identify and protect cultural resources and values encountered during construction, rehabilitation, and offsetting."</i>	Please refer to the response to Recommendation 2
	Sagkeeng First Nation requests additional discussions with Indigenous nations, Manitoba Hydro and the provincial government as the plan is further developed.	Manitoba Hydro remains open to discussions with Sagkeeng First Nation and the provincial government.
Offsetting area calculation	The amount of land that needs to be offset was not adequately calculated based on long-term effects to Crown land and wetland function including impacts on Indigenous rights and interests from, for example, a reduction in viable areas from which to practice their rights. The amount of land calculated for	Please refer to the response to Recommendation 2

Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
	<p>offset was underestimated and did not consider indirect and cumulative effects.</p> <p>Recommendation 5: <i>“Sagkeeng requests that Manitoba Hydro makes appropriate changes to the Crown land and wetland offset plans to account for residual effects of the transmission line corridor, including overhead transmission lines and maintenance of the ROW. This calculation should include, at a minimum:</i></p> <ul style="list-style-type: none"> <i>• 457.7 hectares of wetland habitat, representing the area of physical disturbance associated with Project construction, operation, and maintenance that overlaps with sensitive wetland habitat (Manitoba Hydro 2019b, p.10-46);¹ and</i> <i>• 550 hectares of Crown land, representing 55 km of transmission line (18 km within existing ROWs and</i> 	<p></p> <p>Please refer to the response to Recommendation 2. The Wetland Offset Measure Plan includes use of a multiplier of three to account for uncertainty of effectiveness of wetland function.</p> <p>The measure put forward in this document works alongside other measures already in place, such as routing in existing transmission corridors and away from areas of concern, the development of areas for additional protection such as Environmentally Sensitive Sites and rehabilitation of disturbed areas.</p>

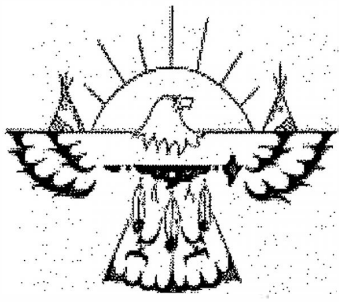
Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
	<i>37 km of new ROW) with a corridor width of 100 m"</i>	
Offset measures	Recommendation 6: <i>"Manitoba Hydro to work with Sagkeeng to develop a framework for assessing ecological and cultural components that integrates Indigenous knowledge, science, and the values identified by Sagkeeng community members."</i>	Manitoba Hydro would like to continue to engage with Sagkeeng First Nation as this plan is implemented.
	Recommendation 7: <i>"Manitoba Hydro to apply a minimum offsetting ratio of at least 4:1 for Crown lands and wetland habitat, where offsets are of similar ecological and cultural function to the values lost to development."</i>	<p>Manitoba Hydro is using an approach modeled on the Province of Manitoba's <i>The Water Rights Act</i> and Water Rights Regulation. This approach includes adopting a multiplier of 3 to address uncertainty of effectiveness, indirect and cumulative effects.</p> <p>The measure put forward in this document works alongside other measures already in place, such as routing in existing transmission corridors and away from areas of concern, the development of areas for additional protection such as Environmentally Sensitive Sites and rehabilitation of disturbed areas.</p>
	Recommendation 8: <i>"Manitoba Hydro to identify and share for review and comment with Sagkeeng, higher offsetting ratios for locations where equivalency is</i>	Please refer to the response to recommendation #7

Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
	<i>low and/or uncertainty is high"</i>	
	Recommendation 9 <i>"Manitoba Hydro to provide Sagkeeng the time and resources necessary to collaboratively develop an offset plan that supports the retention and regaining of ecological and cultural function resembling that of Crown land and wetland habitat permanently impacted by the Project. Sagkeeng engagement in the development of the offset plan should include, but not be limited to identification of appropriate offsetting areas, the selection and implementation of restoration treatments, monitoring of restoration results, and engagement in the development of adaptive management responses."</i>	Manitoba Hydro has provided funding to Sagkeeng First Nation to refer and make recommendations on this Plan.
	Recommendation 10: <i>"Manitoba Hydro to develop a governance structure for implementation of the offset plan that supports Sagkeeng engagement and participation".</i>	Please refer to the response to Recommendation 2
	Recommendation 11: <i>"Manitoba Hydro to work with Sagkeeng to</i>	Please refer to the response to Recommendation 2

Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
	<i>develop an Indigenous knowledge-based approach to monitoring impacts and offsetting results, including a meaningful role for Sagkeeng in adaptive management decisions."</i>	
	Recommendation 12: <i>"Manitoba Hydro to identify sufficient funding to cover all costs of long-term management and monitoring, including a role for Sagkeeng Guardians."</i>	Please refer to the response to Recommendation 2
Written justification	Sagkeeng First Nation is requesting written justification from Manitoba Hydro where Manitoba Hydro did not adopt their recommendations for revisions to the plan and wants further consultation to find an appropriation solution to address their concerns.	Manitoba Hydro will share a copy of this table with the community.
More concerns and requirements	As the plan is still draft, Sagkeeng may identify more concerns and requirements as the plans develop.	Manitoba Hydro remains open to discussing and working to resolve concerns with the community as the plan develops.
More concerns and requirements	Overall, the draft Crown land and wetland offset plans lack critical details that are required for	Further detail has been added to the August 28, 2020 final plan.

Category of concern	Description of any issues or concerns raised regarding the plan from Sagkeeng First Nation	How Manitoba Hydro has addressed or responded to issues or concerns raised regarding the plan
	<p>Sagkeeng's future consideration, such as the identification of offsetting locations and methods, and detailed plans to support the meaningful engagement and participation of Indigenous nations. Furthermore, in the absence of a monitoring regime and adaptive management approach, Sagkeeng cannot be confident that the offsetting measures will in fact produce the desired ecological and cultural outcomes.</p>	

Animakee Wa Zhing #37 Preliminary Comments on the Draft Crown Land and Wetland Offset Measure Plans for the Manitoba-Minnesota Transmission Project (Letter to Manitoba Hydro dated December 11, 2019)



Animakee Wa Zhing #37

(formerly Northwest Angle #37 First Nation)

Forever The Sun Rises And the River Flows. (Treaty 3, 1873)

December 11, 2019

Sarah Coughlin

Senior Environmental Specialist
Licensing & Environmental Assessment
Transmission, Manitoba Hydro
360 Portage Ave
Winnipeg, MB, R3C 0G8

VIA EMAIL scoughlin@hydro.mb.ca

Dear Ms. Coughlin:

Re: Draft Offset Plans

We are writing regarding Manitoba Hydro's draft offset plans for the Manitoba-Minnesota Transmission Project. In an email dated November 26, 2019, we were notified about Manitoba Hydro's offset plans for Crown land and wetlands. These offset plans are binding conditions mandated by the Canadian Energy Regulator: Condition #22 requires a Crown Land Offset Measures Plan and Condition #26 requires a Wetland Offset Measures Plan.

Included with your email was an attachment described as a "summary and questionnaire of the offsetting plans" that provides a summary of how Manitoba Hydro intends to fulfill Conditions #22 and #26. The summary document advised is that we could contact Manitoba Hydro before January 17, 2020, if we had any questions about the plans.

AWZ's ability to meaningfully assess and provide comments on the draft plans is limited. Manitoba Hydro's engagement plan is not reasonable. First, we do not have the financial or technical resources to meaningfully review the offset plans. We ask that Manitoba Hydro provide us with \$15,000 in preliminary capacity funding so we can retain technical support to support our internal review of these plans and to engage with our membership. Second, both draft offset plans were prepared without baseline data on our First Nation's land use, relationship to and responsibilities to lands and wetlands.

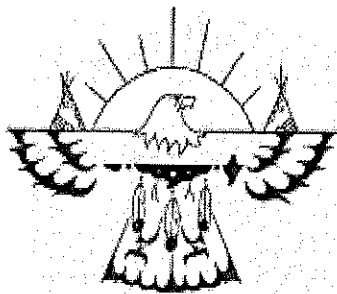
Despite these limitations, and based on a very preliminary review, AWZ has identified some concerns with Manitoba Hydro's offset plans.

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Animakee Wa Zhing #37

(formerly Northwest Angle #37 First Nation)

Forever The Sun Rises And the River Flows. (Treaty 3, 1873)

Regarding the Crown Land Offset Measures Plan: we are concerned the plan does not adequately offset lands available for traditional use by Indigenous peoples. Manitoba Hydro has only included lands under the guyed towers and self-supporting towers to determine how much land it is required to offset. Problematically, Manitoba Hydro has not included the cleared right-of-way in its calculations for determining the total amount of Crown land offsets required.

We are further concerned about the process for offsetting Crown land and our role, if any, in the land selection and land acquisition process once the Manitoba Government receives funds to purchase offset lands.

We have similar concerns about the Wetland Offset Measures Plan as it does not appear to offset all permanent wetlands losses. In particular, it does not set out any measures for restoring wetlands which are lost or harmed by clearing a right of way. Condition 26 of the Canadian Energy Regulator's decision requires Manitoba Hydro to outline how all "permanent loss to wetlands resulting from the Project will be offset". The Canadian Energy Regulator found that "permanent loss may occur accidentally" at locations other than the transmission tower and Dorsey Station.

Second, the Wetlands Offset Measures Plan does not actually set out *any* offset measures for the permanent wetland losses it identifies. Rather, it simply provides that Manitoba Hydro will make a payment to the Manitoba Government for the loss of wetlands. This is inadequate because:

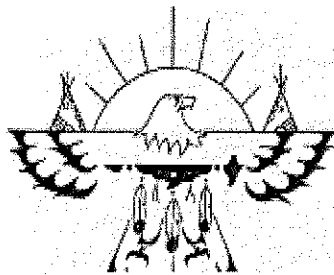
1. **No payment is being made to the First Nation:** Many of transmission towers which are negatively impacting wetlands are within AWZ's traditional territory. In particular, at least a dozen towers creating permanent losses are located in or around Piney, Manitoba. Our First Nation has relied on this area to practice our traditional activities. Further, wetlands are essential for our ongoing ability to exercise our Aboriginal and Treaty rights as they provide habitat for species we look to for sustenance and culture. Moreover, we have stewardship obligations to the land and its inhabitants.
2. **There is no indication that the payment will be used to rehabilitate wetlands:** The Wetland Offset Measures Plan simply states that it will make a payment to the Manitoba Government. There is no plan in place or assurance that the funds will be used to restore the lost wetlands. Moreover, Manitoba Hydro has not explained why making a payment to

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the Manitoba Government is a more effective way of rehabilitating the wetlands than actually undertaking such work.

3. **Payment cannot be made to the Government of Manitoba:** Under the *Water Rights Act*, payments for the permanent loss of wetlands must be made to the Manitoba Habitat Heritage Corporation, not the Manitoba Government directly.

Our preliminary review of these offset plans has determined that we have significant concerns about the draft offset plans. We strongly encourage Manitoba Hydro to engage with our community in a meaningful way to ensure our concerns are effectively addressed.

Sincerely,
Animakee Wa Zhing #37

Chief Jim Major

Councillor Lorraine Major

Councillor Linda McVicar

Councillor Don Kavanaugh

Councillor Deanna Major

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Manitoba Metis Federation Preliminary Comments on the Draft Crown Land and Wetland Offset Measure Plans for the Manitoba-Minnesota Transmission Project (Letter to Manitoba Hydro dated February 14, 2020)



MANITOBA METIS FEDERATION INC.

300 - 150 Henry Avenue, Winnipeg, Manitoba R3B 0J7

Phone: (204) 586-8474 Fax: (204) 947-1816 Website: www.mmf.mb.ca

David Chartrand, LL.D. (Hon)
President

February 14, 2020

VIA E-MAIL

Ms. Jay Grewal
President and CEO
Manitoba Hydro
360 Portage Avenue
Winnipeg, MB R3C 0G8

Dear Ms. Grewal,

**Re: MMF's Significant Concerns with Manitoba Hydro's Draft Plans for MMTP
Certificate Conditions 22 and 26**

On behalf of the Manitoba Metis Federation (the "MMF"), which is the democratically elected self-government representative of the Manitoba Métis Community, I am writing regarding the MMF's significant concerns about Manitoba Hydro's ("Hydro") draft plans for Conditions 22 and 26 (collectively the "**Draft Offset Plans**") of Certificate EC-059 for the Manitoba Minnesota Transmission Project (the "MMTP"). Hydro's Draft Offset Plans are fundamentally deficient and fatally flawed. As further outlined below, Hydro's Draft Offset Plans do not meet the requirements of Conditions 22 or 26 (collectively the "**Conditions**") in at least three ways:

1. There has been no consultation with the MMF regarding the Draft Offset Plans, as required by the plain language of the Conditions;
2. Hydro's calculation of the permanent loss of Crown land available for traditional use is incorrect; and
3. Hydro's proposed "measure" to offset permanent loss of Crown land is unenforceable and does not address 3 of the 7 Condition requirements.¹

The MMF has previously raised these concerns through Hydro's MMTP Indigenous Monitoring Committee to no avail. I am therefore following up with you directly to repeat our request for a meaningful consultation process as required by the plain language of the Conditions. I am

¹ While this letter focuses on Condition 22, the MMF has equal concerns with Hydro's draft plan for Condition 26. The language of Conditions 22 and 26 is nearly identical and there is substantial overlap of the MMF's concerns regarding both draft plans. The focus and citations to Condition 22 in this letter should not be taken as minimizing the MMF's concerns with Hydro's approach and draft plan for Condition 26, which contains many of the same fatal flaws in design, approach, and execution.

copying the Canadian Energy Regulator (the “**CER**” which is the successor to the National Energy Board, or “**NEB**”) so that it is aware of our concerns with the Draft Offset Plans.

In addition, this letter serves to notify the CER that the MMF has concerns regarding Hydro’s request for relief from the timing of Condition 22. As further outlined below, this Condition (among others) was modified by the federal Crown as part of fulfilling its duty to consult and accommodate regarding the Project. It would be inconsistent with the honour of the Crown and the duty to consult to allow the Project to commence operations without the Crown Land Offset Plan in place.

I am copying this letter to the other Indigenous Interveners in the MMTP NEB hearings. These other Indigenous communities are equally entitled to have the Conditions that represent the Crown’s accommodation of impacts of the MMTP on their s. 35 rights, claims, and interests implemented in a way that is enforceable and that does not defeat the purpose of the promised accommodation. Hydro’s attempt to offload the responsibility for fulfilling these Conditions—and the responsibility for implementing Draft Offset Plans—onto Manitoba is, in effect, robbing Peter to pay Paul. It is the Indigenous communities that will bear the burdens and impacts of the Project on our s. 35 rights. Why should the Crown reap the benefits? Particularly where, as further outlined below, we have no assurances or means to enforce these promises. The remainder of this letter sets out the above concerns in further detail.

1. Hydro Has Not Consulted with the MMF

To date, the MMF has not been engaged in the development of the Draft Offset Plans in any way. Moreover, public notice and pan-Indigenous engagement processes are entirely insufficient to fulfill the plain language of the Conditions² and their broader constitutional purpose.

As the MMF has outlined in previous correspondence,³ Conditions 22 and 26, among others, play a critical role in discharging the Crown’s duty to consult and accommodate for impacts of the Project on Métis rights.⁴ Hydro has ignored the purpose and constitutional significance of these Conditions in discharging the Crown’s duty. Instead of implementing a meaningful consultation process, Hydro is continuing its misguided, pan-Indigenous approach that has been repeatedly recognized as superficial and outdated.⁵

The failure of Hydro’s flawed engagement approach is obvious in the Draft Offset Plans themselves. The Plans do not include “an explanation of the expected effectiveness of each offset

² Condition 22(f): “The Plan must include: . . . a summary of consultation by Manitoba Hydro with any impacted Indigenous communities and with relevant provincial and federal authorities regarding the Plan.”

³ Letter from MMF to CER (5 December 2019) ([C03468-1](#)); letter from MMF to CER (23 October 2019) ([C02373-1](#)); letter from MMF to NEB (5 September 2019) ([C01479-1](#)); letter from MMF to NEB (16 August 2019) ([C01061-1](#)); Letter from MMF to Manitoba Hydro (8 August 2019) ([C00907-1](#)); letter from MMF to NEB (23 July 2019) ([C00653-1](#)).

⁴ Following the conclusion of the NEB hearings for the Project, Canada undertook additional Crown Consultation with Indigenous communities, including the MMF, related to the Project. In response to concerns raised by the MMF, among others, Canada modified five Conditions proposed by the Board—including specifically Conditions 22 and 26—“to fulfill the duty to consult . . . [and] further address impacts to section 35 rights.” Government of Canada, Major Projects Management Office, MMTP, online at: <https://mpmo.gc.ca/measures/308>

⁵ See, for example, the Clean Environment Commission, *Report on Public Hearing: Bipole III Transmission Project* (June 2013), online (PDF): http://www.cccmanitoba.ca/cccm/archive/pubs/commission%20reports/final%20web%20bipole%20iii%20transmission%20project_web1.pdf.

measure described . . . **for each Indigenous community**” as required by the clear language of Conditions.⁶ Canada specifically added the requirement to consider whether the Draft Offset Plans were effective **for each Indigenous community** because accommodating these impacts for each community is what is required to fulfill its duty to consult and accommodate.

In order to meet this requirement, Hydro must consult with each Indigenous community and consider/outline how the Draft Offset Plans address their distinct traditional uses and loss of Crown lands related to the same. For example, a plan that might effectively offset loss of Crown lands for timber harvesting by one Indigenous community does nothing to offset loss of Crown land for gathering aquatic plants or fishing to another Indigenous community. The CER is ultimately charged with ensuring that the Conditions are implemented in a manner that upholds the honour of the Crown, including the duty to consult and accommodate. Hydro’s lack of consultation not only does not meet the plain language of the Conditions, but it also does not provide the CER any information on which to determine that the duty—owed to each Indigenous community—is being fulfilled through the Draft Offset Plans. A robust consultation process with the MMF is required and should begin immediately.

2. Hydro’s Calculation of Permanent Loss of Crown Land is Incorrect

The MMF strongly objects to Hydro’s impoverished and incorrect calculation that only 24.1 hectares of Crown lands available for traditional use by the Manitoba Métis Community will be permanently lost because of the MMTP. It defies logic for Hydro to assume that the CER did not consider Hydro’s own plans and the evidence put forward by Indigenous Intervenors in adopting the Condition language and for Hydro to now assert that only the transmission tower footprints constitute “permanent loss.”

The MMF Study—that is on the record before the NEB—outlines the Crown lands that will be converted by the MMTP from unoccupied lands (lands available to harvesting and traditional uses by the Manitoba Métis Community) to occupied lands (lands effectively lost to harvesting and traditional use) are significantly greater than 24.1 hectares.⁷ This evidence was considered by the NEB, and the Crown, in drafting the Conditions. The text of the Conditions on its face acknowledge that the permanent loss of Crown lands is broader than merely the transmission tower footprints.⁸ Moreover, Hydro’s argument that only “very small” amounts of Crown land would be permanently lost was already expressly rejected by the NEB.⁹ In light of this, Hydro’s calculation does not withstand scrutiny and must be revised.

⁶ Condition 22(c), emphasis added.

⁷ Calliou Group and MMF, *Metis Land Use and Occupancy Study: Assessment of Potential Effects Prior to Mitigation* (December 2016) ([A91072-20](#), [A91072-21](#), [A91072-22](#), [A91072-23](#), [A91072-24](#), [A91072-25](#)).

⁸ Condition 22 (a): “The Plan must include: a) a description of site-specific details and maps showing the locations where Crown land is no longer available for traditional use **as a result of Project activities at Dorsey Converter Station** and the transmission tower locations, **as well as any other locations**” (emphasis added).

⁹ The NEB Reasons for Decision on MMTP (November 2018) ([A95736-1](#)) states: “The proponent argued that the loss of Crown land associated with the proposed Project was very small in comparison with the total acreage of land available to the provincial Crown and that the land was still available for traditional use. . . . The Board would find the proponent’s argument more compelling were the Project located in an area of the province in which Crown land is abundant and the loss of Crown land relative to that abundance was small” (page 4).

3. Hydro's Proposed "Offset" Measure is Unenforceable and Does Not Address 3 of the 7 Condition Requirements

The MMF also has significant concerns regarding the unenforceable and unimplementable nature of Hydro's proposed measure to "address the permanent loss of crown lands."¹⁰ Hydro's proposal is to "provid[e] funding to the Province of Manitoba or designated agency for the purchase of offset land in Manitoba."¹¹ While Hydro has stated that in order to meet "the spirit" of the federal condition, its "intention is for the acquired land to be designed by the Province of Manitoba as protected Crown land and for the land to be made available to Indigenous Peoples for traditional use"¹² the MMF—and the CER—have no guarantees that this will be the case. Neither Hydro nor Manitoba have provided any assurances that lands meeting the criteria and needs of each impacted Indigenous community can actually be identified,¹³ will be set aside, or when this will take place. This approach ignores that Hydro must meet the actual terms and requirements of the Condition and not only its "spirit and intent."

Hydro's Draft Offset Plans also do not include any information related to 3 of the 7 mandatory elements required by the Conditions:

- "an explanation of the expected effectiveness of each offset measure";
- "the decision making criteria for selecting specific offset measures that would be used and under what circumstances"; and
- "a schedule indicating when measures will be implemented and the estimated completion date(s)."¹⁴

Indeed, Hydro cannot include this information because despite its "intent," Hydro, as a Crown Corporation, cannot bind the Crown.

In fact, the MMF's experience has demonstrated that if anything, Manitoba is willing to take unprecedented—and illegal—action to prevent even legally-binding accommodation agreements that Hydro reaches with an Indigenous community from being fulfilled.¹⁵ All of the Indigenous communities impacted by MMTP and with a stake in the honourable implementation of these Conditions and Draft Offset Plans should be concerned with any proposals that hinge on Manitoba honouring its promises or Hydro's commitments.

¹⁰ Condition 22(b): "The Plan must include: . . . b) a list of the offset of compensation measures that will be implemented to address the permanent loss of crown lands identified in a) above."

¹¹ Manitoba Hydro, MMTP Draft Crown Land Offset Measures Plan (November 2019), section 4.4, online ([PDF](https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/crown_land_offset_measures_plan_draft.pdf)): https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/crown_land_offset_measures_plan_draft.pdf.

¹² Manitoba Hydro, MMTP Draft Crown Land Offset Measures Plan, November 2019, section 4.4.

¹³ The MMF is significantly concerned that Hydro's proposed plan ignores the findings of the NEB that: "the Project is located in an area of the province in which Crown land of the type and quality sufficient to be considered in future negotiations is in relatively short supply" (NEB Reasons for Decision on MMTP, page 4). This was said specifically in response to the MMF's concerns regarding future negotiations with Canada about land.

¹⁴ Condition 22 (c), (d), (e).

¹⁵ *Manitoba Metis Federation v Brian Pallister, Premier of Manitoba, Cliff Cullen, Minister of Crown Services, The Executive Council for the Government of Manitoba, the Government of Manitoba, the Manitoba Hydro-Electric Board* (MBQB Court File No. CI18-01-14927).

Proposed Way Forward

The MMF repeats its request for a meaningful process of consultation with Hydro regarding the Draft Offset Plans.¹⁶ Given the significance of our concerns and the constitutional importance of these Conditions for discharging the Crown's duty to consult and accommodate owing to the Manitoba Métis Community, one meeting will clearly not be sufficient. A robust consultation process is required, including sufficient capacity for the MMF to participate in meetings with Hydro and engage experts and other advisors to assist us in reviewing and providing comments on the Draft Offset Plans.¹⁷ This should begin immediately. In light of the Conditions clear timing requirements it would not be in Hydro, or the MMF's, interests for Hydro to delay beginning a meaningful consultation process until the eleventh hour.

As previously expressed, the MMF will be engaging in any consultation process on the basis that the MMF already has a negotiated and legally binding accommodation agreement with Hydro (the July 2017 Agreement). Honouring the July 2017 Agreement is a commitment in the MMTP license.¹⁸ The MMF is confident that Hydro will someday have to honour the bargain made with MMF in July 2017. With that said, the MMF recognizes that it has an obligation to mitigate adverse effects and impacts, so we will be engaging in the development of the Draft Offset Plans towards that end.¹⁹

We hope to hear from you as soon as possible. Please have your staff be in touch with Marci Riel, MMF Senior Director of Energy and Infrastructure, at 204 586 8474 ext. 263 or via email to marci.riel@mmf.mb.ca, to discuss putting in place a meaningful consultation process regarding the Draft Offset Plans and the MMF's concerns.

Meeqwetch,



David Chartrand, LL.D. (hons), O.M.

cc MMF Cabinet
Marci Riel, MMF Senior Director of Energy and Infrastructure
Sebastian Labelle, Director General, Natural Resources Canada
L. George, Secretary of the Commission, Canadian Energy Regulator
List of MMTP Indigenous Interveners

¹⁶ Email from Marci Riel, MMF Energy and Infrastructure Director to Sarah Coughlin, Manitoba Hydro re MMTP Draft Offset Plans (17 December 2019).

¹⁷ As you are aware, Manitoba has unlawfully terminated the Turning the Page Agreement ("TPA") and Hydro has subsequently ceased to make any payments for the Hydro Liaison Officer position that was included in the TPA. Hydro cannot expect the MMF to self-fund work that is a licencing requirement of its Certificate.

¹⁸ Letter from MMF to CER (5 December 2019) ([C03468-1](#)); letter from MMF to CER (23 October 2019) ([C02373-1](#)); letter from MMF to NEB (5 September 2019) ([C01479-1](#)); letter from MMF to NEB (16 August 2019) ([C01061-1](#)); Letter from MMF to Manitoba Hydro (8 August 2019) ([C00907-1](#)); letter from MMF to NEB (23 July 2019) ([C00653-1](#))

¹⁹ The MMF recognizes that should a "compensation measure" of the final Conditions 22 and 26 offset plans include financial compensation to the MMF on behalf of the Manitoba Métis Community that, upon payment, any amounts coming to the MMF from this plan would be deducted from the roughly \$67.5M owing to the MMF based on the July 2017 Agreement.

Manitoba Hydro's March 11th letter to the Manitoba Metis Federation

2020 03 11

David Chartrand
President
Manitoba Metis Federation Inc.
300 - 150 Henry Avenue
Winnipeg MB R3B 0J7

Dear President Chartrand:

RE: MMTP CERTIFICATE CONDITIONS 22 AND 26

Thank you for your letter of February 14, 2020 providing comments on Manitoba Hydro's draft plans for Conditions 22 and 26 of CER Certificate EC-059 (the "Draft Plans") and its consultations with respect to the Draft Plans.

Manitoba Hydro (MH) respectfully disagrees with the Manitoba Metis Federation's (MMF's) view that MH has not consulted with the MMF regarding the Draft Plans. MH continues to engage with Indigenous communities regarding Manitoba Minnesota Transmission Project (MMTP) using the processes that were outlined before the former National Energy Board ("Board") in the MMTP proceeding. The Board concluded that MH's engagement processes were appropriate and noted that it was encouraged by the creation of an MMTP Monitoring Committee.¹ These processes include not only what you have referenced as a "pan-Indigenous" approach (through the MMTP Monitoring Committee) but engagement at the individual community level as well. MH also offers capacity funding for its engagement processes. However, as MH has previously indicated to the MMF, in accordance with MH's policies, before funding can be provided to a community, a scope of activities and budget must be submitted to support the request. MH again invites the MMF to submit this documentation as MH does wish to hear from the MMF about the Draft Plans. If you wish more details on the funding available, please contact Sarah Coughlin at (204)360-3016.

Regarding the content of the Draft Plans, MH wishes to note that Condition 22 requiring the creation of a Crown Land Offset Measures Plan is the first Canadian regulatory condition of this kind. With no precedents to guide this undertaking, the creation of a Draft Plan has been challenging. MH is open to receiving suggestions for revising its Draft Plan, including its method for calculating permanent loss of Crown lands available for traditional use by Indigenous Peoples resulting from the Project. The comments provided in your letter will be

¹ [A95736-1](#) NEB-Reasons for Decision Manitoba Hydro EH-001-2017, November 2018, p.82.

considered when revising the Draft Plan. Feedback is also welcomed on the Draft Plan for Condition 26 regarding offsetting the permanent loss of wetlands. Our plans are indeed drafts and we look forward to receiving further feedback to inform updated versions of each plan.

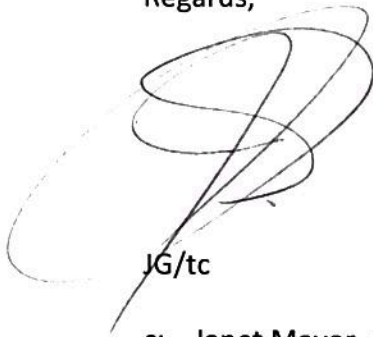
MH also understands the MMF's concerns regarding assurances that lands will indeed be protected for traditional use by Indigenous Peoples. While it may not have been evident from the wording of the Draft Plan, MH's intention is to develop a plan that is legally enforceable. We are updating our Draft Plan to include a more thorough description of the land securement process. There are many options for offsetting and various viewpoints across all 21 Indigenous communities with whom MH is engaging regarding the Project. We appreciate any feedback the MMF wants to provide regarding their perspective.

With respect to the MMF's contentions regarding the July 2017 draft document, MH's position that the document is not a legally enforceable agreement has been made clear to the MMF and the Board on a number of occasions and there is nothing served by reiterating a dispute that is currently before the courts.

MH has been and remains willing to provide funds to the MMF to review the Draft Plans. I have asked the appropriate staff to continue to reach out to Marci Riel to discuss engagement regarding the Draft Plans and the MMF's concerns. We hope the MMF will engage with MH on these plans.

Thank you again for sharing your perspectives and concerns with me.

Regards,

A handwritten signature in black ink, appearing to be 'JG/tc', written over a light blue circular stamp or watermark.

c: Janet Mayor, Legal Counsel, Manitoba Hydro
Marci Riel, Senior Director of Energy and Infrastructure, Manitoba Metis Federation Inc.
Sebastien Labelle, Director General, Natural Resources Canada
L. George, Secretary of the Commission, Canadian Energy Regulator
List of MMTP Indigenous Interveners

Manitoba Hydro's March 16th email to the Manitoba Metis Federation

From: [Coughlin, Sarah](#)
To: [Marci Riel](#)
Subject: RE: MMTP Draft Offset Plans
Date: March 16, 2020 1:29:00 PM
Attachments: [2020 03 11 Letter J Grewal to President D Chartrand RE MMTP Certificate Conditions 22 and 26.pdf](#)
[image001.png](#)

Hi Marci,

Further to the letter Manitoba Hydro sent a letter to President Chartrand on March 11, 2020 (see attached), I'd like to follow up regarding the MMF's request for funding to support a review of the draft plans for Conditions 22 and 26.

As I noted in my email to you on December 19, 2019, Manitoba Hydro is generally supportive of proposals that include engagement of community members; however, we require a breakdown of budget details such as:

- An estimate of Honorariums for the individuals who attend the meeting. We will require receipts acknowledging their payment.
- Travel – mileage is reimbursed at a rate of \$0.50 per km for each vehicle utilized. Reimbursement rate is per vehicle and not per person.
- Food costs (for example, lunch may be reimbursed at a rate of up to \$18.15 per person)
- Meeting Room/Facility Costs – will be reimbursed as per the proposal with itemized invoice provided
- Legal/consultant costs – please provide an estimate of number of hours per task and rate per hour.

If you can send me the workplan/budget that the MMF is proposing for its review of the draft plans for Conditions 22 and 26, we will review as quickly as possible and get back to the MMF with any questions or concerns.

Thank you and please don't hesitate to contact me with any questions.

Sarah Coughlin
Senior Environmental Specialist
Licensing & Environmental Assessment
Transmission, Manitoba Hydro
360 Portage Ave, Winnipeg, MB
w (204) 360-3016
c (204) 918-9848
scoughlin@hydro.mb.ca

From: Coughlin, Sarah
Sent: Thursday, December 19, 2019 9:50 AM

To: 'Marci Riel'

Cc: Al Benoit; Jasmine Langhan

Subject: RE: MMTP Draft Offset Plans

Thank you for your response Marci.

Manitoba Hydro is working to fulfill Conditions 22 and 26 as required by NEB Certificate EC-059 for the Manitoba-Minnesota Transmission Project (MMTP). Manitoba Hydro developed draft plans for meeting these conditions and circulated those drafts in an email sent November 26th, 2019 to the MMF, as well as others, asking for review and comments. In your December 17, 2019 emailed response, you already expressed a general reservation that the draft plan is not what the MMTP license commitment requires. Manitoba Hydro would like to understand your concerns more specifically and in greater detail. If possible, receiving written feedback, including details regarding your current reservations on both draft plans by January 17, 2020 would be very helpful. However, if more time is required, please let us know.

At the December 16, 2019 MMTP Monitoring meeting, which the MMF attended, Manitoba Hydro offered to meet with leadership of each of the Nations involved, including the MMF, to discuss and receive feedback on the draft plans. We also indicated that Manitoba Hydro is supportive of a meeting in the community, hopefully with member participation. To facilitate review of the draft plans, Manitoba Hydro offered to provide an honorarium to those individuals who are reviewing and providing feedback on the drafts on behalf of their communities.

If there was any doubt, Manitoba Hydro confirms its intention that the above offer extends to the MMF. We are hopeful such a meeting can be arranged.

In your December 17, 2019 response you indicated that the MMF would need to engage external consultants in its review of the draft plans and in developing a mutually agreeable engagement process. You also indicated that: you would need to involve legal counsel in your discussions with Manitoba Hydro; that the MMF would require funds for this work; and that the MMF wishes to scope out "a mutually agreeable process and budget for engagement on the draft plan".

Manitoba Hydro is unclear on the scope of this proposed work and what the role of external consultants and legal representatives would be. Prior to engaging in a phone call, it would be helpful if the MMF could provide further detail outlining the scope of the activities the MMF is proposing and provide a detailed budget for the proposed work. This will assist us to understand the activities the MMF wishes to undertake in reviewing and providing feedback on the draft plans and allow Manitoba Hydro to provide timely feedback.

We note in your email that you raised other issues that we feel we should respond to.

- The request we have made for your review and comment on the draft plans relates to fulfilling MMTP Certificate conditions. It is unrelated to the 2017 Major Agreed Points document in any way.
- Manitoba Hydro's position, that the 2017 Major Agreed Points document is a without

prejudice, non-binding proposal, remains unchanged. Contrary to your suggestion, the 2017 Major Agreed Points document is not a legally binding accommodation agreement and the MMF should not proceed on the basis that the Major Agreed Points document has any binding force or effect.

Thank you for the notification of the letter planned for the NEB. We request a copy of the letter when available.

Sarah

Sarah Coughlin

Senior Environmental Specialist
Licensing & Environmental Assessment

Transmission, Manitoba Hydro

360 Portage Ave, Winnipeg, MB

w (204) 360-3016

c (204) 918-9848

scoughlin@hydro.mb.ca

From: Marci Riel <marci.riel@mmf.mb.ca>
Sent: Tuesday, December 17, 2019 12:59 PM
To: Coughlin, Sarah <scoughlin@hydro.mb.ca>
Cc: Al Benoit; [Jasmine Langhan](#)
Subject: MMTP Draft Offset Plans

BE CAUTIOUS WITH THIS EMAIL: This message originated outside Manitoba Hydro. Verify all links and attachments from unknown senders before opening. Search 'email security' on mpower for details.

Sarah,

The MMF has significant concerns about the draft plan. As you know, the MMF has not been engaged in the development of this plan in any way whatsoever. Moreover, the plan, as drafted, does not take into account the MMF's unique land use issues as documented in our study or the significance of these lands to the Manitoba Métis Community, within the heart of the Métis Nation's Homeland. It is far from what the MMTP license commitment requires.

We are currently reviewing the plan, and, are engaging external consultants in this review. A first step for us will be developing a mutually agreeable engagement process on the plan with Hydro, including financial supports to the MMF to allow for meaningful engagement. As you know, Manitoba has unlawfully cancelled the Turning the Page Agreement (TPA), so the MMF no longer has a Hydro Liaison Officer position. Hydro cannot expect the MMF to self-fund this work, which is a requirement of its MMTP license. Hydro has no meaningful or supported relationship with the MMF

at this time to even engage on this plan and has provided no financial support to the MMF to undertake a review of this draft plan in a meaningful way.

Moreover, one mere meeting will not be sufficient given the significance of this plan to accommodating Aboriginal rights and interests in relation to the MMTP. Hydro has a long and well-documented history of inadequate and superficial engagement of Aboriginal communities (i.e., the final report of the Clean Environment Commission on Bipole III, the NEB's review of the MMTP project). We hope this will not be yet another one of those hollow and meaningless processes. We will be providing this email to the National Energy Board (NEB) because we are concerned Hydro will simply file its plan without any serious or meaningful engagement of impacted Aboriginal communities, including the MMF.

We should first schedule a call to scope out a mutually agreeable process and budget for engagement on the draft plan. We are available to have a call this week to discuss a workplan and budget. The call will include MMF staff as well as legal counsel. We expect that Hydro will cover the costs associated with this initial call. We should then look to scheduling a face to face meeting in the new year when the MMF offices re-opens.

Finally, the MMF is will be engaging in the process on the basis that the MMF already has a negotiated and legal binding accommodation agreement with Hydro (the July 2017 Agreement). Honouring the July 2017 Agreement is a commitment in the MMTP license. The MMF is confident that Hydro will someday have to honour the bargain made with MMF in July 2017, whether that be by virtue of Hydro acting honourably, the NEB and/or Canada holding Hydro to account or the courts upholding the MMTP's licence commitments and/or the July 2017 Agreement. As you know, issues with respect to the MMF-Hydro July 2017 Agreement are currently before the courts based on Manitoba's unlawful and unconstitutional March 21, 2018 Directive.

With that said, the MMF recognizes that it has an obligation to mitigate, so we will be engaging in the development of the plan, recognizing that any amounts coming to the MMF from this plan would be deducted from the roughly \$67.5M owing to the MMF based on the July 2017 Agreement.

We look forward to hearing from you.

Marci Riel



Marci Riel
Director, Energy and Infrastructure
Manitoba Metis Federation

Manitoba Metis Federation Preliminary Comments on the Draft Crown Land and Wetland Offset Measure Plans for the Manitoba-Minnesota Transmission Project (Letter to Manitoba Hydro dated August 18, 2020)

August 18, 2020

Marci Riel
Senior Director
Energy, Infrastructure and Resource Management
Manitoba Metis Federation
150 Henry Ave
Winnipeg, MB R3B 0J7

RE: Preliminary Comments on Manitoba Hydro's Manitoba-Minnesota Transmission Project Draft Wetland Offset Measures Plan and Draft No Net Loss of Wetlands Plan for Condition 26 of Certificate EC-059

Dear Ms. Riel,

As per our Engagement Letter, please accept this initial review and preliminary comments on the Manitoba-Minnesota Transmission Project ("MMTP") draft Wetland Offset Measures Plan ("dWOMP") and draft No Net Loss of Wetlands Plan ("dNNLWP") (collectively the "Plans") prepared by Manitoba Hydro for Condition 26 of Certificate EC-059 ("Certificate"). Please find below an overview of central comments as well as a detailed table in Appendix A.

The Certificate was issued to Manitoba Hydro subject to twenty-eight conditions. After the National Energy Board ("NEB") completed its hearing process and report for the MMTP, Canada engaged in supplemental consultation with Indigenous communities, including the Manitoba Metis Federation ("MMF") on behalf of the Manitoba Metis Community, regarding outstanding concerns and unaddressed impacts of the MMTP on their section 35 Aboriginal and treaty rights. As a result of this supplemental consultation, the federal Crown modified five conditions of the Certificate, including Condition 26 to specifically address outstanding impacts on the section 35 rights of Indigenous communities who participated in the NEB (now Canada Energy Regulator or "CER") and supplemental Crown consultation processes. Condition 26 states:

Manitoba Hydro must file with the Board for approval, within ninety (90) days of commencing operation of the Project, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*
- b) an explanation of how wetland function will be measured during the postconstruction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*
- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*

- h) *this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

A draft of the Plans was provided by Manitoba Hydro to the Indigenous Monitoring Committee in November 2019.

The Plans **have not** been updated since November 2019. They have not been updated to address the MMF's concerns outlined in its February 14, 2020 letter. We are of the understanding that the Plans will be submitted without any additional consultation with the MMF, which is inappropriate, will result in deficient plans that do not fulfill the provisions of the Condition and place the Honour of the Crown in jeopardy.

Concerningly, there is very little detail on what will be included in the final Plans and no specifics on the consultation undertaken to date. The main takeaway from the document was that Manitoba Hydro considers only the tower foundations as places where wetland will be permanently lost. The Plans contain no evidence on which to base this conclusion. There is no discussion of whether the wetlands impacted during construction of the tower foundations will be monitored post construction to ensure that construction activities have not permanently altered their function. Indeed, there is no discussion of monitoring throughout.

Overall the Plans are incomplete and do not meet the requirements of Condition 26. There is no way to assess whether the evidence and consultation summary will be adequate – as it is not available; or whether the MMF's issues and concerns will be addressed, as the Plans are incomplete. However, based on the draft final Crown Land Offset Measures Plan prepared by Manitoba Hydro for Condition 22, it can be assumed that should a similar approach be undertaken, the Plans will include a deficient consultation process.

Metis-specific interest of importance must be considered in the development of the Plans and were articulated within the Metis Land Use and Occupancy Study – Assessment of Potential Effects Prior to Mitigation, Manitoba-Minnesota Transmission Project (2016). Specifically, wetlands are an important area for Metis harvesting, sites of cultural importance, and are directly tied to Metis cultural identity. Among other important traditional uses, wetlands are used in the teaching and transmission of harvesting skills to the next generation and ongoing vegetation management at the tower foundations is of concern for ongoing wetland function.

Wetlands are home to culturally critical species that are harvested by Metis citizens and which may be altered by the construction and operation of the Project. These species information should be cross referenced with existing Traditional Land Use data to identified species and locations of importance in consultation with the MMF. These results must then be incorporated into the Plans.

Change in wetland function also has the potential to impact harvesting activities and experience. A Participant in the Metis Land Use and Occupancy Study, Assessment of Potential Effects Prior to Mitigation, Manitoba Minnesota Transmission Project (2016) noted that "...once you clear it out and you compact it with all the big machines, you're compacting the ground; it takes forever for the vegetation to grow up through it again." This and other evidence must be considered and incorporated into the Plans if it is to be an effective offset measure for the Manitoba Metis Community.

We hope that the issues presented in this letter and below Appendix A will facilitate discussion with Manitoba Hydro and allow for development of the Plans that ensure the Manitoba Metis Community issues and concerns, as listed in Appendix A, are addressed. These comments are provided in addition to those from the MMF's February 14, 2020 letter (rather than repeating those concerns, Manitoba Hydro is directed to that letter).

Sincerely,

Tracy Campbell

MNP Consulting, Indigenous Services

P: 403.539.6257

C: 403.796.3899

E: tracy.campbell@mnp.ca

APPENDIX A

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Comment
1.	4.0 Wetland offset measures 4.1 Defining wetlands Page 4	<p>“Wetland descriptions, classification and mapping are described in Chapter 10 of MMTP Environmental Impact Statement. Digitally mapped wetland polygons and classifications were refined based on available imagery including the Land Cover Classification Imagery, Forest Resource Inventory database, the Agriculture and Agri-Food Radar imagery, and in-field data gathered while preparing the MMTP Environmental Impact Statement. This analysis was used to identify environmentally sensitive wetland sites for the MMTP Construction Environmental Protection Plan. Wetland types defined under this dataset include: mineral wetland marsh, peatland fen, mineral wetland swamp and peatland bog. This dataset was used to calculate wetland type and area (ha) for this plan.”</p>	<p>This section does not contain the necessary details required by Condition 26. Condition 26 requires a description of site-specific details (and maps) of permanent wetland loss as a result of Project activities. This is not described and not mapped.</p> <p>There are maps available in the appendices which indicate where tower locations intersect wetlands but there is no connection between this information and where there will be permanent wetland loss as a result of Project activities following avoidance measures.</p> <p>Further, no site-specific details are provided of the wetlands potentially lost including downstream drainage, peak flow following rainfall, water flow, sediment loading anticipated, nitrogen and phosphors load anticipated, and waterfowl production.</p>
2.	4.0 Wetland offset measures 4.2 How wetland function will be measured Page 4 – Page 5	<p>“To meet the requirements of NEB EC-059 Condition 26 b) wetland function will be measured during the post-construction monitoring program as outlined in Section 4.4.1 and Section 7.2.1 of the MMTP Environmental Monitoring Plan. To validate environmental impact statement predictions, verify implementation of mitigation measures, and to allow for adaptive management, pre-construction, construction and post-construction monitoring will identify any changes to wetland area affected (ha), and species composition and abundance. This monitoring program will be conducted by a wetland specialist for two years post-construction. Any resulting accidental permanent loss to wetlands will be quantified and reported</p>	<p>Condition 26 indicates that the plan must include and explanation of how wetland function will be measured during the post-construction monitoring program. This cannot be deferred to post-construction monitoring and must be provided as part of this plan.</p> <p>In addition, there has been no discussion with the MMF about its involvement in monitoring or co-management measures aimed to ensure that any damage or loss of wetlands is appropriately mitigated.</p>

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Comment
		annually to the Board as per the MMTP Environmental Monitoring Plan.”	
3.	<p>4.3 Achieving not net loss of wetlands</p> <p>Table 1. List of Offset of Mitigation Measures that will be Implemented to Address Permanent Loss of Wetlands</p> <p>Page 6</p>	<p>“Mitigation measures to be Implemented include (but are not limited to) to following:</p> <p>Offsets:</p> <ul style="list-style-type: none"> • Measure permanent wetland loss • Calculate wetland loss compensation • Monetary compensation provided to the Province of Manitoba, or designated agency, at a ratio of 3:1 with a valuation of \$14,820 per hectare to restore or enhance wetlands in Manitoba” <p>“Explanation of expected effectiveness and the relative value of each mitigation/offset measure towards achieving the objective of no net loss of wetlands:</p> <p>Offsets:</p> <p>This offset measure is expected to be effective. Rationale: Monetary compensation as a wetland offset as dictated under the Province of Manitoba’s <i>The Water Rights Act</i> and Water Rights Regulation has been deemed an effective measure by government regulators.”</p>	<p>The MMF previously outlined extensive concerns with an offset measure plan that effectively provides the full benefit to the provincial Crown while Indigenous communities continue to bear the burdens and impacts of loss of wetlands to traditional practices (see MMF February 14, 2020 letter and also MMF’s comments on the draft final Crown Land Offset Measures Plan). These concerns have not been resolved or addressed by Manitoba Hydro.</p> <p>It is interesting to note that monetary compensation is identified as an effective mitigation measure to address the permanent loss of wetland when the financial compensation is being provided to the Crown but was dismissed as an option in the draft final Crown Land Offset Measures Plan as “...compensation ... is viewed as a way for proponents to purchase a license to damage the environment.”</p> <p>We agree that monetary compensation is an effective mitigation measure and would encourage Manitoba Hydro to apply this metric consistently to offset measures proposed, including the Crown Land Offset Measures Plan.</p>
4.	<p>4.4 Measuring permanent wetland loss</p> <p>Page 7</p>	<p>“Of the 503 new tower structures required for the Project, 54 are located in wetlands (Table 2, Map 1). To calculate wetland loss, the dimensions of each tower foundation in a wetland were determined. On average, the foundations of self supporting tower structures resulted in 27.45 m2 of wetland loss, and foundations for guyed tower structures resulted in an average of 36.4 m2 of wetland loss. A visual representation can be</p>	<p>How will Manitoba Hydro propose to monitor wetland function post construction to ensure that wetlands disturbed during construction of the towers (assumed to be a greater area than the tower footprint itself) will be restore to previous function and not contribute to the permanent loss of wetland?</p> <p>In addition, the assumption that because “wetland function can continue to occur under a tower” does not necessarily mean that harvesting or other uses of wetlands will not be loss to Indigenous communities beyond the tower structure</p>

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Comment
		found in Appendix D. Wetland loss was calculated using the understanding that wetland function can continue to occur under a tower, but not where foundations are installed. Total wetland loss from all 54 tower structures foundations is 0.186 hectares.”	foundations. Condition 26 was modified by the federal Crown during its supplemental Crown consultation undertaken on the project and as part of fulfilling the duty to consult and accommodate. The area of wetlands loss must include the area of wetlands loss to Indigenous communities as a result of the project.
5.	5.1 Indigenous Engagement 5.1.1 Method of Engagement Page 8 and Page 9	<p>“Manitoba Hydro plans to engage with Indigenous communities as indicated in Condition 26 g) with interest in reviewing this draft plan...”</p> <p>“Manitoba Hydro will share feedback received from Indigenous communities with the Provincial and Federal Authorities. Comments and concerns shared through the engagement process will be tabulated and included in an appendix of this draft plan.”</p>	<p>This section of the Plan is forward looking whereas the Condition indicates that the plan must include evidence and summary of consultations with any impacted Indigenous communities regarding the plan. There is no information included on the existing concerns of the MMF which were provided to Manitoba Hydro in MMF’s letter dated February 14, 2020 which indicated that “While this letter focuses on Condition 22, the MMF has equal concerns with Hydro’s draft plan for Condition 26. The language of Condition 22 and Condition 26 is nearly identical and there is substantial overlap of the MMF’s concerns regarding both draft plans. The focus and citations to Condition 22 in this letter should not be taken as minimizing the MMF’s concerns with Hydro’s approach and draft plans for Condition 26, which contains many of the same fatal flaws in design, approach and execution.”</p> <p>This includes issues related to limited consultation on the draft offset plans to date. As a way forward, MMF has requested a meaningful process moving forward with sufficient capacity for MMF to be involved. Capacity to undertake a review of the Plans was not provided to the MMF until July 31, 2020 and in the intervening period there was no consultation or discussion about the MMF’s outstanding concerns regarding the Plans (as is evidenced by the fact that the Plans remain unchanged since November 2019).</p>
6.	5.1 Indigenous Engagement 5.1.3 Next Steps Page 9	“All comments and concerns are received by January 17th, 2020 will be included in the table described above, and a final plan will be sent back out to all participants in the First Nation and Metis Engagement Process (which includes the MMTP monitoring committee).”	When can the MMF expect a final plan as referenced, particularly as the Plan must be filed with the Board for approval within 90 days of commencing operation of the Project?
7.	6.0 Summary Page 10	“This process demonstrates Manitoba Hydro’s commitment towards the goal of no net loss of wetlands for the Project.”	Please articulate why ‘no net loss’ was selected rather than ‘net gain’ for wetland; particularly as wetland loss is a serious issue in Manitoba that is at the forefront for many environmental organizations (e.g., Ducks Unlimited Canada).

Manitoba Metis Federation Preliminary Comments on the Draft Crown Land and Wetland Offset Measure Plans for the Manitoba-Minnesota Transmission Project (Letter to Manitoba Hydro dated August 24, 2020)

August 24, 2020

Manitoba Metis Federation
150 Henry Ave
Winnipeg, MB R3B 0J7

RE: Comments on Manitoba Hydro's Manitoba-Minnesota Transmission Project Draft Wetland Offset Measures Plan and Draft No Net Loss of Wetlands Plan for Condition 26 of Certificate EC-059

Dear Manitoba Metis Federation,

As per our Engagement Letter, please accept this initial review and comments on the Manitoba-Minnesota Transmission Project ("MMTP") draft Wetland Offset Measures Plan ("dWOMP") and draft No Net Loss of Wetlands Plan ("dNNLWP") (collectively the "Plans") prepared by Manitoba Hydro for Condition 26 of Certificate EC-059 ("Certificate").

Condition 26 states:

Manitoba Hydro must file with the Board for approval, within ninety (90) days of commencing operation of the Project, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;
- b) an explanation of how wetland function will be measured during the postconstruction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;
- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;
- f) a schedule indicating when measures will be implemented and estimated completion date(s);
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.

Please find below an overview of central comments on the Plans as well as a detailed table listing specific concerns and comments in Appendix A.

BACKGROUND

The MMTP is a 213 km-long, 500 kV, international power line; originating at the Dorsey Converter Station located near Rosser, northwest of Winnipeg, it travels south around the city and then east towards Anola, where it continues south-southeast to the Manitoba-Minnesota border, near Piney. The Manitoba Metis Federation (“MMF”) has made clear the importance of this place to the Metis:

For the Manitoba Metis Federation (“MMF”), as the democratic self-government representative of the Manitoba Métis Community (the “Métis”), this is no ordinary transmission line. The Project dissects the heart and soul of its traditional territory, known as the Métis Homeland. The valleys of the Red and Assiniboine Rivers and the lands stretching from Winnipeg to the American border is where the Métis—as a distinct Indigenous people—were born. It is their *place*.

This *place* is home to their origin story, traditional lands, unique language, culture, and way of life. It is where they originally forged their nation-to-nation relationship with Canada in 1870, which brought the province of Manitoba into confederation and created one of the enduring constitutional compacts this country is built on. This *place* is irreplaceable for the Manitoba Métis Community.

In this *place*, the Métis should presently own over 1.4 million acres of land flowing from the “head start” they were promised in relation to the lands in the original ‘postage stamp’ province of Manitoba. This was the intent of the constitutional compact reached between Canada and the Manitoba Métis Community in 1870, which is embedded in parts of the *Manitoba Act, 1870*.

Instead of securing a “lasting place” in the province they were partners in creating, the Métis were systemically disposed from their *place* because the federal Crown “failed to implement the land grant provisions in section 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown” [*Manitoba Metis Federation Inc. v. Canada*, 2013, 1 SCR 623, at para 9] . . .

In this *place*, the Métis also continue to hold and exercise collectively-held Aboriginal rights and interests throughout southern Manitoba generally and the Project area specifically. These are pre-existing and communal Aboriginal interests in the Project area that are integral to the distinctive nature of the Manitoba Métis Community and their relationship to the land. These Métis communal interests are protected as Aboriginal rights by section 35(2) of the *Constitution Act, 1982*. They require the Crown to consult and accommodate the Métis on decisions that have the potential to adversely impact these rights.”¹

The MMTP was subject to federal and provincial reviews, including hearings before the National Energy Board (“NEB”) in June 2018. During the federal review, Canada confirmed that it was relying, to the extent possible, on the NEB (now the Canada Energy Regulator or “CER”) processes as part of fulfilling its duty to consult and accommodate Indigenous peoples regarding impacts of the MMTP.

On November 15, 2018, the NEB released its Reasons for Decision and recommended that the Governor in Council approve the issuance of the Certificate, subject to the twenty-eight conditions proposed by the NEB.

After the NEB completed its hearing process and released its Reasons for Decision, Canada engaged in supplemental consultation with Indigenous communities, including the MMF on behalf of the Manitoba Metis Community, regarding outstanding concerns and unaddressed impacts of the MMTP on their section 35

¹ MMF Final Written Submissions to the National Energy Board for Hearing Order EH-001-2017 (June 22, 2018).

Aboriginal and treaty rights. As a result of this supplemental consultation, the federal Crown modified five of the conditions initially proposed by the NEB, including Condition 26, to specifically accommodate for outstanding impacts on the section 35 rights of Indigenous communities, including the Manitoba Metis Community.

On June 28, 2019, the Certificate was issued to Manitoba Hydro subject to twenty-eight conditions, including the Crown's modified language for Condition 26 (quoted above).

A draft of the Plans was provided by Manitoba Hydro to the Indigenous Monitoring Committee in November 2019.

PREVIOUSLY RAISED CONCERNS AND UNADDRESSED ISSUES

On February 14, 2020, the MMF provided comments and outlined significant concerns with the draft Plans. Among other concerns, the MMF expressly noted that: the draft Plans significantly underestimate the amount of wetlands permanently lost/impacted by the project; included an unenforceable mechanism/offset measure; did not meet nearly half of the requirements of Condition 26; and that there had not been any meaningful consultation or capacity for the MMF to review the draft Plans.

The Plans **have not** been updated since November 2019. As they have not been updated, it is assumed that all the concerns identified in the MMF's February 14, 2020 letter remain unaddressed.²

Overall, the Plans are incomplete. Concerningly, the Plans include very little detail of the required list of information in Condition 26 and no specifics on the consultation that may have been undertaken to date. This means that there is no way to assess whether the evidence and consultation summary required by Condition 26 (g) and (h) will be adequate – as it is not included in the draft Plans; or whether the MMF's issues and concerns will be addressed.

The main takeaway from the document was that Manitoba Hydro considers only the tower foundations as places where wetland will be permanently lost. The Plans contain no evidence on which to base this conclusion. There is no discussion of whether the wetlands impacted during construction of the tower foundations will be monitored post construction to ensure that construction activities have not permanently altered their function. Indeed, there is no discussion of monitoring throughout. Monitoring was raised as a key issue by Manitoba Metis Community members during the confirmation meeting to discuss the Plans and a monitoring arrangement or co-management agreement should be negotiated with the MMF to address these concerns.

METIS SPECIFIC INTERESTS/CRITERIA

Metis-specific interests and criteria of importance must be considered in the development of the Plans and were articulated within the Metis Land Use and Occupancy Study – Assessment of Potential Effects Prior to Mitigation, Manitoba-Minnesota Transmission Project (2016) (the "MMF Study") which was filed on the record with the NEB. Specifically, wetlands are an important area for Metis harvesting, sites of cultural importance, and are directly tied to Metis cultural identity. As part of the meeting with Manitoba Metis Community members about the Plans it was noted that wetlands are important for filtering and as habitat. MMF Citizens and harvesters expressed significant concerns that wetland function will be disrupted by the project activities, and that these disruptions were not adequately identified or addressed in the Plans in light of the fact that it takes many years for wetlands to establish.

Among other important traditional uses, wetlands are used in the teaching and transmission of harvesting skills to the next generation and ongoing vegetation management at the tower foundations (among other places) is of concern for ongoing wetland function. This was reaffirmed during the Manitoba Metis

² The comments outlined in this document are provided in addition to those from the MMF's February 14, 2020 letter. Rather than repeating those concerns, Manitoba Hydro is directed to that letter.

Community meeting regarding the Plans where Community members expressed that vegetation management requires significant consideration near wetlands.

Wetlands are also home to culturally critical species that are harvested by Metis citizens and which may be altered by the construction and operation of the Project. These species information should be cross referenced with existing Metis Traditional Land Use data to identify species and locations of importance in consultation with the MMF. These results must then be incorporated into the Plans.

Change in wetland function also has the potential to impact harvesting activities and experience. A Participant in the MMF Study noted that "...once you clear it out and you compact it with all the big machines, you're compacting the ground; it takes forever for the vegetation to grow up through it again." This and other evidence must be considered and incorporated into the Plans if it is to be an effective offset measure for the Manitoba Metis Community.

We are of the understanding that Manitoba Hydro intends to submit the Plans on August 31, 2020 and without any additional consultation with the MMF, which is inappropriate, will result in deficient Plans that do not fulfill the provisions of the Condition, and place the Honour of the Crown in jeopardy. We hope that the issues presented in this letter and below Appendix A will allow for development of the Plans that ensure the Manitoba Metis Community issues and concerns are addressed.

Sincerely,



Tracy Campbell

MNP Consulting, Indigenous Services
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APPENDIX A

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Outstanding Comment, Concern, or Question
1.	<p>4.0 Wetland offset measures</p> <p>4.1 Defining wetlands</p> <p>Page 4</p>	<p>“Wetland descriptions, classification and mapping are described in Chapter 10 of MMTP Environmental Impact Statement. Digitally mapped wetland polygons and classifications were refined based on available imagery including the Land Cover Classification Imagery, Forest Resource Inventory database, the Agriculture and Agri-Food Radar imagery, and in-field data gathered while preparing the MMTP Environmental Impact Statement. This analysis was used to identify environmentally sensitive wetland sites for the MMTP Construction Environmental Protection Plan. Wetland types defined under this dataset include: mineral wetland marsh, peatland fen, mineral wetland swamp and peatland bog. This dataset was used to calculate wetland type and area (ha) for this plan.”</p>	<p>This section does not contain the necessary details required by Condition 26. Condition 26 requires a description of site-specific details (and maps) of permanent wetland loss as a result of Project activities. This is not described and not mapped.</p> <p>There are maps available in the appendices which indicate where tower locations intersect wetlands but there is no connection between this information and where there will be permanent wetland loss as a result of Project activities following avoidance measures.</p> <p>Further, no site-specific details are provided of the wetlands potentially lost including downstream drainage, peak flow following rainfall, water flow, sediment loading anticipated, nitrogen and phosphors load anticipated, and waterfowl production.</p> <p>Please provide updated information that includes the above details, and also the maps, as required by Condition 26.</p>
2.	<p>4.0 Wetland offset measures</p> <p>4.2 How wetland function will be measured</p> <p>Page 4 – Page 5</p>	<p>“To meet the requirements of NEB EC-059 Condition 26 b) wetland function will be measured during the post-construction monitoring program as outlined in Section 4.4.1 and Section 7.2.1 of the MMTP Environmental Monitoring Plan. To validate environmental impact statement predictions, verify implementation of mitigation measures, and to allow for adaptive management, pre-construction, construction and post-construction monitoring will identify any changes to wetland area affected (ha), and species composition and abundance. This monitoring program will be conducted by a wetland specialist for two years post-construction. Any resulting accidental permanent loss to wetlands will be quantified and reported</p>	<p>Condition 26 indicates that the plan must include and explanation of how wetland function will be measured during the post-construction monitoring program. Currently there is no discussion of monitoring in the Plans. This cannot be deferred to post-construction monitoring and must be provided as part of this plan, for review and approval by the CER.</p> <p>In addition, there has been no discussion with the MMF about its involvement in monitoring or co-management measures aimed to ensure that any damage or loss of wetlands is appropriately mitigated. MMF Citizens and harvesters have clearly identified ongoing monitoring of wetlands as a distinct concern that requires addressing, yet the Plans are silent on this point.</p> <p>The Plans should be updated to include a detailed explanation of how wetland function will be monitored during post-construction. In addition,</p>

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Outstanding Comment, Concern, or Question
		annually to the Board as per the MMTP Environmental Monitoring Plan.”	Manitoba Hydro should engage with the MMF to develop a co-management plan or agreement for the MMF’s participation in ongoing monitoring of wetlands. Funding for the MMF’s participation in this co-management plan (and the negotiations of the plan) should be provided by Manitoba Hydro.
3.	<p>4.3 Achieving not net loss of wetlands</p> <p>Table 1. List of Offset of Mitigation Measures that will be Implemented to Address Permanent Loss of Wetlands</p> <p>Page 6</p>	<p>“Mitigation measures to be Implemented include (but are not limited to) to following:</p> <p>Offsets:</p> <ul style="list-style-type: none"> • Measure permanent wetland loss • Calculate wetland loss compensation • Monetary compensation provided to the Province of Manitoba, or designated agency, at a ratio of 3:1 with a valuation of \$14,820 per hectare to restore or enhance wetlands in Manitoba” <p>“Explanation of expected effectiveness and the relative value of each mitigation/offset measure towards achieving the objective of no net loss of wetlands:</p> <p>Offsets:</p> <p>This offset measure is expected to be effective. Rationale: Monetary compensation as a wetland offset as dictated under the Province of Manitoba’s <i>The Water Rights Act</i> and Water Rights Regulation has been deemed an effective measure by government regulators.”</p>	<p>The MMF previously outlined extensive concerns with an offset measures plan that effectively provides the full benefit to the provincial Crown while Indigenous communities continue to bear the burdens and impacts of loss of wetlands to traditional practices (see MMF February 14, 2020 letter and also MMF’s comments on the draft final Crown Land Offset Measures Plan). These concerns have not been resolved or addressed by Manitoba Hydro regarding the Plans.</p> <p>It is interesting to note that monetary compensation is identified as an effective mitigation measure to address the permanent loss of wetland when the financial compensation is being provided to the Crown but was dismissed as an option in the draft final Crown Land Offset Measures Plan, where Manitoba Hydro said that “...compensation ... is viewed as a way for proponents to purchase a license to damage the environment.” We agree that monetary compensation is an effective mitigation measure and would encourage Manitoba Hydro to apply this metric consistently to its offset measures proposed, including the Crown Land Offset Measures Plan.</p> <p>This does not, however, address the MMF’s concern that the compensation for impacts on Metis section 35 rights in this Condition is being provided, in full, to the provincial Crown. Manitoba Hydro acknowledged the inappropriateness of this approach when it revised the Crown Land Offset Measures Plan following the November 2019 draft (that, similar to these Plans, provided monetary compensation to the Government of Manitoba). As noted above, the November 2019 draft of the wetland Plans has not likewise been revised.</p> <p>The Plans must be revised so that the offset or compensation measures that are accommodating for impacts on Metis rights are not being provided to the Government of Manitoba. In making these revisions, Manitoba Hydro should have regard to the MMF’s comments provided on the draft Crown Land Offset Measures Plan.</p>

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Outstanding Comment, Concern, or Question
4.	4.4 Measuring permanent wetland loss Page 7	<p>“Of the 503 new tower structures required for the Project, 54 are located in wetlands (Table 2, Map 1). To calculate wetland loss, the dimensions of each tower foundation in a wetland were determined. On average, the foundations of self supporting tower structures resulted in 27.45 m2 of wetland loss, and foundations for guyed tower structures resulted in an average of 36.4 m2 of wetland loss. A visual representation can be found in Appendix D. Wetland loss was calculated using the understanding that wetland function can continue to occur under a tower, but not where foundations are installed. Total wetland loss from all 54 tower structures foundations is 0.186 hectares.”</p>	<p>How will Manitoba Hydro propose to monitor wetland function post construction to ensure that wetlands disturbed during construction of the towers (assumed to be a greater area than the tower footprint itself) will be restore to previous function and not contribute to the permanent loss of wetland?</p> <p>In addition, the assumption that because “wetland function can continue to occur under a tower” does not necessarily mean that harvesting or other uses of wetlands will not be lost to Indigenous communities beyond the tower structure foundations. Condition 26 was modified by the federal Crown during its supplemental Crown consultation undertaken on the project and as part of fulfilling the duty to consult and accommodate for impacts of the project on Metis rights. The area of wetlands lost must include the area of wetlands lost to Indigenous communities as a result of the project, which is larger than only the area of the tower foundations (or footprints).</p> <p>The calculation of permanent loss of wetlands must be updated to reflect the area of wetlands lost to Indigenous communities, including the MMF, as a result of the project activities.</p> <p>In addition, this baseline calculation should then be increased through the use of an appropriate multiplier to account for various uncertainties (e.g. such as the accidental loss of wetlands as contemplated by Condition 26 (b) or damages through maintenance activities). The MMF should be consulted on the updated calculation and proposed multiplier.</p>
5.	4.4 Measuring permanent wetland loss Page 8 and Table 1	<p>“A monetary payment by Manitoba Hydro in fulfillment of this wetland offset for the Project will be made to the Province of Manitoba, or designated agency, to be held in trust for projects dedicated to restoring or enhancing wetlands in Manitoba. Such projects would be carried out by accredited third parties and may include (by are not limited to) restoration of wetlands in the same, adjacent or other Manitoba watersheds; or enhancement of existing wetlands and wetland complexes.”</p>	<p>How does Manitoba Hydro intend to ensure that the funds provided are used for “restoring or enhancing wetlands in Manitoba”? How are Metis section 35 rights and Metis use of/interests in wetlands being factored into the Plans?</p> <p>In addition, this description and Table 1 does not provide any decision-making criteria for selecting specific offset measures or identify what criteria will be used under what circumstances. When is a restoration project being implemented versus an enhancement project? Will offsetting impacts on wetlands lost or impacted in the same watershed as the project be prioritized? When will other Manitoba watersheds be considered? It is entirely unclear.</p>

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Outstanding Comment, Concern, or Question
			<p>The Plans should be updated to include decision-making criteria for selecting specific offset measures and identify under what circumstances each measure will be considered/used. These criteria should be developed through consultation with the MMF that takes into account Metis specific uses and interests in wetlands.</p>
6.	<p>4.5 Calculating wetland offset compensation</p> <p>Page 9 and Table 1</p>	<p>“For the loss of wetlands, a compensation ratio of 3:1 has been determined with a valuation of \$14,820 per hectare as per regulations under <i>The Water Rights Act</i>.”</p> <p>“Manitoba Hydro will schedule to pay this compensation within 12 months after commencing Project operation.”</p>	<p>How was the ratio of 3:1 determined by Manitoba Hydro to be effective? To what extent did Manitoba Hydro consider Metis rights and Metis-specific interests in wetlands when determining this offset ratio?</p> <p>The Plans do not include any details regarding the estimated completion date for the offset measures. Where compensation is being provided, how long is it from when Manitoba Hydro pays this compensation to when it is actually used to offset impacts on wetlands and create a no net loss situation? Given that the compensation is being provided to third parties, Manitoba Hydro cannot control this timeline; the funds could sit in the hands of the Government of Manitoba or other third parties for years, or potentially be reallocated to another purpose entirely. The Plans, as currently written, risk the accommodation provided through this Condition becoming an empty shell of a promise to the Metis.</p> <p>Additional engagement with the MMF regarding the suitability of the offset ratio is required. As a first step, please answer the above questions regarding how Manitoba Hydro determined the proposed 3:1 offset ratio.</p> <p>The Plans must be updated to include offset or compensation measures that are enforceable and can be implemented.</p> <p>The Plans must also be updated to include an accurate estimated completion date (as required by Condition 26 (f)), as the timelines for implementing the offset/compensation measure must be reviewed by the CER as part of determining whether the Plans meet what is required to uphold the honour of the Crown.</p>
7.	<p>5.1 Indigenous Engagement</p>	<p>“Manitoba Hydro plans to engage with Indigenous communities as indicated in Condition 26 g) with interest in reviewing this draft plan...”</p>	<p>This section of the Plan is forward looking whereas the Condition indicates that the plan must include evidence and summary of consultations with any impacted Indigenous communities regarding the plan. There is no information included on</p>

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Outstanding Comment, Concern, or Question
	<p>5.1.1 Method of Engagement</p> <p>Page 8 and Page 9</p>	<p>“Manitoba Hydro will share feedback received from Indigenous communities with the Provincial and Federal Authorities. Comments and concerns shared through the engagement process will be tabulated and included in an appendix of this draft plan.”</p>	<p>the existing concerns of the MMF which were provided to Manitoba Hydro in MMF’s letter dated February 14, 2020. This letter specifically indicated that “While this letter focuses on Condition 22, the MMF has equal concerns with Hydro’s draft plan for Condition 26. The language of Condition 22 and Condition 26 is nearly identical and there is substantial overlap of the MMF’s concerns regarding both draft plans. The focus and citations to Condition 22 in this letter should not be taken as minimizing the MMF’s concerns with Hydro’s approach and draft plans for Condition 26, which contains many of the same fatal flaws in design, approach and execution.”</p> <p>This includes issues related to limited consultation on the draft offset plans to date. As a way forward, MMF requested a meaningful process moving forward with sufficient capacity for MMF to be involved. Capacity to undertake a review of the Plans was not provided to the MMF until July 31, 2020 and in the intervening period there was no consultation or discussion about the MMF’s outstanding concerns regarding the Plans (as is evidenced by the fact that the Plans remain unchanged since November 2019).</p> <p>In addition, it is not clear if Manitoba Hydro shared the MMF’s concerns with the provincial and federal authorities or what their responses were.</p> <p>The Plans should be updated to include the lack of consultation with the MMF and clarify whether the MMF’s feedback and concerns were ever shared with the provincial and federal Crown.</p> <p>In addition, the Plans should clearly outline the MMF’s concerns identified in its February 14, 2020 letter and in this chart. These concerns should be noted as “unaddressed.” This revised information should be provided to the MMF for review and comment to ensure its accuracy.</p>
8.	<p>5.1 Indigenous Engagement</p> <p>5.1.3 Next Steps</p> <p>Page 9</p>	<p>“All comments and concerns are received by January 17th, 2020 will be included in the table described above, and a final plan will be sent back out to all participants in the First Nation and Metis Engagement Process (which includes the MMTP monitoring committee).”</p>	<p>When can the MMF expect a final plan as referenced, particularly as the Plan must be filed with the Board for approval within 90 days of commencing operation of the Project?</p>

#	Draft Wetland Offset Measures Plan and draft No Net Loss of Wetlands Plan Section	dWOMP and dNNLWP Details	Outstanding Comment, Concern, or Question
9.	6.0 Summary Page 10	“This process demonstrates Manitoba Hydro’s commitment towards the goal of no net loss of wetlands for the Project.”	Please articulate why ‘no net loss’ was selected rather than ‘net gain’ for wetland; particularly as wetland loss is a serious issue in Manitoba that is at the forefront for many environmental organizations (e.g., Ducks Unlimited Canada).

Sagkeeng First Nation Preliminary Comments on the Draft Crown Land and Wetland Offset Measure
Plans for the Manitoba-Minnesota Transmission Project (Technical Memorandum dated April 22, 2020)



Sagkeeng Anicinabe

TECHNICAL MEMORANDUM

Sagkeeng First Nation Preliminary Comments on the Draft Crown Land and Wetland Offset Measure Plans for the Manitoba-Minnesota Transmission Project

Prepared By: Sagkeeng Anicinabe First Nation with Firelight Research Inc.

Submitted To: Sarah Coughlin, Senior Environmental Specialist, Manitoba Hydro

Date: April 22, 2020

Dear Sarah Coughlin,

Please find enclosed Sagkeeng Anicinabe First Nation's (Sagkeeng) initial round of comments on the *Draft Crown Land Offset Plan* (Manitoba Hydro 2019a) and the *Draft Wetland Offset Measures Plan and Draft No Net Loss of Wetlands Plan* (Manitoba Hydro 2019b) prepared for the Manitoba-Minnesota Transmission Project (MMTP).

These documents have been prepared by Manitoba Hydro to fulfill the requirements of Condition 22 and Condition 26 of the Certificate of Public Convenience and Necessity EC-059.

Sagkeeng's preliminary concerns with the draft Crown land and wetland offset plans are:

- 1. Lack of Indigenous engagement and participation:** Sagkeeng has concerns that Indigenous consultation to date has been insufficient for our meaningful engagement in the identification of residual project effects and the development of appropriate offset measures. As stewards of our lands and waters, Sagkeeng requests that we are engaged in key aspects of the offset plans, including the completion of a rigorous and comprehensive Traditional Land and Resource Use study within the Project area, as well as collaborative selection of appropriate offsetting locations, measures and quantum.

2. Underestimation of residual project effects leading to inadequate offsetting area calculation:

Sagkeeng has substantial concerns that the offsetting area as calculated will be insufficient to account for long-term impacts to Crown land use and wetland function as a result of the transmission line and maintenance of the new transmission line corridor, including associated impacts to Indigenous rights and interests. This concern arises primarily from an underestimation of residual project effects and the exclusion of indirect and cumulative project effects from offset value calculations. As a result of Manitoba Hydro's minimization of such effects, we have determined that the draft plans have severely underestimated the amount of offset Crown Land and wetlands required. By Sagkeeng's calculation, 457.7 hectares of wetland, and 550 hectares of Crown land (increases of 140,299% and 2,182% respectively) must be offset to meet minimum requirements. Furthermore, the offsetting ratios in the draft Crown land and wetland offset plans are inadequate to support a no net loss objective.

3. Inappropriate offset measures: From Sagkeeng's perspective, a monetary payment to the Province of Manitoba, or a designated agency, is not an appropriate offset measure. This approach does not support Indigenous engagement and participation, nor does it provide Sagkeeng with assurances that offsetting funds will be properly used to maintain, restore or compensate for Sagkeeng rights and interests impacted by the permanent loss of Crown lands and wetland habitat in our traditional and ancestral territories.

Overall, the draft Crown land and wetland offset plans lack critical details that are required for Sagkeeng's future consideration, such as the identification of offsetting locations and methods, and detailed plans to support the meaningful engagement and participation of Indigenous nations. Furthermore, in the absence of a monitoring regime and adaptive management approach, Sagkeeng cannot be confident that the offsetting measures will in fact produce the desired ecological and cultural outcomes.

Recommended measures described in the enclosed memo are critical to filling existing gaps in MMTP offset measure planning and implementation. It is Sagkeeng's expectation that these recommended measures will be adopted by Manitoba Hydro. Where Manitoba Hydro is considering not adopting

any of these measures, Sagkeeng requires written justification from Manitoba Hydro and additional direct consultation toward an appropriate solution. Sagkeeng expects further engagement with Manitoba Hydro on the development of a fulsome approach to mitigating and offsetting the permanent loss of these culturally and ecologically important areas within our territory, including the implementation of a strong monitoring and adaptive management approach that integrates considerations of our values associated with these areas. As previously indicated by Sagkeeng, the current approach taken by Manitoba Hydro is insufficient and disrespectful.

Sagkeeng recognizes that the draft Crown land and wetland offset plans are a work in progress and reserves the right to identify additional information requirements as the plans are developed and finalized. Further discussions between potentially impacted Indigenous nations (including Sagkeeng), Manitoba Hydro, and provincial government representatives are required on this important matter. We look forward to Manitoba Hydro contacting us to engage in these critical conversations.

Meegwetch,

Chief Derrick Henderson

Sagkeeng Anicinabe Government

CC: Louise George, Secretary of the Canada Energy Regulator

Attachment: Sagkeeng Preliminary Comments on the Crown Land and Wetland Offset Measure Plans for MMTP

PRELIMINARY COMMENTS ON THE CROWN LAND AND WETLAND OFFSET MEASURE PLANS FOR MMTP

SAGKEENG ANICINABE FIRST NATION

APRIL 22, 2020

SAGKEENG TERRITORY AND THE MMTP

Sagkeeng Anicinabe First Nation (Sagkeeng) is a signatory to Treaty #1. The lands and waterways in Sagkeeng's traditional and ancestral territories have been a part of our members' way of life and economic wellbeing since time immemorial. Sagkeeng territory is intersected by the proposed Manitoba to Minnesota Transmission Project (MMTP), including the creation of a new Right of Way (ROW) from south of Anola to the Manitoba-Minnesota border.

Thirty-seven kilometers of the new transmission line corridor are located on Crown lands (Manitoba Hydro 2015b). Crown lands are effectively the only lands left for Sagkeeng to practice traditional harvesting, given the widespread alienation from the land base by privatization, industrialization and other land fragmentation factors (Sagkeeng First Nation 2018). The transmission line corridor also overlaps with 457.7 hectares of wetland habitat. Aquatic environments including wetlands are important to the culture of Sagkeeng Anicinabe and their ability to fulfil the ideals of Anicinabe Pimatiziwin, loosely translated as "Anicinabe life" (Olson, Firelight Research Inc., and Sagkeeng Anicinabe 2019).

Previous studies unrelated to MMTP emphasize the connection between Sagkeeng identity and continued practice of land-based activities such as fishing, hunting, rice picking, berry picking, medicine gathering, and trapping. Crown lands and wetlands are integral to supporting these cultural practices. Many of the animals harvested by Sagkeeng members, including moose and various furbearers, utilize aquatic or wetland environments. Additionally, wetlands are identified as important to the collection of a range of medicinal plants (Olson, Firelight Research Inc., and Sagkeeng Anicinabe 2019). It is apparent from past data collected with Sagkeeng Anicinabe that the community uses and continues to value Crown land and wetland environments across their traditional and ancestral territories. This highlights the importance of conducting further research on particular project-specific impacts in order to fully understand the potential effects of the proposed Project on Sagkeeng use, culture and rights within the project area.

Treaty 1 rights potentially impacted by MMTP include but are not limited to hunting, fishing, and gathering for sustenance and livelihood purposes (Sagkeeng First Nation 2018). Direct and indirect impacts associated with the Project on these rights will come from reduction in available land that support meaningful Treaty rights practices, loss of habitat for wildlife and food and medicinal plants, alienation due to visual and other sensory alterations of the ROW, and concerns about contamination, among other factors (Sagkeeng First Nation 2018; Firelight Research Inc. 20).

PRELIMINARY CONCERNS

1. Lack of Indigenous engagement and participation

Offsetting occurs within a social context and must take into account existing treaty rights and rights of traditional use (Poulton 2018). Without proper consultation, offsetting will fail to adequately identify and compensate for impacts to Sagkeeng rights and interests, and changes in conditions caused by offsetting may even contribute to further socio-cultural disruption or inequities.

Sagkeeng engagement and participation to date has been limited by multiple factors, including but not limited to the unwillingness of Manitoba Hydro to work with Sagkeeng to undertake a full and proper assessment of potential interactions of the Project's preferred route with Sagkeeng traditional use, occupancy, culture and rights (Sagkeeng First Nation 2018). Sagkeeng has made it clear that Sagkeeng's early scoping stage traditional knowledge paper, *O-Pimatiziwin 2*, represents only a preliminary traditional knowledge scoping study (Sagkeeng First Nation 2018, 2015). Without a full Traditional Land and Resource Use study, it is not possible to complete an informed estimation of residual adverse effects, including impacts to Sagkeeng rights and interests associated with the loss of Crown lands and wetland habitat.

As signatories to Treaty #1, Sagkeeng community members have constitutionally-protected rights, including to the stewardship of our traditional and ancestral territories. Further, the cultural practices and ecological knowledge of Sagkeeng community members offer critically important insights to the offset process, a fact about Indigenous knowledge recognized in other jurisdictions (Poulton 2018).

The draft MMTP Crown land and wetland offset plans, however, do not include evidence of, nor provisions for, meaningful Indigenous engagement and participation in this process. Sagkeeng has concerns that our Indigenous knowledge, perspectives, and priorities related to Crown land and wetlands will not be meaningfully reflected in the development of the offset plans and the selection of criteria for offsetting locations.

Recommended measures:

1. Manitoba Hydro to work with Sagkeeng to provide the time and resources necessary to conduct a comprehensive Traditional Land and Resource Use Study for the Project-affected area, with appropriate methodology and confidentiality agreements.
2. Manitoba Hydro to revise the governance structure for the Crown land and wetland offset plans to include for meaningful Sagkeeng engagement and participation.
3. Manitoba Hydro to work with Sagkeeng to develop a collaborative approach to identify criteria for selecting offsetting measures and locations based on Indigenous knowledge, perspectives, and priorities.
4. Manitoba Hydro to employ Sagkeeng cultural experts, knowledge holders, and Guardians in the project team to identify and protect cultural resources and values encountered during construction, rehabilitation, and offsetting.

2. *Underestimation of residual project effects leading to inadequate offsetting area calculation*

a) *Underestimation of residual project effects*

The MMTP Crown land and wetland offset plans severely underestimate the area of loss of use and reduced wetland function associated with residual project effects. These offset plans assume that Crown land use and wetland function will continue, un-impacted, beyond the immediate footprint of each tower foundation and converter station (Manitoba Hydro 2019a, 2019b). The resulting calculation fails to capture long-term impacts to Crown land use and wetland function as a result of the overhead transmission line and maintenance of the new ROW.

In addition, any portion of the Project that crosses Crown lands inevitably contributes to (already significant) land alienation experienced by Sagkeeng community members, reducing the area of viable territory within which to practice their Treaty rights (Sagkeeng First Nation 2018). Sagkeeng community members who harvest medicines and other plants, for example, advise that they will not harvest from under a transmission line as plants under a transmission line are “considered unhealthy because of the EMF created by the transmission lines and because chemicals are used to keep the right of way clear” (Sagkeeng First Nation 2015, p. 14).

Furthermore, clearing and maintenance of the ROW represents long-term alteration of important forested habitat, where Sagkeeng community members hunt and trap (Sagkeeng First Nation 2015). Linear features have well-documented effects on culturally important species, such as moose, including increased hunting and predation pressure (GOABC 2016; Beazley et al. 2004; Davis 2012). Transmission line construction and clearing also have long-term effects on wetland habitat, with some bog wetlands failing to recover after as much as ten years after construction (Nickerson, Dobbertein, and Jarman 1989). Physical disturbances, including linear features, can impact wetland plant diversity and composition through hydrologic regime change and altered soil conditions (Ficken, Cobbaert, and Rooney 2019). Changes in water movement around physical infrastructure, for example, could make other areas of the wetland more susceptible to drying. ROW maintenance can also lead to the formation of different wetland plant associations (Thibodeau and Nickerson 1986), with potential adverse implications for Sagkeeng harvesting practices and food security.

Recommended measures:

5. Sagkeeng requests that Manitoba Hydro makes appropriate changes to the Crown land and wetland offset plans to account for residual effects of the transmission line corridor, including overhead transmission lines and maintenance of the ROW. This calculation should include, at a minimum:

- 457.7 hectares of wetland habitat, representing the area of physical disturbance associated with Project construction, operation, and maintenance that overlaps with sensitive wetland habitat (Manitoba Hydro 2019b, p.10-46);¹ and
- 550 hectares of Crown land, representing 55 km of transmission line (18 km within existing ROWs and 37 km of new ROW) with a corridor width of 100 m.²

b) *Insufficient Offsetting Ratio*

Appropriate offsetting requires a framework to draw equivalency between the ecological and cultural features lost to development and those gained from offset activities. As described by Poulton (2018), this includes considerations of kind, proximity, condition, and quantity. Such a framework is lacking from the MMTP Crown land and wetland offset plans, for which offset areas and values have not even been identified.

Offsetting ratios applied in the MMTP Crown land (1:1) and wetland (3:1) offset plans are not sufficient to compensate for uncertainty in offsetting equivalency or success. This is particularly concerning given the high degree of cumulative effects in Sagkeeng territory. As acknowledged by Manitoba Hydro (Manitoba Hydro 2015c, 2015a, 2015d), and written evidence submitted by Sagkeeng (Sagkeeng First Nation 2018), there has been extensive land privatization, fragmentation and industrial development within the Regional Assessment Area and broader Treaty 1 area.

Clearing and maintenance of the new transmission line corridor will traverse core patches of remaining intact natural habitat, ranging from 200 to 12,000 hectares in size (Manitoba Hydro 2015a, p. 9-47). Linear features, such as transmission lines, have a disproportionately large and persistent fragmentation impact, given their higher edge to area ratios (Ficken, Cobbaert, and Rooney 2019). It is unclear if or how the fragmentation of these critically important habitats within Crown land and wetlands will be considered in the calculation and selection of offsetting areas. Given the highly damaged nature of the Regional Assessment Area, it is not appropriate to allow further clearing of intact habitat without equivalent compensatory offsets to support the restoration of associated ecological and cultural values.

In the absence of a strategic approach for restoring habitat at this time, Sagkeeng requests that the Manitoba Hydro offset new projects at rates that begin to address the legacy footprint. Scientific best practice dictates the need for offsetting with a multiplier for addressing both project and cumulative effects. Scientific studies indicate that vegetation restoration offsets should be at a ratio of at least 4:1, and often much higher (Laitila, Moilanen, and Pouzols 2014).

Recommended measures:

¹ This represents 199.7% difference (or 140,299% increase) compared to the 0.326 hectares of permanent wetland loss identified by Manitoba Hydro (Manitoba Hydro 2019b, p. 7)

² This represents a 183.2% difference (or 2,182% increase) compared to the 24.1 hectares of permanent Crown land loss identified by Manitoba hydro (Manitoba Hydro 2019a, p. 11)

6. Manitoba Hydro to work with Sagkeeng to develop a framework for assessing ecological and cultural components that integrates Indigenous knowledge, science, and the values identified by Sagkeeng community members.
7. Manitoba Hydro to apply a minimum offsetting ratio of at least 4:1 for Crown lands and wetland habitat, where offsets are of similar ecological and cultural function to the values lost to development.
8. Manitoba Hydro to identify and share for review and comment with Sagkeeng, higher offsetting ratios for locations where equivalency is low and/or uncertainty is high.

3. Inappropriate offset measures

From Sagkeeng's perspective, a monetary payment to the Province of Manitoba, or a designated agency, is inappropriate and offensive as an offset measure. This approach does not support Indigenous engagement and participation, nor does it provide Sagkeeng with confidence that the expenditure of offsetting funds will maintain, restore or compensate for Sagkeeng rights and interests impacted by the permanent loss of Crown lands and wetland habitat.

Furthermore, offsetting measures described in the Crown land and wetland offset plans lack key details pertaining to governance, management, and future monitoring. It is important that the governance structure and legal authority of the governance body responsible for implementing offsetting is clearly established (Poulton 2018). This governance structure should include a central role for Sagkeeng.

If Sagkeeng is to be confident that offset measures will in fact produce the desired ecological and cultural outcomes, a monitoring regime will also be necessary. In the case of the Nova Gas boreal caribou habitat offsets, for example, the National Energy Board has required annual monitoring and reporting on vegetation regrowth and species use of restored areas for a period of fifteen years (NGTL 2016). Monitoring must include indicators and adaptive management responses that reflect Sagkeeng values and perspectives, and a role for Sagkeeng Guardians.

Recommended measures:

9. Manitoba Hydro to provide Sagkeeng the time and resources necessary to collaboratively develop an offset plan that supports the retention and regaining of ecological and cultural function resembling that of Crown land and wetland habitat permanently impacted by the Project. Sagkeeng engagement in the development of the offset plan should include, but not be limited to identification of appropriate offsetting areas, the selection and implementation of restoration treatments, monitoring of restoration results, and engagement in the development of adaptive management responses.
10. Manitoba Hydro to develop a governance structure for implementation of the offset plan that supports Sagkeeng engagement and participation.

11. Manitoba Hydro to work with Sagkeeng to develop an Indigenous knowledge-based approach to monitoring impacts and offsetting results, including a meaningful role for Sagkeeng in adaptive management decisions.
12. Manitoba Hydro to identify sufficient funding to cover all costs of long-term management and monitoring, including a role for Sagkeeng Guardians.

We note that key issues we flag in this memorandum are not the full extent of Sagkeeng's outstanding concerns with the proposed Project or Crown land and wetland offset plans. Sagkeeng reserves the right to identify additional concerns and information requirements as the plans are developed and finalized and looks forward to Manitoba Hydro increasing the level of engagement with us toward accomplishing these tasks.

References

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- . 2015c. "Assessment of Potential Environmental Effects on Vegetation and Wetlands." In *Manitoba-Minnesota Transmission Project Environmental Impact Statement*.
- . 2015d. "Assessment of Potential Environmental Effects on Traditional Land and Resource Use." In *Manitoba-Minnesota Transmission Project Environmental Impact Statement*, 89.
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Appendix D: Summary of engagement with Provincial and Federal Authorities and non-government expert bodies

Appendix D Part 1: Summary of Consultation to Date with Provincial and Federal authorities

Manitoba Hydro consulted with provincial and federal authorities regarding the plan.

Contact and Title	Agency	Emailed	Called	Response Received	Response Provided
Elise Dagdick, Environment Officer	Environmental Approvals Branch, Manitoba Conservation and Climate, Province of Manitoba	November 28, 2019	N/A	April 8, 2020	July 24 th , 2020
Mr. Paul Gregoire, A/Manager	Regulatory Affairs Section, Canadian Wildlife Service, Environment and Climate Change Canada, Government of Canada	November 27, 2019	N/A	December 2, 2019	None required
Sebastien Labelle, Director General	Major Projects Management, Natural Resources Canada, Government of Canada	November 29, 2019	N/A	January 10, 2020	None required
Carmen Kardoes, Regional Director	Governance and Community Dev Indigenous Services Canada, Government of Canada	November 29, 2019	N/A	January 21, 2020	None required. Final plan will be shared in future.
Diana Watson, Director	Lands and Economic Development, Indigenous Services Canada, Government of Canada				

Summary of issues or concerns provided by with provincial and federal authorities and Manitoba Hydro's response

Issues or Concerns Provided	How Manitoba Hydro Addressed or Responded to Issues or Concerns Raised
Manitoba Conservation and Climate expressed concerns regarding the wetland damage beyond the tower footprints, clarification on the type of wetland classification being used, and consideration of accidental and unforeseen wetland loss.	Manitoba Hydro provided a written response to Manitoba Conservation and Climate. This response addressed concerns regarding wetland loss outside of the tower footprints by outlining existing wetland commitments in the construction environmental protection plans. Clarifications were also provided on the type of wetland system being used. Additional amendments were made on reporting accidental or unforeseen loss of wetlands. Addressing the recommendations from Manitoba Conservation and Climate only required minor alterations to the Wetland Offset Measures Plan and No Net Loss of Wetlands Plan.
Environment and Climate Change Canada indicated that they had not identified any concerns.	No response was required.
Natural Resources Canada did not indicate any concerns with the plan but encouraged Manitoba Hydro to consider the views raised by Indigenous communities as part of the engagement process.	No response was required.
Indigenous Services Canada did not indicate concerns with the Plan but recommended that the following federal departments should receive the documents, Impact Assessment Agency (former CEAA for federal coordination), Transport Canada (nav. waters) Department of Fisheries and Ocean (stream crossing impact on Fish) and Environment and Climatic Change Canada (species at risk).	No response was required. Manitoba Hydro will provide a final copy of the Plan to each of these federal agencies.



5-360 Portage Avenue • Winnipeg, Manitoba Canada • R3C 0G8
(204) 360-3119 • jmatthewson@hydro.mb.ca

November 28, 2019

Client File No. 5750.00

Licence No. 3288

Ms. Elise Dagdick
Environmental Approvals
Manitoba Sustainable Development
1007 Century Street
Winnipeg, MB R3H 0W4

Dear Ms. Dagdick:

RE: Manitoba-Minnesota Transmission Project– Wetland Offset Measures Plan

Pursuant to Manitoba-Minnesota Transmission Project National Energy Board Certificate of Public Convenience and Necessity EC-059 condition 26 and *Environment Act* licence #3288 condition 36, Manitoba Hydro is seeking your feedback on the attached Wetland Offset Measures Plan.

This document outlines Manitoba Hydro's plan for offsets for unavoidable permanent wetland losses with the goal of no net loss of wetlands as a result of the project. This Plan follows the requirements dictated under the Province of Manitoba's *The Water Rights Act* and Water Rights Regulation. Manitoba Hydro will also be seeking input from federal authorities and impacted Indigenous communities.

Please provide any feedback on this plan by January 17, 2020.

For your reference, federal certificate condition 26 and provincial licence condition 36 state:

26. Wetland Offset Measures Plan

*Manitoba Hydro must file with the Board for approval, **within ninety (90) days of commencing operation of the Project**, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:*

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*
- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*
- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*

- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

Wetlands

36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development.

Should you have any questions or wish to discuss, please do not hesitate to contact me at 204-360-3119.

Regards,

Original signed by

James Matthewson
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

Attachment: 1

November 27, 2019

Mr. Paul Gregoire
Environment and Climate Change Canada
9250 49 Street NW
Edmonton, AB
T6B 1K5

Dear Mr. Gregoire:

RE: Manitoba-Minnesota Transmission Project– Wetland Offset Measures Plan

Pursuant to Manitoba-Minnesota Transmission Project National Energy Board Certificate of Public Convenience and Necessity EC-059 condition 26, Manitoba Hydro is seeking feedback from your agency on the attached draft Wetland Offset Measures Plan.

The Plan can be accessed electronically at this link:

https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/wetland_offset_measures_plan_draft.pdf

This document outlines Manitoba Hydro's plan for offsets for permanent wetland losses with the goal of no net loss of wetlands as a result of the project. This Plan follows the requirements dictated under the Province of Manitoba's *The Water Rights Act* and Water Rights Regulation. Manitoba Hydro is seeking input from provincial and federal authorities, non-government expert bodies and impacted Indigenous communities.

Please provide any feedback on this plan by January 17th, 2020.

For your reference, federal certificate condition 26 and provincial licence condition 36 state:

26. Wetland Offset Measures Plan

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- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*
- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

For your reference, the Provincial authorization for the Project under *The Environment Act* (licence #3288) includes condition 36:

Wetlands

36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development.

Should you have any questions or wish to discuss, please do not hesitate to contact me at 204-360-7677 (mbratland@hydro.mb.ca) or Jonathan Wiens at 204-360-6623 (jwiens@hydro.mb.ca). If you will not be reviewing and providing feedback on the document, we ask that you please inform us.

Regards,

Original signed by

Maggie Bratland
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

Attachment: 1

November 29, 2019

Mr. Sebastien Labelle
Director General
Major Projects Management Office
Natural Resources Canada
580 Booth Street
Ottawa, ON K1A 0E4

Dear Mr. Labelle:

RE: Manitoba-Minnesota Transmission Project– Wetland Offset Measures Plan

Pursuant to Manitoba-Minnesota Transmission Project National Energy Board Certificate of Public Convenience and Necessity EC-059 condition 26, Manitoba Hydro is seeking feedback from your agency on the attached draft Wetland Offset Measures Plan.

The Plan can be accessed electronically at this link:

https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/wetland_offset_measures_plan_draft.pdf

This document outlines Manitoba Hydro's plan for offsets for permanent wetland losses with the goal of no net loss of wetlands as a result of the project. This Plan follows the requirements dictated under the Province of Manitoba's *The Water Rights Act* and Water Rights Regulation. Manitoba Hydro is seeking input from provincial and federal authorities, non-government expert bodies and impacted Indigenous communities.

Please provide any feedback on this plan by January 17th, 2020.

For your reference, federal certificate condition 26 and provincial licence condition 36 state:

26. Wetland Offset Measures Plan

*Manitoba Hydro must file with the Board for approval, **within ninety (90) days of commencing operation of the Project**, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:*

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*

- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*
- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

For your reference, the Provincial authorization for the Project under *The Environment Act* (licence #3288) includes condition 36:

Wetlands

36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development.

Should you have any questions or wish to discuss, please do not hesitate to contact me at 204-360-3016 (scoughlin@hydro.mb.ca) or Jonathan Wiens at 204-360-6623 (jwiens@hydro.mb.ca). If you will not be reviewing and providing feedback on the document, we ask that you please inform us.

Regards,

Original signed by

Sarah Coughlin
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

Attachment: 1

November 29, 2019

Carmen Kardoes
Regional Director, Governance and Community Development
Indigenous and Northern Affairs Canada
365 Hargrave St Room 200
Winnipeg, MB R3B 3A3

Dear Carmen Kardoes:

RE: Manitoba-Minnesota Transmission Project– Wetland Offset Measures Plan

Pursuant to Manitoba-Minnesota Transmission Project National Energy Board Certificate of Public Convenience and Necessity EC-059 condition 26, Manitoba Hydro is seeking feedback from your agency on the attached draft Wetland Offset Measures Plan.

The Plan can be accessed electronically at this link:

https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/wetland_offset_measures_plan_draft.pdf

This document outlines Manitoba Hydro's plan for offsets for permanent wetland losses with the goal of no net loss of wetlands as a result of the project. This Plan follows the requirements dictated under the Province of Manitoba's *The Water Rights Act* and Water Rights Regulation. Manitoba Hydro is seeking input from provincial and federal authorities, non-government expert bodies and impacted Indigenous communities.

Please provide any feedback on this plan by January 17th, 2020.

For your reference, federal certificate condition 26 and provincial licence condition 36 state:

26. Wetland Offset Measures Plan

*Manitoba Hydro must file with the Board for approval, **within ninety (90) days of commencing operation of the Project**, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:*

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*
- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*

- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

For your reference, the Provincial authorization for the Project under *The Environment Act* (licence #3288) includes condition 36:

Wetlands

36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development.

Should you have any questions or wish to discuss, please do not hesitate to contact me at 204-360-3016 (scoughlin@hydro.mb.ca) or Jonathan Wiens at 204-360-6623 (jwiens@hydro.mb.ca). If you will not be reviewing and providing feedback on the document, we ask that you please inform us.

Regards,

Original signed by

Sarah Coughlin
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

Attachment: 1

Response from provincial and federal authorities:



File No. 5750.00

April 8, 2020

Mr. James Matthewson
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, MB R3C 0G8

Dear Mr. Matthewson:

Re: Manitoba-Minnesota Transmission Project, Environment Act Licence 3288 – Draft Wetland Offset Plan

Thank you for your letter of November 28, 2019 requesting feedback on the Draft Wetland Offset Measures Plan for the Manitoba-Minnesota Transmission Project required by Clause 36 of Environment Act Licence 3288. Based on the Technical Advisory Committee's review of the draft plan, Manitoba has the following comments.

- The draft plan proposes compensation for only the footprint of the tower foundations. Manitoba is concerned that the total impacts of the clearing, towers, and conductors on wetland benefits (e.g. hydrology and wildlife habitat) will extend beyond the tower footprints. If Manitoba Hydro proposes to compensate only for the area of the tower footprints, supporting scientific information should be provided.
- The draft wetland offset plan should identify which wetland classification system is being used when referring to wetlands. Terms from both the Stewart and Kantrud Wetland Classification System (i.e. Class 3,4,5) are used as well as terms similar to those used in the Canadian Wetland Classification (e.g. peatland fen, mineral wetland swamp, peatland bog, etc.).
- While efforts to reduce impacts to wetlands during construction have been identified, accidental or unforeseen loss of wetlands due to construction must be assessed and compensated for. Section 4.2 of the draft plan states that monitoring will continue for two years post construction and that any resulting accidental permanent loss to wetlands will be quantified and reported annually to the Board. Any additional loss of benefits associated with Class 3, 4, and 5 wetlands identified post construction must be reported to Manitoba Conservation and Climate and compensated for in accordance with the wetland area calculations and compensation values approved in the final plan, within eight months of reporting.

If you have any questions regarding this matter, please contact me at
Elise.Dagdick@gov.mb.ca.

Yours sincerely,



Elise Dagdick
Environment Officer

From: [Coughlin, Sarah](#)
To: [Coughlin, Sarah \(scoughlin@hydro.mb.ca\)](#)
Subject: FW: Manitoba Minnesota Transmission Line Crown Land Offset Measures Plan - for your review/feedback
Date: Friday, January 3, 2020 12:12:00 PM

From: "Gregoire, Paul (EC)" <paul.gregoire@canada.ca>
Date: December 2, 2019 at 4:13:59 PM CST
To: "Bratland, Maggie" <mbratland@hydro.mb.ca>
Subject: RE: Manitoba Minnesota Transmission Line Crown Land Offset Measures Plan - for your review/feedback

BE CAUTIOUS WITH THIS EMAIL: This message originated outside Manitoba Hydro. Verify all links and attachments from unknown senders before opening. Search 'email security' on mpower for details.

Hello Maggie and thank you for the information.

I have reviewed both the draft Crown Land Offset Measures Plan and the draft Wetland Offset Measures Plan and have not identified any concerns. I note that the lands will be put in the care of the province of Manitoba for action.

Regards,
Paul

Paul Gregoire, MSc.
A/Manager Regulatory Affairs Section
Canadian Wildlife Service | Service canadien de la faune
Prairie Region | Région des Prairies
Environment and Climate Change Canada | Environnement et Changement Climatique Canada
Eastgate Offices, 9250 – 49th Street
Edmonton, Alberta T6B 1K5
paul.gregoire@canada.ca
Telephone | Téléphone 780-951-8695

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From: Bratland, Maggie <mbratland@hydro.mb.ca>
Sent: Thursday, November 28, 2019 12:07 PM
To: Gregoire, Paul (EC) <paul.gregoire@canada.ca>
Subject: Manitoba Minnesota Transmission Line Crown Land Offset Measures Plan - for your review/feedback

Hello again Paul –

We have a second Offset Measures Draft plan that we would like to provide for your review and feedback, that pertains to Crown Lands. Please see the attached letter and the link below for the plan itself.



Natural Resources
Canada

Ressources naturelles
Canada

JAN 10 2020

Sarah Coughlin
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Avenue
Winnipeg, MB
R3C 0G8

Subject: Manitoba-Minnesota Transmission Project – Crown Land Offset Measures Plan and Wetland Offset Measures Plan

Dear Ms. Coughlin

Thank you for your letters dated November 29, 2019 regarding Manitoba Hydro's Crown Land Offset Measures Plan and Wetland Offset Measures Plan for the Manitoba-Minnesota Transmission Project. I appreciate Manitoba Hydro providing Natural Resources Canada (NRCan) the opportunity to review and comment on these plans.

NRCan notes that the Government of Canada is relying on Manitoba Hydro's compliance with Canada Energy Regulator (CER) Conditions 22 and 26 to accommodate potential impacts to Indigenous groups' Aboriginal and Treaty Rights. As such, NRCan encourages Manitoba Hydro to consider the views raised by Indigenous communities during the engagement activities described in Section 5 of both plans.

With respect to the Crown Land Offset Measures Plan, the CER will determine whether Manitoba Hydro has adequately measured and defined the "permanent loss of crown lands available for traditional use by Indigenous peoples." NRCan expects that lands acquired to comply with CER Condition 22 will be suitable for the exercise of potentially impacted Indigenous groups' Aboriginal and Treaty rights.

Sincerely,

Sébastien Labelle
Director General
Major Projects Management Office
Natural Resources Canada

Canada

From: [Atiomo, Emmanuel \(AADNC/AANDC\)](#)
To: [Watson, Diana \(AADNC/AANDC\)](#); [Coughlin, Sarah](#)
Subject: RE: MMTP EC-059 draft Condition consultation request
Date: Wednesday, January 22, 2020 9:16:08 AM

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We have no further comments to add. thanks

From: Watson, Diana (AADNC/AANDC) <diana.watson@canada.ca>
Sent: Tuesday, January 21, 2020 1:29 PM
To: Coughlin, Sarah <scoughlin@hydro.mb.ca>
Cc: Atiomo, Emmanuel (AADNC/AANDC) <emmanuel.atiomo@canada.ca>
Subject: RE: MMTP EC-059 draft Condition consultation request

Hi Sarah,

No, I don't have anything further to add.

Emmanuel, if you have additional comments please provide them, if not, please advise you have nothing further to add.

Diana

From: Coughlin, Sarah <scoughlin@hydro.mb.ca>
Sent: Tuesday, January 21, 2020 11:48 AM
To: Watson, Diana (AADNC/AANDC) <diana.watson@canada.ca>
Subject: RE: MMTP EC-059 draft Condition consultation request

Good afternoon Diana. Will we be receiving any further comments from ISC regarding Conditions 22 and 26?

Thank you.

Sarah Coughlin
Senior Environmental Specialist
Licensing & Environmental Assessment
Transmission, Manitoba Hydro
360 Portage Ave, Winnipeg, MB
w (204) 360-3016
c (204) 918-9848
scoughlin@hydro.mb.ca

From: Watson, Diana (AADNC/AANDC) <diana.watson@canada.ca>
Sent: Friday, January 03, 2020 8:39 AM
To: Coughlin, Sarah <scoughlin@hydro.mb.ca>
Cc: Atiomo, Emmanuel (AADNC/AANDC) <emmanuel.atiomo@canada.ca>
Subject: RE: MMTP EC-059 draft Condition consultation request

BE CAUTIOUS WITH THIS EMAIL: This message originated outside Manitoba Hydro. Verify all links and attachments from unknown senders before opening. Search 'email security' on mpower for details.

Hi Sarah,

Here are the comments I received from our Environment Unit:

Include in Table 1 Sec. 4.0 a column on valued ecosystem (specific use of the land in question) so that we can assess the significance of the impact, the appropriateness of the proposed Mitigation and on how to measure 4.0 (d).

The following federal departments should receive the documents, Impact Assessment Agency (former CEEA for federal coordination), Transport Canada (nav. waters) Department of Fisheries and Ocean (stream crossing impact on Fish) and Environment and Climatic Change Canada (species at risk).

Thanks very much and if you have any questions, please let me know.

Diana

Diana Watson
Director, Lands and Economic Development
Indigenous Services Canada / Government of Canada
diana.watson@canada.ca / Tel: 204-983-5523 / TTY: 1-866-553-0554

From: Coughlin, Sarah <scoughlin@hydro.mb.ca>
Sent: Wednesday, December 18, 2019 3:07 PM
To: Watson, Diana (AADNC/AANDC) <diana.watson@canada.ca>; Kardoes, Carmen (AADNC/AANDC) <carmen.kardoes@canada.ca>
Subject: RE: MMTP EC-059 draft Condition consultation request

We initiated discussions on both of these conditions with impacted Indigenous communities in November. 20 First Nation communities and the MMF have been asked to review and comment on the plans. Communities have been offered funding to conduct that review and we've worked with the [MMTP Monitoring Committee](#) to hold a special meeting on this topic so representatives can discuss concerns collectively as well.

I can provide more detail when we chat tomorrow.



July 24th, 2020

File No. 5750

Elise Dagdick
Environment Officer
Environmental Approvals Branch
Manitoba Conservation and Climate
1007 Century Street, Winnipeg MB, R3H 0W4

Dear Elise Dagdick:

RE: Manitoba-Minnesota Transmission Project– Draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan

Thank you for your letter dated April 8th, 2020. We appreciate your comments on the Manitoba-Minnesota Transmission Project – Draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan (the Plan). Please see Manitoba Hydro's responses to your comments and recommendations below:

- 1. The draft plan proposes compensation for only the footprint of the tower foundations. Manitoba is concerned that the total impacts of the clearing, towers, and conductors on wetland benefits (e.g. hydrology and wildlife habitat) will extend beyond the tower footprints. If Manitoba Hydro proposes to compensate only for the area of the tower footprints, supporting scientific information should be provided;*

Manitoba Hydro recognizes the potential for altering wetland benefits as a result of the Project and has therefore developed a rigorous set of mitigation measures to minimize and prevent wetland damage across the Project right-of-way. One of these mitigation measures includes the commitment that;

“Disturbance of wetlands will only be carried out under frozen ground conditions. If frozen ground conditions do not exist alternate mitigation measures such as construction matting may be used to minimize surface damage, rutting and erosion if approved by MH environmental Officer/Inspector.”

Details on further mitigation measures applied to clearing, towers, and conductors near wetlands, such as the installation of bird diverters, can be found in the MMTP Construction Environmental Protection Plan and Table 1 of the draft Plan. These measures have been implemented to minimize effects to hydrology and wildlife habitat. As outlined in Section 10.5.3.1 of the MMTP Environmental Impact Statement, changes to hydrology from construction activities are not expected.

Manitoba Hydro has also developed a MMTP Rehabilitation and Invasive Species Management Plan and a MMTP Environmental Monitoring Plan to examine the effectiveness of these mitigation measures. Reporting of these results will be provided annually as per the Plan.

Supporting scientific evidence that wetland compensation should be limited to the tower footprints is also attached to this response. This includes the following summary documents demonstrating limited

effects of transmission line development for vegetation and birds from recent transmission line construction projects in Manitoba:

- *Effects on wetland within the Bipole III transmission line project;*
- *Effects of transmission line on wetlands birds.*

As jurisdictional comparison, we also attach a copy of the Province of Alberta's "Code of Practice for Powerline Works Impacting Wetlands". This document outlines requirements for wetland protection while commencing or carrying out powerline activities. Under this code of practice, compensation for wetland loss is not required, and mitigation and minimization requirements generally align with the wetland protection measures outlined in the MMTP Construction Environmental Protection Plans.

2. *"The draft wetland offset plan should identify which wetland classification system is being used. Terms from both the Stewart and Kantrud Wetland Classification System (i.e. Class 3,4,5) are used as well as terms similar to those used in the Canadian Wetland Classification (e.g. peatland fen, mineral wetland swamp, peatland bog, etc.)";*

Manitoba Hydro will update the Wetland Offset Measures Plan to better distinguish utilization between where the Stewart and Kantrud Wetland Classification System and the Canadian Wetland Classification System. This will be reflected in Appendix B. Manitoba Hydro would like to point out that wetland offsets are being offered **for all wetlands** being lost as a result of the Project, and not just Kantrud and Stewart Class 3, 4, 5.

3. *While efforts to reduce impacts to wetlands during construction have been identified, accidental or unforeseen loss of wetlands due to construction must be assessed and compensated for. Section 4.2 of the draft plan states that monitoring will continue for two years post construction and that any resulting accidental permanent loss to wetlands will be quantified and reported annually to the Board. Any additional loss of benefits associated with Class 3, 4, and 5 wetlands identified post construction must be reported to Manitoba Conservation and Climate and compensated for in accordance with the wetland area calculations and compensation values approved in the final plan, within eight months of reporting.*

Manitoba Hydro will compensate in accordance with the wetland area calculations and compensation values approved in the final plan for accidental or unforeseen permanent loss of any wetlands at the end of construction phase. This will also be reported to Manitoba Conservation and Climate. Manitoba Hydro will amend Section 4.2 to include these commitments.

Thank you again for your comments and we hope these responses address your recommendations. We expect to release a final draft of the Plan in the coming weeks.

Regards,

Original signed by

James Matthewson

Licensing and Environmental Assessment Department

Manitoba Hydro

360 Portage Ave (5) Winnipeg,

MB, R3C 0G8

Attach. 3

**Code of Practice for
Powerline Works Impacting Wetlands**

*Made under the Water Act and the
Water (Ministerial) Regulation*

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DEFINITIONS

1(1) All definitions in the *Water Act* and associated regulations shall apply, except where expressly defined in this Code of Practice.

(2) For the purpose of this Code of Practice,

- (a) “authenticating wetland professional” means a professional member who meets the requirements set forth in Professional Responsibilities in *Completion and Assurance of Wetland Science, Design and Engineering Works in Alberta*, as amended or replaced from time to time, to be able to authenticate professional documents for submission under the *Alberta Wetland Policy*, published by the Department and as amended or replaced from time to time;
- (b) “Code of Practice” means the *Code of Practice for Powerline Works Impacting Wetlands*, as amended or replaced from time to time;
- (c) “delineation” means the process used to identify wetlands and delineate their ecological boundaries as set forth in *Alberta Wetland Identification and Delineation Directive*, as amended or replaced from time to time;
- (d) “emergency” means a situation where there is an imminent risk to the aquatic environment, public health or safety, or an imminent risk of structural failure to a powerline works;
- (e) “engineering technical specialist” means a person who
 - (i) possesses
 - (A) a post-secondary degree or technical diploma in engineering sciences, or
 - (B) educational equivalencies,
 - (ii) has knowledge of hydrology, hydrogeology and water management assessment, and
 - (iii) is currently experienced in water management and hydrological assessment methods, the determination of expected flows for flood events and the designing of power and transmissions lines;
- (f) “owner” means
 - (i) the person who owns, places, constructs, operates, installs, maintains, removes or disturbs a powerline works, or drills or reclaims a borehole in a wetland,
 - (ii) a successor, assignee, executor, administrator, receiver, receiver-manager, liquidator or trustee of a person described in clause (i), or
 - (iii) a person who acts as the principal or agent of a person described in clause (i) or (ii);
- (g) “powerline activity” means an activity related to powerline works that impact a wetland, as described in section 3(7) of the *Water (Ministerial) Regulation*;
- (h) “powerline works” means a system or arrangement of lines or wire or other conductors and transformation equipment, whereby electric energy, however produced, is transmitted in bulk or distributed directly to consumers and includes any associated permanent or temporary structure

that is or will be constructed for the installation, maintenance or protection of the line, including but not limited to:

- (i) transmission or distribution circuits composed of the conductors that form the minimum set required to transmit electrical energy,
- (ii) insulating and supporting structures,
- (iii) operational and control devices, and
- (iv) structures for erosion

protection, but does not include

- (v) a substation or power plant,
 - (vi) a pipeline crossing or telecommunication line crossing as defined in the Code of Practice for Pipeline and Telecommunication Lines Crossing a Water Body, or
 - (vii) a watercourse crossing for vehicles or equipment as defined in the Code of Practice for Watercourse Crossings;
- (i) "professional engineer" means a professional engineer as defined in the *Engineering and Geoscience Professions Act*, as amended or replaced from time to time;
 - (j) "structure" means the supporting portions of the powerline works that is in contact with the ground including but not limited to:
 - (i) towers and poles and their foundations,
 - (ii) insulating structures and their foundations,
 - (iii) operational and control devices and their foundations, and
 - (iv) erosions control structures and their foundations;
 - (k) "UTM coordinates" means coordinates that use the Universal Transverse Mercator grid to identify or plot the specific location of a site or object;
 - (l) "wetland" means land saturated with water long enough to promote wetland or aquatic processes as indicated by the poorly drained soils, hydrophytic vegetation, and various kinds of biological activity that are adapted to a wet environment;
 - (m) "wetland impacts" mean any disturbance in a wetland or part of a wetland from a powerline activity.

APPLICATION

2(1) This Code of Practice applies to:

- (a) placing, constructing, operating, installing, maintaining, removing or disturbing of works related to a powerline that impact a wetland, and the drilling or reclaiming of a borehole in a wetland;
- (b) aboveground structures within a wetland where the total footprint of each structure is equal to or less than 0.005 hectares; and
- (c) reclamation of wetland impacts related to a powerline activity, including the removal of

powerline works.

(2) This Code of Practice does not apply to buried powerline works.

COMPLIANCE WITH THE CODE OF PRACTICE

3 For the purposes of section 3(7) of the *Water (Ministerial) Regulation*, an owner shall comply with the requirements set out in this Code of Practice.

NOTICE TO THE DIRECTOR

4(1) Notwithstanding section 4(1) of the *Water (Ministerial) Regulation*, unless another time period is agreed to by the Director, an owner shall provide notice to the Director at least 14 calendar days prior to commencing a powerline activity.

(2) After notice to the Director has been provided for the commencement of a powerline activity, the owner may change any of the information provided to the Director, as long as:

- (a) the change complies with this Code of Practice; and
- (b) notice of the change is provided to the Director in accordance with subsection (1).

(3) Notice to the Director under subsection (1) must:

- (a) be submitted in the form and manner prescribed by the Director;
- (b) include the information provided in the Schedule; and
- (c) include any other information as requested by the Director.

EMERGENCY

5(1) Where there is an emergency and it is not possible for an owner to provide notice in accordance with section 4, the owner must:

- (a) take appropriate measures to address the emergency; and
- (b) notify the Director of the emergency within 24 hours of becoming aware of the emergency, with any information regarding the nature of the emergency that is available to the owner at the time.

(2) Within 30 days of completion of the appropriate measures to deal with the emergency, or another time period as agreed to by the Director, the owner must submit the following information to the Director:

- (a) a chronology of events before, during and after the emergency;
- (b) a description of any damage to the powerline works caused by the emergency;
- (c) a description of the actions taken by the owner during and after the emergency;

- (d) a description of any powerline activity that has been or will be taken as a result of the emergency, including repairs or changes to the powerline works;
 - (e) a statement as to whether the owner
 - (i) complied with section 7, and
 - (ii) incorporated the specifications, measures and recommendations of any reports prepared under section 8 by a qualified professional.
- (3) Notice under this section must be in the form and manner prescribed by the Director.

CONTRAVENTIONS

- 6(1) In the event of a contravention of this Code of Practice, the owner must do the following:
- (a) take appropriate measures to address the contravention; and
 - (b) notify the Director of the contravention within 24 hours of becoming aware of the contravention, with any information regarding the nature of the contravention that is available to the owner at the time.
- (2) Within 7 calendar days of the immediate reporting under subsection (1), the owner must submit the following information to the Director:
- (a) a description of the contravention;
 - (b) an explanation as to why the contravention occurred;
 - (c) a summary of all measures that were taken to mitigate the adverse effects to the aquatic environment related to the contravention;
 - (d) the names, addresses, phone numbers and responsibilities of the owner that carries out a powerline activity, including any persons that were retained or employed by the owner, at the time that the contravention occurred; and
 - (e) any proposed preventative measures designed to prevent future contraventions.
- (3) Notice under this section must be in the form and manner prescribed by the Director.

STANDARDS FOR CARRYING OUT A POWERLINE ACTIVITY

7 An owner who commences, continues or carries on a powerline activity under this Code of Practice shall:

- (a) carry out the powerline activity in a manner that is designed to prevent adverse effects to the aquatic environment;
- (b) ensure each structure within a wetland does not exceed a total footprint of 0.005 hectares;

- (c) develop a sedimentation and erosion plan prior to commencing the powerline activity and implement the plan while conducting the powerline activity;
- (d) develop a plan to prevent the transfer of non-indigenous biota to the aquatic environment prior to commencing the powerline activity and implement the plan while conducting the powerline activity;
- (e) stabilize all powerline works that impact a wetland for the life span of the works;
- (f) ensure that any materials used in powerline works that come into contact, or are expected to come into contact, with the ground, groundwater, or surface water within a wetland are non- reactive/inert;
- (g) upon completion of the powerline activity, ensure that the wetland area, excluding the footprint of any structure, equals the wetland area that existed prior to the carrying out of the powerline activity;
- (h) upon completion of the powerline activity, ensure that any changes to the hydraulic, hydrologic, or hydrogeological characteristics of the wetland, with the exception of changes resulting from the powerline structure, be restored to the condition that existed prior to the carrying out of the powerline activity; and
- (i) develop a reclamation plan for all impacted wetlands prior to commencing any powerline activity and implement the plan while :
 - (i) conducting the powerline activity, and
 - (ii) removing any powerline works.

QUALIFIED PROFESSIONAL REPORTS

8(1) Subject to subsection (2), and prior to providing notice to the Director under section 4, the owner shall retain a professional engineer or engineering technical specialist to prepare a report that includes the following information:

- (a) the type of material used for the construction of powerline works, including any material that is expected to come into contact with the ground, groundwater, or surface water;
 - (b) a description of any structure that is part of the powerline works, including but not limited to guy wire anchors and slugs, temporary rider poles, pilings and caissons;
 - (c) any surveyed and unsurveyed profiles and cross-sectional drawings required for the design; and
 - (d) any other information considered relevant by the professional engineer or engineering technical specialist.
- (2) A report under this section is not required for the following:
- (a) the removal of powerline works; or
 - (b) the maintenance of powerline works.

- (3) In the event a report is not required under subsection (2), the owner must prepare in writing the information contained in subsection (1)(a) to (c) and make it available upon request of the Director.

9(1) Subject to subsection (3), and prior to providing notice to the Director under section 4, the owner shall retain an authenticating wetland professional to prepare a report that includes the following information:

- (a) a map, diagram, or air photo that shows the location of the proposed powerline works including the legal description of the land, and the UTM coordinates, if available;
 - (b) a description of the powerline activity;
 - (c) a delineation of the wetland where wetland impacts have or will be expected to occur;
 - (d) a description of the anticipated wetland impacts, including the total wetland impact, in hectares, resulting from the combined footprint of all structures;
 - (e) a description of all measures the owner should take to meet the standards set out under section 7;
 - (f) any information and assessments used to prepare the report, including:
 - (i) any existing information, published and unpublished reports reviewed,
 - (ii) any new information gathered through assessments, and
 - (iii) any reports prepared by the authenticating wetland professional;
 - (g) a compilation of physical and biological data related to the wetland where wetland impacts have occurred, including:
 - (i) a description of all living organisms that could be present at any time during the year,
 - (ii) a description of the existing wetland class in accordance with the Alberta Wetland Classification System, and
 - (iii) a description of the hydrological characteristics of the wetland.
 - (h) a description of any assessment conducted, including study sites, methods used, dates and times; and
 - (i) any other information considered relevant by the authenticating wetland professional.
- (2) In the event the information listed under subsection (1) cannot be compiled using desktop methods, a field assessment must be conducted.
- (3) A report under this section is not required for the following:
- (a) the removal of powerline works;
 - (b) the maintenance of powerline works; or
 - (c) the replacement of a structure that does not result in an increase in the loss of wetland area relative to the loss that existed prior to the replacement.
- (4) Notwithstanding subsection (3), unless an emergency has occurred, if any powerline activity cannot be carried out during firm or frozen ground conditions, a report under this section is

- (5) For the purpose of this section, “firm or frozen ground conditions” mean soil conditions that will support the equipment conducting the powerline activity and will not cause an adverse effect to the wetland, including, but not limited to, rutting, compaction, or siltation.

RECORDKEEPING

10(1) The owner shall record and retain all the following information for a minimum of five years after the completion of powerline activity, unless another time period is agreed to by the Director:

- (a) the names, addresses and phone numbers of any person who carried out a powerline activity;
 - (b) a copy of any plans prepared for the construction of powerline works;
 - (c) any as built plans or as constructed plans, if such as built or as constructed plans were prepared;
 - (d) the time period over which the carrying out of any powerline activity occurred, including
 - (i) the start and completion dates, and
 - (ii) the duration of time each day that any powerline activity was carried out;
 - (e) all photographs or video-recordings taken of the wetland area before and after conducting the powerline activity;
 - (f) a copy of all reports prepared by any qualified professional or, in the event the report of a qualified professional is not required, the information the owner is required to compile under sections 8(3).
- (2) When requested in writing by the Director, the owner must submit any requested information or records retained under subsection (1) to the Director in the time frame specified by the Director.

SCHEDULE

Notice to the Director

Information that must be contained in a notice for the purposes of section 4:

- (a) name and contact information of the owner of the powerline works;
- (b) name and contact information of the owner's authorized representative;
- (c) legal land description(s) of the impacted wetland;
- (d) a map, diagram, or air photo that shows the location of the proposed powerline works including the legal description of the land, and the UTM coordinates, if available;
- (e) whether any reports were prepared by a qualified professional;
- (f) wetland type and classification;
- (g) tentative commencement and completion dates of the powerline activity; and
- (h) a description of the proposed powerline activity, including:
 - (i) methods of placement, operation, installation, removal, maintenance or replacement of powerline works,
 - (ii) the outside diameter of each structure within the wetland, and
 - (iii) construction methods and conditions.

EFFECTS ON WETLANDS
within the
BIPOLE III TRANSMISSION LINE PROJECT



April 2020

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APPENDIX I. Photographs of environmentally sensitive wetlands monitored on the transmission line RoW from 2014 through 2019.

LIST OF TABLES

Table 3-1a.	Vegetation measures on and off RoW: species cover and richness.
Table 3-1b.	Vegetation measures on and off RoW: diversity and evenness.
Table 3-2.	Community types for environmentally sensitive wetland surveys on the RoW.
Table 3-3.	Mitigation measures assessed at sites monitored for environmentally sensitive wetlands on the RoW.

1.0 INTRODUCTION

The purpose of this study was to assess the effects on wetland vegetation within the Bipole III Transmission Line Project.

On August 14, 2013, Manitoba Conservation and Water Stewardship granted an Environment Act Licence to Manitoba Hydro for the construction, operation, and maintenance of the Bipole III Transmission Project. Clearing and construction for the project began in 2014 and was completed during the winter of 2017-2018 (2018 in-service date).

Bipole III is a new high voltage direct current (HVDC) transmission project required to improve overall system reliability and dependability. The Bipole III Transmission Project involved the construction of a 500 kilovolt (kV) HVDC (high voltage direct current) transmission line that links the northern power generating complex on the Lower Nelson River with the conversion and delivery system in southern Manitoba.

Environmental monitoring of the transmission project began in 2014 and included monitoring of terrestrial vegetation (forested), wetlands, prairie habitat, traditional resource areas, invasive and non-native species, and species of conservation concern.

The specific objectives established for this study were as follows:

- Identify monitoring sites established for wetlands;
- Review and summarize data and environmental effects on wetlands; and
- Provide photographs showing monitoring sites over time.

2.0 METHODS

The methods used to assess wetland vegetation can be divided into three groups: i) those used for project review; ii) those used to sample, survey and monitor the vegetation; iii) and the techniques used to describe the data.

2.1 Project Review

Project information and data used for this study were based on the environmental monitoring and subsequent reports prepared for the project from 2014 to 2019 (Szwaluk Environmental Consulting et al. 2015, 2016a, 2016b, 2017, 2018, and 2019).

A total of 11 wetland sites were identified for analyses. These sites were monitored during construction and post-construction. The wetland sites sampled were identified as patterned fen wetlands, and were labelled as environmentally sensitive sites in the

environmental protection plan (Manitoba Hydro 2014) prepared for the project. Project activities were anticipated to affect species of conservation concern present in these wetlands. Approximately 535 ha of patterned fen wetlands occur within the transmission line right-of-way (RoW).

2.2 Vegetation Monitoring

Monitoring of vegetation consisted of establishing sample plots on sites with relatively homogenous vegetation. Transects were permanently located along the transmission line RoW, longitudinally, and approximately in the center of the RoW, but generally off the equipment path. Vegetation was sampled for composition, abundance and structure. Sampling of selected sites followed methods outlined by Redburn and Strong (2008) and involved the establishment of five 2.5 m by 2.5 m quadrats with a 1 m by 1 m nested quadrat spaced at 5 m increments along a 30 m transect for shrubs 1 - 2.5 m tall and herbs and low shrubs 1 m tall respectively. The first quadrat was placed at the 5 m mark. The composition of tree cover >2.5 m tall was estimated using a 20 m by 30 m plot centered on each transect. Plant cover was estimated to the nearest 1% for species <15% cover and nearest 5% for those with higher cover. Other incidentally observed species were recorded. Ground cover estimates (percent) were recorded and included exposed soil, litter, rock, water and wood. Site condition measurements included percent slope and aspect. Plot locations were marked at the beginning of each transect with GPS coordinates, and staked with a 30 cm section of conduit pipe driven into the ground with a pin flag inserted. Reference sites that shared similar natural conditions were established adjacent to the RoW, where possible. Plots began approximately 5 m from the RoW edge, using identical quantitative sampling methods. Photographs were captured at each monitoring site.

2.3 Rare Plant Monitoring

Species of conservation concern encompass plants ranked as rare elements by the Manitoba Conservation Data Centre (MBCDC 2018). The ranking of species used by the MBCDC according to a standardized procedure used by Conservation Data Centres and Natural Heritage Programs includes a series of ranks on a five-point scale from critically imperilled (S1) to secure (S5).

Areas with high potential to support species of conservation concern were identified for surveys. Monitoring occurred at selected sites to investigate species presence, abundance and extent. Photographs of plants were taken.

2.4 Data Preparation and Analyses

After field sampling (2014 through 2019), data was digitized and verified for accuracy. For each plot with quantitative sampling, mean values for vegetation percent cover were calculated for plots with a tall shrub stratum, herb and low shrub stratum, non-vascular stratum, as well as inanimate ground cover. All sites were stratified by vegetation type.

Total species cover (summed % plant cover) and species richness (actual number of species present) were determined for each plot. Species diversity was calculated using the Shannon diversity index, which combines species richness with relative abundance. Equitability was calculated to determine the evenness of species in their distribution within the site. The diversity index values fall generally between 1.5 (i.e. low diversity) and 3.5 (Kent and Coker 1996, p97). The equitability (or evenness) value, with an upper limit of 1, is a measure of whether species abundance in a community is evenly distributed. Diversity and evenness measures were calculated in Excel.

Sites were described by classifying community types based on plant species composition and abundances using hierarchical cluster analysis. Ward's method was used as the clustering algorithm, with squared Euclidean distance as the dissimilarity measure. Where vegetation community types are listed, naming was based on their structure and species dominance by stratum.

The sample size for this study influences the statistical analyses performed. Specific tests available are dependent upon the distribution of data (e.g., parametric versus non- parametric). The increased variability from the sample size reduces the ability to detect an effect when one is present. Accordingly, data were not subject to inferential statistical analyses.

3.0 RESULTS

3.1 Data Analysis of Environmentally Sensitive Wetlands

Seven environmentally sensitive patterned fen wetlands were monitored during construction and post-construction, from 2014 through 2019. Ground surveys were conducted to identify wetland changes not discernible from habitat mapping and to monitor wetland protection measures. In 2014, three monitoring sites were established on the RoW in Section N3, while four additional sites established in 2015, after clearing in Section N4. Of the seven sites surveyed, four were paired sites with off-RoW samples. Vegetation descriptions for the environmentally sensitive wetlands include species cover and richness, diversity and evenness, with mean values for all years monitoring on- and off- RoW.

Since initial clearing there continues to be a trend of lower mean species cover in sites on- RoW, when compared to off-RoW sites, shown in Table 3-1a. Lower vegetation cover values are due to the removal of sparse tree and tree sapling cover, and other low growing woody species on the RoW. The off-RoW sites in N3 are further distinguished from on-RoW sites by increased moss cover and much reduced surface water, which tends to allow for increased vegetation cover. Consequently, cover values on the RoW in N3 are unlikely to match those off-RoW. In N4, off-RoW sites are distinguished by a very sparse tree and or sapling layer and increased moss cover. On the RoW, the average species cover is variable in any given year, perhaps due to fluctuating water levels. In 2016, forest tent caterpillar activity was observed at two sites (N4WET100; -400). The highest average total percent cover in paired surveys on the RoW was 72% and 71% in 2017 and 2019, respectively.

Species richness values or total number of species tend to be lower in wetland sites on- RoW, but a trend of increasing richness is shown over successive years of sampling. In 2019, the average number of species is 26.8 in paired surveys, slightly lower than off-RoW with 28.8. The diversity index and species evenness continue to have similar values across all years and between paired surveys on and off-RoW, shown in Table 3-1b. Clearing activities in wetlands has not affected these species measures.

Table 3-1a. Vegetation measures on and off RoW: species cover and richness.														
Site	Total Species Cover (%)							Species Richness						
	RoW						Off RoW	RoW						Off RoW
	2014	2015	2016	2017	2018	2019		2014	2015	2016	2017	2018	2019	
N4WET100	-	61.0	48.4	97.6	88.6	118.2	81.6	-	17	18	22	27	28	24
N4WET200	-	16.6	33.0	57.6	52.2	55.8	70.0	-	24	28	26	30	30	32
N4WET300	-	47.4	19.2	58.0	38.6	69.2	-	-	25	19	27	27	25	-
N4WET400	-	16.3	8.6	13.8	19.6	25.0	-	-	8	7	9	12	11	-
N3WET100	81.4	79.8	43.6	121.4	88.2	76.2	-	23	28	26	27	31	26	-
N3WET200	56.8	54.0	26.6	40.2	25.2	34.4	119.8	21	23	18	25	22	23	24
N3WET300	68.6	71.8	66.2	92.4	57.4	75.4	147.4	21	26	27	26	30	26	35
Paired Mean (SD) ¹	62.7 (8.3)	50.8 (24.0)	43.3 (17.7)	72.0 (27.6)	55.9 (26.0)	71.0 (35.7)	104.7 (35.5)	21.0 (0)	22.5 (3.9)	22.8 (5.5)	24.8 (1.9)	27.3 (3.8)	26.8 (3.0)	28.8 (5.6)
Total Mean (SD) ¹	68.9 (12.3)	49.6 (25.0)	35.1 (19.4)	68.7 (37.1)	52.8 (27.8)	64.9 (30.8)	104.7 (35.5)	21.7 (1.2)	21.6 (6.9)	20.4 (7.4)	23.1 (6.5)	25.6 (6.7)	24.1 (6.2)	28.8 (5.6)

¹Standard deviation.

Table 3-1b. Vegetation measures on and off RoW: diversity and evenness.														
Site	Diversity							Evenness						
	RoW						Off RoW	RoW						Off RoW
	2014	2015	2016	2017	2018	2019		2014	2015	2016	2017	2018	2019	
N4WET100	-	1.4	2.1	2.0	1.9	2.0	2.1	-	0.5	0.7	0.7	0.6	0.6	0.7
N4WET200	-	2.8	2.6	2.3	2.5	2.6	2.2	-	0.9	0.8	0.7	0.7	0.8	0.6
N4WET300	-	2.1	2.3	2.1	2.3	1.9	-	-	0.6	0.8	0.6	0.7	0.6	-
N4WET400	-	1.7	1.6	1.8	1.8	1.7	-	-	0.8	0.8	0.8	0.7	0.7	-
N3WET100	2.1	1.8	2.1	1.5	2.2	1.9	-	0.7	0.5	0.7	0.4	0.6	0.6	-
N3WET200	1.7	1.5	1.8	2.0	2.4	2.2	1.9	0.6	0.5	0.6	0.6	0.8	0.7	0.6
N3WET300	2.1	2.1	2.1	2.2	2.8	2.3	2.2	0.7	0.7	0.6	0.7	0.8	0.7	0.6
Paired Mean (SD) ¹	1.9 (0.3)	2.0 (0.6)	2.2 (0.3)	2.1 (0.2)	2.3 (0.4)	2.2 (0.3)	2.1 (0.1)	0.6 (0.1)	0.6 (0.2)	0.7 (0.1)	0.7 (0.1)	0.7 (0.1)	0.7 (0.1)	0.6 (0.1)
Total Mean (SD) ¹	2.0 (0.2)	1.9 (0.5)	2.1 (0.3)	2.0 (0.3)	2.2 (0.3)	2.1 (0.3)	2.1 (0.1)	0.7 (0.1)	0.6 (0.2)	0.7 (0.1)	0.6 (0.1)	0.7 (0.1)	0.7 (0.1)	0.6 (0.1)

¹ Standard deviation.

3.2 Cluster Analysis and Community Typing

Patterned fen wetland community types were identified on the RoW based on regenerating vegetation cover and composition. Analyses were performed for seven surveys on the RoW, resulting in two community types (Table 3-2), generally consistent since 2017. Though quite similar in species composition, the two communities have remained distinguished since initial sampling due to vegetation structure (i.e., presence of low shrubs), moss cover and composition, and the presence of surface water. Dwarf birch (*Betula pumila*) seedlings and tall shrubs have become identifiable in 2019 typing (similar to off-RoW). In 2017, one site did not group with others due to higher water levels (98%), which in turn resulted in very little emergent vegetation present.

Adjacent to the RoW, one wetland community type was identified during initial sampling for off-RoW comparison - Tamarack/Dwarf Birch/Hairy-fruited Sedge/Moss. This community type (two surveys) has a sparse canopy of tamarack (*Larix laricina*), characteristic of this wetland type. The tall shrub layer consists of three species that include tamarack, dwarf birch and black spruce (*Picea mariana*). Notably present in the ground layer were hairy-fruited sedge (*Carex lasiocarpa*), dwarf birch, Labrador tea (*Rhododendron groenlandicum*) and bog bean (*Menyanthes trifoliata*). Moss species cover was high (62%) in the ground layer; peat moss (*Sphagnum* spp.) cover was lower (17%). Ground litter cover was 15%.

Table 3-2. Community types for environmentally sensitive wetland surveys on the RoW.

Year	Community Types	Surveys	Species
2014	Bog Willow-Bog Bean/Moss	2	24
	Hairy-fruited Sedge/Moss	1	19
2015	Bog Willow-Bog Bean/Sphagnum	2	27
	Hairy-fruited Sedge- Bog Bean/Moss	5	48
2016	Bog Birch – Three-leaved Solomon’s-seal/Sphagnum	3	44
	Hairy-fruited Sedge- Bog Bean	4	28
2017	Bog Bean – Hairy-fruited Sedge/moderate Mosses	3	42
	Low shrub – Bog Bean – Hairy-fruited Sedge/abundant Sphagnum - Mosses	3	40
	High water site	1	9
2018	Bog Bean – Hairy-fruited Sedge/moderate Mosses/Surface water	4	49
	Low shrub – Bog Bean – Hairy-fruited Sedge/abundant Sphagnum - Mosses	3	44
2019	Sparse Dwarf Birch seedlings - Flat-leaved Bladderwort/moderate Mosses (non-Sphagnum)/ Surface water	3	37
	Sparse Dwarf Birch Tall Shrub/Dwarf Birch seedlings - Labrador Tea- Three-leaved Solomon’s-seal/abundant Mosses (Sphagnum and other)	4	47

3.3 Accuracy of Effect Predictions and Effectiveness of Mitigation

The effect predictions for the project were determined to be accurate, and included effects on environmentally sensitive sites and wetlands (Szwaluk Environmental Consulting et al. 2011). The effects on wetlands identified included potential disruption, alteration or loss from project activities; and species of conservation concern may also be affected.

Mitigation measures identified in the Construction Environmental Protection Plan (Manitoba Hydro 2014) were initially assessed after clearing, at each wetland site sampled. The majority of recommended mitigation measures were implemented (Table 3-3). Recommended mitigation was effective for the patterned fen wetlands which minimized the disturbance from clearing and construction activities. In the absence of mitigation, surface disturbance (i.e, rutting, exposed soils) likely would have increased.

Table 3-3. Mitigation measures assessed at sites monitored for environmentally sensitive wetlands on the RoW.

Mitigation Measure	N 3 W E T 1 0 0 0	N 3 W E T 2 0 0 0	N 3 W E T 3 0 0 0	N 4 W E T 1 0 0 0	N 4 W E T 2 0 0 0	N 4 W E T 3 0 0 0	N 4 W E T 4 0 0 0
Use existing access roads and trails to the extent possible.	Y	Y	Y	Y	Y	Y	Y
Provide 30 m vegetated (shrub, herbaceous) buffer around site.	N	N	N	N	N	N	N
Remove trees by low disturbance methods.	Y	N	N	N	N	Y	Y
Confine vehicle traffic to established trails to extent possible.	Y	Y	Y	Y	Y	Y	Y
Carry out construction activities on frozen/dry ground to minimize surface damage, rutting and erosion.	Y	Y	Y	Y	Y	Y	Y
Install erosion protection/sediment control measures in accordance with Erosion/Sediment control plan.	-	-	-	-	-	-	-

During clearing and construction activities in 2014 and 2015, all sites appeared to utilize existing trails and had vehicle traffic confined to established trails, to the extent possible. Construction activities were carried out on frozen ground conditions to minimize surface damage, rutting and erosion. Vegetated buffers at the ends of the wetlands on the RoW were not fully retained.

Tree clearing was carried out using methods with low disturbance to wetlands for three monitoring sites (N3WET100; N4WET300; -400). Four sites showed moderate disturbance from shear blading and tree cover removal, with slash present and areas of organic soil exposed, over the first two seasons. Approximately 42 hectares were disturbed from clearing activities in 2014 while 15.2 hectares were calculated in 2015, a reduction of 26.8 hectares. In 2016, monitored wetlands showed lower disturbance from earlier years observations. Average surface water cover increased from 0.6% to 97% from the previous season in one site (N4WET300). During monitoring in 2017, the equipment path displayed light travel or minor rutting in areas of the RoW from construction activities. Natural regeneration showed increases throughout disturbed wetland sites.

In 2018, all towers were erected and conductor stringing was completed in wetlands sampled. During ground surveys, the wetlands showed relatively low disturbance from the recent project activities. Vehicle traffic appeared to utilize mainly existing trails under frozen ground conditions. Water levels in many areas of the RoW were observed to be higher than in previous years, possibly a result of increased winter snow melt or greater precipitation received during spring and early summer. Sampled wetlands observed with high water levels included N3WET200; -300 and N4WET400.

The seven wetland sites monitored showed relatively low disturbance in 2019. Water levels in sampled wetland plots continue to be variable over monitoring seasons. Three sites with previous high-water levels (2018) showed a reduction in percent surface water cover in 2019. A reduction in water levels could have been a result of lower precipitation received in the region. In 2018, total precipitation received in The Pas region from January through July was 339.9 mm, while in 2019, 212.7 mm was received over the same months (Government of Canada 2019). Patterned fen wetlands continue to recover with no evidence of disrupted natural function along the RoW.

Elsewhere on the RoW, generally low wetland disturbance was documented during aerial inspection of wetlands. Occasional areas of rutting through wetlands on the equipment path were observed, where natural revegetation was slow and exposed soil remained with tracks of water. Similarly, occasional tower foundations in wetlands showed evidence of previous construction activity. Remaining disturbances were however reduced in 2019 and areas previously affected were anticipated to naturally recover. No areas of wetland disturbance were identified for rehabilitation in 2019.

3.4 Species of Conservation Concern

In wetland monitoring sites, species of conservation concern were observed to persist after clearing and construction activities. Surveys occurred from 2014 through 2018. Among sites, nine species of conservation concern were observed in monitored wetlands. Species ranked imperiled (S2? to S2S4) were slender-leaved sundew (*Drosera linearis*, S2?) and floating marsh-marigold (*Caltha natans*, S2S4). Seven additional species ranked vulnerable (S3 to S3S5) were oblong-leaved sundew (*Drosera anglica*, S3S4), yellow twayblade (*Liparis loeselii*, S3S4), swamp-fly-honeysuckle (*Lonicera oblongifolia*, S3S5), bog candle (*Platanthera dilatata*, S3S4), white beakrush (*Rhynchospora alba*, S3), podgrass (*Scheuchzeria palustris*, S3S4) and lesser bladderwort (*Utricularia minor*, S3).

Two locations for species of conservation concern were not observed at monitoring sites during successive growing seasons (white beakrush and oblong-leaved sundew). Several new locations for species of conservation concern were observed incidentally in sites over the duration of monitoring (e.g., floating marsh-marigold; slender-leaved sundew; bog candle; white beakrush; oblong-leaved sundew). The monitoring success for species of conservation concern was attributed to general low disturbance in these environmentally sensitive wetlands.

4.0 CONCLUSION

Seven environmentally sensitive patterned fen wetlands were monitored during construction and post-construction. Although some wetland measures initially show differences between on and off-RoW, species richness values show an increasing trend on the RoW, similar to off-RoW values after six years of monitoring. Mean species cover values on the RoW are influenced by the removal of sparse woody vegetation during clearing. Measures of diversity and evenness show similar values between on and off-RoW across all years of monitoring.

The effects on wetlands included the predicted initial disruption and alteration from project activities, such as those from tree removal and equipment travel. The recommended mitigation was effective for the wetlands which minimized the disturbance from clearing and construction activities. Monitored wetlands continue to naturally recover with no evidence of disrupted wetland function along the RoW.

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APPENDIX I. Photographs of environmentally sensitive wetlands monitored on the transmission line RoW from 2014 through 2019.

N3WET100 MONITORING



2014



2015



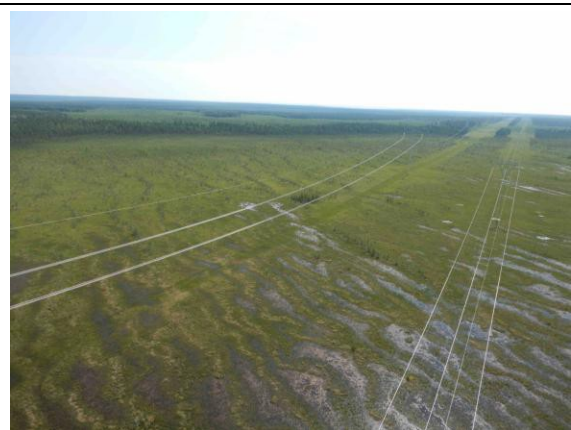
2016



2017



2018



2019

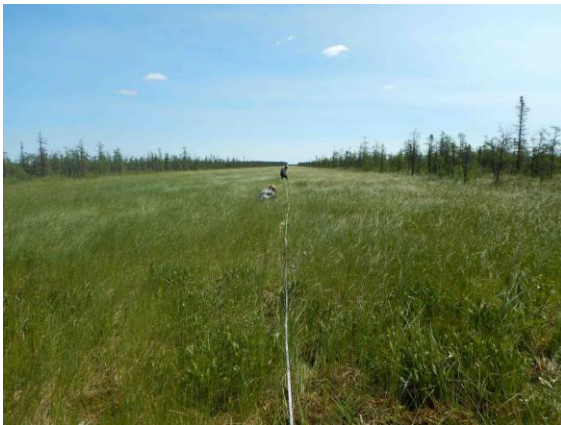
N3WET200 MONITORING



2014



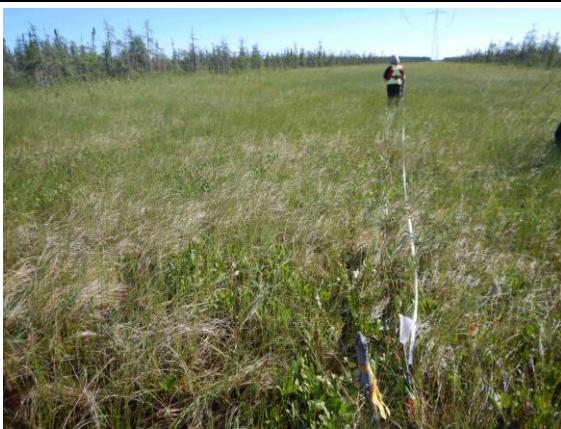
2015



2016



2017



2018



2019

N3WET300 MONITORING



2014



2015



2016



2017



2018



2019

N4WET100 MONITORING



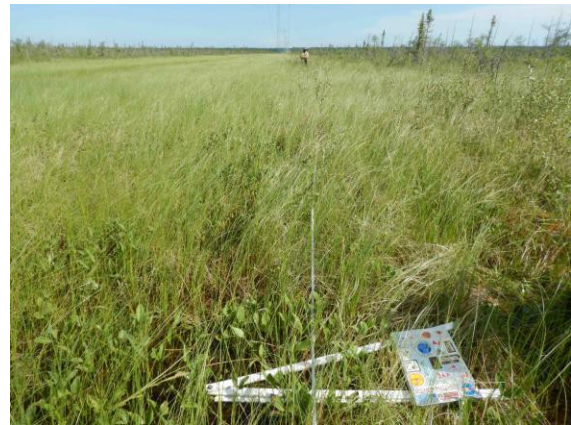
2015



2016



2017



2018



2019a



2019b

N4WET200 MONITORING



2015



2016



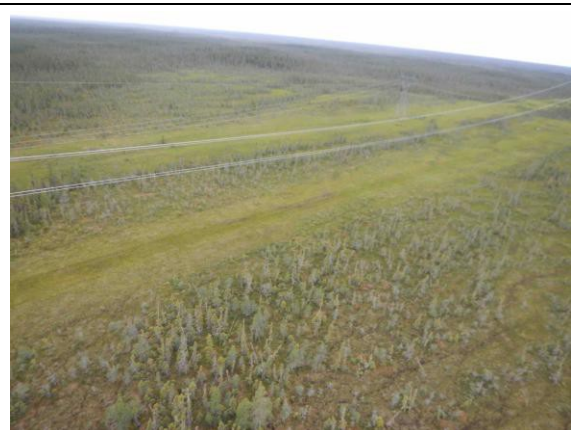
2017



2018



2019a



2019b

N4WET300 MONITORING



2015



2016



2017



2018



2019a



2019b

N4WET400 MONITORING



2015



2016



2017



2018



2019a



2019b

MANITOBA—MINNESOTA TRANSMISSION PROJECT

EFFECTS OF TRANSMISSION LINES ON WETLAND BIRDS

Prepared for
Manitoba Hydro

By
Wildlife Resource Consulting Services MB Inc.

April 2020

INTRODUCTION

The Manitoba-Minnesota Transmission Project consists of approximately 213 km of transmission line that will start at the existing Dorsey Converter Station northwest of Winnipeg and will connect at the Manitoba-Minnesota border (Manitoba Hydro 2019a). The project consists of two types of metal towers, guyed and self-supported, placed an average of 400 to 500 m apart in a right-of-way (ROW) approximately 80 to 100 m wide (Manitoba Hydro 2020). Towers will be connected by single circuit, 500 kV AC transmission line (Manitoba Hydro 2019a).

The main effects of transmission lines on wetland birds are associated with habitat changes and collisions with overhead wires. Some habitat has been lost at tower footprints and vegetation has been cleared on the ROW. The Manitoba-Minnesota Transmission Project was expected to affect a small amount (2%) of wetland habitat in the region (Manitoba Hydro 2015a). Changes in vegetation species abundance (Magnusson and Stewart 1987), the conversion of one type of wetland into another (e.g., wooded swamp to shrub swamp; Nickerson and Thibodeau 1986), and the maintenance of vegetation in early successional stages (Askins 1994) on transmission line ROWs can influence the bird species found within and nearby. Wetland birds such as cranes, ducks and geese can collide with transmission lines, resulting in mortality (e.g., Faanes 1987; Bevanger 1998; APLIC 2012; Rioux et al. 2013; Loss et al. 2014).

Compounds from chromated copper arsenate (CCA)-treated wooden utility poles (and potentially, other wood preservatives) can leach into wetlands (e.g., Warner and Solomon 1990) and areas with stagnant water (North American Wood Pole Council and Brooks 2020). Although no description of the effects of these compounds on wetland birds could be found in the literature, the use of steel lattice towers on this project negates the need for further investigation.

HABITAT EFFECTS

Limited literature is available on the effects of constructing and operating transmission lines on wetland bird habitat. Transmission lines can alter habitat by providing perch sites for brood parasites such as brown-headed cowbird (*Molothrus ater*), nest predators such as common raven (*Corvus corax*), and predators such as raptors (e.g., hawks and eagles). While transmission lines through forests increase the amount of edge habitat that attracts brown-headed cowbirds, effects on wetlands, which are typically open, are not as pronounced. However, the perches created by transmission lines could attract brown-headed cowbirds, possibly increasing brood parasitism and decreasing the productivity of affected songbird species (Evans and Gates 1997 in DeGregorio et al. 2014). There may or may not (Hauber and Russo 2000; DeGregorio et al. 2014; Bernaith-Plaisted et al. 2017) be a relationship between proximity to perches and brood parasitism, depending on the species being parasitized and the surrounding habitat. Transmission lines can provide perching and nesting sites for common ravens and red-tailed hawks (*Buteo jamaicensis*) (Knight and Kawashima 1993 in DeGregorio et al. 2014), which are protected under *The Wildlife Act* of Manitoba. However, the introduction of perching sites can result in increased raven and hawk predation on other birds and their nests. As the effects of transmission lines on the abundance of brown-headed cowbirds and raptors are described mainly for forest and grassland birds, the effects on wetland birds are unclear.

The effects of the construction of a transmission line on a shrub swamp, wooded swamp, and cattail (*Typha*) swamp were studied in Massachusetts (Nickerson and Thibodeau 1986). It was found that the shrub swamp returned to its former condition, the wooded swamp became a shrub swamp, and the cattail swamp was unaffected. Bird populations increased at the wooded and shrub swamps, likely due to the creation of edge habitat and of a travel corridor (Nickerson and Thibodeau 1986).

The spread of invasive plant species could potentially affect wetlands and reduce the quality and quantity of wetland bird habitat, primarily within, but potentially beyond the footprint of the ROW. The spread of invasive and native non-peatland plant species in bog and fen peatlands was studied along a transmission line ROW in Quebec (Dubé et al. 2011). The ROW was shown to facilitate the spread of native non-peatland and invasive plant species in fens. Minor effects were observed in bogs (Dubé et al. 2011). Measures to prevent the establishment of invasive plant species and to manage weeds were outlined in the Rehabilitation and Invasive Species Management Plan (Manitoba Hydro 2019b). Examples include avoiding walking or driving through areas of invasive species, cleaning and washing equipment and boots before entering and leaving a site, and recording early detection of invasive species problem areas on adjacent lands (Manitoba Hydro 2019b). During environmental monitoring for the Bipole III Transmission Project (Bipole III) it was determined that mitigation measures were effective where they were implemented, and no noxious, invasive, or non-native species had been found in environmentally sensitive wetlands (Szwaluk Environmental Consulting Ltd. And Newman 2018).

In Manitoba forested peatlands, changes in the abundances of plant species, rather than the alteration of plant community composition, were observed along transmission corridors from Gillam to Winnipeg (Magnusson and Stewart 1987). Other studies conducted in a range of habitats in the transmission corridors indicated that the vegetation communities along the ROW were different than those at nearby undisturbed sites and were typically at an earlier stage of succession, attributed to vegetation maintenance (MacLellan 1982; MacLellan and Stewart 1985).

More recently, environmental monitoring for Bipole III has shown no adverse effects of habitat loss on marsh birds. Minimal habitat loss was predicted, as the route was chosen to avoid wetlands and waterbodies where possible (Manitoba Hydro 2011). The abundance of marsh birds was lower after vegetation clearing on the ROW than before (Amec FosterWheeler Environment & Infrastructure 2017). However, a decline in marsh bird abundance was observed at impact sites expected to be affected by the transmission line and at unaffected control sites; a wide-ranging declining trend in the abundance of marsh birds was identified. Vegetation clearing on the ROW did not appear to affect marsh bird abundance adjacent to the transmission corridor. The abundance of wetland/open water songbirds was unchanged at control sites but increased at impact sites, indicating a potential increase in habitat at the latter sites due to an increase in beaver ponds and/or open flooded areas in the transmission corridor. Bird species richness was not affected by vegetation clearing on the ROW (Amec Foster Wheeler Environment & Infrastructure 2017).

COLLISION MORTALITY

Collisions with transmission lines result in bird mortality. The species most frequently affected are relatively large and with low maneuverability including waterfowl (ducks and geese), pelicans, and herons (e.g., Faanes 1987; Huckabee 1993 in Manville 2005; Bevanger 1998; APLIC 2012; Loss et al. 2014). Gulls are also susceptible to collisions because of their flocking behaviour and their tendency to feed at night (APLIC 2012). All are frequently found in wetlands. Passerines (perching birds) and raptors are more likely to collide with transmission lines in habitats other than wetlands (Manville 2005).

Many bird collisions occur at transmission lines near wetlands that support large numbers of waterbirds (Faanes 1987; Bernardino et al. 2018). Effects can be mitigated by route planning (D'Amico et al. 2018 in Bernardino et al. 2018) to avoid wetlands and by installing bird diverters on transmission lines near wetlands and waterbodies (e.g., APLIC 2012; Barrientos et al. 2012). In Manitoba, the Bipole III (Manitoba Hydro 2011), Keeyask (Manitoba Hydro 2012), Manitoba-Minnesota (Manitoba Hydro 2015b), and Birtle (Manitoba Hydro 2018) transmission projects have included a route selection process that considered environmental priorities, including wetlands, as factors in the determination of the suitability of transmission line locations. Bird diverters were placed on static wires at environmentally sensitive sites (primarily wetlands and stream crossings) to mitigate the potential effects of bird collisions.

Collision monitoring has been conducted at recently constructed transmission lines in northern Manitoba. Monitoring at stream crossings for the Keeyask Transmission Project in 2016 indicated that Canada goose (*Branta canadensis*), an unidentified gull species, common raven (*Corvus corax*), Canada jay (*Perisoreus canadensis*), savannah sparrow (*Passerculus sandwichensis*), and an unidentified sparrow species mortality had occurred (Wildlife Resource Consulting Services MB Inc. [WRCS] 2017). The minimum collision mortality at stream crossings was estimated at 10.80 birds/km of transmission line in the late breeding bird season and at 10.32 birds/km during the fall migration. Collision monitoring was conducted for the Wuskwatim Generation Project from 2016 to 2018. Sites along a relatively short transmission line spanning open gravel areas with little vegetation regrowth were searched for evidence of bird mortality. Eight incidences of mortality were found in total: unidentified waterfowl, unidentified gull, common raven, four mallards (*Anas platyrhynchos*), and unidentified woodpecker (WRCS 2019). Despite the dry habitat on the transmission line ROW most mortalities were waterbirds, possibly because of the proximity of the transmission line to the Burntwood River. Collision mortality was estimated at 5.04 to 43.10 birds/km of transmission line during two breeding bird seasons and at 21.55 to 46.01 birds/km during two fall migration periods, which is within the range reported by other studies (WRCS 2019).

Collision monitoring was conducted for Bipole III from central to southern Manitoba in 2018 (Wood Environment & Infrastructure Solutions [Wood] 2019). Twenty-seven incidences of mortality were found in total at 14 of the 29 sites surveyed and 18 bird species were identified. Nine specimens were not identified to species. Of these, three were identified to group (sparrow, waterfowl, gull). Fourteen of the 27 (52%) collisions were passerine species, five (19%) were waterfowl species, and one (4%) was a gull. Two gamebird collisions (7%) were recorded and the remaining five

(19%) were unknown. Of the 29 sites surveyed, six were near wetlands. Mortalities were recorded at three wetland sites, including two where bird diverters were installed. Collision mortality was estimated at 56.21 birds/km of transmission line during the spring migration and at 35.66 birds/km during the fall migration.

More passerine mortality was found than expected during collision monitoring for Bipole III but was reported as similar to passerine mortality at the Manitoba-Minnesota and Keeyask transmission projects (Wood 2019). The relatively large number of passerine collisions could be due, at least in part, to the proportion of sites that were in terrestrial, rather than near riparian, habitat. While the habitats surveyed were unspecified, it could also be because smaller bird carcasses may be easier to detect in habitats such as grasses (Martin 2018).

CONCLUSION

The effects of transmission lines on wetland birds are mainly associated with marginal habitat changes such as physical habitat loss around the footprint of the tower, an incremental increase of perches for brown-headed cowbirds on wires and towers, increased perches and potential nesting habitat on structures for predators (e.g., hawks, ravens) for a limited number of towers spanning a wetland, and potential collisions with overhead wires. Measurably substantive effects are unlikely to bird populations associated with wetlands, with the possible exception of bird-wire collisions. No effects on bird diversity were observed during monitoring studies for the Bipole III Transmission Project, including no change to brown-headed cowbird abundance or birds of prey abundance. Collision mortality on Manitoba transmission lines was similar to that observed during other studies. These effects were mitigated by selecting a route that avoids wetlands, with practices that minimize the spread of invasive species, and by installing bird diverters on static wires at wetland sites to reduce bird collisions.

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Appendix D Part 2: Summary of Consultation to Date with Relevant Non-Government Expert Bodies

Manitoba Hydro consulted with relevant non-government expert bodies regarding the plan.

Contact and Title	Agency	Emailed	Called	Response Received	Response Provided
Pat McGarry - Head, Industry and Government Relations, Manitoba	Ducks Unlimited Canada	November 28, 2019	November 29, 2019; January 21, 2020	January 17, 2020	July 22 nd , 2020
Stephen Carlyle - Chief Operating Officer	Manitoba Habitat Heritage Corporation	November 28, 2019; January 28 2020	November 29, 2019; December 3 2019	February 23, 2020	July 22nd, 2020
Carey Hamel - Director of Conservation	Nature Conservancy of Canada	November 28, 2019; January 28 2020	November 29, 2019	January 30, 2020	Not required

Summary of issues or concerns provided by relevant non-government bodies and Manitoba Hydro's response

Issues or Concerns Provided	How Manitoba Hydro Addressed or Responded to Issues or Concerns Raised
<p>Ducks Unlimited Canada indicated that the plan applied the wetland mitigation hierarchy appropriately, appeared to match new Provincial wetland regulations, provided some wetland protection from future development, but could still cause wetland function concerns due to waterfowl striking the transmission line. Ducks Unlimited Canada recommended three actions: 1) consider bird strikes as loss of wetland function 2) construct the Project under frozen ground in wetland areas, 3) restrict maintenance activities in class 3,4,5 wetlands during the waterfowl breeding season.</p>	<p>Manitoba Hydro provided a written response to Ducks Unlimited Canada on July 22nd, 2020. This written response addressed the recommendations provided by Ducks Unlimited Canada by directing them to other environmental mitigation measures contained in the construction environmental protection plan, environmental impact statement, and commitment table. Addressing the recommendations from Ducks Unlimited Canada did not require altering the Wetland Offset Measures Plan.</p>
<p>Manitoba Habitat Heritage Corporation provide a written email response. In the response MHHC indicated that in their opinion the wetland plan should cover a broader wetland area and consider a higher compensation ratio then was outlined.</p>	<p>Manitoba Hydro provided a written response to Manitoba Habitat Heritage Corporation on July 22nd, 2020. This written response addressed the comments and recommendations by outlining how the wetland offset plan followed the requirements of Provincial legislation. They were also directed to the other wetland mitigation measures contained in the construction environmental protection and wetland offset measures plan. Addressing the comments and recommendations from Manitoba Habitat Heritage Corporation did not require altering the Wetland Offset Measures Plan.</p>
<p>Nature Conservancy Canada notified Manitoba Hydro that they would not be conveying a review of this plan.</p>	<p>None required.</p>

Initial correspondence submitted to relevant non-government expert bodies:



Thu 11/28/2019 8:49 AM

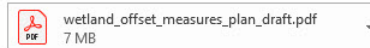
Wiens, Jonathan

MMTP - Wetland Offset Measures Plan

To p_mcgarry@ducks.ca

Cc MMTP

This is the most recent version, but you made changes to another copy. [Click here to see the other versions.](#)



Hello Pat,

Please see the attached letter.

Thank you,

Jonathan Wiens

Manitoba Hydro

Licensing & Environmental Assessment Dept

360 Portage Avenue (5), R3C 0G8

Phone: (204) 360-6623

Email: jwiens@hydro.mb.ca

November 27th, 2019

Pat McGarry
Head Industry and Government Relations
Ducks Unlimited Canada
Stonewall, Manitoba
p_mcgarry@ducks.ca

Dear Mr. McGarry:

RE: Manitoba-Minnesota Transmission Project– Wetland Offset Measures Plan

Pursuant to Manitoba-Minnesota Transmission Project National Energy Board Certificate of Public Convenience and Necessity EC-059 condition 26, Manitoba Hydro is seeking feedback from your agency on the attached draft Wetland Offset Measures Plan.

The Plan can be accessed electronically at this link:

https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/wetland_offset_measures_plan_draft.pdf

This document outlines Manitoba Hydro's plan for offsets for permanent wetland losses with the goal of no net loss of wetlands as a result of the project. This Plan follows the requirements dictated under the Province of Manitoba's *The Water Rights Act* and Water Rights Regulation. Manitoba Hydro is seeking input from provincial and federal authorities, non-government expert bodies and impacted Indigenous communities.

Please provide any feedback on this plan by January 17th, 2020.

For your reference, federal certificate condition 26 and provincial licence condition 36 state:

26. Wetland Offset Measures Plan

*Manitoba Hydro must file with the Board for approval, **within ninety (90) days of commencing operation of the Project**, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:*

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*
- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*

- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

For your reference, the Provincial authorization for the Project under *The Environment Act* (licence #3288) includes condition 36:

Wetlands

36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development.

Should you have any questions or wish to discuss, please do not hesitate to contact me at 204-360-6623 (jwiens@hydro.mb.ca) or Maggie Bratland 204-360-7677 (mbratland@hydro.mb.ca). If you will not be reviewing and providing feedback on the document, we ask that you please inform us.

Regards,

Original signed by

Jonathan Wiens
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

Attachment: 1



Thu 11/28/2019 8:48 AM

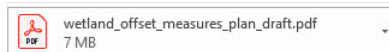
Wiens, Jonathan

MMTP - Wetland Offset Measures Plan

To scarlyle@mhhc.mb.ca

Cc MMTP

You replied to this message on 1/28/2020 10:53 AM.



Hello Stephen,

Please see the attached letter.

Thanks you,

Jonathan Wiens

Manitoba Hydro

Licensing & Environmental Assessment Dept

360 Portage Avenue (5), R3C 0G8

Phone: (204) 360-6623

Email: jwiens@hydro.mb.ca

November 27th, 2019

Stephen Carlyle
Chief Operating Officer
Manitoba Habitat Heritage Corporation
200-1765 Sargent Ave
Winnipeg, MB R3H 0C6

Dear Mr. Carlyle:

RE: Manitoba-Minnesota Transmission Project– Wetland Offset Measures Plan

Pursuant to Manitoba-Minnesota Transmission Project National Energy Board Certificate of Public Convenience and Necessity EC-059 condition 26, Manitoba Hydro is seeking feedback from your agency on the attached draft Wetland Offset Measures Plan.

The Plan can be accessed electronically at this link:

https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/wetland_offset_measures_plan_draft.pdf

This document outlines Manitoba Hydro's plan for offsets for permanent wetland losses with the goal of no net loss of wetlands as a result of the project. This Plan follows the requirements dictated under the Province of Manitoba's *The Water Rights Act* and Water Rights Regulation. Manitoba Hydro is seeking input from provincial and federal authorities, non-government expert bodies and impacted Indigenous communities.

Please provide any feedback on this plan by January 17th, 2020.

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26. Wetland Offset Measures Plan

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- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*
- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*

- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
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Wetlands

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Should you have any questions or wish to discuss, please do not hesitate to contact me at 204-360-6623 (jwiens@hydro.mb.ca) or Maggie Bratland 204-360-7677 (mbratland@hydro.mb.ca). If you will not be reviewing and providing feedback on the document, we ask that you please inform us.

Regards,

Original signed by

Jonathan Wiens
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

Attachment: 1




Thu 11/28/2019 8:45 AM

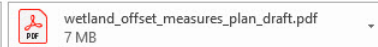
Wiens, Jonathan

MMTP - Wetland Offset Measures Plan

To Cary.Hamel@natureconservancy.ca

Cc [MMTP](#)

 This is the most recent version, but you made changes to another copy. [Click here to see the other versions.](#)
You replied to this message on 1/28/2020 10:54 AM.



Hi Carey,

Please see the attached letter.

Thank you,

Jonathan Wiens

Manitoba Hydro

Licensing & Environmental Assessment Dept

360 Portage Avenue (5), R3C 0G8

Phone: (204) 360-6623

Email: jwiens@hydro.mb.ca

November 27th, 2019

Cary Hamel
Conservation Science Manager
Manitoba Region
Nature Conservancy of Canada
Cary.Hamel@natureconservancy.ca

Dear Mr. Hamel:

RE: Manitoba-Minnesota Transmission Project– Wetland Offset Measures Plan

Pursuant to Manitoba-Minnesota Transmission Project National Energy Board Certificate of Public Convenience and Necessity EC-059 condition 26, Manitoba Hydro is seeking feedback from your agency on the attached draft Wetland Offset Measures Plan.

The Plan can be accessed electronically at this link:

https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/wetland_offset_measures_plan_draft.pdf

This document outlines Manitoba Hydro's plan for offsets for permanent wetland losses with the goal of no net loss of wetlands as a result of the project. This Plan follows the requirements dictated under the Province of Manitoba's *The Water Rights Act* and Water Rights Regulation. Manitoba Hydro is seeking input from provincial and federal authorities, non-government expert bodies and impacted Indigenous communities.

Please provide any feedback on this plan by January 17th, 2020.

For your reference, federal certificate condition 26 and provincial licence condition 36 state:

26. Wetland Offset Measures Plan

*Manitoba Hydro must file with the Board for approval, **within ninety (90) days of commencing operation of the Project**, a Wetland Offset Measures Plan which outlines how permanent loss to wetlands resulting from the Project will be offset or compensated for. This plan must include:*

- a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations where wetlands were affected by the Project;*
- b) an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Board as part of Condition 23;*

- c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above;*
- d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset;*
- e) the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances;*
- f) a schedule indicating when measures will be implemented and estimated completion date(s);*
- g) evidence and summary of consultation with provincial and federal authorities, any non-governmental expert bodies, and any impacted Indigenous communities regarding the plan; and,*
- h) this summary must include a description of any issues or concerns raised regarding the plan by Indigenous communities, and how Manitoba Hydro has addressed or responded to them.*

For your reference, the Provincial authorization for the Project under *The Environment Act* (licence #3288) includes condition 36:

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36. The Licencee shall, within three months of the completion of construction of the Development, submit a plan for approval of the Director of the Environmental Approvals Branch to ensure that there is no net loss of wetland benefits related to Class 3, 4, and 5 wetlands (as defined by the Stewart & Kantrud Classification System) that are altered or destroyed during construction of the Development.

Should you have any questions or wish to discuss, please do not hesitate to contact me at 204-360-6623 (jwiens@hydro.mb.ca) or Maggie Bratland 204-360-7677 (mbratland@hydro.mb.ca). If you will not be reviewing and providing feedback on the document, we ask that you please inform us.

Regards,

Original signed by

Jonathan Wiens
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

Attachment: 1

Response from relevant non-government expert bodies:



Conserving
Canada's
Wetlands

January 16, 2019

Mr. J. Wiens
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Avenue
Winnipeg, Manitoba R3C 0G8

Dear Mr. Wiens,

Re: Draft Manitoba-Minnesota Transmission Project (MMTP) Wetland Offset Measures Plan

Thanks for the invitation and opportunity to review the above document. We are pleased to see that you are following generally accepted wetland mitigation and offset protocols starting with the Mitigation Hierarchy. Transmission line routing is a key in avoidance and minimization and seems to have been applied well for this project.

What remains after that exercise is unavoidable wetland loss or alteration that requires compensation or offset to effectively meet the no-net-loss of wetland benefits goal of the recently enacted *Sustainable Watersheds Act* (June 2018) with amendments to the *Water Rights Act* and *Water Rights Regulation*. Your basis for compensation of permanent wetland loss is the footprint of anchors for each tower type (27.45 m² for self-supporting towers and 36.4 m² for guyed structures). While the structure footprint identified, minimally covers the physical wetland loss, it does not cover all the wetland functions and benefits associated with that loss, especially for Class 3, 4 and 5 wetlands that have waterfowl habitat associated with them. The presence of the structures and the overhead transmission lines present a hazard and obstacle to breeding and migrating waterfowl and other birds. This effect might be considered one of alteration resulting in partial loss of wetland benefits.

The Environmental Impact Assessment (EIA) for the project reviewed the potential effects of transmission line on birds and concluded that mitigation was required to lessen potential for bird strikes by installing bird deflectors in important bird areas. This is a reasonable mitigation especially for waterfowl that are heavy bodied and have limited avoidance capability in comparison to more agile flyers. A reference included in the MMTP EIA indicated that "most bird collisions occur within 400m of water" (Faanes 1987). As such, bird diverters should be considered on the transmission line for Class 3, 4 and 5 wetlands within that distance of the transmission line right-of-way (ROW).

In conclusion the draft wetland offset plan:

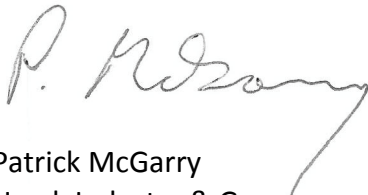
- Applies the mitigation hierarchy appropriately;
- Uses mitigation ratios and compensation amounts for your defined wetland loss that appear to meet or exceed the requirements of the recently proclaimed *Water Rights Regulation* (M.R. 130/2019);
- Does by default somewhat protect wetland benefits on the ROW, by removing that area from future land development, once maintenance and access activities are accounted for;
- However, the ROW does not protect all aspects of wetland function and still exposes waterfowl to transmission line strikes in proximity to Class 3, 4 and 5 wetlands.

Ducks Unlimited Canada recommends Manitoba Hydro consider:

- Expanding the scope of wetland alteration or loss to include the potential for bird strikes in proximity to Class 3, 4 and 5 wetlands and mitigating as suggested above;
- Constructing the transmission line across wetlands on frozen ground to minimize wetland habitat disturbance;
- Restricting maintenance activities in Class 3, 4 and 5 wetlands during migratory bird breeding season.

Thanks again for the opportunity to review and comment on the draft Wetland Offset Measures Plan. If you wish to discuss further, please contact me.

Best regards,



Patrick McGarry
Head, Industry & Government Relations - Manitoba
Ducks Unlimited Canada

From: [Stephen Cadyle](#)
To: [Wiens Jonathan](#)
Subject: Re: MMTP - Wetland Offset Measures Plan
Date: Monday, February 3, 2020 5:07:41 PM

BE CAUTIOUS WITH THIS EMAIL: This message originated outside Manitoba Hydro. Verify all links and attachments from unknown senders before opening. Search 'email security' on mpower for details.

Hey Jonathan,

All is well, just got swamped and I am now on the road (currently in the St. Louis airport). In terms of a response from MHHC, I can keep it very simple, as follows, if that will suffice. MHHC applauds MB Hydro for their work to consult a variety of agencies with respect to the Manitoba-Minnesota transmission line. As a leading conservation group in Manitoba, and an organization that has worked on mitigation for several linear disturbances, it is our opinion that the proposed mitigation calculation is erroneous in that it does not account for the full impact of the line and towers. It is our recommendation to include in the calculation of the area disturbed, the entire right of way. Identifying only the concrete piles/footings as the only lost habitat does not fully address long term losses. MHHC recommends that all the ROW be included, but at a lower "impact" level.

All wetland habitat within the tower footprints should be compensated at a 4:1 ratio with wetland habitat in the ROW at a 2:1 (i.e. 50%) ratio.

Thanks for your consideration of this recommendation and we would be willing to explore these calculations further in the future.

Thanks,
Stephen

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From: [Cary Hamel](#)
To: [Wiens Jonathan](#)
Cc: [MMTP Rebekah Newfield](#)
Subject: RE: MMTP - Wetland Offset Measures Plan
Date: Thursday, January 30, 2020 8:34:27 AM

BE CAUTIOUS WITH THIS EMAIL: This message originated outside Manitoba Hydro. Verify all links and attachments from unknown senders before opening. Search 'email security' on mpower for details.

Hi Jonathan – NCC won't be conveying a review of this.

Regards

Cary



Cary Hamel
Director of Conservation
Nature Conservancy of Canada | Manitoba Region

cary_hamel@natureconservancy.ca | www.natureconservancy.ca

NCC staff published several research papers in 2019 on some of Manitoba's most important conservation opportunities: <http://www.natureconservancy.ca/en/where-we-work/manitoba/stories/celebrating-a-great-2019.html>



July 22nd, 2020

Pat McGarry
Head Industry and Government Relations
Ducks Unlimited Canada
Stonewall, Manitoba

Dear Mr. McGarry:

RE: Manitoba-Minnesota Transmission Project– Draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan

Thank you for your letter dated January 16th, 2020. We appreciate your comments on the Manitoba-Minnesota Transmission Project – Draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan. While Manitoba Hydro has not altered the Plan based on your recommendations, we have provided further information that hopefully addresses your concerns. These responses help explain the Project's broader commitment to wetland protection.

1. Expanding the scope of wetland alteration or loss to include the potential for bird strikes in proximity to Class 3, 4 and 5 wetlands and mitigating as suggested above;

Manitoba Hydro values this recommendation and notes it has already committed to installing bird diverters in areas identified as being higher risk for bird wire collisions. Please see Construction Environmental Protection Plan (https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/epp_construction_environmental_protection_plan.pdf) and Construction Environmental Protection Plan Mapbook (https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/epp_construction_environmental_protection_plan_mapbook.pdf) for more details including specific locations where bird diverters have been prescribed. Bird movement surveys and proximity to wetlands were an important consideration in this process.

2. Constructing the transmission line across wetlands on frozen ground to minimize wetland habitat disturbance;

Manitoba Hydro has committed to specific mitigation measures regarding wetlands, including the commitment that "Disturbance of wetlands will only be carried out under frozen ground conditions. If frozen ground conditions do not exist alternate mitigation measures such as construction matting may be used to minimize surface damage, rutting and erosion if approved by MH environmental Officer/Inspector." Further details can be found in the Construction Environmental Protection Plan (https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/epp_construction_environmental_protection_plan.pdf).

3. Restricting maintenance activities in Class 3, 4 and 5 wetlands during migratory bird breeding season.

Manitoba Hydro has committed to wetland protection and mitigation measures during

operations of the Project as described in Chapters 8, 9 and 10 of the Environmental Impact Statement. These commitments are available for review in our Manitoba-Minnesota Transmission Project (MMTP) Commitment Tracking Table (https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/commitment_tracking.pdf).

Thank you again for your comments and we hope these responses address your recommendations. We expect to release a final Plan in the coming weeks.

Regards,

Original signed by

Jonathan Wiens
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

July 22nd, 2020

Stephen Carlyle
Chief Operating Officer
Manitoba Habitat Heritage Corporation
200-1765 Sargent Ave.
Winnipeg, MB R3H 0C6

Dear Mr. Carlyle:

RE: Manitoba-Minnesota Transmission Project– Draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan

Thank you for your email dated February 4th, 2020. We appreciate your comments on the Manitoba-Minnesota Transmission Project – Draft Wetland Offset Measures Plan and No Net Loss of Wetlands Plan (the Plan). While Manitoba Hydro has not altered the Plan based on your recommendations, we have provided further information that hopefully addresses your concerns. These responses help explain the Project's broader commitment to wetland protection.

1. *"it is our opinion that the proposed mitigation calculation is erroneous in that it does not account for the full impact of the line and towers";*

Manitoba Hydro respects this opinion and notes that it developed the Plan to best align with the requirements dictated under the Province of Manitoba's recently updated *The Water Rights Act* and Water Rights Regulation. The offsets will be implemented to address permanent loss of wetlands as a result of the Project. We acknowledge that other wetland impacts may be realized and therefore additional wetland mitigation measures are outlined in the Plan and the MMTP environmental protection plan documents. Please see table 1 of the Plan for an overview of these measures. In addition, we also note that this Plan generally aligns with or exceeds the requirements of developers in the nearby Province of Alberta, as outlined in their "[*Code of Practice for Powerline Works Impacting Wetlands*](#)".

2. *It is our recommendation to include in the calculation of the area disturbed, the entire right of way. Identifying only the concrete piles/footings as the only lost habitat does not fully address long term losses. MHHC recommends that all the ROW be included, but at a lower "impact" level. All wetland habitat within the tower footprints should be compensated at a 4:1 ratio with wetland habitat in the ROW at a 2:1 (i.e. 50%) ratio.;*

Manitoba Hydro has committed to wetland mitigation measures across the entire Project right-of-way, including the commitment that "Disturbance of wetlands will only be carried out under frozen ground conditions. If frozen ground conditions do not exist alternate mitigation measures such as construction matting may be used to minimize surface damage, rutting and erosion if approved by Manitoba Hydro environmental Officer/Inspector." Further details can be found in the Construction Environmental Protection Plan

https://www.hydro.mb.ca/projects/mb_mn_transmission/pdfs/epp_construction_environmental_protection_plan.pdf).

The wetland habitat offset ratio outlined in this plan follows the requirements dictated under the Province of Manitoba's recently updated *The Water Rights Act* and Water Rights Regulation.

Manitoba Hydro has also developed a MMTP Rehabilitation and Invasive Species Management Plan and a MMTP Environmental Monitoring Plan to examine the effectiveness of these mitigation measures. Manitoba Hydro will also offset for wetlands that are permanently lost due to accidental or unforeseen events. This will be calculated at the end of construction.

Thank you again for your comments and we hope these responses address your concerns. We expect to release a final draft of the Plan in the coming weeks.


Regards,

Original signed by

Jonathan Wiens
Licensing and Environmental Assessment Department
Manitoba Hydro
360 Portage Ave (5)
Winnipeg, Manitoba
R3C 0G8

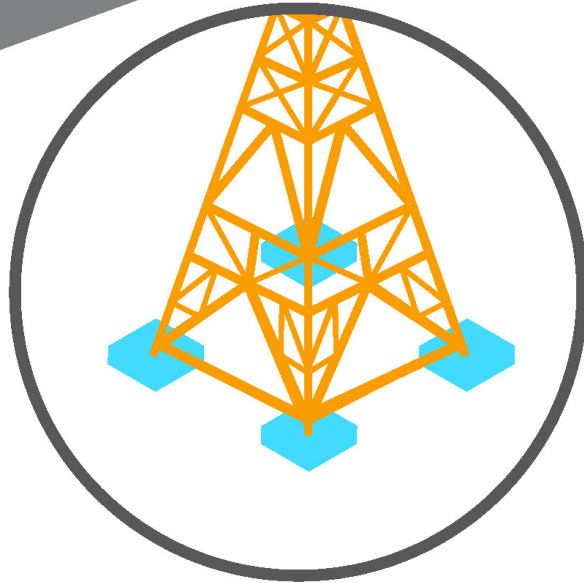
Appendix E: Diagram of Permanent Wetland Loss

MANITOBA-MINNESOTA TRANSMISSION PROJECT

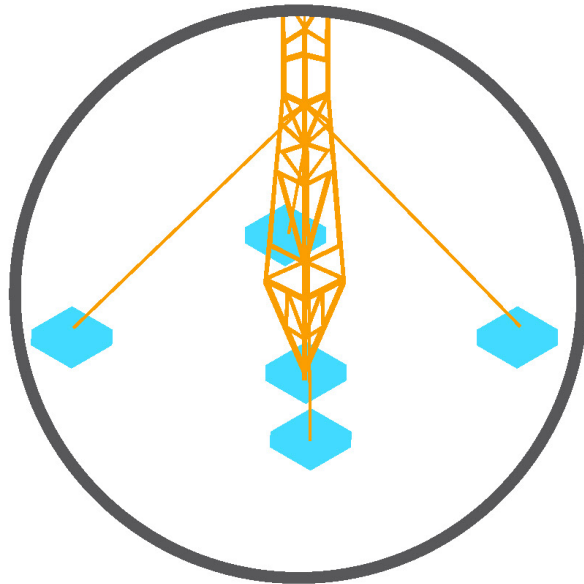
 Permanent loss
Area of loss dependant
on individual tower

WETLANDS

Permanent loss of wetlands



Self-supporting structure



Guyed structure

7