

THE NORTHERN FLOOD AGREEMENT AND THE NORTHERN FLOOD COMMITTEE

ORIGIN OF THE NORTHERN FLOOD COMMITTEE

The Nelson and Churchill Rivers had long been considered as major sources for hydro electric power. Beginning in the 1920s, and continuing through the late 1940s and 1950s, Canada and Manitoba had carried out preliminary surveys on potential power sites on both the upper and lower Nelson. The capacity of the Churchill River was also examined. These preliminary studies, coupled with the development of long distance electrical transmission technology set the scene for the development of hydro electric generating stations on the lower Nelson River, the Churchill River Diversion, and the regulation of Lake Winnipeg which, altogether, comprise the Northern Manitoba Hydro Project. During the 1960s, Canada, Manitoba, and Manitoba Hydro signed agreements, setting in motion the plan for the Project.

The Cree people of northern Manitoba throughout this whole period were not aware, nor were they ever consulted or informed, about what would happen to their traditional homelands in the not too distant future.

From 1966 to 1974, there was an increasing awareness by the Cree that the Hydro Project was going to have a destructive impact on their respective lands waters, and way of life. The first publicized reaction in the north was by the community of South Indian Lake in 1968 to the potential high level impoundment of water on Southern Indian Lake, and the diversion of the Churchill River through a channel from South Bay on South Indian Lake to the Rat River which flows into the Burntwood River and then down the Burntwood River into the Nelson River at Split Lake. Split Lake is located at the point where the flow of the Churchill River Diversion and the flow of the Nelson River are combined into a single volume of water flow for the hydro-electric generating stations on the lower Nelson. The three major generating stations of Kettle, Limestone, and Long Spruce provide 75 % of the total electricity produced by Manitoba Hydro.

These three major generating stations, and the smaller Kelsey generating station, are all located within the Split Lake Resource Management which has been the traditional homeland of the Split Lake (Tataskweyak) Cree since time immemorial.

In 1970, the newly elected NDP government under Premier Edward Schreyer did not stop the Churchill River Diversion but did lower the high level reservoir on Southern Indian Lake from 35 feet of water to 17 feet. The South Indian Lake

community was located on Provincial Crown land, and the Manitoba Department of Northern Affairs and Manitoba Hydro handled the negotiation of the project impacts on the South Indian Lake community, at that time.

The incident that appears to have sparked the organization of the Northern Flood Committee happened at Nelson House in the early winter of 1974. Community members at a meeting with the Manitoba government and Manitoba Hydro officials were told that there could be up to 30 feet of water on their lake as a result of the Churchill River Diversion.

FORMATION AND DEVELOPMENT OF THE NORTHERN FLOOD COMMITTEE

The Northern Flood Committee was formed in April 1974, at a meeting in Thompson. Initially, the idea was that the Northern Flood Committee would consist of both Treaty and non-Treaty communities impacted by the hydro project. However, due to the problems of the different jurisdictions and the responsibilities of the governments of Canada and Manitoba for the Treaty and non Treaty communities, the membership of the Northern Flood Committee was narrowed down to the six First Nations of Split Lake (Tataskweyak) York Landing (Kiche Waskihekan), Nelson House (Nisichawayasihk), Cross Lake (Pimicikamak), Norway House (Kinosao Sipi) and Fox Lake.

The non-Treaty communities, including South Indian Lake, did not form a separate united committee.

The South Indian Lake community did not become a part of the Northern Flood Committee despite the fact that many residents of the South Indian Lake community were also members of the Nelson House First Nation, however the South Indian Lake was on Provincial crown Band and was not reserve land. The South Indian Lake residents who were also members of the Nelson House First Nation were entitled to benefits flowing from the Northern Flood Agreement, where applicable. The South Indian Lake Community negotiated a settlement with Manitoba and Manitoba Hydro in 1992.

All of the early documentation of the Northern Flood Committee (i.e. letters and meeting notes) indicates that the Fox Lake First Nation was a part of the Northern Flood Committee until mid 1974. By early 1975, the Fox Lake First Nation was no longer a member of the Northern Flood Committee but there does not appear to be any written record of why or how Fox Lake ceased to be a member of the Northern Flood Committee.

By early 1975, the five Northern Flood Committee First Nations had arrived a point where there was solidarity on their commitment and purpose for forming a single representative organizational structure to be known as the Northern Flood Committee. They, therefore, incorporated the Northern Flood Committee in February 1975.

Being formally incorporated, the Northern Flood Committee organized to inform residents of the reserve communities about the purpose of the Northern Flood Committee and to gather their support. The Northern Flood Committee also had to convince the governments of Manitoba and Canada, and Manitoba Hydro that the Northern Flood Committee was the representative for the five Northern Flood Committee First Nations on all relevant matters pertaining to the Northern Flood Agreement negotiation.

The formation of the Northern Flood Committee resulted in a unified voice for dealing with the governments and Hydro. This unity was rooted in common recognition of three key principles:

- the autonomy of each First Nation;
- the continuing jurisdiction and authority of each First Nation over its traditional lands and waterways; and
- the right of each First Nation to negotiate an Agreement according to its own needs and goals.

NEGOTIATION OF THE NORTHERN FLOOD AGREEMENT

The Northern Flood Agreement was negotiated over a three-year period from 1974 to 1977. This was not an easy task, as initially Manitoba and Manitoba Hydro did not want to negotiate with the Northern Flood Committee, or even the individual First Nations. Manitoba and Manitoba Hydro felt that they had the right to do what they liked on Manitoba Crown lands, within their powers under the Constitution.

The Northern Flood Committee's only bargaining chip was the fact that the Hydro Project was going to impact Indian Lands (the Reserves) over which the Federal government (Canada) had the authority under the Constitution. In order to build the Project as designed, the waters would now have to flood and to rise and fall on Indian Reserve lands as never before, causing many different types of adverse impacts. Canada said that they would not permit Indian Lands to be impacted unless the First Nations agreed. The Northern Flood Agreement was signed by the four parties (Northern Flood Committee, Canada, Manitoba, Manitoba Hydro) in December 1977, and ratified by the membership of each First Nation in March 1978.

FIRST ATTEMPTS TO GET THE NORTHERN FLOOD AGREEMENT IMPLEMENTED

Once the Northern Flood Agreement was ratified by the four parties Canada, Manitoba, Manitoba Hydro, and the five Northern Flood Committee First Nations, represented by the Northern Flood Committee, the task of getting it implemented had to be organized by the Northern Flood Committee First Nations in the same manner as its negotiation. Once again, the governments of Manitoba and Canada, and Manitoba Hydro, had to be shown that the Cree were serious about getting the promises they believed were contained in the 25 Articles of the Northern Flood Agreement.

After the Northern Flood Agreement was ratified, the parties (Manitoba, Canada and Manitoba Hydro) did as little as possible to implement their obligations under the Northern Flood Agreement. It was as if they had signed the Northern Flood Agreement, and then forgotten about it, except insofar as Manitoba and Manitoba Hydro believed that they had the authority to carry on with the Hydro Project and do as they wished in northern Manitoba. They continued to build dams, create large forebays above the dams, and raise and lower the water levels of the northern lakes and rivers as required by Manitoba Hydro.

In the years from 1974 to 1990, the five Northern Flood Committee First Nations, through their own organization the Northern Flood Committee, showed the governments (Manitoba, and Canada and Manitoba Hydro) that they were united and determined to get the promises contained in the Northern Flood Agreement delivered to their people. These promises are the legally binding, contractual undertakings contained in the Northern Flood Agreement. This was a long and difficult period, first to negotiate the Northern Flood Agreement and then to get it implemented.

It was not an easy struggle. From the beginning, efforts to organize the Northern Flood Committee and its constituent First Nations were attacked by both the Federal and Provincial governments (Canada and Manitoba) in their attempts to destroy the unity of the Northern Flood Committee First Nations. When the Northern Flood Committee was being organized in 1974 and 1975, the Provincial government (Manitoba) deliberately tried to eliminate the Northern Flood Committee by refusing to recognize the right of the First Nations to have their own representative organization negotiate for them. The membership and leadership of the five First Nations had to convince Canada, Manitoba, and Manitoba Hydro that they had no alternative but to negotiate through the Northern Flood Committee.

After the Northern Flood Agreement was negotiated and ratified, once again both Canada and Manitoba tried to destroy the unity and determination of the Northern Flood Committee First Nations, first by refusing to fund the Northern Flood Committee, and then by not taking any action to implement their obligations under the Northern Flood Agreement.

The period from March 1978 to the early 1980's was an extremely difficult time for the Northern Flood Committee as an organization, and for the Northern Flood Committee First Nations. Canada, the guardian and trustee of Canada's First Nations provided only very limited core funding to each of the Northern Flood Committee First Nations, and none at all for its representative organization, the Northern Flood Committee. The core funding was to provide funds to hire staff to expedite and monitor Northern Flood Agreement implementation. There were no funds available to retain legal counsel or for any other type of expertise that might be required. The total funds provided for core funding over a four year period varied from a low of \$75,000 to a high of \$150,000, annually. These were the total amounts provided for all the five First Nations, so that each First Nation had \$15,000 to operate with in the low years,

to \$30,000 in the high years. These funds came only from Canada. Neither Manitoba nor Manitoba Hydro provided any core funding.

There was no direct monetary compensation under the Northern Flood Agreement. All the obligations were remedial or mitigatory activities and programs which in some cases, could have financial aspects when they were implemented, such as purchasing material, training people, employment.

There was an Economic Development Agreement, which provided a total of 2.4 million dollars for economic development for the five Northern Flood Agreement First Nations. The Economic Development Agreement was a sub-agreement under the Northern Flood Agreement, and not a part of the 25 articles of the master Northern Flood Agreement. The Economic Development Agreement had very specific terms as to how the money could be used.

NORTHERN FLOOD COMMITTEE GUIDELINES IN NEGOTIATING IMPLEMENTATION

Despite this tactic of seemingly deliberate neglect, the five Northern Flood Committee First Nations kept an office in Winnipeg, and continued to have regular meetings. The five Northern Flood Committee First Nations were determined to make the Northern Flood Agreement a viable and workable agreement. Even when new Chiefs were elected, such was the feeling of unity and determination, that there was no breakdown in unity or splitting off of any Northern Flood Committee First Nations.

This was accomplished because the leaders of the Northern Flood Committee (the Chiefs and Councillors and other community leaders) realized that they had to stay unified in order to show the other parties that they were determined to get the Northern Flood Agreement implemented. Initially, all three parties (Canada, Manitoba, Manitoba Hydro) stated that they would implement the Northern Flood Agreement through existing programs, and were not planning to put any new or extra money into implementation efforts.

The leaders (Chiefs and Councillors and other community leaders) of each of the five Northern Flood Committee First Nations recognized that this strategy, on the part of governments and Manitoba Hydro, would make the Northern Flood Agreement appear insignificant to the point where the First Nations membership on the Reserves would lose hope and give up on the Northern Flood Agreement.

The leaders of the First Nations decided that they had to formulate guiding principles that must be followed in their struggle to get the Northern Flood Agreement implemented:

- their major guiding principle was that they must remain united. The Northern Flood Committee First Nations recognized that they had the most strength by standing together on matters of common concern. They had to show the parties to the Northern Flood Agreement that they were united and determined.

- the second principle was that each First Nation would recognize the independence, and the right and responsibility of every other Northern Flood Committee First Nation to take the actions each First Nation felt was required to get the Northern Flood Agreement implemented for their own community. The scope of implementation includes their respective reserve lands, their traditional water ways, and all of their traditional lands. The traditional lands are basically the same physical area as the present Resource Management Areas.

The Northern Flood Agreement First Nations recognized that each First Nation was unique and had specific concerns that could best be handled through a unique implementation plan that fulfilled the particular needs of each First Nation.

- the third principle was that each Northern Flood Committee First Nation agreed that the only limitation on their action(s) was that any action on their part concerning the Northern Flood Agreement should not adversely affect or harm any other Northern Flood Committee First Nation.

ARBITRATION

The Chiefs recognized that the situation, as it existed then in 1978-79-80, with no co-operation from the other parties, demanded that they must get the Northern Flood Agreement Arbitrator appointed as soon as possible. The Northern Flood Agreement Arbitration Article gave the First Nations a weapon to force the other parties to begin taking action towards the implementation of the Northern Flood Agreement. It took two years, from the ratification of the Northern Flood Agreement in March 1978, to get the Arbitrator appointed in March 1980. The appointment of the Arbitrator, Judge Patrick Ferg of the Court of Queen's Bench, immediately gave life to the Northern Flood Agreement by:

- legitimizing in a real way the existence of the Northern Flood Agreement, which up to that time had largely been ignored by the other three parties (Canada, Manitoba, Manitoba Hydro).
- providing resources and a forum to the Northern Flood Agreement First Nations for taking claims for adverse impacts, and for other matters of Northern Flood Agreement non-compliance by any of the parties, to the Northern Flood Agreement Arbitrator.

The Northern Flood Agreement Arbitration Article had never been intended as the method for implementing the Northern Flood Agreement. It was designed to be a special Court to which the Northern Flood Committee, the Northern Flood Agreement First Nations, and the other parties to the Northern Flood Agreement could take conflicts, disputes, or disagreements arising out of the Northern Flood Agreement, for resolution by the Arbitrator. However, with the continuing deliberate position of the parties (Canada, Manitoba, Manitoba Hydro) of refusing to take pro-active steps for the implementation of Northern Flood

Agreement, Arbitration became the only path for implementing the Northern Flood Agreement.

Ironically, Arbitration became a safe political and legal tool for the Parties to do only what they were forced to do in implementing the Northern Flood Agreement. If they came under attack politically for giving special consideration to any, or all, of the five Northern Flood Agreement First Nations, they (the Parties) were able to blame the Arbitrator for making them do it. If they (the Parties) did not like what the Arbitrator ordered them to do, they were able to appeal his judgement to the Manitoba Court of Appeal, which was the final Court under the Northern Flood Agreement. Any dispute or claim under the Northern Flood Agreement was part of the arbitration arrangement under the Northern Flood Agreement, and was not a part of the regular court system. The whole process of proceeding with a claim from its beginning, to a decision by the Arbitrator, was time consuming, often taking years to complete.

By 1985, it had become obvious to the five First Nations' leadership, within the Northern Flood Committee, that "Arbitration" under the Northern Flood Agreement had, in effect, become another barrier to the effective implementation of the Northern Flood Agreement. In Thompson, in February 1986, at a three-day workshop, attended by more than 50 senior First Nation leaders, the five Northern Flood Committee First Nations reached a consensus to work towards a more organized and planned approach for implementing the Northern Flood Agreement.

The Northern Flood Agreement, as it was signed is a legally binding agreement for the four parties which in effect, however, is worded more as an agreement-in-principle because of its ambiguity, and lack of specificity in many areas. It lacks a definitive, operational plan, which could provide the detailed direction of how each Article of the Northern Flood Agreement, is to be implemented.

DEVELOPMENT OF A DEFINITIVE FRAMEWORK FOR IMPLEMENTING THE NORTHERN FLOOD AGREEMENT

In the four years, between 1986 and 1990, the four parties to the Northern Flood Agreement (the Northern Flood Committee, Canada, Manitoba, and Manitoba Hydro) worked towards providing a definitive framework for the Northern Flood Agreement, from which each of the five Northern Flood Agreement First Nations could work out the details of its own implementation plan. The common guide for each of the Northern Flood Agreement First Nations was to be this definitive framework.

By the spring of 1990, the Senior Negotiators for the four parties (Northern Flood Committee, Canada, Manitoba, and Manitoba Hydro) had produced a framework document called a "Proposed Basis for the Settlement of Outstanding Claims and Obligations". The First Nations input into the Proposed Basis for the Settlement of Outstanding Claims and Obligations was the result of direction given by the Northern Flood Committee Chiefs through consultation with their membership. There were also many Northern Flood Committee Workshops

involving the Chiefs, Members, Elders, and senior Band administration officials from each of the five Northern Flood Committee First Nation. The Proposed Basis for the Settlement of Outstanding Claims and Obligations covered the areas of:

- the settlement of outstanding claims,
- land transfer (new Reserve land) and land use (permit and fee simple land),
- joint resource management
- economic and social development,
- remedial / mitigatory works and other infrastructure,
- resource compensation,
- environment,
- reciprocity, legal and monetary issues related to Northern Flood Agreement provisions, and
- notice and consultation about future development.

The monetary compensation in total, for all the five First Nations was \$243.5 million dollars to be paid in Hydro bonds and direct cash payments, over a period of seven years, in addition to the \$150 million plus already received by the First Nations in implementation measures.

It appears that the matter of the amount of the monetary compensation, and how it was to be shared among the five First Nations, was the major cause of the breakdown of the unity of the Northern Flood Committee in 1990. Initially, in May 1990, the Norway House Cree Nation opted out of the negotiations, and then in August 1990, three other First Nations opted out (Nelson House, York Landing, and Cross Lake). Only the Split Lake Cree Nation continued along the negotiating path. The position of the Split Lake Chief and Council was that they had been instructed by their membership to continue the negotiations towards the effective implementation of the Northern Flood Agreement.

NEGOTIATION OF INDIVIDUAL FIRST NATION IMPLEMENTATION AGREEMENTS

It took twenty-one months from September 1990, to June 1992, for Split Lake to negotiate their Northern Flood Agreement Implementation Agreement. Subsequently, Nelson House, York Factory, and Norway House each negotiated their own Northern Flood Agreement Implementation Agreements with the parties to the Northern Flood Agreement. The Cross Lake First Nation is the only one of the original five Northern Flood Agreement First Nations that has not negotiated an Implementation Agreement.

Each of the four Northern Flood Agreement First Nations who have negotiated Implementation Agreements has found that implementation is not an easy task. Nevertheless, it appears that each of the First Nations has been able to combine the benefits from the Northern Flood Agreement with their other resources to make a better life for their membership. The Implementation Agreements have provided the Northern Flood Agreement First Nations with direct and ready

access to those resources promised in the Northern Flood Agreement, under the control of each First Nation, which were not available to them as long as "Arbitration" was the only method for implementing the Northern Flood Agreement.

NOTE:

The five First nations have changed their names to:

Split Lake First Nation – Tataskweyak Cree Nation (TCN)

Cross Lake First Nation – Pimicikamak Cree Nation (PCN)

Nelson House First Nation – Nisichiwayasik Cree Nation (NCN)

York Factory First Nation – York Factory First Nation (YFFN)

Norway House First Nation – Norway House Cree Nation (NHCHN)