

# PADDLING UPSTREAM: CAN PUBLIC INVOLVEMENT IN HYDRO RE-LICENSING BE MEANINGFUL?

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- Context
- Re-licensing requirements
- Recent regulatory outcomes
- Introducing the group discussion
- Group Discussion
  - Barriers
  - Strategies

# LEGACIES OF THE CHURCHILL RIVER DIVERSION AND AUGMENTED FLOW PROGRAM

I don't think that you people realize how painful it is to see our animals, lands and waters being destroyed for the comfort of people down south, and in the name of progress.

We worked hard at a very young age to look after Mother Earth since the Creator made us stewards of the land.

Jimmy Beardy

York Factory First Nation

Transcript from CEC Hearing @ York Landing, page 15



# OUR STARTING PREMISE

Hydro damage - continues to be enabled by a Captive Government and a Captive Department

AN IMPORTANT  
REALITY

*Term of licence*

45(1) Every licence shall be limited to such term not exceeding 50 years from the time fixed in the original interim licence for the completion of the initial development

**OLD HYDRO POWER  
IS EXEMPTED FROM  
*THE ENVIRONMENT  
ACT* UNLESS THE  
MINISTER DECIDES  
DIFFERENTLY**

6(5) When requested by the minister, the commission must . . . : (b) conduct public meetings or hearings and provide advice and recommendations to the minister (*The Environment Act*, C.C.S.M. c. E125)

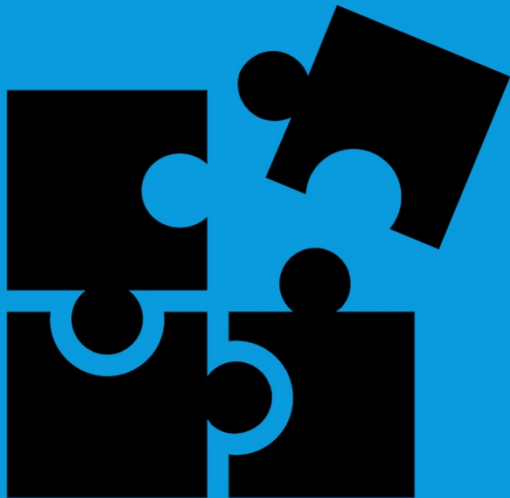
12(2) Notwithstanding subsection (1),

(a) where in the opinion of the minister new evidence warrants a change in the existing limits, terms or conditions;

.....

the minister may require any person operating an existing Class 3 development to file a proposal with the department, to be considered under this section.

## OLD HYDRO POWER IS EXEMPTED FROM THE FEDERAL IMPACT ASSESSMENT ACT UNLESS A REGIONAL CUMULATIVE EFFECTS ASSESSMENT CAN BE TRIGGERED



93 (1) If the Minister is of the opinion that it is appropriate to conduct a regional assessment of the effects of existing or future physical activities carried out in a region that is composed in part of federal lands or in a region that is entirely outside federal lands,

(a) the Minister may . . .

(ii) authorize the Agency to conduct the assessment;

*(Impact Assessment Act, S.C. 2019, c. 28, s. 1)*

**WE DON'T KNOW WHAT IS  
GOING ON WITH S. 35  
CONSULTATIONS WITH HYDRO  
AFFECTED FIRST NATIONS OR  
OTHER INDIGENOUS  
COMMUNITIES**

# WATER POWER ACT LICENSING IN MANITOBA

- Licensing regime was created in 1930 when *The Water Power Act* and Regulations came into force.
- Applies to all provincial water powers, undertakings and Crown lands involved in operation.
- Focused on regulating water power developments and the transmission or distribution of energy generated.

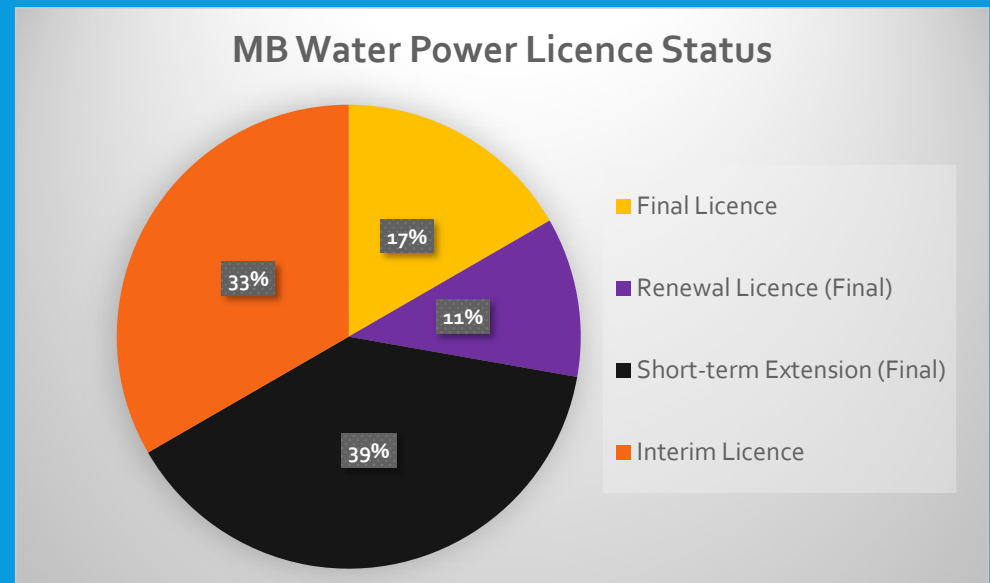


Missi Falls Control Structure  
Source: RCEA Summary Report, p. 31



# TYPES OF WPA LICENCES

- The *Water Power Regulation* sets out the requirements for the different categories of WPA licences.
- Types of Licences:
  - Interim
  - Supplementary
  - Final
  - Renewal
  - Extension



# WHAT INFORMATION IS REQUIRED FOR WPA (RE)LICENSING?

## Difference between EA and WPA Licences

- Identification and consideration of environmental impacts

## WPA application Requirements

- Information about the applicant
- Description of water sources to be used
- Description of lands to be used
- Information about the intended use of power generated
- Plans and layout of proposed development



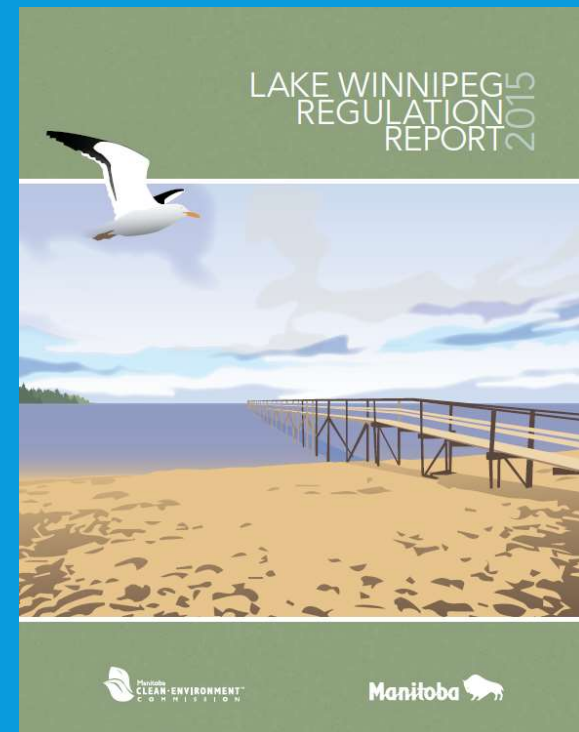
Notigi Control Structure  
Source: RCEA Summary Report, p. 19

# PUBLIC INVOLVEMENT IN WPA LICENSING

- Not required
- Must publish notice in The Manitoba Gazette and “newspaper of general circulation” in area
- Hearing may be requested by Minister
  - Ex. Clean Environment Commission hearing for Lake Winnipeg Regulation Final Licence

## Indigenous Consultation:

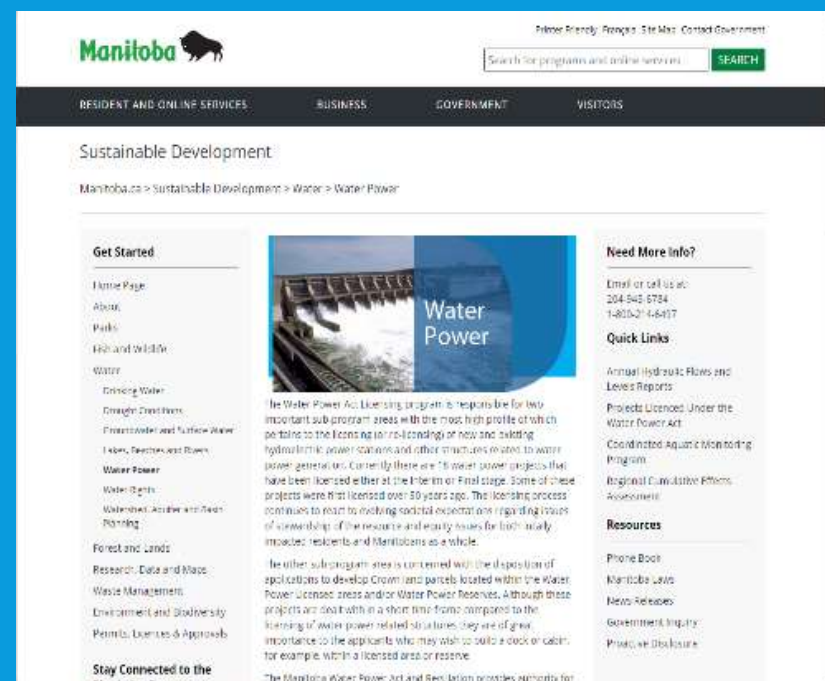
- Triggered if s. 35 rights may be impacted



# ACCESSING WATER POWER LICENSING INFORMATION

Where can you find information about Water Power Act Licences?

- Government of Manitoba (Department of Conservation and Climate)
- Manitoba Hydro
- Clean Environment Commission
  - Lake Winnipeg Regulation
  - Regional Cumulative Effects Assessment

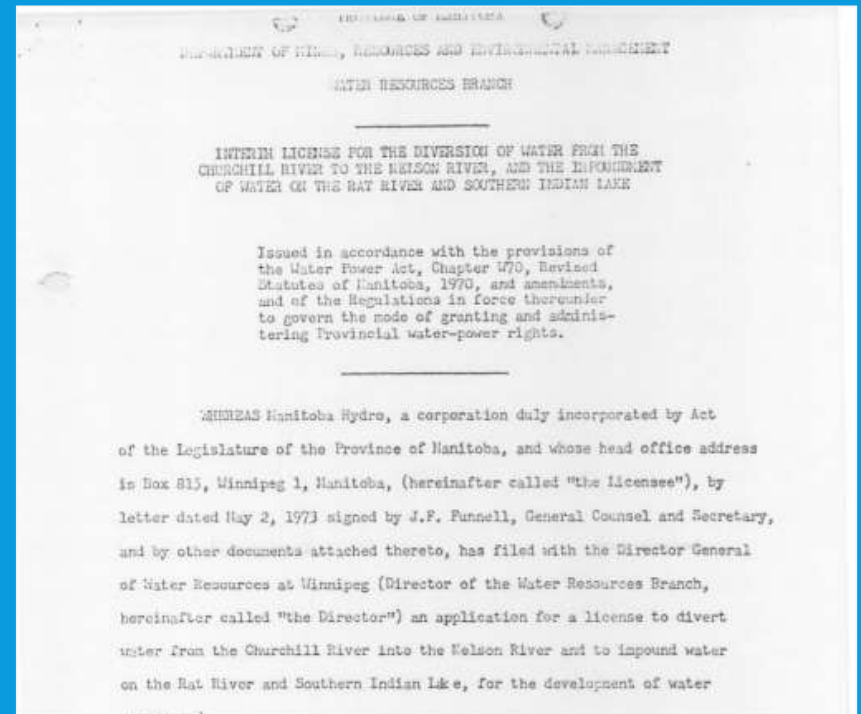


The screenshot shows the Manitoba Government website's 'Sustainable Development' section for 'Water Power'. The page features a navigation bar with links for 'Home', 'About', 'Parks', 'Fish and Wildlife', 'Water', 'Drinking Water', 'Drought Conditions', 'Freshwater and Surface Water', 'Lakes, Reservoirs and Rivers', 'Water Power', 'Water Rights', 'Water Use, Allocation and Fees', 'Planning', 'Forest and Lands', 'Research, Data and Maps', 'Waste Management', 'Environment and Biodiversity', 'Permits, Licences & Approvals', and 'Stay Connected to the Manitoba Government'. The main content area includes a 'Get Started' section with a 'Home Page' link, a 'Need More Info?' section with contact information (Email or call us at: 204-943-6734, 1-800-273-4617), and a 'Quick Links' section with links to 'Annual Hydraulic Flows and Levels Reports', 'Projects Licensed Under the Water Power Act', 'Coordinated Aquatic Monitoring Program', and 'Regional Cumulative Effects Assessment'. A 'Resources' section includes links for 'Phone Book', 'Manitoba Laws', 'News Releases', 'Government Inquiry', and 'Privacy Disclosure'. The page also features a search bar and a 'Water Power' image with the text 'Water Power' overlaid.

<https://www.gov.mb.ca/sd/water/water-power/index.html>

# WHAT INFORMATION IS AVAILABLE?

- Interim, Supplementary and Final Licences
- Augmented Flow Program
- Supporting Documentation
  - Licensing Requests
  - Government Responses
  - Licence Guides
- Historical Reports
- Environmental Licensing Information



Interim Licence for the Churchill River Diversion

# STATUS OF WPA LICENCES IN NORTHERN MANITOBA

## Term of (final) licence

45(1) Every licence shall be limited to such term not exceeding 50 years from the time fixed in the original interim licence for the completion of the initial development, as may be agreed upon between the minister and the licensee.

Hydroelectric Project	Type of Licence
Churchill River Diversion	Interim (1973)
Jenpeg	Interim (1972)
Keeyask	Interim (2014)
Kelsey	Final (1966); Extension (2015) [exp. 2020]
Kettle	Final (1990) [exp. 2022]
Lake Winnipeg Regulation	Interim (1970)
Limestone	Interim (1976)
Long Spruce	Final (1990) [exp. 2028]
Wuskwatim	Interim (2006)

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**THE WATER POWER  
ACT AIN'T GREAT!**

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**BACK TO THE  
1930S – THE  
WATER POWER  
ACT- MOSTLY  
MAXIMIZING  
WATER POWER**

"water power" - energy generated from flowing water of **commercial value**;

*(The Water Power Act, C.C.S.M. c. W60, s 1)*

maximum advantageous development of the power and other resources of the river or stream;

*(Water Power Regulation, 25/88, 72)*

See also *The Water Power Act, C.C.S.M. c. W60, 7 and 12*



**BUT THE  
PUBLIC  
INTEREST IS  
NOT  
NECESSARILY  
SYNONYMOUS  
WITH  
MAXIMUM USE**

- public interest - both present conditions and future requirements;
- protection of any sources of water supply;
- the interests of all water users;
- rights, powers, and privileges, acquired before July 15, 1930;
- free and unobstructed passage of fish;
- general conservation purposes;
- Navigable Waters Protection Act;
- purity of waters;
- logging, forestry, fishing, wildlife or other interests present or future.

*(The Water Power Act, C.C.S.M. c. W60, s 11 and 14) (Water Power Regulation, 25/8, s 18, 37 and 87)*

# PUBLIC HEARINGS ARE CONTEMPLATED UNDER WPA BUT NOT MANDATORY

*Water Power Regulation, 25/88, s. 6, 46, 93*

## *THE WPA CONTEMPLATES OTHER APPLICANTS FOR THE LICENCE RENEWAL*



46(2) Upon the filing of such application for renewal and undertaking, the licensee will be given preference over other applicants for a licence to use and occupy the waters and lands in question during a further term. . . if the proposed use and development of the site is at least as desirable in the public interest as that of any other pending applicant. (*Water Power Regulation, 25/88*)

## CAN WE HOLD THE DEPARTMENT ACCOUNTABLE FOR ITS CLAIMS

The licensing process continues to react to evolving societal expectations regarding issues of stewardship of the resource and equity issues for both locally impacted residents and Manitobans as a whole.

<https://www.gov.mb.ca/sd/water/water-power/index.html>

# RECENT GOVERNANCE ACTIVITIES



CDR and Lake  
Winnipeg Licence  
work



Regional  
Cumulative Effects  
Assessment



Great Binding Law -  
First Nations Laws



Project Specific  
Environmental  
Assessments



Senate Committee  
Hearings into Federal  
EA Bill

# LAKE WINNIPEG REGULATION

9.1 The Government of Manitoba evaluate the current licensing regime for hydro projects and ensure that legislation and regulation is consistent with modern legislative, consultation and environmental standards.

9.2 The Government of Manitoba require relicensing of hydro projects to be done under The Environment Act, in addition to or in lieu of any other water management legislation.

10.5 The Government of Manitoba facilitate the establishment of a Steering Committee, with an independent chair, to undertake an environmental assessment of Lake Winnipeg Regulation effects downstream as described in Section 10.4, Planning for a Future Environmental Assessment for LWR, of this report

# REGIONAL CUMULATIVE EFFECTS ASSESSMENT

- The Phase II report indicated that a final RCEA document, entitled Next Steps, will be published following the completion of the Manitoba Clean Environment Commission review.

The commission identified that community engagement and a more comprehensive monitoring program should be made central elements of any next-steps process.

The commission suggests that in any monitoring, assessment, relicensing, or planning that is ongoing or to be initiated in the future must address this participation deficit.

[T]he Manitoba government should consider the adoption of a higher order, strategic approach to environmental impact assessment....While regional strategic environmental assessment is rarely exercised in Canada, it may well prove key to environmental sustainability in Canada and Manitoba.

## PREVIOUS EAS

13.1 The Government of Manitoba enhance the practice of environmental assessment in the Province by requiring higher standards of performance.

Bipole III

Grandmothers' Circle "The minister should support these long-standing and successful methods of the Cree/indigenous worldview by incorporating a circle of Ke nocominank with a mission to oversee safeguarding the environment."

Keeyask





Hands off

Federal Crown  
Environmental  
Assessment



Provincial Interests

Dated legislation  
Maximization of  
Revenues  
Minimize  
"red/green tape"



Capacity

Funding  
programs  
Pressing  
priorities

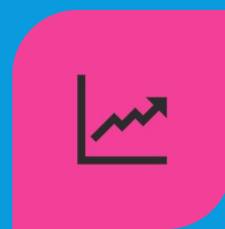
## BARRIERS



CEC EVIDENCE



RISK OF BRAND  
DAMAGE



INCREASING  
AWARENESS



LACK CLEAR  
DIRECTION BY  
THE PROVINCE

OPPORTUNITIES



WATERSHED  
APPROACH



ADVANCING  
ALTERNATIVE  
APPLICATION



OPPORTUNITIES  
TO INCREASE  
FEDERAL INTEREST



WORK BY THE  
WATER KEEPERS



WATER RENTAL  
FEES

# POTENTIAL AVENUES

## WORKSHOP QUESTIONS

1. What are the barriers to a meaningful water license renewal process?
2. What strategies could we collectively (and individually) pursue to push for meaningful, public processes?