



January 21, 2022

Senate Standing Committee on Energy, the Environment and Natural Resources  
The Senate of Canada  
Ottawa, On K1A 0A4

Re: Senate study to examine the impacts of hydroelectric projects on both the environment and Indigenous communities across Canada

---

To Senator Massicotte, Chair,

We are a group of academics and members of hydro-affected First Nations that have spent the last seven years documenting the adverse impacts of hydroelectric projects on First Nations in Manitoba. We work collaboratively in an Indigenous-led academic research partnership called the *Wa Ni Ska Tan Alliance of Hydro-Impacted Communities*. Our membership includes hydro-affected community members, concerned citizens, members of the NGO community, and university researchers from Canada and the United States. Some of our members are also Treaty rights holders with constitutionally-affirmed and protected rights. For the last seven years we have detailed the impacts of hydropower on First Nation communities, lands, waters, and livelihoods with the goal of increasing awareness of the impacts of hydroelectric projects among the general public and fostering social and environmental change.<sup>1</sup> We are writing in strong support of an independent Senate study that would examine the impacts of hydroelectric projects on both the environment and Indigenous communities across Canada.

At this writing, we are particularly concerned that the Manitoba Conservation and Climate has issued a Final Licence to its Crown Corporation, Manitoba Hydro, for operation of the Churchill River Diversion (CRD) without due and meaningful consultation with all affected Indigenous communities. The CRD Final licence was issued without a mitigation clause to address damages, even though previous deviations from the Licence, the Augmented Flow Program (AFP), had a mitigation clause. Although included actions to mitigate damages were still inadequate, they are now non-existent. The AFP deviations and conditions are now officially the parameters of the Final Licence. The decision to issue this license was effectively undertaken in a “closed-door” and secretive manner that was not transparent or conducive to reconciliation with Indigenous peoples. The Federal Government’s fiduciary duty to First Nations has been well established by the Courts. The Constitutional duty to uphold the Aboriginal and Treaty rights of First Nations peoples in northern Manitoba, including the right to harvest from the land and water, remains important. The Sparrow decision noted that “Section 35(1)... also affords aboriginal peoples constitutional protection against provincial legislative power” (SCC, 1990). We support and welcome an opportunity to include, as part of the study, a review of fiduciary and constitutional undertakings with respect to hydropower.

---

<sup>1</sup> Please see our website for more information: <https://hydroimpacted.ca>

Cree communities in northern Manitoba have experienced the decimation of their once-thriving commercial fisheries. Many waterways, which were and are still integral to their livelihoods and cultures, have been subjected to ongoing devastation; drinking water has become contaminated; a number of waterways have become hazardous for navigation, and recreational and traditional uses have been greatly impacted. Additionally, access to land, shorelines, and waters, which are critical for the exercise of harvesting and hunting activities, has become difficult and sometimes impossible. Harvesting rights depend, in part, on healthy animal populations, yet severe damage has occurred to environments on which animals rely and the populations of a number of culturally important species have declined. Extraordinary cultural and social damage has resulted from hydro impacts in northern Manitoba. These direct impacts of hydro power are clearly contrary to both the spirit and the letter of Treaty 5, which the Cree parties understood as a protection of their livelihoods, cultures, and ways of life.

Based on the foregoing, we reiterate our support for a study focused on the impacts of hydroelectric projects on the environment and in Indigenous territories across Canada and within the context of treaty and Aboriginal rights.

We wrote to the Federal Government on June 2<sup>nd</sup>, 2021, requesting that it apply its own mechanism for public hearings and conduct a federally overseen and independent review of the Churchill River Diversion Project. We also called on the Federal Government to provide financial and legal assistance to Indigenous communities to help ensure their views and needs are adequately reflected in the long-term water and hydropower regime in Manitoba. Any Final Licence should have learned from the mistakes of the past and acknowledged, at a minimum, that if the project is to continue it must do so on the basis of robust recognition and fulfillment of Sec. 35 Constitutionally enshrined Aboriginal and Treaty rights.

Yet, these criticisms are not unique to Manitoba. Many patterns regarding the development and operation of hydroelectric projects and their impacts on Indigenous communities and the environment have been witnessed across Canada.

The Federal Government has declared an era of reconciliation and meaningful consultation is now a constitutional requirement for the Crown. However, the honour of the Crown is at stake because of such treaty rights violations. Given all these commitments and binding legal obligations, the federal government must promptly issue a statement of concern and intervene to ensure the protection and fulfillment of Aboriginal and Treaty rights. Anything less is a constitutional and, in our view, a moral abdication. Please support a nation-wide analysis of what these hydro-related impacts are and how to address them now and moving forward.

Sincerely,



Stéphane McLachlan, PhD  
 Professor, University of Manitoba  
 Principal Investigator, Wa Ni Ska Tan Alliance of Hydro-Impacted Communities

CC Senators - *Verner, Josée; Anderson, Margaret Dawn; Arnot, David; Carignan, Claude; Galvez, Rosa; Gignac, Clément; Griffin, Diane; Miville-Dechêne, Julie; Seidman, Judith Sorensen, Karen; McCallum, Mary Jane; Cardinal, Chantal*