Public Comments Received on the Federal Environmental Assessment Document:

Screening Report
Red River Floodway Expansion Project

May 2005

Submission by: NASECA Manitoba
(North American Sediment and Erosion Control Association)

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June 22, 2005

Mr. Gerry Tessier, Senior Program Officer
Canadian Environmental Assessment Agency
Suite 445, Union Station
123 Main Street
Winnipeg, Manitoba
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Dear Mr. Tessier

RE: EROSION AND SEDIMENT CONTROL FOR THE MANITOBA FLOODWAY EXPANSION PROJECT

Previously, our association had sent comments to the Commission regarding issues related to erosion and sediment control. Since our last submission, I have received a number of additional comments from members from NASECA.

This is a summary of the NASECA members comments which were reinforced at the June 17, 2005 MFA workshop at the Holiday Inn South on Pembina Highway, which was focused on seeding of the floodway expansion. The first is that the key people in the Manitoba Floodway Authority (MFA) do not have a firm grasp on erosion and sediment control. Secondly, they believe that the practice of providing effective erosion control is based on the use of particular products. Lastly, members are pleased that the design consultants KGS have taken the recommendation to retain Ms. Jennifer Hildebrand of Bonestroo Associates, (MN), a certified professional in erosion and sediment control (CPESC).

However, we do not believe her expertise has been adequately reflected in the plan nor is her CPESC seal attached to the document. The **preparation of** an appropriate erosion and sediment control plan is unlikely to be effective if the qualified erosion and sediment control planner has limited a scope of involvement.

The key people in the Manitoba Floodway Authority (MFA) do not have a firm grasp on erosion and sediment control.

A representative from KGS regarding Tender C1, (the first floodway tender involving approximately 300,000 cubic metres of earthwork,) suggested that the contract was hurried together and did not represent the intended standards for erosion control to be set for the project. The release of Tender C1 was released without appropriate erosion and sediment controls as admitted by the Consultant in order to expedite the project. There is a concern that setting a precedence of tendering out a document deficient of erosion and sediment controls will make it more difficult for erosion and sediment control measures to be effective later.

Beyond the planning of the erosion and sediment controls, there is a great concern by many members regarding the implementation of an effective plan. With the C1 document lacking appropriate erosion and sediment control measures there is an impression left that a plan may be required but not necessarily enforced.

One of our members who is a certified professionals in erosion and sediment control (CPESC) members had heard about the seed workshop and when asked the MFA representative about attending, he was told that this workshop was about seeding, not about erosion control, and that he was not invited. The workshop discussion however was dominated by the discussion on the selection of seed for erosion control. One of the members of the design team had also made the comment during the workshop that the meeting was all about erosion control. The conflicting views of the workshop's purpose suggests that the issue of erosion control is not understood by some of those in key positions who involved in the floodway expansion

Lower Channel

Also at the workshop, we were made aware that people from Native Plant Solutions (NPS) have been undertaking work on determining seed selection for the lower wetter area of the channel. The approach that they appear to have developed so far has focused on using native plants to provide a long term sustainable solution. There is concern that temporary erosion control has been limited to only the nurse crop, particularly since this is in the area that is likely to experience the greatest shear. While the nurse crop is getting established the soil is vulnerable to erosion. The response suggested that erosion control issues were not part of the main objectives of the work being tasked to NPS. Several considerations for temporary erosion control were discussed by the consultants and other participants of the workshop such as the use of straw mulch, blown mulch, rolled erosion control blankets, and polymers. It was also noted that the NPS work lacks the recognition and importance of saving soil as part of the revegetation work, one of the most effective and cost effective ways of ensuring a cover crop. It is suggested that the comments and suggestions of temporary erosion control measures by the workshop participants be included in the planning and design details for the lower section of the floodway.

Also, NPS's described approach of preparing the seed bed was suggested to require limited ideal conditions and be very costly. Many of the participants had suggested that the methods being considered cannot be used due to the soft soil conditions. If the approach is not viable, the construction schedule may be extended, the cost of the project increased, the soil is exposed and vulnerable to erosion, compromise environmental protection and ultimately affect water quality and aquatic habitat. From the questions asked by Ms. Hildebrand at the workshop, it is assumed that she has not been involved with this portion of the work which may have the greatest potential for erosion and sedimentation into the river and areas downstream. We believe that it would be prudent to have details such as these worked out prior to the commencement of construction.

To date, many of the erosion and sediment control measures intended for the project have been limited in scope and in materials. Members have suggested that the MFA consider several techniques, approaches and other products commonly used in erosion and sediment control plans which have not been presented as part of the intended ESC plan for the floodway expansion such as:

1. education of the contractors, inspectors, and other stakeholders on erosion and sediment control
2. public participation in the erosion and sediment control planning
3. off site tracking controls
4. the use of compost in the seed bed preparation
5. topsoil salvaging when possible
6. mycorrhizae inoculation
7. an erosion and sediment control monitoring program by persons trained in erosion and sediment control

The following is an excerpt of an email message sent to the Manitoba Floodway Authority by one of our members. It represents the sentiment and concerns of many of our members and is consistent with many of the messages shared with the MFA and floodway design team over the past year.

Dear Sirs

Yesterday I reviewed the specs in the first tender for the beginning of the earth moving portion of the Floodway's expansion, handily available for public review on your website. It is a fact that the engineers and consultants that designed and signed off on this tender had canvassed contractors and erosion control specialists to learn what the single most important action might be to control erosion, among others, and they were told that topsoil being put back in place was the most vital step for success. In spite of this, the specs call for reseeding pure clay, which has about a 5% chance of success. Meanwhile, the three hundred thousand cubic meters of earth, removed by heavy equipment to reshape the slope, sits where? One would have to ask, how much effort would it take, with caterpillars and back hoes idling nearby, to re-use the original topsoil? How did this and so many other deficiencies occur? Why would one roll of erosion control blanket be sufficient to prevent sediment movement? Where are the staged plans to keep the soil in its place during the course of work, as each cubic meter is uncovered? What happened to the recommendations that were provided to the engineers before the tender was sent out?

Gentlemen, if this indicates the kind of performance we can expect in the critical area of erosion and sediment control during the course of this project, we have cause to be alarmed and we have been misled, although we have intervened in this process from the public hearings portion onward. Manitoba's public assumes this project will help, not hurt, and salaries from the public purse have gone into your plans, performance and supervision. Who is to be held accountable for signing off on this tender, while federal and provincial people work to keep the soil in its place and prevent nutrients from entering Lake Winnipeg via waterways in other areas?

May I suggest that a Notice of Alteration be prepared to address this and other deficiencies, following the expert advice that you have paid for and that has been provided to you by Jennifer Hildebrand (CPESC). Minnesota is so far ahead of us in the arena of erosion and

sediment control. Let's catch up and show how well we can do it, before our mistakes hit the press. The downstream people who wrote in with their fears of groundwater contamination and a new sediment laden beach forming on the shores of beleaguered Lake Winnipeg would not be as impressed as they would if properly employed erosion and sediment control principles, practices and products were planned for and installed in each stage of the project, carried out by properly supervised contractors - this could be a wonderful demonstration of best management practices.

I look forward to your response on this urgent matter, and anticipate the next tender will have substantial improvements.

Sincerely,
Lindy Clubb
Resource person (volunteer)
North American Sediment and Erosion Control Association

NASECA RECOMMENDATIONS

Many of our members agree with the position suggested by the Department of Fisheries and Oceans that there are potential risks with the floodway expansion project, but that that they can be reasonably mitigated. We urge that the Ms. Hildebrand, the CPESC that has been consulted in some capacity this project, be included in more aspects of the overall project for the purpose of ensuring that the floodway project demonstrate appropriate and effective erosion and sediment control as part of the environmental protection.

We would also urge that the designers review the Canadian Council of Ministers of the Environment (CCME) criteria for acceptable sediment levels, the *Canadian Environmental Quality Guidelines* loads and The Protocol of the *Canadian Sediment Quality Guideline* as part of the development of the monitoring program proposed.

It is our hope of many members that the MFA do not intend on continuing this practice of pushing through the work at the expense of the environment.

Sincerely,

Vic Lee, *CSLA, CPESC*
NASECA Manitoba President

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Public Comments Received on the Federal Environmental Assessment Document:

Screening Report
Red River Floodway Expansion Project

May 2005

Submission by: North Ritchot Action Committee (NRAC)

North Ritchot Action Committee, Suite 261, 32-2855 Pembina Highway, Winnipeg, MB R3T 2H5

21 June, 2005

Mr. Gerry Tessier
Senior Program Officer
Canadian Environmental Assessment Agency
Suite 445, 123 Main Street
Winnipeg, MB, R3C 4W2

Dear Mr. Tessier:

Re: NRAC Review of Federal Screening Report – Red River Floodway Expansion

The North Ritchot Action Committee (NRAC) has reviewed the Federal screening report submitted on behalf of the Ministers of Infrastructure Canada, Fisheries and Oceans Canada, and Transport Canada with regards to the proposed Red River Floodway Expansion Project. Although NRAC's comments primarily relate to issues of concern to residents living upstream of the floodway, they may also apply more generally as well. Many of the issues concerning the environmental assessment of this project have been previously provided by NRAC and as such we will not dwell on them here. Instead, we would refer you to our correspondence on these matters as included in Attachments 1 through 5. There is no evidence that these issues have been addressed since originally identified.

Under CEAA, the Responsible Authorities are required to ensure that a screening of the project is conducted and that a screening report is prepared. A screening is defined as an environmental assessment that is conducted pursuant to Section 18 of the *CEAA* and that includes a consideration of the factors set out in Subsection 16(1) of the *Act*. A screening report summarizes the results of the screening. The overall purpose of the process is:

- to ensure that the environmental effects of proposed projects receive careful consideration before responsible authorities take actions in connection with them;
- to facilitate public participation in the environmental assessment of projects to be carried out by or with the approval or assistance of the Government of Canada; and
- to provide access to the information on which those environmental assessments are based.

From NRAC's review, this screening report does not even come close to meeting that overall purpose as it provides little information on the environmental assessment and little if any quantitative assessment of the environmental effects. Instead the screening report arbitrarily dismisses or obfuscates the environmental effects of the project and ignores any public comments received

on the project to date. This results in a dearth of information or analyses upon which reviewers can comment. It is never clear what the actual screening is. The screening report does not summarize the information in the screening but merely provides a series of conclusions unsupported by any analyses or meaningful assessment. There is virtually nothing to comment on as the information that the conclusions are supposedly based on is not readily available to the reviewers. This is hardly in keeping with one of the stated purposes of CEAA, which is *"to ensure that there be an opportunity for public participation in the environmental assessment process"*. The public cannot respond to what is not there. It is also troubling that we are being asked to comment on the Project screening when it appears that the RAs have already completed their assessment and rendered a decision under Subsection 20(1) of CEAA, contrary to the apparent requirements of Subsection 18(3).

Problems with the screening report appear to arise from a number of factors, not the least of which is a reliance on the environmental assessment methods and philosophy adopted by the proponent, the Manitoba Floodway Authority (MFA). NRAC has already commented on the inadequacy of MFA's approach. It includes a lack of definition of what the project is, confusion over what constitutes an environmental effect and cumulative environmental effects, a lack of any quantitative or even qualitative analysis of the significance of the environmental effects, a lack of consideration of the socio-economic impacts of the environmental effects, a distorted or misguided consideration of the efficacy or adequacy of the proposed mitigation, and lastly, the absence of any legitimate consideration of the concerns of those likely to be adversely affected by the project. NRAC's previous comments on these issues are still relevant. Unfortunately, many of the deficiencies inherent in the EIS have simply been incorporated into the federal screening report without regard to the requirements of CEAA or the conduct of a meaningful assessment in spite of numerous critical comments from the public and other federal authorities alike. Because of the shortfalls in the EIS, the screening report is often compelled to ignore or skirt around the very issues that it is required to examine. The screening report provides few details of the screening process particularly with regard to the determination of the significance of the environmental effects.

With regard to project definition, CEAA provides discretion to the Responsible Authorities (RAs) to determine the scope of the project in relation to which an environmental assessment is to be conducted. However the exercise of that discretion must be reasonable and must be clearly spelled out by the RAs. It is never entirely clear what the scope of the project is. Section 3.2 states that:

"The scope of the project established for the purposes of this environmental assessment comprise the various components of the Project as described by the Manitoba Floodway Authority in the Red River Floodway Expansion Project Description (July, 2003), the Environmental Impact Statement

(August, 2004), the Supplemental Filings (November, December, 2004) and the undertakings, activities and works described in this document."

The screening then goes on to state that the scope of the Project includes the site preparation, construction, operation, maintenance and final disposition of all components of the Red River Floodway Expansion Project, and more specifically lists a number of components. To add to the confusion, the Notice of Public Participation includes "operations of the Floodway" within the scope of the project which is not mentioned elsewhere. What is apparent however is that the project as scoped serves no purpose independent of the existing floodway. It would seem reasonable that the scope of the project should be governed by the purpose of the project as suggested in the EIS Guidelines:

"The environmental assessment for the Project shall include consideration of the environmental effects of all undertakings associated with the site preparation, construction, maintenance, operation and final disposition of all components of the proposed Red River Floodway expansion, including any required infrastructure modification or development. The assessment must consider the purpose of the project and alternative means of carrying out the project that are technically and economically feasible."[EIS Guidelines, Feb 5, 2004]

Most troublesome in the report, is the lack of recognition of the cumulative effects of the floodway particularly with regard to upstream interests. The screening report states that the cumulative effects assessment included consideration of the existing floodway but it is not evident that that is the case. The screening report provides its conclusion without regard to any supporting analysis. It is inconceivable that the proposed floodway acting in concert with the existing floodway can have insignificant environmental effects given the magnitude of damages and suffering experienced in 1997 for a flood nowhere near the maximum contemplated by the operating rules for the Floodway, expanded or otherwise. In its report "Living with the Red" the International Joint Commission (IJC) documented the prolonged misery inflicted on residents as a result of flooding or in the case of residents upstream of the floodway, artificial flooding. There is no evidence to suggest that any measures have been proposed or can be proposed to alleviate or mitigate the environmental effects of the operation of the floodway under extreme conditions, especially as it relates socio-economic conditions brought about by the environmental effects of the project.

Following the 1997 flood, the IJC provided their observations on the socio-economic consequences of being flooded:

"There is no satisfactory way to sum up the collective trauma of the over 100,00 people who were affected by the flood and who struggle to recover, even now, more than three years after the event. The Commission knows from its many visits with local residents, public

> *hearings, and study of the flood that the human toll is high and is real. There is no easy way to assign an economic benefit to the value of knowing that you may once again be flooded. Uncertainty about the amount and timing of compensation from government still are important issues in many peoples minds. Many residents upstream of the Winnipeg Floodway who were harmed by increased water levels caused by the way in which the Winnipeg Floodway was operated to save Winnipeg feel that the matter still has not been satisfactorily addressed by the government of Manitoba." [IJC 2000, Living with the Red, p. 36]*

Unfortunately little has changed since those sentiments were expressed. There is still apprehension over being flooded but now on a more frequent basis with the promotion of summertime operation. There is still distrust of government and how upstream residents will be treated in the future. Those misgivings are understandable given that the floodway was initially proposed as a project that would not artificially flood upstream residents. But then the rules were surreptitiously changed to include artificial flooding for spring floods and are now being further corrupted for routine summertime protection of Winnipeg's inadequate infrastructure, as evident in its use in three of the last four years. This has resulted in the progressive erosion of the security and rights of upstream residents.

The Manitoba Clean Environment Commission (CEC) in its recent report on public hearings on the Project offered the following:

> *"There can be no doubt that the most compelling testimony came from people who had been flooded. The evidence that they gave spoke to the efforts and courage involved in protecting one's home or the home of a loved one and family member. There also were stories of uncertainty and confusion, as people had to make crucial decisions about the future of their home with very little notification. There were stories of helplessness and heartbreak, as people put in long strenuous hours in an effort to save their homes at a time when they did not have the power to influence crucial decisions that were being made about water levels in the Red River Valley. In some cases, homes were saved from flooding only to be lost to mould infestation and the serious effects related to it months later.*
>
> *One of the issues raised several times was the mental-health impact of artificial flooding. This involved feelings that arose from the fact that property and possessions had been flooded, not by acts of nature but by act of government policy. Furthermore, the introduction of non-spring emergency operations and the prospect that the Floodway might be operated during the summer to keep the Forks walkways above the water meant that people faced the increased likelihood of often having their land flooded in the future. The fact that people would have to continue to apply of compensation on a regular basis was in itself stressful....*

> *The Commission was told that many upstream residents are suffering long-term health effects and long term debt as a result of uncompensated losses and have lost any hope of retirement or vacation. In some cases they have been left to carry two mortgages, one on the destroyed home and one on the new home….. " [CEC 2005, p.47]*

Instead of discussing these issues of long-term socio-economic and health concerns, the screening report appears to dismiss them through some sort of slight of hand and questionable analysis:

> *"It is noted that under CEAA, environmental effects include socio-economic effects caused by a change in the biophysical environment, which in turn is caused by the project. However, if a socio-economic effect is not caused by a change in the environment, but by something related directly to the project, the socio-economic effect is not an environmental effect within the meaning of the CEAA [CEAA, 2005, p. 125]*

This particularly difficult to fathom as CEAA's definition of the environment is extensive. It is also not clear where this might have been applied in the assessment. No details are provided.

Again, it should be noted that the CEC's testimonials relate to the 1997 flood, a flood some 6.5 feet lower than flooding that can be induced by the expanded floodway. There should be no doubt as to the consequence of such flooding on the upstream community – it would be catastrophic. Yet somehow all of this escapes any consideration in the screening report. Upstream residents are well aware of these issues and have petitioned the federal government to refer the assessment, first to a joint panel, and following the CEC hearings, to a federal panel to ensure that the environmental effects and the consequence of those effects are clearly understood and considered in the federal assessment.

The screening report states that: "*Information provided through the CEC hearing process has been considered in the development of this screening report." (p.8).* However, there is no credible evidence that this occurred. Listing these concerns in an Appendix provides no evidence how these concerns were incorporated or rejected in the screening process. There is no "value-added" in the screening report as there is in the CEC report that presents point and counter-point before drawing its conclusions. The CEC report at least recognizes and acknowledges that there are serious issues with the floodway but somehow these issues magically vanish in the federal screening report. The following examples from the CEC report clearly demonstrate this:

> *"For reasons that sometimes mystified Commission members and sometimes angered public participants, the MFA appeared to have*

assumed that, because there were so many upsides, there should be little concern about what it viewed as relatively few and minor downsides. This appeared to have led the MFA to take a narrow approach in conducting its environmental impact assessment." (p. xiv*)*

NRAC comment– The recipients of the "upsides" and "downsides" are different therefore there is no net benefit from the perspective of upstream residents. NRAC has previously provided comment on the scope of the environmental assessment.

"What is the Project that is being assessed and licensed? .... In the matter of the construction phase of Floodway expansion, it is clear that the project to be assessed and licensed is the physical expansion of the Floodway. During the course of the public hearing, there was no disagreement on this point. Since this expansion will create a single, expanded Floodway, it is also clear that any operating license granted under provisions of The Environment Act must apply to the expanded Floodway, not simply the expansion of the Floodway. There was considerable debate at the hearing, however, as to whether the assessment of effects should be limited to the effects of the Floodway expansion or whether effects of the previously grandfathered existing Floodway should be not only described but assessed." [CEC 2005, p.4]

NRAC comment – NRAC's position that there will be only a single Floodway to which all environmental effects will be attributed to in the future has been stated repeatedly. Any grandfathering of the environmental effects of the existing floodway cease upon construction of the expanded floodway and the cessation of the existing floodway as a viable entity.

The addition of more sessions at the provincially mandated hearing process to accommodate all the public presentations indicates there were sufficient public concerns to warrant reference to a mediator or review panel where those concerns should have been heard under a federally mandated panel. The fact that this did not occur in spite of numerous public requests including a request by the Municipality of Ritchot on behalf of its residents suggests that public comments have not been duly considered in the past and will not likely be considered in the future. Moreover, the terms of reference for the CEC hearings were circumscribed which may have prevented the public from bringing certain issues forward as completely as possible had those issues not been excluded. Before rendering any decision under subsection 20(1) of CEAA, the responsible authorities must make a determination as to whether public concerns warrant reference to a mediator or review panel [20(1)(c)(iii)]. It is not clear that this assessment was made and if so what information was considered.

The consideration of mitigation is another deficiency in the screening report. The conclusions of the Responsible Authorities are invariably based on the application of some form of mitigation. However, there is no evidence to suggest that the mitigation will be effective or whether it would be adequate to reduce the potential environmental effects to insignificance. The listing of mitigation does not of itself mean that the environmental effects will disappear. In fact, in most cases, what is referred to as mitigation in the screening report is invariably a requirement that the proponent provide a future plan of mitigation. This includes submission of various Environmental Management Plans (EMPs), Operating Phase Environmental Protection Plans (OPEPPs), Construction Phase Environmental Protection Plans (CPEPPs), Sediment and Erosion Control Plans and details of various compensation programs. The authors of the screening report obviously have great uncertainty about the MFA's intentions for mitigation and it is not clear how the RAs can conclude that the project is not likely to cause significant adverse environmental effects after the implementation of the mitigation measures. The details of that mitigation have not been provided.

Although one would assume that the proposed compensation program for upstream flooding would be a vital component of the mitigation for the most catastrophic environmental effects of the floodway, the report is virtually mute on the subject. CEAA 20(1) requires that the RA "*shall ensure that any mitigation measures that the responsible authority considers appropriate are implemented.*" It is not clear how the RAs can ensure that the compensation as proposed in the *Manitoba Floodway Act,* inadequate as it might be, will be implemented at some future date. The current experience from the existing floodway is that commitments made in the past can be readily circumvented or disregarded in the future. The inclusion of the compensation program within legislation that can be readily altered by future governments does not provide the required certainty.

The screening report also appears to accept the proponent's argument that the existing floodway already permitted the province to flood upstream areas to an elevation of 778 ft ASL and since the expanded floodway did not increase this level then the environmental effects were unlikely to be significant. NRAC has previously rejected this argument on the basis of what should constitute the scope of the project, what constitutes the existing environmental conditions, and what must be considered in a cumulative effects assessment. With further regard to the issue it has become increasingly obvious that the proponent's own logic is fatally flawed. The design for the Red River floodway was apparently completed in 1963 and the floodway built between 1963 and 1968. The first set of rules was issued in 1970 and provided for increasing water levels upstream to a maximum of 778 ft. under "emergency" conditions. This level has been proposed as "baseline conditions" by the proponent. NRAC has previously rejected this premise on the basis that vacillating government policy does not dictate environmental conditions. Nonetheless, setting that argument aside for the moment and examining the proponent's proposition, what becomes apparent is that the baseline elevation of 778 was never achievable within the existing design of the floodway. At best, it was wishful thinking. This was especially

evident in 1997 when emergency construction of the Z dyke was undertaken to permit the province to operate the floodway beyond its design capacity of 60,000 cfs at an elevation of 234.77 m (770 ft) ASL. It should be clear that the floodway was never intended to be operated to an elevation of 778 as suggested by the proponent or as apparently adopted in the screening report. This is obvious from an examination of the footnote to Table 2 in the screening report wherein it states that:

> *"Water levels upstream of the control structure for the 1:225 year – existing Floodway are 778 ft. however this level upstream of the inlet for existing conditions carries unacceptable risk to the flood protection works."*

As it turns out, the only way that flood levels of the magnitude of 778 could ever be achieved is by virtue of increasing the elevation of the west dyke and that component is clearly within the scope of the current project. Thus, even with the proponent's logic, "baseline conditions" could never have deviated from the original Floodway design specification which was to cause no artificial flooding upstream.

Also included as baseline are the current rules of operation. It is unfathomable how these rules constitute baseline when they were changed in November 2004, during the environmental review process. It is unprecedented to adopt as baseline an operating regime that changed during the project. And, as with the compensation legislation, the federal RAs will be powerless to ensure that the structure is operated according to these rules or any other rules that might be put in place.

In conclusion, NRAC has already provided considerable comment on the deficiencies of the environmental assessment of this project and our position remains unmoved by anything that has been proposed to date. Overall, the screening report is a superficial restating of the MFA's position that environmental effects of the project can be partitioned off. The CEC noted in its report:

> " *MFA put much effort into declaring, often arbitrarily what it believed to be within the scope of the hearings and what was out of scope. One observer noted that, if the MFA had put as much effort into assessing the environmental effects as it did in arguing why it didn't need to, the entire process would have gone more smoothly, more quickly and with less animosity."* [CEC 2005, p. xiv]

Not only will the expanded floodway continue to be operated to the detriment of upstream residents, but the extent (vertical and horizontal) of that destruction is greatly increased by making the previously ill-conceived maximum elevation of 778' ASL a reality. The CEC hearings were extended and the four Rural Municipalities adjacent to the floodway have registered serious concerns. There

are significant public concerns that need to be addressed. The screening report does not address them. Moreover, the fact that it is already signed suggests the federal government is not interested in properly discharging its duties and obligations under CEAA.

Reasonableness is the final test of a thorough environmental assessment. In that regard, the screening report fails dismally. The screening report supposedly describes the environmental effects of a project that is explicitly designed to flood one area of the province for the protection of another. Operated to its limit, the proposed project would inundate thousands of homes and displace thousands of residents, cause significant property damage and create unfathomable long-lasting suffering and hardship on those residing upstream of the floodway. This is not a hypothetical consideration or an unforeseen scenario as the experiences of the 1997 flood are still fresh in the minds of many upstream residents who are still struggling with the aftermath of that manmade flood. All of this has been well documented by the Manitoba Water Commission, the International Joint Commission and more recently, the Manitoba Clean Environment Commission. In spite of this, the screening and the screening report have all but ignored the most serious consequences of operating the floodway and have instead parroted the MFA's focus on the benefits to the City of Winnipeg.

NRAC has long called for, and continues to request, a federal panel to closely examine all of the alternatives to the project, the environmental effects of the project as well as any necessary mitigation. There can be no doubt about the potentially disastrous consequences of using the Floodway, expanded or existing, on the upstream community. There is also little doubt about the horrific consequences that would ensue if the floodway was not used to benefit the City of Winnipeg under emergency conditions. The question then becomes one of weighing the benefits and working cooperatively to everyone's mutual satisfaction. That is what is missing from this process – an understanding of issues relevant to each side of what has now become a polarized debate. That is the reason there is no trust built between government and the affected stakeholders. Ultimately, if the benefits of the Floodway are found to outweigh the negative effects and the project is deemed to be in the public interest then at least all stakeholders would have had a say in that decision. That decision, however, cannot be made on the basis of a screening such as the one being reviewed here. In its assessment the CEC offered:

> *"Hearing these – and other- concerns made us realize that the Floodway expansion project is not the simple excavation that many might perceive it to be.*
>
> *It is, in fact a very large construction project, which requires much, very complex engineering and which will include many, varied environmental concerns.*

> *Notwithstanding this realization, the Commission recognizes that there are many benefits to the proposed expansion of the Floodway, and that the threat posed to Winnipeg by a flood larger than 1997 would be devastating to inhabitants of the city and the province as a whole."[CEC 2005, p.xiii]*

NRAC and upstream residents have always acknowledged that the City of Winnipeg needs to be protected but not on the backs of the few who live upstream of the floodway. The CEC might be able to determine that the Project should proceed in the public interest, but as stated earlier, the Responsible Authorities do not have that discretion under CEAA. The genesis of the Floodway expansion followed from the IJC's Recommendation 3 which stated:

> *"The city, province and the Canadian federal government should cooperatively develop and finance a long-term flood protection plan for the city that fully considers all social, environmental and human effects of any proposed flood protection measures and respects both the needs of Winnipeg and the interests of those outside the city who might be affected by such a plan."[IJC 2000, Living with the Red, p.68]*

What could be clearer? Unfortunately, many are advocating on behalf of the City of Winnipeg but it is apparent that few are representing the rights of upstream residents – not even the federal government which has a responsibility to protect the rights of all of Canadians. NRAC has steadfastly held onto the belief that the Project must be referred to a federal panel for its consideration and/or mediation because of significant adverse environmental effects that cannot be mitigated and because of significant public concern. NRAC's position remains unchanged in that regard. It is also NRAC's view that the federal government has both a legal and moral responsibility to conduct a thorough environmental of the Project and to ensure that the rights of upstream citizens are not being compromised by the operation of that Project. To date, the federal government has not met these obligations.

If anyone would like to discuss these matters, we will make ourselves available.

Sincerely,

Dr. Rob Stewart
NRAC – Chair

Electronic copies
Council, RM Ritchot
D. McNaughton, CEAA
D. Benoit, Natural Resources - MB Metis Federation

J. Buhler, Cooks Creek Conservation District
M. Clifton, Ritchot Concerned Citizens Committee
D. Donaghy, RM of Springfield
R. Duerksen, 768 Association
R. Dzus, MB Recreational Trails Association
J. Jonasson, Coalition for Flood Protection North of the Floodway
R. Poirier RM St. Clements
P. Rebeck, RM East St. Paul
Sierra Legal Defense Fund
E. Stevenson, Peguis Indian Band
D. Watson, Save our Seine
G. Whelan Enns, Manitoba Wildlands

attachments

1. NRAC Comments on project description (Oct 2003)
2. NRAC Review of EIS (Oct 2004)
3. NRAC Review of Supplemental EIS (Jan 2005)
4. NRAC Presentation to CEC (Jan 2005)
5. NRAC Summation to CEC (Mar 2005)

ATTACHMENT 1

North Ritchot Action Committee (NRAC)

Review Comments on the Red River Floodway Expansion Project Description

October, 2003

Overall, the project description as submitted provides few details of the actual project which is the expanded floodway. Much of the focus is directed at the activities associated with the construction and not the actual floodway operation. Also, regrettably, the project description does not appear to build on the existing body of work provided by the Manitoba Water Commission and the International Joint Commission except through selected references in support the proposal being advanced. This is a disservice to the commissions, the participants whoappeared before the commissions, and ultimately to the integrity of the project proposal. We can only hope that these omissions will be addressed in the proposed EIS. It should be noted that NRAC's review of the document was not exhaustive but related primarily to the safety, security and equitable treatment of upstream residents. Although it was difficult to comment on what is mostly a conceptual document, the following comments were highlighted for future consideration in a more comprehensive project description.

Section 1.2 – Under the heading of "Public Discussions" reference is made to meetings held in Selkirk and St. Adolphe in 2001 and 2002 to discuss the operation of the floodway and the development of legislation for financial compensation to property owners adversely affected by the floodway. NRAC has no knowledge of such public discussions. Disclosure of the participants in these "Public Discussions" should be made public as should the details of the discussions and the proposed legislation.

Section 1.3 – The project proponent is identified as the Floodway Expansion Authority which has been charged to expedite all works associated with the project. Having been charged to undertake the works by the Government of Manitoba and having no control over the operation of the works or any required mitigation, it is not clear how the Authority can be identified as the "proponent". The Province of Manitoba is the proponent of the works and this should be acknowledged up front. The Floodway Expansion Authority could be acknowledge as the project manager.

Section 1.5 – It is stated here that a federal environmental screening will be required to comply with the Canadian Environmental Assessment Act (CEAA). However a screening can only satisfy the requirements of CEAA if there are deemed to be no significant environmental effects, no significant public concern, and that there is no uncertainty in the prediction of the environmental effects. Any assertion that these conditions will be met is speculative without further project details or an assessment of the environmental effects. It is NRAC's contention, largely supported by the IJC, that the personal effects of being flooded can not mitigated. As for public concerns, these have been well documented by the Manitoba Water Commission, the International Joint Commission and the Clean Environment Commission meetings. Many of those same concerns prevail today and are unlikely to go away by being ignored.

Section 2.1 –The construction and operation of the existing floodway has been reviewed by the Manitoba Water Commission as well as the International Joint Commission. It would seem reasonable that the deliberations and recommendations of these commissions should form the basis for any future consideration of floodway expansion. This has not been done. Instead only select references that support the proposal appear to be cited.

Full disclosure and discussion of the previous findings must be considered in the context of the proposed project.

Section 2.2 - The incorporation of recreational facilities associated with the floodway project is not consistent with the overall purpose of the project – protecting Winnipeg from flooding. Perhaps revisiting the purpose of the project would be appropriate here.

The apparent deferral of Winnipeg's obligations to improve its infrastructure to some other phase of development is not acceptable. The flood protection infrastructure of the city was integral part of the flood protection system which included the floodway. Many of the commitments listed represent unfulfilled commitments dating back to the original proposal of the existing floodway. What assurances are there that these commitments will be honored this time. As witnessed in 1997, the state of the city's infrastructure may have a profound effect on the operation and operability of the floodway.

Reference to improvements in the flood capacity upstream of the floodway entrance to a 1:250 year flood level or 25% larger flows than 1997 does not appear to be consistent with the current operating rules nor the current levels of flood protection in existence in the area. There can be no benefit to upstream residents if the floodway is to be operated at either the "state of nature" or above the state of nature. There is no reference to operating the floodway below the "state of nature", which is the only condition which might benefit upstream residents and then only provided that the "state of nature" as used in the operating were acceptable to upstream residents. As such, the perceived benefit must relate to less artificial flooding which is hardly a "benefit". It is unfathomable that the floodway might be operated to provide recreational opportunities in Winnipeg but there is no consideration to operating it to the benefit upstream residents.

Again, it is difficult to comment on proposed legislation for compensation without any details being provided. However, it should be noted that legislation can be changed as quickly as governments. What assurances do upstream residents have that such legislation will persist as long as the floodway? The floodway proposal is being sponsored by both provincial and federal governments. What assurance can the federal government provide that any compensation package will be there when it is required?

The dismissal of socio-economic effects to be identified during the environmental assessment abrogates the proponent's responsibility to assess, evaluate and plan mitigation and compensation as part of the overall project planning exercise. The current proposal may be still somewhat premature.

Table 2 – It is disturbing to see that the preliminary assessment of environmental effects does not give any consideration to upstream interests despite the acknowledgement that artificially induced water levels to an elevation of 778 ft will be generated by the operation of the floodway, some 6.5 higher than the flood of 1997. Yet apparently there is no recognition of any adverse effects upstream. In reality, if the floodway were operated to its maximum elevation, the consequences to upstream residents would be even more serious than the flood of 1997. Moreover, the indication that there will be

upstream economic and social benefits is an absurd notion given that the floodway is not operated to benefit upstream residents and will inevitably inundate the community.

Section 3.4 - It is noteworthy that residential occupancy does not appear to be considered a land use.

Section 4.3 - Erosion during operation does not appear to be considered even though it may be a significant issue during frost free operation.

Section 5.0 – It is noted here that there is no reference to the works of the Manitoba Water Commission. It would seem reasonable that the report of the Commission which documented the plight of upstream resident as a result of the 1997 flood would be given serious consideration in the development or modification of any flood protection system. The documentary evidence collected by the Commission would also help identify the potential impacts on upstream residents if again faced with serious flooding.

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NORTH RITCHOT ACTION COMMITTEE (NRAC)

REVIEW OF THE DRAFT GUIDELINES FOR THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT FOR THE RED RIVER FLOODWAY EXPANSION PROJECT

OCTOBER, 2003

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General – Overall, NRAC's comments relate to those issues of immediate concern to upstream residents as it is those issues with which we have first-hand experience and the most in-depth knowledge. Nonetheless, NRAC also supports any efforts, initiatives or proposals that ensure equitable flood protection for all the residents in the Red River basin.

With regard to the proposed guidelines, in general they appear to skirt probably the most important and certainly the most contentious issue likely to be associated with the project – upstream flooding. By design, both the existing floodway and the proposed floodway expansion must flood upstream areas at least under high flow conditions and arguably even under lower flows when the overall flood protection system is considered. Aside from the pure economic costs, the social and personal cost of flooding will be a difficult issue to mitigate if it can be mitigated at all. How does one mitigate for personal losses? This issue has been studied, acknowledged and repeatedly ignored. Hopefully the EIS will not fall into this pattern. It is NRAC's view that significant attention must be dedicated to these issues in the EIS. Failure to acknowledge these issues up front can only jeopardize the timely advancement of this project.

Section 1 – Purpose – The purpose of the guidelines should be to identify to the proponent and the public the information that will be required within the EIS to satisfy the requirement of the federal and provincial regulatory framework and relevant legislation.

Section 2.3.1 – Intent – Aside from the factors itemized in this section the following should also be considered.

- In characterizing the environment in which the project is to exist, the EIS shall describe existing conditions related to both the current and expanded floodway designs as well as the operation of each. The EIS shall also describe the proposed project in the context of other similar projects built elsewhere and compare the predicted benefits and environmental effects of the same, as applicable.

- The EIS shall describe any proposed program of operation for the expanded floodway and describe the parties responsible for the implementation of such program. The EIS shall describe any potential liabilities associated with the construction or operation of the floodway.

- The scope and detail of the EIS shall be sufficient to allow for a quantitative assessment and prediction of the environmental effects of the project including the effects on biophysical, socio-economic and cultural conditions as well as the cumulative effects of the project in combination with any other projects or activities that have been, or will be carried out. The EIS shall detail any assumptions used in modeling and the prediction of environmental effects and describe any limitations of the models and the degree of uncertainty in any of the predictions made.

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- The EIS shall detail how any adverse project effects will be mitigated and propose a follow-up program to verify the accuracy of the environmental assessment of the projects and to determine the effectiveness of any measures employed to mitigate the adverse effects of the project. The EIS shall also describe any residual environmental effects that cannot be mitigated and how these residual effects will be managed.

- The EIS shall detail the public consultation process that occurred in advance of the project and that will occur throughout the implementation of the project. The EIS shall also summarize public concerns and identify how those concerns have been addressed within the ongoing project planning process. Specific attention should be directed at the issues and concerns that were highlighted by the Manitoba Water Commission and the International Joint Commission.

Section 2.3.2 – Scope - In addition to the criteria listed the following should be considered

- It not entirely clear what constitutes the defined project. Although frequent reference is made to the Red River Floodway Expansion Project the actual machinations of the environmental assessment appear to be directed at the components or activities associated with the expansion of the Red River Floodway. For greater clarity it should be stated unequivocally that the project being reviewed is in fact the expanded floodway. Although the activities associated with the proposed construction must be assessed so must the project which is ultimately proposed. In the parlance of CEAA - where a project is in relation to a physical work, an environmental assessment shall be conducted in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work that is proposed by the proponent.

- With respect to any measures proposed to mitigate any adverse environmental effects, all parties responsible for ensuring the implementation of the mitigation shall be clearly identified. The same applies to any prescribed follow-up program.

- With respect to the prediction of the significance of project effects, the criteria used in the assessment of significance shall be clearly identified.

Section 5.3 – Project Description - the following comments should be considered within the context of the project description. Also see NRAC's comments specific to the July. 2003 Project Description.

- Examination of Manitoba's entire flood protection system for the City of Winnipeg is appropriate as all of the components including the Shellmouth Reservoir, the Portage Diversion, the City of Winnipeg infrastructure and the current floodway have a direct bearing on the design and operation of the expanded floodway.

- The Red River Floodway has a long history of being studied by various commissions such as the Manning Royal Commission, the Manitoba Water Commission and the International Joint Commission among others. To build on this significant information base, the EIS should provide an overview of all previous studies and findings related to construction or operation of the existing floodway and its proposed expansion along with any germane recommendations issued from such studies. The EIS shall also describe how the recommendations have been, or will addressed during the course of the present project planning exercise.

Section 5.3.3 - Operation and Maintenance – The EIS shall summarize and compare the operating rules for both the existing and the expanded floodway. The analysis shall include how the rules affect both upstream and downstream interests likely to be affected by operation of the floodway throughout its prescribed range.

The floodway operating rules dictate how the current or expanded floodway will be operated. As such, the EIS shall describe the rationale and process for developing the rules of operation. The EIS shall also clearly describe the proportioning of flows between the city and the floodway in the context of the defined "state of nature" and provide justification for such proportioning. The EIS shall describe the extent of stakeholder engagement or input involved in formulating the rules of operation and how that input was dealt with. NRAC supports the International Joint Commission's commentary as follows:

> *"Clearly the protection of Winnipeg must be given a high priority. But it is equally clear that proposals for additional flood protection for the city or alteration to the operating rules for the Winnipeg Floodway must take account of the full economic, social and human costs for other areas that would be affected by such measures. A transparent process for open consultation must be established to ensure that residents of such areas have an opportunity to be an integral part of any decision-making process." (IJC, Living with the Red, November 2000)*

Fundamental to the floodway operating rules is the concept of the "state of nature" water levels. The EIS shall describe the rationale and the process used for defining the "state of nature". The EIS shall also describe how the "state of nature" is calculated as well as any models used in its analysis. Any assumptions, limitations or uncertainty inherent in the models used or the calculations shall be discussed. The EIS shall describe the extent of stakeholder engagement involved in defining and formulating the "state of nature" along with an indication of the degree of stakeholder acceptance.

Section 6 – Description of Existing Environment - The EIS shall specifically identify current flood protection levels in place upstream of the floodway both in terms of the elevation (geodetic and elevation above the 1997 flood levels) and in terms flood return frequency. The proponent shall develop a flood risk assessment for all areas potentially impacted by floodway operation with specific reference to areas upstream of the

floodway under a full range of operating regimes with specific reference to the flood protection levels previously identified. The number of residences, businesses and the infrastructure that would be flooded under the various flow regimes should be highlighted.

Section 6.4 Socio-economic Environment - One of the revelations of the 1997 flood was that social and economic effects persist long after the flood waters recede. The massive disruption of the personal lives of flood victims can invoke feelings of anxiety, frustration, exhaustion and despair at a time when one faces the difficult task of rebuilding ones life. To this day, weariness from the struggle to put things back together is still evident in the community that NRAC represents. The IJC captured the following sentiment:

> *"It is very difficult of be objective or unemotional when relating the pain and uncertainty of our lives over the last 10 months. The effect of dislocation, the loss of place, cherished possessions and the ensuing anxiety over disruption in children's development and security, stress on marriages, damage to livelihoods and cost of rebuilding is extremely hard to describe. The emotional gamut for us has run from despair to anger, dismay to worry, acceptance to determination." [Floodplain resident – IJC hearing Ste. Agathe, February 12, 1998] in (IJC, Living with the Red, November 2000)*

This is a cost that affected residents must bear that cannot be factored into the cost/benefit ratios or into any monetary compensation package proposed to mitigate the adverse effects of flooding. Serious consideration must be given to this personal cost in evaluating the full environmental effects of the proposed expanded floodway, especially as it was never considered during the deliberations for the present floodway design. The IJC similarly commented:

> *"There is no satisfactory way to sum up the collective trauma of the over 100,000 people who were affected by the flood and who struggle to recover, even now, more than three year after the event. The Commission knows from its many visits with local residents, public hearings, and study of the flood that the human toll is high and real. There is no easy way to assign an economic benefit to the value of knowing one is relatively safe from future floods or the economic cost of the trauma of knowing that you may once again be flooded" (IJC, Living with the Red, November 2000)*

Section 6.4.2 Economy - Undoubtedly, construction of the floodway will have some short term economic benefits to the community and the provincial economy at large. The proposed economic analysis is sure to quantify that benefit. However, the potential adverse economic effects associated with flooding persist indefinitely and are difficult to quantify yet must somehow be addressed. Some of issues that the EIS must address include the economic uncertainty in establishing businesses or residences in the potential flood zone, the inflated costs associated with rebuilding after a flood and delays in providing compensation as evident after 1997 flood. In short, the EIS must included

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consideration of both the positive and negative effects of the floodway over the short and long term.

Section 6.4.3 Infrastructure and Services – Based on the 1997 flood, the EIS shall describe the effect on the infrastructure and services available to potentially flooded residents under the full spectrum of operating regimes for the floodway.

Section 6.4.4 – Personal, Family and Community Life - As previously discussed, these issues will not be easy to quantify. The listed parameters may help to understand who may be potentially affected but will not help to assess the adverse effects on affected individuals. NRAC strongly recommends that the EIS document the nature and extent of personal, family and community effects based on the 1997 flood experience as well as any other similar disasters as a starting point and describe how the present proposal will deal with this same suite of issues.

Section 7 – Environmental and Socio-economic Effects and Mitigation - Both quantitative and qualitative analyses should be provided especially where the socio-economic effects cannot readily be quantified - see discussion as provided for Section 6.4 above. Also, for greater clarity the EIS shall describe the effects for all aspects of the Floodway Expansion Project including the construction and modification of the floodway as well as the completed and operational floodway. As with all mitigation required for the project, the EIS shall describe all parties responsible for ensuring that the mitigation occurs.

Inevitably, by its nature and design, the floodway will inundate upstream areas. The EIS shall describe what measures are, or will be in place when that time comes to "mitigate" the effects of the operation of the floodway – aside from legislated compensation package already referenced.

Summary - In order to assure an expeditious review of the proposal, the EIS must first acknowledge that the "project" being built is in fact the expanded floodway. The current guidelines appear to focus on the activities associated with the construction of the floodway and not the operation of the floodway itself. The EIS must also acknowledge that the floodway will inevitably inundate a significant populated area upstream of the floodway and that there will be heavy toll paid by those that have been sacrificed to protect the city. Lastly, the EIS must outline how the public will be informed, consulted and engaged with the development of the proposal.

North Ritchot Action Committee Suite 261, 32-2855 Pembina Highway, Winnipeg, MB R3T 2H5

October 10, 2004

Larry Strachan P. Eng.
Director, Environmental Approvals
And Chair, Project Administration Team
Manitoba Conservation
Suite 160 – 123 Main Street
Winnipeg, Manitoba
R3C 1A5

Dear Mr. Strachan,

Re: North Ritchot Action Committee (NRAC) Comments on the EIS for the Red River Expansion Project

Please find attached NRAC's comments on the EIS submitted for the Red River Floodway Expansion Project. From the comments and the analysis provided it should be apparent that NRAC has grievous concerns with the environmental assessment approach adopted in the EIS as well as the lack of consideration given to upstream residents who will ultimately be sacrificed for the benefit Winnipeg's flood protection. If unchecked, these actions will only fuel the existing distrust of the operators and operations of the Floodway, a distrust that has grown with the years and with each occasion that the Floodway has been operated to the detriment of upstream residents.

The Red River Floodway has a long history in the minds and psyches of upstream residents. It is important to examine that history to provide context to the current environmental assessment. The Floodway concept was originally recommended by the Manning Royal Commission (1958) which recommended a practical solution of diverting water around Winnipeg without causing upstream flooding. Based on its cost/benefit analyses, the Commission recommended construction of a diversion channel that would divert 60,000 cfs from the Red River south of the City and discharge that volume back into the Red River near Lockport. The Commission did not consider, nor felt the need to consider, the environmental effects or the socio-economic effects on upstream residents as, clearly, there were to be none. The Floodway was ultimately constructed between 1962 and 1968 at a cost of roughly $63 million (1968$) and was first operated in the spring of 1969.

The first rules of operation for the floodway were issued in 1970 and included the concept of "surcharging the floodway" or exceeding the design capacity of the floodway. In that regard, these rules deviated from the original intent of the Floodway and more significantly deviated from the information that was presented to upstream residents. Many residents still recall being told that the Floodway would only benefit them and have no adverse impacts on their lives.

While these rules entertained operating in excess of the design capacity, the infrastructure did not. The original Floodway design called for an west flank breach which would allow controlled flooding of Winnipeg once the design discharge was reached. This west flank breach was the focus of considerable attention in 1997 and ultimately led to hasty construction of the Brunkild or "Z" dike. Controlled flooding of Winnipeg, as envisioned by the Royal Commission was no longer a palatable option. The 1970 rules of operation were never approved by the Federal government as required under the 1962 Canada/Manitoba Agreement which set out the terms and conditions of the partnering arrangement, nor was there any public consultation on their use. The rules were subsequently revised in 1984, again without federal approval, and then changed again in 1999 in response to the 1997 flood. During this brief history, the Floodway had assumed a life of its own. Originally envisioned as a harmless diversion ditch, the Floodway eventually grew in complexity to become a major dam with induced artificial flooding of the upstream forebay area in excess of 8 feet above "natural" at its maximum operating range.

This brings us to the present Floodway proposal which once again is a joint Federally/Provincially funded project with the roles and responsibilities spelled out in the *Red River Floodway Expansion Project Proposal for a Framework Agreement...* dated October 30, 2002. This agreement, in part, committed the parties to a number of actions. Actions relevant to the review of the EIS include:

1. *A commitment, on behalf of Manitoba, to conduct public hearings with regard to issues of compensation and operating rules.*
2. *Improving and upgrading flood protection infrastructure in Winnipeg to enable the maximum flood through Winnipeg, thereby minimizing the extent of required expansion of the floodway channel.*
3. *Subject to Canada's direction, Manitoba is prepared to coordinate all public consultation required to ensure appropriate public input to the development of flood damage compensation policy for induced flood levels. In addition, it is Manitoba's intent to submit any revisions to the Floodway Operating Rules to public scrutiny.*
4. *Public consultation on the Red River Floodway and associated works will address public interest in the project and will focus on two major components a) operation of the floodway under the proposed expansion and compensation for adverse effects and b) inclusion of interested parties in the environmental aspects of the project.*

5. *Compensation for adverse effects from the operation of the Floodway above what would occur naturally is considered as mitigation for those effects. Manitoba will work with the potentially affected parties to develop a plan for fair and equitable compensation to parties that experience flooding beyond which would occur naturally.*
6. *Conducting a public review process for ratification of the new Floodway program of Operation.*
7. *With expansion of the Floodway a new program of operation will be needed. Manitoba intends to develop this program and solicit input from the public before finalizing a new operating regime.*

Of note in the agreement are the commitments to public input in a compensation agreement, in the rules of operation for the floodway, and in the environmental assessment process.

Following on the agreement, *Guidelines for the Preparation of an Environmental Impact Statement for the Red River Floodway Expansion Project* were issued on February 5, 2004. Under these guidelines the scope of the required assessment of the project was defined as:

> *"The environmental assessment for the Project shall include consideration of the environmental effects of all undertakings associated with the site preparation, construction, maintenance, operation and final disposition of all components of the proposed Red River Floodway expansion, including any required infrastructure modification or development. The assessment must consider the purpose of the project and alternative means of carrying out the project that are technically and economically feasible."*

In addition, the Guidelines also require the EIS to address:

- *Cumulative environmental effects of the Project that are likely to result from the Project when its effects are considered in combination with the effects of other projects or activities that have been or will be carried out,*
- *The technically and economically feasible measures that would mitigate any significant adverse environmental effects of the Project,*
- *The adequacy of measures proposed to mitigate adverse environmental effects of the Project and to address residual adverse effects, where appropriate*

This brings us to the current environmental assessment and the EIS which we have reviewed. First with respect to the Existing Floodway, there has been no environmental assessment or risk assessment of the effects of the floodway in the past or in the current EIS. This is a crucial first step in a standard cumulative effects assessment or in a new project assessment as the case might be. Second, with respect to the commitments in the Framework Agreement, virtually none of the commitments have been met in terms of

meaningful public involvement in the overall process. The statement in the Framework Agreement that "*compensation for adverse effects from the operation of the Floodway above what would occur naturally is considered as mitigation for those effects*" suggests that the "natural" condition was to be treated as the environmental baseline for the purposes of the projects assessment. The EIS does not adopt this approach but rather attempts to equate an administrative environment with the term "environment" as used in CEAA. Third, with respect the Guidelines, the EIS does not consider the purpose of the project with any credibility, does not conduct either a proper project assessment or cumulative effects assessment, does not provide any details of the proposed mitigation for the upstream area, does not identify the environmental effects that are allegedly being mitigated, and does not address the adequacy of the proposed mitigation. Last, the residual effects are just plain ignored.

Overall, the EIS has "whitewashed" the whole environmental assessment process, paying lip service only to the intent of CEAA and the Framework Agreement, leaving upstream residents feeling betrayed one more time. It is difficult to fathom how an environmental assessment of a project as important as this one can have gone so far astray.

In Manitoba, this problem does not appear to be unique to this project. The Clean Environment Commission in its deliberations on the Wuskwatim project shed some light on the problem:

> *(Recommendation 7.8) The Clean Environment Commission recommends that:*
>
> *The practice of environmental assessment in Manitoba be enhanced by requiring higher standards of performance. In this regard, the Government of Manitoba should*
>
> - *Enact environmental assessment legislation*
> - *Provide guidance for proponents, consultants and practitioners*
> - *Establish protocols for best professional practice that includes cumulative-effects assessment*
>
> *The process should include use of traditional scientific knowledge, selection of appropriate Valued Environmental Components (VECs), establishment of baseline conditions, and establishment of thresholds in the conduct of environmental assessments. The protocols should reduce uncertainty, enhance effectiveness and improve predictability of future environmental assessments.*

It is NRAC's view that this is as good a place as any to start with those improvements. However, rather than delay floodway expansion until provincial legislation is enacted, it is also NRAC's contention that the most timely mechanism for applying this solution would be to abandon the current travesty and establish a joint panel with mediation. Failing that, a federal panel, subsequent to the current exercise, is a real possibility.

All of the above establishes the context and is germane to both the current environmental assessment and NRAC's review of the EIS. If you have any questions or comments with regard to any of the above or with regard to our review comments, please do not hesitate to contact us.

Sincerely,

Dr. R. Stewart, Chair
NRAC

Cc:
Mr. T. Sargeant, Chair CEC
Hon. J. Godfrey, Minister of State Infrastructure and Communities.
Hon. S. Dion, Minister for the Environment
Hon. R. Alcock, President of the Treasury Board
V. Toews, MP Provencher
M. Taillieu, MLA Morris
Council, RM Ritchot
R. Connelly, Canadian Environmental Assessment Agency
D. McNaughton, Canadian Environmental Assessment Agency
Sierra Legal Defense Fund
Association 768
Coalition for Flood Protection North of the Floodway
Manitoba Wildlands
Red River Valley Group
Ritchot Concerned Citizens Committee

ATTACHMENT 2

North Ritchot Action Committee (NRAC)

Review of Environmental Impact Statement (EIS)

for the

Red River Floodway Expansion Project

October, 2004

OVERVIEW

Although we recognize that there is a wide range of environmental and other issues associated with the proposed floodway expansion project, NRAC has elected to focus on those issues and concerns most relevant to the community in which we live. Residents living upstream of the floodway are primarily concerned with the environmental effects resulting from the operation of the proposed project and cumulatively from the project and other projects or activities. Our review comments are based on the Executive Summary of the Environmental Impact Statement (EIS) and Volumes 1 to 3 of the Main Report of the EIS.

This EIS was intended to satisfy both the provincial and federal requirements for an environmental assessment. In its review, NRAC concentrated on elements of the federal review process pursuant to the Canadian Environmental Assessment Act (CEAA) since the standards of this process are generally perceived as being more rigorous than the provincial process. Satisfying the federal standard would ensure that the requirement of both processes would be met. This approach also appears to be consistent with the one adopted by the proponent as some of the definitions and guidance materials purportedly originate from the federal process.

The purpose of any EIS is to thoroughly describe the environmental effects, proposed mitigation and significance of residual effects of a project such that decision-makers and stakeholders are fully apprised of the merits of the project under consideration. The EIS reviewed here, however, does not even approach any minimal standard of a thorough environmental assessment. The EIS appears to spend more effort on ignoring or obfuscating the environmental effects or scoping them out of the project than it does in attempting to address them. Rather than identifying the relevant issues and addressing them, the document simply ignores them or attempts to marginalize the issues. It is unfathomable that a project designed to impound river flows on upstream residents can have no adverse environmental effects. This, according to the logic presented in the EIS, can apparently occur because the present environment is already so adversely affected that any change is likely to a positive one. This rationale is based on an environmental assessment approach so fundamentally flawed that it renders the document of little practical value. Most disturbing was the endless effort expended in trying to forego either a proper project assessment or something resembling a cumulative environmental effects assessment.

The recurring justification throughout the EIS is built on a misinterpretation of the requirements of CEAA, misinterpretation or misrepresentation of CEAA guidance materials, and a blatant disregard for the citizens of the province who will be most adversely affected by the proposed project. There are no quantified effects with their specific mitigation cross-referenced. Rather there are sweeping generalities about both the impacts and their mitigation through legislation, and no quantitative details about residual effects. The EIS cannot evaluate the significance of something that it has not

measured. It is NRAC's position that the EIS provides neither a thorough environmental assessment of the project nor a thorough cumulative effects assessment of the project in combination with other projects or activities that have been, or are likely to carried out.

The Project:

The environmental assessment appears to be based on the existence of two separate and distinct entities, the existing floodway to which all the environmental effects are ascribed and the expanded floodway which is only accountable for any incremental effects. The reality, however, is that the existing floodway will cease to exist upon completion of proposed expansion project. These two entities are mutually exclusive and in the end, functionally there will be only one Red River Floodway which will be operated accordingly. The only reasonable proposition is that a larger floodway is being built to replace the existing floodway and this single entity will be responsible for all future environmental effects.

Although CEAA provides significant discretion as to what constitutes a project for the purpose of an environmental assessment, the standard is that that decision must be a reasonable one. Most assuredly, the federal and provincial governments are not providing hundreds of millions of dollars for the construction of purposeless earthen works

If the flawed logic of the EIS is accepted, that the project is a minor modification of an existing project, the EIS is still required to examine the cumulative environmental effects of that existing project and the proposed work. The EIS pays lip service only to this concept by taking the existing project as the baseline environment, thereby hiding or burying adverse effects of existing projects and activities.

The Environment and Environmental Effects:

For the purpose of describing environmental effects on upstream residents the EIS constructs a baseline environment that is largely based on the operating regime of the existing floodway rather than on the environment as specifically defined in CEAA. Under CEAA:

"environment" 'means the components of the Earth, and includes
a) land, water and air including all layers of the atmosphere
b) all organic and inorganic matter and living organisms, and
c) the interacting natural systems that include components referred to in (a) and (b)'

In short, the "environment" can be envisaged as what we currently see outside our window. Undeniably, the current floodway imposes its presence on the physical

environment in terms of its physical works. However, the operation of the floodway does not define the current physical environment but rather the **potential** environmental effects of the floodway. CEAA gives no consideration to what amounts to an administrative environment. Nor does CEAA suggest that there are multiple environments as envisaged under Sections 5.3.2.1 (Inactive Operation), 5.3.2.2 (Spring Operation), and 5.3.2.3 (Emergency Summer Operation). What we have here is one environment with different environmental effects – i.e. changes in the environment.

Under CEAA an:

> *"environmental effect" 'means, in respect of a project:*
> *a) any change that the project may cause in the* ***environment,*** [emphasis added] *including any effect of any such change on health and socio-economic conditions, physical an cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and*
> *b) any change to the project that may be caused by the environment*
> *Whether any such change occurs within or outside Canada'*

The environmental assessment in the EIS operates on the basis that the "environment" is defined by the operating guidelines for the existing floodway and that the conditions specified therein would prevail as the baseline environment condition. The EIS states it thus:

> *"For the purpose of assessing the environmental effects of the proposed Project, the current environment with the Existing Floodway and the project future evolution of the environment without the Project is considered as baseline."*

This is, at best, an amusing approach as it suggests that the environment can be modified merely by changing the text of the operating rules for the existing floodway. Clearly, that is not what is envisioned under CEAA. It is the operation of the existing floodway that caused the environmental effects in the past and it will be the operation of the new, larger floodway which will produce those environmental effects in the future. It is unreasonable to suggest that after completion of the new floodway that the existing floodway (which will no longer exist) will continue to produce environmental effects that somehow are not connected to the expanded floodway. Conveniently, this analysis makes the environmental effects disappear. Clearly, that is not a reasonable proposition, nor does it follow logically from the requirements of CEAA, yet the Canada-Manitoba AEAC stipulates that CEAA's definitions of environment and environmental effect will be employed.

The EIS summary indirectly supports this position when it states:

> *"Accordingly, only socio-economic effects caused by a change in the **biophysical environment*** [emphasis added] *which, in turn, has been caused by the Project are "environmental effects" as defined in CEAA."* [Summary p.13]

The point is that environmental effects are defined by changes in the biophysical environment not in operational policy. This is the underlying concept behind calculation of natural levels by which artificial levels can be determined which leads directly to "effects … on health and socio-economic conditions."

Another fatal flaw in the EIS is the omission of the operation rules from the assessment. In spite of the significance that there rules have in shaping the environmental effects of the project they are not included in the assessment process. Yet, CEAA requires that:

> *"Where a project is in relation to a physical work, an environmental assessment shall be conducted in respect of every construction, **operation*** [emphasis added], *modification, decommissioning, abandonment or other undertaking in relation to that physical work..."*

Clearly, the operation of the project, governed by the operating rules, must be included in the environmental assessment. It is also not clear that the existing rules would be applied to the proposed project. The document, *Red River Floodway Expansion Project – Proposal for a Framework Agreement Between The Government of Canada and The Government of Manitoba and the City of Winnipeg [October 30, 2002]* states that:

> *"With the expansion of the Floodway a new program of operation will be needed. Manitoba intends to develop this program ...."*

Again, since the operating rules for the floodway define the environmental effects, how can the environmental effects of the proposed project be assessed without knowing how it will be operated?

The EIS incorrectly scopes some of the most serious socio-economic and health impacts out of the review with simple dismissive and unsubstantiated statements. After acknowledging the effects (pages 8-100 and 8-112), this effect is dismissed out of hand.

To summarize this section, the EIS wrongly defines the project as a modification when in fact the existing floodway will cease to exist. Even if the expanded floodway is accepted as a modification, the EIS has ignored all the basic requirements and the intent of a CEA under CEAA. Even if after detailing the trauma expected to be induced upstream by the expanded floodway, the EIS summarily dissociates it from the project. It is incomprehensible that this acknowledged severe impact resulting directly and solely from

the presence and operation of the expanded floodway or cumulatively in concert with the existing floodway is somehow not an environmental effect.

Cumulative Effects Assessment (CEA):

Conducting a thorough cumulative environmental effects assessment can be a challenging task at the best of times, however, that does not excuse one from doing it. The EIS goes to great lengths to avoid undertaking anything resembling a cumulative effects assessment. CEAA also provides considerable latitude in the conduct of an cumulative effects assessment however, again, the approach taken must be reasonable and must be conducted in the spirit of determining the full extent of all the environmental effects that have accumulated to date, or are likely to accumulate in the foreseeable future. The EIS satisfies neither of these requirements.

Under the heading "Cumulative Effects Assessment Approach" (Section 2.2) the EIA attempts to rationalize using operational policy to describe baseline environmental conditions as previously discussed. In part, the rationale purportedly relies on CEAA guidance which states:

> *"In practice, past actions often become part of the existing baseline conditions. It is important however, to ensure the effects of these actions are recognized." [CEA Practitioners Guide]*

This statement in and of itself is not unreasonable. What is unreasonable is its application to the present project. Undeniably in some circumstances when a past action or activity has already produced a change in the [biophysical] environment then that change in the environment may become part of the existing baseline environmental conditions. But that does not apply to the floodway. Upon closer examination of the CEA Practitioners Guide it appears that the true context of the passage may have been lost in its translation. The entire passage reads:

> ***"Past Actions***
> *Past actions are no longer active yet continue to represent a disturbance to VECs (e.g., ongoing effects of an abandoned gravel pit on terrain, or a plume of solvents from an abandoned wood preserving factory on a nearby aquifer). It is possible that the effects may no longer be readily observable (e.g., review of maps or airphotos shows little evidence of the action). However, significant changes may remain to ecological processes and VECs. In practice, past actions often become part of the existing baseline conditions. It is important, however, to ensure that the effects of these actions are recognized"*

It is not clear how this can possibly relate to the floodway. If it is a "past action" there are not likely to be any lingering environmental effects, other than terrain disturbances.

The passage certainly does not envision a "past" project which continues to operate into the future, indeed govern the operation of the proposed project, while generating environmental effects which are treated as baseline environmental conditions as suggested in the EIS. Clearly this is an absurd argument. Certainly the CEAA guidance materials or more importantly CEAA itself provide no support for such a contrived proposition.

With further regard to cumulative environmental effects, CEAA explicitly states that every environmental assessment, whether screening, comprehensive study, panel or mediation, shall consider:

> *"16(a) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that* ***have been*** *or* ***will be*** *carried out"* [emphasis added]

It is impossible to have a cumulative environmental effects assessment without knowing what the environmental effects of the existing project are. While we maintain that the only reasonable proposition is that the existing floodway will no longer exist and that all environmental effects resulting from a new larger floodway should be included, even allowing that somehow the old floodway persists, then the cumulative impact of both the old and new floodway would still require assessment and the environmental effects of both would still need to be addressed together. This is not the case in the EIS.

Nowhere does the EIS undertake an assessment of the environmental effects of the present floodway. Also, to act cumulatively, all the environmental effects of past projects and future projects or activities must extend into the same future as the project under consideration, and must overlap both spatially and temporally with the project effects. This brings us back to the argument above, that there can be no cumulative environmental effects from an entity that no longer exists (i.e. no temporal and spatial overlap). In that event, the operation of the new floodway is responsible for all reasonably foreseeable future environmental effects on the existing environment. Such an approach, although different from the classical cumulative effects approach, in the end, would have the same end result. In either case the result would be consistent with CEAA's Cumulative Effects Assessment Practitioner's Guide cited in the EIS:

> *"CEA is an environmental assessment as it should always have been: an Environmental Impact Assessment (EIA) done well."*

In its entirety this passage reads:

> *CEA is environmental assessment as it should always have been: an Environmental Impact Assessment (EIA) done well. In practice, the assessment of*

> *cumulative effects requires consideration of some concepts that are not always found in conventional approaches followed in EIAs. Specifically, CEAs are typically expected to:*
> - *assess effects over a larger (i.e., "regional") area that may cross jurisdictional boundaries; [Includes effects due to natural perturbations affecting environmental components and human actions.]*
> - *assess effects during a longer period of time into the past and future;*
> - *consider effects on Valued Ecosystem Components (VECs) due to interactions with other actions, and not just the effects of the single action under review;*
> - *include other past, existing and future (e.g., reasonably foreseeable) actions; and*
> - *evaluate significance in consideration of other than just local, direct effects.*

where the guide defines "actions" as including both projects and activities. Clearly, the above passage does not support the approach to environmental assessment adopted by the EIS. The intent of the above statement is to raise the standard of individual project assessments to consider all environmental effects (including cumulative) not to lower the standard of a cumulative effects assessment as suggested in the EIS.

It is also bewildering how the cumulative effects of the proposed and existing floodway can have "insignificant environmental effects" when the existing floodway alone, by any reasonable analysis, already has significant environmental effects as was evidenced during the 1997 flood. The EIS clearly acknowledges that operation of the existing floodway has impacted upstream residents:

> *"... flows which currently would be stored in the floodplain in the RM of Ritchot due to unnatural flooding."* (Exec. Summary P 15)

It is patently obvious from the rules of operation (Page 5-6) and Figure 5.3-4 (see below) that the expanded floodway will continue to store water in north Ritchot, that the significant effects will persist.

Cumulative effects of future projects have also been selected and presented in a biased fashion. While Winnipeg's infrastructure (including flood pumping stations) were included in the project definition in the proposed joint agreement (*Red River Floodway Expansion Project – Proposal for a Framework Agreement Between The Government of Canada and The Government of Manitoba and the City of Winnipeg [October 30, 2002]*) they have been specifically excluded from the project now. As future projects relevant to Winnipeg's flood protection, their effect can not, however, be excluded from the EIS. Moreover, the EIS indicates summer operation is a possible future project, but does not consider the cumulative impact of summer operation.

Winnipeg's flood pumping infrastructure and summer operation are intricately linked to each other and to the expanded floodway. Proper upgrading of the pumping infrastructure

could well eliminate any need for summer floodway operation. These alternatives are not discussed in the EIS. Further confusing the issue, the EIS says:

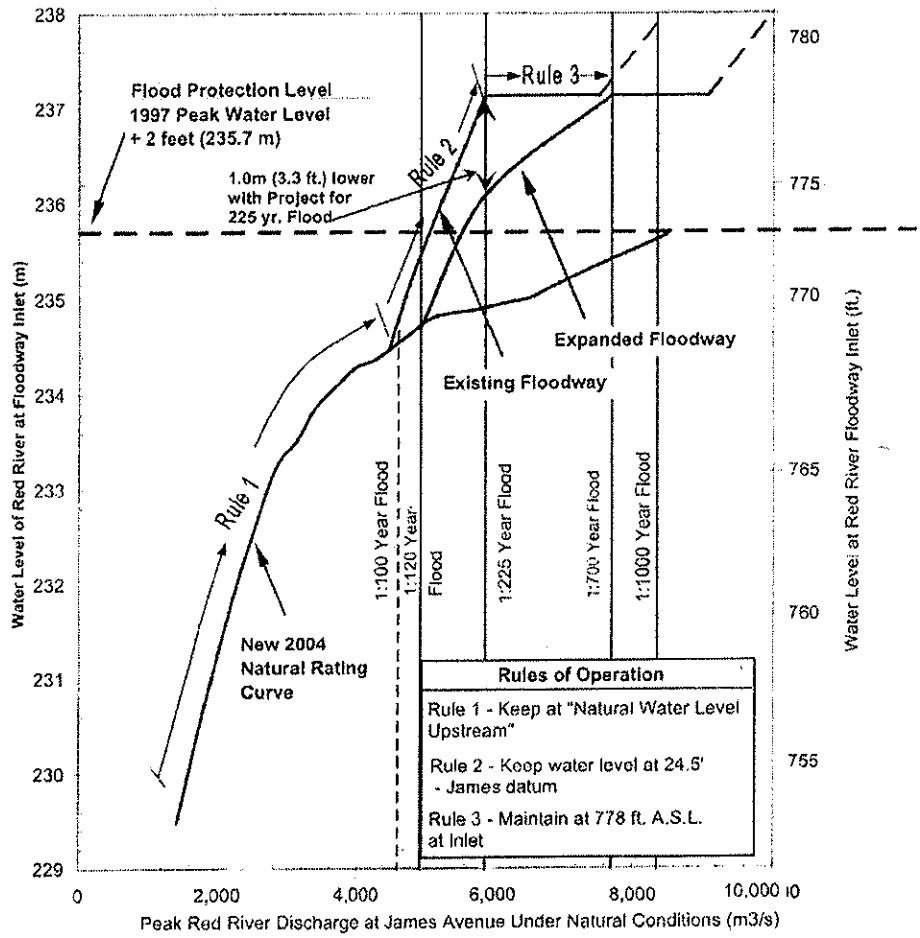
> *"Climate change could result in decreased frequency in the amount of major spring floods, increased probability of rain-generated floods increasing the likelihood of summer operation for emergency conditions, and more summer flooding due to localized thunderstorms."* (Exec Sum page 18)

strongly inferring that summer operation is becoming the *raison d'etre* for floodway expansion. Presumably floodway expansion is not meant to replace Winnipeg's flood-pumping infrastructure but clearly this infrastructure must be included in the EIA not only as an aspect of cumulative effects but also as an alternative for some aspects (summer operation) of the project. This is one more example of how the EIS sloughs off issues rather than presenting a complete review.

Significance of Environmental Effects:

This is one of most perplexing parts of the EIS. The conclusion of the project assessment and the cumulative effects assessment (for what there is) is that there are no significant adverse environmental effects, yet, numerous studies have documented the profound environmental effects of the existing floodway operation in 1997. The International Joint Commission clearly articulated the effect of the 1997 flood on residents in the Red River Valley in its report "Living with the Red". It is patently unreasonable to suggest that the project acting alone or cumulatively with other projects or activities would have no impact on upstream residents. The EIS however ignores this impact by subsuming it in the illogically defined environment that already includes flooding upstream residents and by denying it stems from the biophysical properties of the project.

Of the little information presented concerning upstream impacts, Figure 5.3-4 in the EIS most clearly illustrates one of the most significant sources of the environmental effects of the project. This figure is copied below.



Source: KGS/Acres/UMA 2004a

Application of Floodway Operation Rules for Existing and Expanded Floodway
Figure 5.3-4

In this figure, the lower curve represents the "natural" rating curve. Although NRAC does not necessarily endorse the actual rating curve depicted in the figure, some "natural" rating curve not dramatically different from the one depicted would best represent or govern baseline environmental conditions related to upstream water levels. Ultimately, the significance of cumulative environmental effects must be compared to some threshold value – the natural rating curve represents one such a threshold, the current flood protection level another. Both the existing and proposed floodway options exceed these thresholds.

The two curves above the baseline condition represent the physical environmental effects under two different scenarios: the existing floodway and the expanded floodway, operated with existing rules. Clearly the environmental effects under these two scenarios cannot be additive because the two scenarios are mutually exclusive and their environmental effects do not overlap in space or time.

With regard to determining the cumulative effects of a project, CEAA requires that, in addition to *16(a)* previously cited, the following factors be considered:

16(b) the significance of the effects referred to in (a)

Clearly CEAA requires that a determination of significance be applied to the environmental effects of the project including any cumulative environmental effects from the project in combination with other projects or activities. This is not done in the EIS. Instead, the EIS applies its significance determination only to the incremental difference between the environmental effects of the existing and expanded floodway. This suggests that no matter how significant the current adverse environmental effects of an existing project might be, any incremental reduction in the cumulative effects makes the overall environmental effects insignificant. That is a patently unreasonable. Equally unreasonable is the assertion that the expanded floodway reduces the environmental effect of a structure that no longer exists. The reality is that even if the expanded floodway floods upstream residents by only 4 feet instead of 6 feet, the end result is likely the same: a significant environmental effect. The above figure illustrates this point. The graph highlights a 1.0 m difference in water levels between the existing floodway and the expanded floodway for the 225 year flood, implying a positive environmental effect. Yet clearly both floodway scenarios exceed the current flood protection level for upstream residents. At the same time the expanded floodway causes something in the order of 1.5 m of artificial flooding during the 1:225 flood. That is hardly a benefit to upstream residents. The quality of any good news the EIS hoped to deliver about reduced artificial flooding has gone badly downhill.

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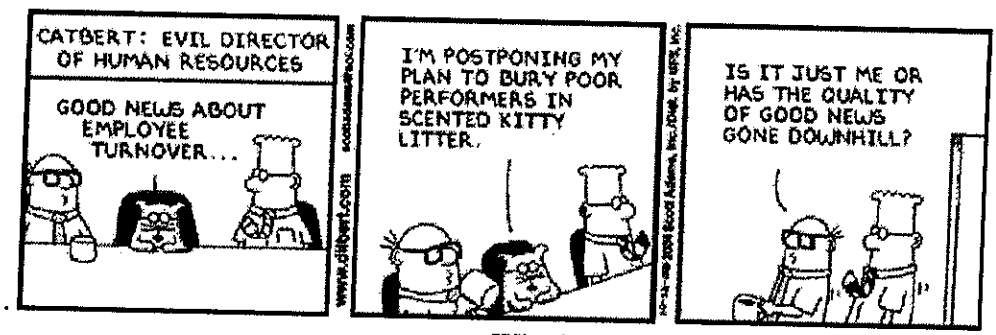

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Determining the significance of the project and cumulative environmental effects begins with determining what the environmental effects are. From EIS Figure 5.3-4, under the current flood protection lever of 1997 +2 feet (235.7 m), upstream residents would be protected from natural flood frequencies greater than 1:1000. Under current operating rules for the existing floodway, this is reduced to something in the order of 1:125 (estimated from figure) and with the current operating rules for the expanded floodway, something less than 1:200. Clearly upstream residents are put at a much higher level of risk for the benefit of lowering Winnipeg's risk. By the time that Rule 3 is implemented, upstream residents are inundated by as much as eight feet of artificial flooding associated with the operation of either floodway option. This is certainly a significant adverse environmental effect by any reasonable standard.

Another flawed argument used in the EIA for dismissing the significance of environmental effects is the apparent infrequent occurrence of the effects. With artificial flooding (levels above "natural" rating curve) occurring roughly once in 90 years for the existing floodway and once in 120 years for the new floodway and the current flood protection levels being exceeded somewhere between 1:125 and 1:200 for the existing and expanded floodways respectively, the EIS claims the apparent risk to residents is so small to be statistically significant. Whether a risk at these probabilities is significant or not compared to Winnipeg's 1:700 risk is not worth debating. More significantly, what the EIS analysis overlooks is that these probabilities are for any given year and that residents living upstream are likely to live there for more than just the one year. The probabilities become cumulative with duration of residency. Many of the residents living upstream have been a part of the community for their entire lives and some families have been there for generations. Even using a conservative residence period of 25 years would mean that a resident has a 24.4% or 18.9% chance of being artificially flooded and an 18.2% or 11.8% chance of being inundated by the existing and expanded floodways respectively. Put into perspective, any resident living upstream of the floodway for a period of 25 years would have roughly the same odds as someone playing Russian roulette, assuming a 1:6 chance. Few people would accept such odds as being trivial or insignificant and the likelihood only gets worse for longer term residents. Any reasonable person would find such an effect to be significant. Under CEAA, the question then becomes whether it can be mitigated to non-significance.

The EIS does not contain a significance evaluation framework suitable for the evaluation of significance. Proponents should not make up their own self-serving significance evaluation criteria.

Mitigation of Environmental Effects:

Under CEAA Mitigation is defined as:

> *"in respect of a project, the elimination, reduction or control of the adverse environmental effect of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means"*

It is important to remember that adverse environmental effects include changes that the project causes in the environment including any effect of any such change on health and socio-economic conditions.

The three main areas in which mitigation measures can been applied to the project include:

1. Mitigation associated with project construction
2. Mitigation associated with the adverse effects of operation of the expanded floodway on the environment
3. Mitigation of any changes on health and socio-economic conditions, on physical and cultural heritage and the current use of lands and resources for traditional purposes by aboriginal persons....

The first of these, mitigation of construction impacts, is fairly straight-forward and is generally accomplished by the employing best practices and technology, although one area of concern to NRAC relates to the proposed mitigation for aquifer drawdown. The EIS proposes to widen the floodway versus deepening it as initially proposed. However, this mitigation measure may have a profound effect as it increases water levels upstream, thereby reducing the flood protection for upstream residents. It is not clear what rationale or analysis was used to recommend mitigating potential adverse effects on downstream aquifers at the cost of upstream residents. NRAC clearly does not advocate sacrificing one part of the population for sake of another without proper consideration. It is just not clear what that consideration was.

With regard to mitigating the physical environmental effects of the floodway on upstream residents, it would appear that little or no consideration was given. Again this appears to be an artifact of the overall assessment approach. The expanded floodway and the existing floodway both have significant adverse effects on the upstream environment as evident in Figure 5.3-4 yet there appears to be no consideration given to eliminating, reducing or controlling these effects as evident in the example with the floodway widening versus deepening. Overall, there is no consideration given to revising the rules, to modifying the design of other flood-works components including those in the City of Winnipeg to reduce the overall impact on upstream residents, to evaluating options that would, at least, eliminate artificial flooding upstream or, better yet, reduce natural flooding south of Winnipeg.

The health and socio-economic effects brought about by changes in the environment this is the critical area of concern to upstream residents. The International Joint Commission clearly summarized its views on this matter in its assessment of the 1997 flood:

> *"There is no satisfactory way to sum up the collective trauma of the over 100,000 people who were affected by the flood and who struggle to recover, even now, more than three year after the event. The Commission knows from its many visits with local residents, public hearings, and study of the flood that the human toll is high and real. There is no easy way to assign an economic benefit to the value of knowing one is relatively safe from future floods or the economic cost of the trauma of knowing that you may once again be flooded" (IJC, Living with the Red, November 2000).*

The EIS acknowledges:

> *"... artificial flooding when the Existing Floodway is operated at Rule 2. This exacerbates the feeling of flood risk and vulnerability for some residents of the municipality and can result in increased anxiety and worry, particularly during spring or large precipitation events (either snow or rain)."* page 8-100

and

> *"This area has been substantially affected by flooding in the past, including artificial flooding due to operation of the Existing Floodway. Increased flood protection actions since 1997 will provide additional protection in this area and the actual threat of artificial flooding is likely to be reduced with the Floodway Expansion. However, the perceived risk continues to influence the way of life in flood-prone portions of this area, where feelings of unfairness due to unresolved compensation are likely to be exacerbated by the Expanded Floodway, despite reduction of flood risk."* page 8-112

It is important to note that the "increased flood protection since 1997" may be negated by changes to the rules of operation, drafted in 1999, that would see significantly less water pass through Winnipeg in an exact replica of the 1997 flood. The new flood protection touted by the EIS may already obsolete but there is no analysis or risk assessment anywhere in the document to validate or refute this.

The 1997 flood was a horrific flood, but even that flood pales in comparison to the floods that can result from the operation of either the existing or expanded floodway. Either of these options will generate artificial flooding at least 6.5 feet higher than 1997 and likely more. Although the Government of Manitoba has developed a legislated compensation package for property damages association with the operation of the floodway, an assessment of efficacy of that compensation in mitigating the adverse environmental affects of the project has not been included in the EIS. Neither the magnitude and

character of the damages nor the specific mitigation actions (damage-response dyads) proposed are included. Quantified damages and specific mitigation steps need to be detailed so compliance and effectiveness can be assessed. With no assessment of the overall environmental effects of the project it is impossible to determine what the proposed compensation package will mitigate.

The overall package will be exercised at the discretion of the government of the day so it is impossible for anyone today to say what will be covered at some date in the future. For example, there is no indication of how this program would be funded. The package dictates that the government will be responsible for determining if artificial flooding has occurred, how much has occurred, how much and what compensation will be paid. It amounts to a hollow promise to do something in the future although what that might be remains vague. That same kind of hollow promise made to upstream residents when the original floodway was proposed i.e. it would do them no harm. It can also be argued that the removal of upstream resident's right to seek legal action through the courts for the operation of the floodway puts them in a worse position than they were in before the legislation was enacted. In the end, the legislation is more about protection the government from litigation than it is about protection of upstream residents. Without any risk assessment analysis and knowledge of the potential costs of compensation it is impossible to evaluate the viability of the proposed compensation package.

It should also be noted that there is no guarantee that any such legislation will continue to exist into the future. As such, it is also not clear how such a package would fit within the context of CEAA. CEAA requires that the responsible authority ensure that any mitigation measures in respect of the project are implemented. Clearly the federal government can not ensure that provincial legislation will remain intact, will be adhered to, or will be implemented to address the environmental effects it is intended to mitigate, especially without any kind of assessment. Neither the provincial legislation nor the EIS indicate how the *"cost of the trauma of knowing that you may once again be flooded"* will be, or indeed could be, mitigated. From first hand experience, most upstream residents would argue that you cannot mitigate those effects - the same sentiment was voiced by the IJC.

Residual Effects:

Overall, the EIS avoids addressing mitigation by manipulating, obfuscating, trivializing and concealing the environmental effects of the project in the baseline environment. It purports to address only residual effects but must present first the effects and detail how they are mitigated before it can address the residuals. The residual effects need to be quantified, not glossed over in vague qualitative statements, to be able to evaluate their significance.

Residual effects are those environmental effects, including induced changes in health and socio-economic conditions, that have not, or can not be fully mitigated. Given the above noted problems in the assessment approach within the EIS, it is difficult to say exactly what the residual effects are. But we do know that the expanded floodway will continue to inundate upstream residences as part of its operation and that there is no proposed mitigation to reduce the significance on the physical environment, at best a tenuous proposal to offset economic losses arising from the unmitigated environmental effects, and, finally, no mitigation proposed to reduce, eliminate or control the health and social consequences associated with artificial flooding. Given this scenario, it is not clear how residual effects can be much different from the project and cumulative effects that we have previously described as being significant.

It is NRAC's view that the EIS does not represent a comprehensive environmental assessment in accordance with the Guidelines for the Preparation of an EIS for the Red River Floodway Expansion Project as issued February, 2004, nor does it follow either the letter or the spirit of the Canadian Environmental Assessment Act or guidelines issued with respect to it. NRAC has consistently advocated for a comprehensive, inclusive and transparent environmental review process with meaningful participation by affected stakeholders in the decision making process. Unfortunately, this advice has not been heeded and the proponent is now facing significant revisions in the EIA and a need to address many of the outstanding issues that should have been addressed concurrently with the development of the project design and the EIS.

SPECIFIC COMMENTS

In addition to the above overview of the environmental assessment process as presented in the EIS, NRAC also has the following specific comments for further consideration. This is not an exhaustive list.

Executive Summary: Overall the frailties, inconsistencies and unreasonable approaches included in this document have been covered above. The following are a few noteworthy passages.

1. P. 2 ¶ 6 The summary describes a series of meetings to discuss the Floodway operating conditions and to announce development of legislation for financial compensation. Please provide details of these meetings as they are not known to the community at large.

2. P. 3 ¶ 5 It states here that public consultation and involvement is an integral part of MFEA's Floodway expansion project, particularly for the selection of alternative ways of carrying out the Project, the consideration of mitigation measures, and the interpretation of the significance of effects associated with the project. Please provide more details and evidence the public was involved in the

consideration of mitigation and the significance of the environmental effects. Again, NRAC has no knowledge of such consultations.

3. P. 3 ¶ 6 The previously provided overview dispels the notion of no significant adverse effects on the environment or related socio-economic conditions.

4. P. 4 ¶ 6 – It is stated here that the floodway can be operated to its full capacity at an elevation of 778 ft asl (237.13 m). However, Figure 5.3-4 suggests that such elevation will be exceeded after Rule 3. Please provide details in the appropriate section.

5. P. 6 ¶ 1 – It is stated here that the proposed Floodway Expansion will be operated in accordance with the current operation rules for existing floodway. As noted in the preceding Overview, this is not consistent with what was stated in the Red River Floodway Expansion Project – Proposal for a Framework Agreement, which states that a new program of operation will be needed. Please reconcile this contradiction.

   Moreover, Manitoba interprets these "rules" as simply "guidelines." If they are not rules then the floodway can be operated on an *ad hoc* basis and the environmental effects can never be assessed. Furthermore, how can the federal government ensure that the new floodway will be operated in accordance with operating guidelines, however vague and flexible, presented under any EIS?

6. P. 6 ¶ 5 It is noted here that prior to construction Manitoba/MFEA will provide details for emergency summer operation. At what stage would the environmental effects be addressed? How would those effects act cumulatively with other environmental effects? Why has this information been excluded from the current EIA when it is clearly relevant to the environmental effects of the project?

7. P. 10 ¶ 2 The perception of unequal flooding by people outside of Winnipeg is noted with a recommendation to encourage Canada and Manitoba to consider investments in rural flood protection – particularly north of Winnipeg. How did it transpire that the residents facing the most profound effects of project induced flooding, those upstream, are not even acknowledged? What is the rationale for such a blatant disregard for those most affected?

8. § 3 NRAC has already stated its concerns with regard to the environmental assessment in the preceding Overview. Beyond that, we take little consolation in the explanation as to why the environmental effects of summertime operation are not considered in the EIS. As with the rest of the environmental assessment approach the rationale is neither plausible nor reasonable. Undeniably, the new floodway will be used for summer operations in the future and the environmental

effects of such operations are attributable to the expanded floodway not its predecessor which will cease to exist.

9. P. 14 ¶ 2 The statement that no significant effects on the physical environment are expected from the project is worthy of noting, not for its significance but as a measure of how far wrong this environmental assessment has gone. As detailed in the above Overview, project-induced flooding of thousands of residents homes must certainly qualify as significant to any reasonable person. It is of little comfort that Lower Trophic Levels and Aquatic Invertebrates received more attention in the remainder of this section than did people living upstream.

10. P. 15 ¶ 2 The assertion that the Expanded Floodway will be a benefit to upstream residents is not only unreasonable but it is insulting. To qualify as a benefit to upstream residents the Floodway would have to be operated below the natural rating curve. That option has apparently never been considered.

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11. § 1.4.3 (see #4, 5 regarding operation of the floodway). The floodway is operated to flood upstream areas in order to protect the City of Winnipeg. It is not clear under what legal authority this occurs. What legislation permits the inundation of upstream residents? What environmental assessments, or consultations have taken place to date?

12. § 1.4.4 Examination of the alternative of the Ste. Agathe Detention structure noted that it would require and international agreement with the U.S.A. In its consideration of the Ste. Agathe Structure, the IJC stated:

> *"It is noteworthy that the Boundary Waters Treaty would provide for adequate protection and indemnity to persons in the United States who might be injured by an increase in water levels caused by a structure such as that proposed at Ste. Agathe. It is hard to believe that Canadians should received less consideration (IJC, Living with the Red -p.31).*

Exactly the same argument would apply to the Canadian residents upstream of the floodway.

13. § 2 Assessment Approach – see above Overview which address most the relevant issues in this section.

§ 4.1 ¶ 2 This section details the Manning Royal Commission recommendations on the construction of the existing floodway. Specifically, as stated in this section the Commission's recommendation pertaining to the floodway read:

> *"Red River Floodway to divert 1700 cubic meters (60,000 cubic feet per second [cfs]) from the Red River south of Winnipeg to the east of the city, discharging this flow back into the Red River as Lockport".*

However, the existing floodway is not operated to divert only 60,000 cfs around the city but instead, somehow, has been inflated to "supercharge" the floodway to 100,000 cfs (re-estimated to 90,000 after 1997). This all too clearly illustrates that the existing floodway is a corruption of the floodway envisioned by the Royal Commission. It also explains why the fate of upstream residents was never considered in the initial development of the floodway; upstream residents were never intended to be artificially flooded by the floodway. It is inconceivable that flooding of upstream residents was not considered an ethical option nearly fifty years ago when there was no environmental legislation but is now blatantly regarded as an inherent right of the operators of the floodway. It is ironic that the rights of upstream residents appear to have been better protected before the Charter of Rights and Freedoms was enacted than after it

14. § 4.1.1.5 It is stated here that the operating rules were established between the various levels of governments and originally documented in 1970. These rules in fact were never endorsed by the Federal Government as required under the [1961 Agreement]. And as for compensation, the operating rules were mute on subject.

15. § 5.3.2.2 Floodway Spring Operation. Noteworthy in this section is the dependence of Rule 1 on water elevations within the city of Winnipeg as opposed to discharge data as originally envisioned in the 1970 rules of operation. This change removes any obligation on the part of Winnipeg to ensure that the conveyance of water through the city is unimpeded and leaves the door wide open for abuse. What measures exist to ensure that flows will not be impeded through developing infrastructure or channel armoring within the city? Obviously, the formulae for operating the floodway must be based on assumed discharges through the city in order to predict upstream water levels. How would any changes in conveyance capacity of the river channel through the city be reflected in increased flooding upstream?

16. § 5.3.2.3 Emergency Summer Operation. It is not clear what constitutes a summer emergency nor is it clear that the rationale for floodway use in the summer might not creep into the rules of operation for springtime operations. Summertime operation does not involve a natural disaster but rather a man-made disaster – the shortcomings of the City of Winnipeg's infrastructure. How is this operation consistent with the stated purpose of the floodway?

17. § 5.3.3.3, P. 5-10, ¶ 1 See the discussion in preceding Overview of perceived benefits at 1:225 flood. Being 2 feet under water versus 5 feet under water is little consolation to upstream residents. It's akin to being shot only five times through the head instead of eight.

Figure 5.3-5 shows diverted flows for the existing and expanded floodway using the 1999 rules of operation. It would be useful to all readers to see the graph for existing floodway as used in 1997. Please add that line.

18. § 5.8.3.3.2 This section presents brief but contradictory arguments that climate changes will negate the need for a bigger floodway for spring floods but suggesting it should be used more for summer protection:

> *"Warkentin (2002) concluded that climate change may result in changes in the magnitude and frequency of flooding. These effects may include* ***decreased*** [emphasis added] *frequency in the amount of major prairie spring floods, increased probability of rain-generated floods increasing the likelihood of summer operation for emergency conditions, and more summer flooding due to localized thunderstorms."*

The EIS then cites some unpublished reports that suggest increased flooding (Simonovic and Li (undated)). The EIS concludes "*Accordingly, potential changes in climate would not change the need for the Project."* But it apparently relies more on the published analysis in presenting the essential conclusion in the Executive Summary (page 18)

> *"Climate change could result in decreased frequency in the amount of major spring floods, increased probability of rain-generated floods increasing the likelihood of summer operation for emergency conditions, and more summer flooding due to localized thunderstorms."*

It would appear that an expanded floodway is not required but improving Winnipeg's flood pumps is, or at least that a critical analysis of climate change effects was not undertaken. It should be.

19. §8, P. 8-11 A list of key literature is provided here with reference to Socio-Economic Impact Assessment (SEIA). With respect to other EISs, please explain how these references are relevant to the project under review. These all appear to be greenfield projects – how do they relate to the floodway expansion project? NRAC suggests that a thorough examination of the IJC report *Living with the Red* would be a good starting place for looking at the socio-economic effects of the floodway based on the 1997 experience.

20. § P. 8-37, Table 8.3-5 It is absolutely beyond comprehension why there is a risk assessment of flood damage starting at the North Perimeter and extending northward with no similar risk assessment for the area upstream of the floodway – the area most profoundly affected by the operation of floodway, an area, where as stated in §8.3.2.2, approximately 1200 homes in seven municipalities were directly affected by the 1997 flood with the majority (800) of those located in Ritchot. Whether through a project assessment or a cumulative effects assessment the effects of the new floodway on upstream residents must be included in the assessment.

21. § 8.6.2.5.1, P. 8-100 It is stated here that flooding has a profound effect on the way of life for residents in the Flood Study Region in terms of seasonal worry and preparations, staying up-to-date with flood forecasting, and mentally preparing for the potential of personal property damage. It also states that artificial flooding associated with the operation of the existing Floodway is one of the primary causes for the expression of these effects on the way of life of residents of Ritchot. The profoundness of these effects was documented by IJC as discussed above. Yet the assessment states that:

    "there are expected to be no appreciable incremental adverse effects on human health and safety as the result of the operation of the Floodway Expansion Project, beyond those that occur now with the Existing Floodway during an extreme flood event".

    This approach dismisses the cumulative effects of the project and past projects as supposedly adopted in the EIS or in NRAC's analysis, all future environmental effects of the Expanded Floodway (i.e. the existing floodway will not be operated in the future). Yet the EIS states that impacts on the "way of life" do not constitute and environmental effects as they do not flow from the direct biophysical effects on the Project. Where do they flow from? One would think that these would be captured either in the project assessment or the cumulative effects assessment and in either case would be an "environmental effect" as defined under CEAA. Because of the assessment approach taken the EIS dismisses the need for mitigation.

Volume 2

22. Appendix 2 – NRAC's comments on the assessment approach and the use of the reference materials is discussed above. It should be made clear however that guidance materials are just that. They do not, and should not be applied universally to all projects. With regard to the often cited *Cumulative Effects Assessment Practitioners Guide,* CEAA issued an *Operational Policy Statement (March 1999)* stating some of the limitations of the Guide. This included consideration of the fact that:

    "Cumulative environmental effects" are defined more narrowly in the Guide than contemplated under the Act. Whereas the Guide focuses exclusively on cumulative biophysical effects, assessments of cumulative effects under the Act can extend beyond changes to the biophysical environment and included, for example, the effects of such changes on health and socio-economic conditions, physical and cultural heritage and other environmental effects defined in Paragraph 3 of the Act."

    In the end, the requirements of CEAA are spelled out under the Act and the guidance materials provided are there to assist in the interpretation of those requirements on a generic basis. They do not necessarily apply to specific

projects and should not be used as such without reference to the overall requirements of the Act.

23. Appendix 5 – Table 5B-1 This table illustrates the difference in the effect on water elevations between the Existing and Expanded Floodway but should not be interpreted as the effect of the expanded floodway on the existing environment for the reasons previously stated in our submission. A more pertinent analysis for the purposes of examining the cumulative effects would be the deviation of each of the floodway options from a natural rating curve acceptable to stakeholders.

ATTACHMENT 3

North Ritchot Action Committee (NRAC)

Review of Supplementary Information for the Environmental Impact Statement on the Red River Floodway Expansion Project

January, 2005

Section 1 - Consultation

In general, consultation to date has been largely lip service only with little real information and even less heeding of concerns. A few examples from Section 1 of issues raised by various pubic interest groups that received null responses at the meetings and were ignored in the Supplementary Documentation.

- Pages 1-3, 1-4 meeting Morris Council: Councilors raised concerns about bank stability with respect to summer operation. The response ignored bank stability. Section 13 identifies future studies, presumably after floodway expansion is approved.
- Page 1-13: NRAC asked if Winnipeg's water system was part of the assessment and was told it would be part of the cumulative impacts analysis but is not.
- Page 1-14: NRAC asked if the Shellmouth Dam and Portage Diversion were included and was told they were not because they are not affected by the floodway expansion. A follow-up that they affect expansion and must be included (it is one way upstream residents could benefit) was ignored.
- Pages 1-26, 1-27: CFNF disagreed with the assumption that the existing floodway is a baseline "natural" environment, thereby escaping scrutiny. There was no response and this is still the flawed position of MFA.
- Page 1-27: CFNF raised many serious concerns (inequitable flood protection; problems with the compensation legislation, expert assistance, advertising and groundwater security) but the report only records responses to advertising and a partial answer about groundwater.
- Page 1-41: The consultants were asked if there would be any benefit to Ritchot from summer operation. They answered "yes" without any support for this dubious assertion.
- Page 1-66: Attributed to either all federal RAs or to CEAA is the request that summer operation be included in the Supplementary Documentation. (see also RM of Ritchot page 1-77) The response, presumably from MFA, was that summer operations were part of the existing floodway and therefore not to be considered. Indeed MFA steadfastly clings to the illogical belief that it is exempt from any examination of the existing structure and existing operation (including summer operation) because they are part of the existing environment. This is patently false at many levels. Most simply, summer operation was not part of the existing environment because rules formalizing summer operation were tabled only in November 2004, well after expansion plans were being formulated. Many members of the public have also insisted the existing floodway must be part of the EIS for various reasons:
  - it created problems that were not addressed in the past;
  - it is being replaced and as such all environmental impacts arise from the new floodway and can not be passed off as arising from the old one;
  - it will be impossible after expansion to attribute impacts to the old and new "components" of a floodway and it must be viewed in its entirety;
  - it is a past project the effects of which need to be assessed as a cumulative impact.

The self-serving evasion of issues related to the existing floodway is one of the most serious weaknesses in the current review and clearly does not meet the letter or spirit of an environmental assessment as required by CEAA.

- Page 1-77: Ritchot council asked about removing the inlet lip and was told there was no advantage to removing it based on a 1995 study, presumably before expansion was considered and therefore not reviewed with respect to expansion Figure 5 of Section 8 of the Supplementary Documentation (reproduced in the response to V. Rutherford page 1-94) shows there may be an advantage of moving water early in a flood, providing more time for upstream residents to prepare.

- Page 1-93: The written KGS-Acres-UMA response to V. Rutherford about removing the inlet lip states that the lip is in place, originally, to "minimize use of the Floodway during summer" to prevent damage to the channel and that "The same issues exist today ..." How can the MFA and Province be thinking about routine summer operation if it has been clear for 45 years that such operation would lead to "...unpredictable erosion damage."? With new ice-reinforced bridges and routine summer operation it is obviously the right time to remove the lip and start moving water sooner – or cease and desist summer operation. Were repairs to this erosion considered in the cost/benefit analysis?

Section 7 – Compensation

Pg 7-1 "Physical flood protection in the Valley to the 1 in 700 year peak level is **not likely economically feasible.**" (emphasis added). The proponent has obviously not considered the mitigation in favour of compensation despite quoting the Canadian Handbook on Health Impact Assessment immediately after making this unsubstantiated claim. The MFA is obligated to examine, in detail, probably at an individual land title level, which homes and businesses can be protected at a reasonable cost and those that must rely on compensation. This assessment must include an examination of loss of enjoyment and loss of access (by dry land). Moreover, this specific lack of information speaks volumes to the sense that those outside Winnipeg are not worth the effort to determine even if they could be offered the same level of protection. The act specifically excludes consideration of natural flooding outside Winnipeg.

- Pg 7-2. The Minister of Water Stewardship decides when artificial flooding has occurred and how much and "could" make his findings known by early summer. Victims who lost their homes through Provincial actions in April will not find the Minister's news in "early summer" timely and not view his assessment as unbiased. Damage caused by summer operation is excluded.

- Pg 7-4. Claims and appeals under the legislation take the place of litigation, meaning once a victim has made a claim, legal action is not permitted. The courts are the only independent arbitrator available and the basic right of citizens to access the courts is being denied. There is no mechanism to hold the Province and MFA accountable.

- Pg 7-5. Section 7.6 allows Lieutenant Governor in Council to make regulations regarding eligibility, appeals and reports. In other words, nothing in this legislation is fixed and there is no security offered to those who may be damaged by floodway operation.

The conclusions to be drawn from Section 7 are that:

1. It may be economically feasible to protect residents outside Winnipeg to the same level as those in Winnipeg, but the MFA does not care to find out.
2. The Province will determine when it is responsible for damage, how much damage it caused, and appoint a board to determine how much that damage is worth.
3. The victim may make a claim and waive his right to legal action or pay large amounts for legal assistance while he tries to rebuild his home and life.
4. The Province can change how the act is regulated at any time and in any way it sees fit.
5. NRAC can only conclude that this ignores CEAA's requirement for mitigation (increase flood protection) and is too ephemeral to stand as compensation for unmitigated damages.

Section 8.2.2 Summary of the Study of Summer Water Level Control

This section should have been included in the original EIA and received a more extensive review than that presently allotted.. It remains one of the more significant issues for upstream residents. Summer operation of the floodway might translate into financial benefits to the city but for upstream residents, summer flooding translates into increased hardship and anxiety. The numbers regurgitated in this section do not seem to capture that differential although the reduction in anxiety on the part of Winnipeg residents somehow warrants consideration.

- Pg 34 para. 2 calls into question the 1993 reference point that has formed the whole basis of summer operation. It undermines the dollar value used (*"reported in the order of $140 Million"*). It notes that summer operation would have been ineffectual in 1993, contradicting its statements on page 32. Specifically *"these damages were due to significant rainfall events and not necessarily due to the coincident high river levels. That is, substantial portions of these damages would have occurred even if river water levels had been normal."* Then it says these kinds of damages were not included in the cost benefit analysis even though basement damage was specified as the major non-recreational benefit in the table on page 31.

- Pg 30 last para. Analysis is based on assumptions that are difficult to verify, costly to test or so far in the future that there is little faith in their reliability. This is especially true for projections of possible future recreational use – they frankly have no idea and this aspect should be ignored.

- Pg 31 Table: The estimates of net benefits range from $5,000 to $1,100,000. Without guessing at recreational potential, the range is still staggeringly vague: $5,000 to $720,000. Is there a business anywhere that would commit to artificially flood neighbouring communities with such wide confidence intervals on the expected return?

- Pg 32-33 The MFEA proposes that, as part of the environmental licencing process for changing the rules of operation, they would have to determine *"the effects on and compensation requirements for upstream stakeholders"*. The 25% confidence interval on "upstream damages" is bad enough but here MFA suggests it has no information. So how can the cost/benefit just presented have been completed without knowing the compensation costs?

- Pg 34. As an afterthought in the first bullet, minimal reference is made to stress and anxiety upstream with no real analysis anywhere.

- Pg 35 Estimates of basement damage vary by ± 40%, which is virtually random. It was concluded that it would be too expensive to refine these confidence intervals now but basement damage is driving the whole process, is the justification for summer operation, and is overwhelmingly the deciding factor in the cost/benefit analysis.

- Pg 33 "Bank Stability..." para 2. It is not clear if the cost of these studies and monitoring program were included in the cost/benefit analysis. If they were not they would wipe out the possible net benefit of $5,000.

- Pg 33 "Assessment of Results" para 1 *"... these B/C ratios...are not overwhelmingly in support of the summer control initiative."* What more needs to be said of this analysis? The MFA has no economic reason for summer operation.

- Pg 31 second last para. Upgrading the pumping stations was given a "cursory assessment" and rejected as "not viable." But upgrading and improvements for these pumps are already planned – some are over 50 years old (pg 11-4) - outside the terms of reference for the Floodway expansion. Again, as part of the flood protection system they must be included in the environmental review under CEAA's definition of cumulative impacts but have been "excused" from the provincial review. The contention that upgrading pumping stations would be too costly is not supported by any analysis particularly if these pumps stations may need replacement or upgrading to reduce rain induced flooding as described for 1993.

- Pg 31-32 Raising the walkways would be expensive (no cost given) and *"regressive"*. This seems to say that because it was a recent error to construct the walkways too low, it is not worth repairing. Notice here that MFA did not say raising the walkways was irrelevant to protecting basements, just too inconvenient. Furthermore one could envision that the costs of repair and maintenance of these walkways would make their replacement economically viable. NRAC considers saving the recreational use of the Forks is the key factor in proposing summer operation. Summer operation was never an issue until the Forks area was developed although the floodway has existed much longer, although basement flooding has occurred for years, and although the province has been making unilateral changes to the rules of operation since at least 1984.

Section 8 - Annex H - DM Brandson's Letter

- The threshold for operation and for cessation of operation appear inconsistent. If summer operation does not start until 14' James why does it continue until water is at 9' James? Surely if the risk below 14' is acceptable or non-existent, there is no need to reduce water levels to 9'
- Upper limits of 760' ASL cover paved roads in Ritchot, effectively severing access for several summer retail outlets.
- There was a 25% chance of heavy rain in 2004 prompting the raising of the gates. That means there was a 75% chance we would not have heavy rain. The majority probability won and the floodway was used to inflict damage without demonstrable benefit, aside from having the Forks dry for Prime Minister Martin's visit on 1 July.

Section 13 Responses to TAC and Public Comments

NRAC has serious concerns with the lack of responses to comments provided by the public listed here. This seriously erodes the perception of public participation within the review process.

TAC/MFA-S-11 The wide range in variability of estimated flows for the 1826 and 1852 floods illustrates the uncertainly inherent in predicting "natural" levels for floods extrapolated from the current rating curve. This uncertainty would have serious implications for the administration of any proposed compensation program for artificial flooding (ie. above natural).

TAC/MFA-S-15 MFA says they will significantly alter the siphon structure then prepare a plan for the use of the new structure. It is unacceptable to make major revisions to flood control structures with no plan about how to use them.

TAC/MFA-S-27 MFA claims that the generation of greenhouse gasses will be local and of short duration. By definition, greenhouse gases are global in area and persistent in time and to shrug them off as a trivial concern belies the glib and facile approach MFA exhibits throughout their documents.
With respect to greenhouse gases (GHG) MFA argues that 10 kilotonnes/yr is small but there is now a national campaign to have every Canadian reduce GHG output by 1 t. How does an increase of any amount contribute to Manitoba's reduction in GHG?

June 19, 2002 press release

MANITOBA ON COURSE TO MEET KYOTO TARGETS: PREMIER

In a new report, Kyoto and Beyond--Meeting and Exceeding Our Kyoto Targets, the Manitoba government states that it expects to reduce greenhouse gases (GHG) by up to 18 per cent below 1990 levels by 2010 and by up to 23 per cent below 1990 levels by 2012. Canada's official target is a six per cent reduction below 1990 levels by 2012.

TAC/MFA-S-29 The MFA takes the existing floodway as the baseline and says there are severe health issues and that they can not separate health problems that arise from natural flooding and those that arise from artificial flooding. The current floodway is not part of the existing environment but a past project related to this one, and must be considered under cumulative impacts. The current floodway will cease to be when the new floodway is complete and will cause no further harm so all impacts are attributable to the expanded floodway only and must be included in the assessment. If the MFA cannot distinguish between natural harm and harm they cause, and if the MFA refuses to provide upstream residents enough protection from both natural harm and MFA-induced harm, then the MFA is responsible to provide compensation for it all: damage it chose not to protect against and damage it caused.. But the MFA simply concludes this would "likely" be too expensive, with no supporting analysis.

TAC/MFA-S-36 This is an inappropriate response. It is not incumbent upon the reviewers to ferret out their own esponse which may or may not be present in the materials cited. The response attempts to deflect the direction that City infrastructure should be addressed as a cumulative effect.

TAC/MFA-S-44 The response does not address the issue raised. Why is public input on the operation of the floodway not considered within the environmental assessment. It is apparent that answer lies within what the proponent considers as the project.

TAC/MFA-S-45 The MFA's self serving assertion that it has provided meaningful opportunity for public input into the project is not supported, at least by those adversely affected by the project. The MFA lists the public concerns that have been addressed but ignores those that are still outstanding including but not limited to:

1. right to flood residents
2. secure mechanism for compensation
3. fox and chicken coop approach
4. lack of legal recourse
5. operation below natural
6. summer operation
7. or even the notion that the bad news was not being presented in these consultations.

TAC/MFA-S-51 Although the MFA lists the other components of flood protection it does not actually consider them part of the project under cumulative effects assessment.

TAC/MFA-S-63 Anxiety is a health concern during the Inactive Phase as well because upstream residents never know when the floodway will be used against them. The fact that there are several community groups active in the current review process demonstrates how much the floodway and its potential harm weigh on people's minds.

TAC/MFA-S-64 The MFA claims that many socio-economic impacts can not be quantified. NRAC had experts associated with CURA lined up to do just this but did not receive CEC funding. These impacts can be quantified but MFA chooses not to do so: it would take time and erode MFA's glib assertion that these impacts would be small.

Moreover, the impacts from operation are NOT short-term but linger in the minds of victims fore decades. This has been clearly demonstrated by sociological studies.

IC/MFA-S-5 Infrastructure Canada, tacitly as cited here but more explicitly elsewhere, has asked for an assessment of the impacts of operation, not accepting the MFA assertion that the previous project (existing floodway) is part of the pre-existing natural environment. Rather IC maintains operation is part of the cumulative effects analysis. NRAC also rejects the MFA self-awarded exemption and considers the request from IC to be valid but ignored by MFA.

IC/MFA-S-10 Same as **IC/MFA-S-5.**

IC/MFA-S-19 I think IC was more concerned about the need and frequency of summer operation, not the impact of the bigger ditch on summer operation. It speaks to need more than anything. The MFA is mistaken in its assertion that the effect of climate change on the project is not an environmental effect. Under CEAA, an environmental effect is also any change to the project that may be caused by the environment.

IC/MFA-S-20 The MFA has still failed to meet the requirements of a full mitigation package, as required under CEAA by

1. ignoring upstream impacts entirely based on the false assumption the existing floodway is a natural feature of the environment rather than a past-project.
2. Leaving all decisions about the amount of damage caused and the amount of compensation due to various government of Manitoba departments (MEMO, Water Stewardship, and MFA)
3. Having only a list of possibilities to consider as a current plan.

The MFA does not appear to be addressing the issue raised and has not provided the details requested. Furthermore, it is not clear how the MFA figures into the proposed Government of Manitoba compensation legislation. Nor is it evident how the MFA can effect the changes in legislation and policy it has suggested may be necessary. Overall, the response provided does not satisfactorily address the issue raised, an issue that is critical to a federal review.

IC/MFA-S-21 The MFA position lacks credibility. Just because the lake exists only for a month doesn't mean it does not have a long term impact. Moreover, the levels will NEVER be less than natural as claimed in the last line. The whole project is designed to hold waters above natural and or make them rise faster than natural. The fact that only some of the floods might have significant adverse effects still means that the project as a whole has significant adverse effects.

IC/MFA-S-22 Again the concerns of IC are dismissed by the erroneous exclusion of the existing floodway. Put simply, the analysis lacks any credibility and is obviously at ends with the relevant federal legislation.

North Ritchot Action Committee Suite 261, 32-2855 Pembina Highway, Winnipeg, MB R3T 2H5

January 7, 2005

Mr. Larry Strachan
Director, Environmental Approvals
Manitoba Conservation
123 Main Street
Suite 160 Union Station
Winnipeg MB
R3C 1A5

Dear Mr. Strachan:

Re: <u>Supplemental Information on Red River Floodway Expansion.</u>

The North Ritchot Action Committee (NRAC) has completed its review of the above captioned material. Our comments on areas relevant to NRAC's interests are attached. We have not reviewed the material sent out after Christmas: the insert pages for the Supplementary Documentation, the Responses to the Public, and the Response to P. Clifton. Indeed, requesting public responses in less than 30 days during Christmas makes a mockery of the consultative process.

With regard to the information provided, it is not clear how much of it qualifies as "supplemental". A good deal of this information should have been available in the original EIA – these are not clarifications of material in the original EIA but rather new information that should have been provided previously. Providing this information at this late juncture only detracts from undertaking a thorough, comprehensive, and coordinated review of the proposal.

With regard to the environmental assessment of the project, we are still desperately confused over the process as led by the Province of Manitoba. On October 10, 2004 NRAC submitted its original review on the EIS prepared by the proponent, the Manitoba Floodway Authority, with the understanding that the proponent would respond to our concerns, comments and requests for additional information. It is disconcerting to note that, with the exception of one relatively minor comment relating to climate change, our submission was either not transmitted to or not addressed by the proponent. It is unclear what the purpose was in submitting our original submission on the EIS.

Many of NRAC's comments related to the environmental assessment approach adopted by the proponent. One would surely think that a response to something as fundamental as the environmental assessment approach being proposed would be forthcoming. We are not sure what has become of our submission or those of the other groups that submitted comments. If these are not being transmitted to the proponent, then the obvious question is why not? One would assume that neither the Project Administration Team (PAT) nor the

Technical Advisory Committee would jeopardize impartiality by filtering out public concerns with the respect to the project or the project assessment especially for a project destined for public review. To do so would sideline the public in what is supposed to be an open, transparent and comprehensive process. It is all too apparent that the current process does not satisfy these requirements. The overwhelming impression one gets from trying to participate in this review is that there are a whole lot of people advocating on behalf of the proposed project with no one advocating on behalf of those individuals who will be unduly affected by the future operation of the floodway. We hope that we are wrong on this, but fear that we are not.

If you have any questions with regard to any of the above, please do not hesitate to contact us.

Sincerely,

Cc:
Mr. T. Sargeant, Chair CEC
Hon. J. Godfrey, Minister of State Infrastructure and Communities.
Hon. S. Dion, Minister for the Environment
Hon. R. Alcock, President of the Treasury Board
V. Toews, MP Provencher
M. Taillieu, MLA Morris
Council, RM Ritchot
R. Connelly, Canadian Environmental Assessment Agency
D. McNaughton, Canadian Environmental Assessment Agency
Sierra Legal Defense Fund
Association 768
Coalition for Flood Protection North of the Floodway
Manitoba Wildlands
Red River Valley Group
Ritchot Concerned Citizens Committee