

**THE KING'S BENCH**  
**Winnipeg Centre**

BETWEEN:

**MARY MAYTWAYASHING;**  
**ROBERT MAYTWAYASHING;**  
**EMERY STAGG;**  
**TAYLOR GALVIN; and**  
**SOUTHERN CHIEFS' ORGANIZATION**

Plaintiffs

- and -

**THE GOVERNMENT OF MANITOBA and**  
**MANITOBA HYDRO**

Defendants

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**STATEMENT OF CLAIM**

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TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *King's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

\_\_\_\_\_  
Date

Issued by: \_\_\_\_\_  
Deputy Registrar

TO: Jim Koch  
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## THE CLAIM

### OVERVIEW

*Weeniibiikiisagaygun (Lake Winnipeg) has a spirit, is sacred and is living. First Nations Knowledge Keepers, land users and rights holders tell us that Lake Winnipeg is suffering and she is sick. Western scientists agree. It is our responsibility to speak on behalf of Lake Winnipeg as she is unable to speak for herself. Her well-being is crucial to the health of current and future generations. – Mary Maytwayashing*

1. The *Nibi Naa da maa geayuk*, comprised of Mary Maytwayashing, Robert Maytwayashing, Emery Stagg, Taylor Galvin and the Southern Chiefs' Organization ("**SCO**"), bring this action in accordance with their responsibilities under sacred Anishinaabe laws and teachings to ensure the protection and survival of Lake Winnipeg and the other living entities which depend on her.
2. For almost half a century, Manitoba Hydro has operated the Lake Winnipeg Regulation ("**LWR**") project under *The Water Power Act*, C.C.S.M c. W60 (the "**Water Power Act**") and the Water Power Regulation, M.R. 25/87 (the "**Water Power Regulation**").
3. By artificially constraining water levels, fundamentally altering seasonal variations of water levels and flows and materially increasing the quantity of water flow, the LWR project has profound and cascading impacts on the health of the Lake, surrounding watersheds, wetlands and shorelines, and on other living beings, including plants, fish, animals, and birds.
4. The LWR project has further resulted in severe and prolonged impacts on the physical, psychological and spiritual health and wellbeing of the

Anishinaabeg of the Lake Winnipeg Basin who have always lived in relationship with the Lake.

5. Despite these impacts, the LWR project has never been subject to an environmental assessment.
6. Manitoba Hydro has now applied under the *Water Power Act* to extend the term of its Final Licence for the LWR project (the “**Renewal Application**”). If approved, the Renewal Application will allow Manitoba Hydro to continue its commercial use of the LWR project under its existing operating rules for up to 50 additional years, exacerbating and prolonging the impacts of the project.
7. The health of the Lake is in crisis. It is critical that the determination of the Renewal Application include a robust public process which is informed by First Nations’ traditional and cultural knowledge and which meaningfully considers the existing and future impacts of the LWR project on the health of the Lake and surrounding area. Just as critically, it must include an opportunity for the living entities affected by the LWR project – including the Lake herself – to have a voice in decisions about whether the Renewal Application is in the public interest.

## **RELIEF SOUGHT**

8. The Plaintiffs seek the following relief:
  - a. a declaration that Lake Winnipeg holds rights to life, liberty and security of the person which are protected under s. 7 of the *Canadian Charter of Rights and Freedoms*, Part

1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the “**Charter**”);

- b. a declaration under s. 24(1) of the *Charter* and/ or this Court’s inherent jurisdiction that the licensing and commercial use of the LWR project under the *Water Power Act* and the *Water Power Regulation* infringes Lake Winnipeg’s s. 7 *Charter* rights in a manner that cannot be saved under s. 1;
- c. a declaration under s. 24(1) of the *Charter* and/ or this Court’s inherent jurisdiction that the licensing and operation of the LWR project under the *Water Power Act* and the *Water Power Regulation* infringes the s. 7 *Charter* rights of Mary Maytwayashing, Robert Maytwayashing, Emery Stagg and Taylor Galvin (together, the “**Individual Plaintiffs**”), in a manner that cannot be saved under s. 1;
- d. a declaration under s. 24(1) of the *Charter* and/ or this Court’s inherent jurisdiction that a public hearing is necessary to determine whether the Renewal Application is in the public interest, and if so, on what terms and conditions;
- e. an order under s. 24(1) of the *Charter* in the nature of mandamus directing the Minister of Environment and Climate Change (the “**Minister**”) to order a public hearing under s. 46 of the *Water Power Regulation* to determine whether the Renewal Application is in the public interest, and if so, on what terms and conditions;
- f. a declaration that Lake Winnipeg, as represented by the *Nibi Naa da maa geayuk*, has a right to participate in any proceedings

relating to the Renewal Application and related relicensing processes for the LWR project pursuant to the *Water Power Act* and/ or the *Environment Act*, C.C.S.M. c. E125 (the “*Environment Act*”);

- g. costs of this action; and
- h. such other relief as counsel may advise and this court may allow.

## **PARTIES**

*Weeniibiikiisagaygun’s voice has never been heard by Manitoba and Manitoba Hydro. It is our responsibility to support and stand up for her. – Robert Maytwayashing*

### **The Plaintiffs**

- 9. The Plaintiff, SCO, is an independent political organization which represents 33 Anishinaabe and Dakota Nations, and more than 87,000 citizens, in what is now called southern Manitoba.
- 10. SCO members include descendants of the Anishinaabeg of the Lake Winnipeg Basin who have always relied on and cared for Lake Winnipeg in accordance with inherent Anishinaabe laws and teachings, including *Anishinaabe nibi inaakonigewin* (Anishinaabe Water Law).
- 11. SCO is mandated to protect, preserve, promote, and enhance its members’ inherent rights, languages, customs and traditions, including for the purposes of this action.

12. SCO has a longstanding history of advocating on behalf of its member Nations on issues relating to the protection of water in southern Manitoba.
13. Relying on traditional protocols, SCO has carefully selected each of the Individual Plaintiffs to join SCO in its efforts to protect the Lake. Together, SCO and the Individual Plaintiffs are the *Nibi Naa da maa geayuk* (the ones who speak for and protect the Lake).
14. Mary Maytwayashing and Robert Maytwayashing are Anishinaabe Elders and Knowledge Keepers who are versed in sacred Anishinaabe *nibi* (water) teachings, ceremonies and laws. Elder Robert and Elder Mary hold responsibilities under *Anishinaabe nibi inaakonigewin* to speak for *nibi* using their language, teachings, laws and dreams.
15. Elder Mary and Elder Robert are married and together have three adult children and grandchildren. They are both members of the Lake Manitoba First Nation. Both Elders are fluent in their language, Anishinaabemowin, which is spiritual, sacred and gentle.
16. Elder Mary and Elder Robert are members of the Turtle Lodge National Council of Elders and Knowledge Keepers. They are acknowledged nationally and internationally for their *nibi* teachings.
17. Elder Mary (*Zoongi Gabawi Ozawa Kinew Ikwe*) is part of the Crane clan and has an inherent responsibility as an *Anishinaabekwe* (Anishinaabe woman) to speak for and protect *nibi*. She has shared her knowledge about *nibi* with a wide variety of audiences including provincial and federal ministers, municipal government



representatives, industry representatives, police officers, lawyers and judges.

18. Elder Robert (*Zoongi Gabowi Muskoo Mushkoday Biishikii*) is part of the Bear clan and carries a bundle on behalf of the people which includes the responsibility of the pipe, the sweat lodge and other ceremonies when requested or directed by spirit. Elder Robert has participated in numerous *nibi* ceremonies with Elder Mary both nationally and internationally, including in Israel and Tanzania.
19. Elder Mary and Elder Robert each spend significant time hunting, fishing and gathering in and around Lake Manitoba and Lake Winnipeg.
20. Emery Stagg is an Anishinaabe Elder from Dauphin River First Nation who is fluent in Anishinaabemowin. Elder Emery has lived on and relied upon Lake Winnipeg for most of his life just like his parents and generations before them.
21. Elder Emery grew up next to a fish hatchery in Dauphin River First Nation and comes from a family of commercial fishers. He has been fishing on Lake Winnipeg his whole life. His family continues to engage in commercial fishing on Lake Winnipeg.
22. Elder Emery has directly observed changes in the health of Lake Winnipeg over time. Through the years, he has seen significant negative changes in the health of the water as well as the health and availability of the fish, muskrats and wetlands of Lake Winnipeg. He and his family members now have to travel further from their usual fishing area to find healthy fish and clean water.

23. Taylor Galvin (*Ozaawi Mashkode Bizhiki*) is a member of Brokenhead Ojibway Nation, which is located on the southeast shoreline of Lake Winnipeg and a member of the Sturgeon clan.
24. Ms. Galvin is intimately aware of the power of *nibi* as a living being. Her connection to Lake Winnipeg, including attending and leading *nibi* ceremony, fasting near Lake Winnipeg, and spending time observing the Lake, has been an integral part of her sobriety and healing journey.
25. As the Director of the Brokenhead Wetland Ecological Reserve and as a land-based educator and community coordinator with the University of Manitoba Environmental Conservation Lab, Ms. Galvin spends a significant amount of time in and around Lake Winnipeg. She has presented at a United Nations World Water Conference on issues related to the Brokenhead Wetland Ecological Reserve, including in relation to the health of Lake Winnipeg. She has also conducted *nibi* water quality testing and medicine picking workshops, including in the marshes surrounding Lake Winnipeg.
26. The Individual Plaintiffs have each demonstrated knowledge of and commitment to the protection and wellbeing of Lake Winnipeg and other waters in Manitoba.
27. The Individual Plaintiffs each hold deep familial, ancestral, spiritual and cultural connections to Lake Winnipeg.
28. The Individual Plaintiffs' ability to live and survive as Anishinaabeg is inextricably linked to their ability to maintain their sacred relationship with the Lake in accordance with *Anishinaabe nibi inaakonigewin*.

29. The *Nibi Naa da maa geayuk* hold responsibilities to the Lake which flow from Anishinaabe ancestral teachings, ceremonies and law. The *Nibi Naa da maa geayuk*' responsibilities include protecting the health and wellbeing of the Lake, including by speaking on her behalf in contexts where she is unable to speak for herself.
30. The *Nibi Naa da maa geayuk* bring this action collectively on behalf of Lake Winnipeg. Elder Mary, Elder Robert, Elder Emery and Ms. Galvin further bring this action on their own behalf as individuals.
31. This action is a reasonable and effective way to bring these issues to the Court because:
  - a. the Lake is unable to speak on her own behalf for the purposes of this action, or to otherwise protect her interests in respect of the licensing and commercial use of the LWR project;
  - b. the Plaintiffs, individually and collectively, have demonstrated a serious and genuine interest in the subject matter of this action;
  - c. the action raises a serious, justiciable issue;
  - d. the Plaintiffs have the support of counsel with expertise, resources, and commitment to bring the action forward; and
  - e. it is unreasonable to expect that other individuals or similar coalitions will bring an equivalent action at this time.
32. The Plaintiffs rely on relief under s. 24 of the *Charter*. In the alternative, or in any event, this Court has the inherent jurisdiction to grant

declaratory and other relief, to the extent such relief may be unavailable under s. 24 of the *Charter*.

## **The Defendants**

33. The Defendant, the Government of Manitoba (“**Manitoba**”), as represented by the Minister, exercises regulatory authority over Lake Winnipeg pursuant to provincial statutes and regulations, including, *inter alia*, the *Water Power Act*, the Water Power Regulation and the *Environment Act*.
34. The Defendant, Manitoba Hydro, is an electric power and natural gas utility in the Province of Manitoba. Manitoba Hydro is a provincial Crown Corporation and an agent of the Crown pursuant to s. 4(2) of *The Manitoba Hydro Act*, C.C.S.M. c. H190.
35. Manitoba Hydro operates the LWR project pursuant to licences issued by Manitoba under the *Water Power Act* and the Water Power Regulation.

## **FACTS**

*Weeniibiikiisagaygun is our greatest teacher. We are part of her, and she is part of us. We must listen to her as she carries a spirit and teachings. Sadly, her spirit and health are slowly dissipating. – Taylor Galvin*

## **Lake Winnipeg**

36. The Anishinaabeg of the Lake Winnipeg basin and surrounding areas have always lived in relationship with the Lake in accordance with sacred Anishinaabe laws and teachings, including principles of

*Anishinaabe nibi inaakonigewin* which provide that Lake Winnipeg is alive, has a spirit and exists in an interconnected relationship to other entities and living beings. These principles and teachings guide and inform the *Nibi Naa da maa geayuk* relationship with Lake Winnipeg today.

37. Lake Winnipeg is the 11<sup>th</sup> largest freshwater lake in the world. She is located in what is now central-southeastern Manitoba.
38. Lake Winnipeg extends 416 kilometres from north to south and covers an area of approximately 23,750 km<sup>2</sup>. Lake Winnipeg has a watershed of almost 1 million square kilometers, the largest watershed of any lake in Canada.
39. More than 23,000 permanent residents live along the shores of Lake Winnipeg. The southern shore of the Lake also supports several seasonal cottage and beach communities, as well as agriculture, commercial fishing and tourism industries.
40. A number of First Nations, including 9 SCO member Nations, are located on the shores of Lake Winnipeg. An additional 6 SCO member Nations are located along nearby tributaries of the Lake.
41. The wetlands of Lake Winnipeg are central to her health and well-being. Lake Winnipeg has far more wetland per kilometre of shoreline than the Laurentian Great Lakes. The Netley-Libau Marsh at the south end of Lake Winnipeg is the largest coastal wetland in North America.
42. Lake Winnipeg's wetlands, including the Netley-Libau Marsh, provide essential health and environmental benefits including sequestration of

nutrients and carbon, flood storage, sediment traps, shoreline erosion buffers, habitat for plants, fish and staging waterfowls and hotspots for diversity. The wetlands are critical for the exercise of First Nations' inherent and Treaty rights and for activities such as hunting, fishing, medicine picking, boating, birdwatching and ecotourism.

### **The LWR Project**

43. Since 1976, water levels on Lake Winnipeg have been regulated by Manitoba Hydro pursuant to the *Water Power Act* and Water Power Regulation as part of the LWR project.
44. The LWR project infrastructure includes the Jenpeg control structure, which regulates the outflow of the Lake through the west channel of the Nelson River, a series of diversion channels which increase the outflow capacity of the Lake, and a dam at the outlet of Kiskitto Lake.
45. The LWR project maximizes the storage and generation of hydroelectric power by constraining the natural range of water levels on Lake Winnipeg and by interrupting her natural flow pattern.
46. The LWR project artificially constrains the lower and upper levels of Lake Winnipeg to support planning and optimization of the Manitoba Hydro system including in low water years. The LWR project also allows greater flow in winter than would naturally be the case, allowing more water to flow to lower Nelson River generating stations at the time of year when electricity use is highest. In many years, this results in higher flows in winter than in summer, a reversal of the natural seasonal pattern.

47. As a result of the LWR project, Lake Winnipeg is one of the largest hydroelectric power reservoirs in the world. The LWR project is critical to Manitoba Hydro's ability to generate approximately \$3 billion in annual revenue.
48. The LWR project has been in commercial use for 48 years. To date, no environmental assessment process has been carried out in respect of the LWR project.

### **The Interim Licence**

49. In 1970, Manitoba issued an Interim Licence pursuant to the *Water Power Act* and the Water Power Regulation authorizing Manitoba Hydro to:
  - a. construct, operate, and maintain the LWR project, including diversion channels, river channel excavations and gated control structures; and
  - b. regulate the levels of Lake Winnipeg within prescribed levels for the purpose of producing hydroelectrical power for industrial and general purposes.
50. The Interim Licence authorized Manitoba to regulate the level of Lake Winnipeg between a minimum of 711 feet and a maximum of 715 feet above sea level ("**ASL**"). The Interim Licence expressly required Manitoba Hydro to regulate the Lake to prevent water levels from receding below 711 feet ASL.

51. The Interim Licence further provided that Manitoba Hydro's authority to build and operate the LWR project was subject to the condition that Manitoba Hydro divert, use and store water in a manner that did not interfere with the maximum advantageous development of the water power necessary for hydroelectric production.
52. In 1972, the Interim Licence was amended to make provision for a single designated control structure at Jenpeg. On August 1, 1976, the LWR Project was put into commercial use by Manitoba Hydro under the Interim Licence as amended.

### **The Clean Environment Commission Report**

53. In 2010, 34 years after the LWR project began operation, Manitoba Hydro applied for a Final Licence under the *Water Power Act* and the Water Power Regulation.
54. In 2011, Manitoba directed the Clean Environment Commission (the "**Commission**") to conduct a public hearing regarding Manitoba Hydro's performance under its Interim Licence.
55. In 2015, the Commission released a report in which it concluded that Manitoba's water-power licensing and regulatory regime for the LWR project pursuant to the *Water Power Act* was out of step with modern legislative, consultation and environmental standards.
56. The Commission further concluded that, in contrast to other jurisdictions in Canada, Manitoba's licensing and regulatory regime for the LWR project:



- a. did not include a multi-stakeholder water management planning process;
  - b. relied on licence conditions which lacked scientific rationale and which had never been rigorously assessed or subject to public planning processes;
  - c. allowed Manitoba Hydro to operate on a discretionary basis in the absence of externally reviewed and approved conditions and without public scrutiny or consideration of the broader public interest;
  - d. lacked baseline environmental information or requirements for new research to address existing information gaps; and
  - e. failed to adequately consider environmental protection and climate change planning.
57. Manitoba Hydro representatives acknowledged, in the course of the Commission's process, that there were deficiencies in the current licensing regime for the LWR project, as well as challenges in assessing the impacts of increasing or decreasing Lake Winnipeg's operating range.
58. As expressly indicated in the Commission's report, the public hearing was not an environmental assessment of the LWR project under the *Environment Act*. There was no environmental assessment undertaken by Manitoba Hydro, nor was there an opportunity for participants to provide independent evidence or to test evidence of expert witnesses through cross-examination.

59. The Commission recommended that Manitoba require future relicensing of the LWR project under the *Environment Act* in a public process overseen by a steering committee, and that the assessment be informed by First Nations' traditional and cultural knowledge.

### **The Final Licence**

60. In May 2021, Manitoba issued the Final Licence authorizing Manitoba Hydro to continue to operate the LWR project pursuant to the *Water Power Act* until August 1, 2026.
61. Under the Final Licence, Manitoba Hydro retains the right to set outflows as required for power production purposes along the Nelson River when the lake level is between 711 ft and 715 ft ASL.
62. Like the Interim Licence, the Final Licence provides that Manitoba Hydro's authority to operate the LWR project is subject to the condition that Manitoba Hydro divert, use and store water in a manner that does not interfere with the maximum advantageous development of the water power necessary for hydroelectric production.
63. Manitoba did not require a public hearing under the *Water Power Act* or an environmental assessment under the *Environment Act* prior to issuing the Final Licence.
64. At the time the Final Licence was issued, Manitoba indicated that it intended to update the *Environment Act*, *Water Power Act* and the Water Power Regulation. Manitoba further indicated that it would be developing new guidelines for licence renewal requirements for existing hydroelectric developments.

65. To date, there have been no updates to the legislation, nor has Manitoba issued further guidelines for licence renewal requirements. The water power licensing and regulatory regime for the LWR project under the *Water Power Act* and the Water Power Regulation remains out of step with modern legislative, consultation and environmental standards.

### **Health of Lake Winnipeg**

*Lake Winnipeg provides me with sustenance, income, spiritual connection and pleasure. Sadly, I can see her dying from my home and from my boat. I see algae, including brown algae which is the worst color. When that algae moves in, fish and other species can't survive anymore because there's no more life. – Emery Stagg*

*Weeniibiikiisagaygun is the life source and veins of Mother Earth. She is hurting. Because everything is interconnected, when Weeniibiikiisagaygun hurts, so too do all the living beings who rely on her. The wetlands are the kidneys of Mother Earth as they clean and filter the nibi. Without healthy wetlands, Weeniibiikiisagaygun is unable to clean herself. It is hard to watch the Lake hurt so much. – Taylor Galvin*

66. The *Nibi Naa da maa geayuk* understand, based on sacred Anishinaabe teachings, ceremonies and law, that Lake Winnipeg is a living entity, and that she has the capacity to give and sustain life, and to suffer pain and illness.

67. The *Nibi Naa da maa geayuk* further understand that natural water flow is crucial to Lake Winnipeg's integrity, health and spirit, and that the Lake must be able to flow freely in order to live, heal and sustain the other beings that rely on her. When the natural flow of water in Lake Winnipeg is interrupted, she is unable to go through her natural

cleansing cycle and becomes stagnant and struggles to sustain other beings like animals, birds, fish, plants and people.

68. The *Nibi Naa da maa geayuk* have observed significant changes to the quality, colour and smell of the *nibi* since the LWR project came into operation.
69. Fish species have declined, disappeared or migrated to other locations. Others have become sick and inedible. Wildlife and bird populations which rely on the Lake's marshes and wetlands including muskrat, beavers, duck, geese, eagles and gulls, have also declined.
70. Foods and traditional medicines, such as *weekay*, bulrush, cattail, sturgeon and wild rice are becoming harder to access.
71. The *Nibi Naa da maa geayuk* have observed that more people in their communities are sick now that they are unable to access traditional foods and medicines from in and around the Lake.
72. Algae blooms and e-coli levels have increased throughout the Lake, as well as the presence of harmful invasive species, such as zebra mussels and spiny water fleas. The *Nibi Naa da maa geayuk* have heard about and observed the negative consequences of e-coli levels and invasive species on water quality in Lake Winnipeg. In Anishinaabemowin, the *Nibi Naa da maa geayuk* refer to the water in Lake Winnipeg as *moowaakamiim* (the water is full of feces) or *wiinaagamin* (the water is polluted, dirty and full of garbage).
73. As a result of the artificial regulation of the Lake and its poor water quality, the *Nibi Naa da maa geayuk* are no longer able to rely on

certain areas in and around Lake Winnipeg to fish or to harvest food and traditional medicines in accordance with *Anishinaabe nibi inaakonigewin* and other Anishinaabe practices.

74. The natural flow of the Lake has changed. The *Nibi Naa da maa geayuk* cannot rely on their traditional knowledge and teachings about water patterns to keep them safe when they go out on the Lake to fish or carry out other cultural practices.
75. The changes to the natural flow of the Lake have interfered with the sacred relationship between the *Nibi Naa da maa geayuk* and the Lake and made it more difficult for them to maintain their identity as Anishinaabeg.
76. The *Nibi Naa da maa geayuk* describe the Lake's current state as being so sick that she is dying.
77. The Lake's declining health has direct negative impacts on the health of the *Nibi Naa da maa geayuk*. This includes negative impacts on the *Nibi Naa da maa geayuk*' spiritual and cultural health and wellbeing.
78. The *Nibi Naa da maa geayuk*' observations and lived experience regarding the health of the Lake is supported by western science.
79. Since 2005, and in particular since 2015, a developing body of western scientific insight and research has linked the LWR project to the degradation of the wetlands, eutrophication of the Lake and the decline of wildlife species.
80. Habitat degradation of Lake Winnipeg's wetlands has been exacerbated by the LWR project's constraints on Lake Winnipeg

levels which have artificially limited the duration and number of the low water periods necessary to maintain emergent wetland vegetation communities. Just as fundamentally, the current commercial use for the LWR project impairs the ability of the Lake to heal and regenerate her wetlands through the periodic reduction of Lake Winnipeg water levels to restore emergent vegetation.

81. The marked decline of wetlands including the Netley-Libau Marsh has been tied to the reduced ability of the marsh to sequester nutrients that otherwise flow into the Lake. Wetlands like the Netley-Libau Marsh can no longer fulfill their primary function: to clean and filter the water going into Lake Winnipeg from the surrounding watershed. Netley-Libau Marsh is no longer behaving like a healthy, functional marsh.
82. Manitoba Hydro's utilization of the LWR project to draw down water levels of Lake Winnipeg in the winter also has been linked to the decline of species such as muskrat.
83. The combined effects of activities related to the LWR project pose fundamental challenges to the maintenance of a healthy, functioning ecosystem in and around Lake Winnipeg. This challenge is made greater by a changing climate as well as by damaging human activities upstream of Lake Winnipeg.

## **The Renewal Application**

*We don't have 50 years. We need to protect and preserve what is here now. The earth is the original mother to all of humanity. We need her. This is about loving, preserving and taking care of the land and water. Because water is*

*life, the land needs our lakes to be clean and healthy to take care of us and sustain us. Human activities are interrupting the natural ways and the ability of the Lake to replenish herself. Because everything is interconnected and because we love our future generations, we need to look at this very seriously. - Mary Maytwayashing*

84. On July 26, 2022, Manitoba Hydro submitted the Renewal Application pursuant to s. 46(1) of the Water Power Regulation for an extension of its rights under the Final Licence in respect of the commercial use of the LWR project.
85. Pursuant to ss. 46(3) and 46(4) of the Water Power Regulation, on application by a licensee for a renewal of a Final Licence, and after such public hearing as the Minister considers necessary, the Minister may either renew the Final Licence for a term of up to 50 years, or issue a notice of termination setting out the date on which the rights of the licensee shall cease.
86. To date, the Minister has not ordered a public hearing with respect to the Renewal Application.
87. The *Nibi Naa da maa geayuk* know that Lake Winnipeg is sick, and that other living beings that rely on the Lake, including the marshes, muskrats and fish, are suffering. They also know that the Renewal Application poses a grave risk to the future life and health of the Lake and other beings who depend on her for survival.

## **LEGAL BASIS**

*Weeniibiikiisagaygun has been showing us and telling us that she's sick for a while already. Will we continue as a society to ignore her pleas, or will we finally heed her cries and act accordingly? Her future and all that depend on*

*her, will align with what we decide to do next. – Robert Maytwayashing*

### **Lake Winnipeg holds rights under s. 7 of the *Charter***

88. Under s. 7 of the *Charter*, everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
89. Lake Winnipeg is a living entity with her own spirit.
90. First Nations Knowledge Keepers and western scientific experts have repeatedly raised concerns that the Lake is at risk of death.
91. Lake Winnipeg is entitled to presumptive membership in the class of “everyone” who is entitled to benefit from the protections set out under s. 7 of the *Charter*.
92. In the alternative, Lake Winnipeg is entitled to presumptive membership in the class of “everyone” who is entitled to benefit from the protections set out under s. 7 of the *Charter* for the purpose of assessing the substantive *Charter* claim at issue in this action.

### **The LWR project violates Lake Winnipeg’s s. 7 *Charter* rights**

93. The licensing and commercial use of the LWR project under the *Water Power Act* and Water Power Regulation poses an immediate, ongoing and existential threat to the survival, wellbeing and ecological integrity of the Lake and to the living entities which depend on her for survival.
94. The licensing and commercial use of the LWR project violates the Lake’s s. 7 *Charter* rights by:



- a. artificially constraining water levels, fundamentally altering seasonal variations of water levels, materially increasing the quantity of water flows and otherwise obstructing the Lake's natural flow, thereby depriving the Lake of her right to liberty;
  - b. causing or contributing to severe physical and environmental impacts, including the loss of critical wetlands and extreme eutrophication, thereby depriving the Lake of her right to life; and
  - c. exposing the Lake to increased risk of death, illness or disease, including by interfering with and damaging the Lake's ability to heal herself, thereby depriving the Lake of her right to security.
95. The violations of the Lake's s. 7 rights are not in accordance with the principles of fundamental justice and cannot be justified pursuant to s. 1 of the *Charter*.

**The LWR project violates the Individual Plaintiffs' s. 7 *Charter* rights**

96. Each of the Individual Plaintiffs holds rights to life, liberty and security of the person under s. 7 of the *Charter* which are connected to and dependent on the health of the Lake.
97. The licensing and commercial use of the LWR project violates the Individual Plaintiffs' s. 7 *Charter* rights by:
- a. interfering with the Individual Plaintiffs' ability to live harmoniously in relationship with Lake Winnipeg in accordance with Anishinaabe laws and teachings, thereby depriving the Individual Plaintiffs of their right to life;

- b. undermining, or seriously compromising, the Individual Plaintiffs' ability to live and survive as Anishinaabeg and to maintain their traditions, fulfil their sacred obligations as water protectors and practice their culture and way of life, thereby depriving the Individual Plaintiffs of their right to liberty; and
  - c. causing and contributing to severe harm to the health and ecological integrity of the Lake and other living entities which are essential for the Individual Plaintiffs' physical, psychological and spiritual health, thereby depriving the Individual Plaintiffs of their right to security.
98. The violations of the Individual Plaintiffs' s. 7 rights are not in accordance with the principles of fundamental justice and cannot be justified pursuant to s. 1 of the *Charter*.

**A public hearing is necessary to determine whether the Renewal Application is in the public interest**

*There are so many decisions about the Lake that are done without our input. Nobody comes to ask us what we think about issues which directly affect us. Our voices need to be heard. - Emery Stagg*

99. Manitoba cannot be trusted to protect the rights of Lake Winnipeg or the rights of the Plaintiffs. The voice of Lake Winnipeg has never been heard in an environmental assessment of the effects of the LWR project. Manitoba has known since 2015 that its licensing and regulatory regime under the *Water Power Act* is out of step with modern legislative, consultation and environmental standards.

100. The commercial use of the LWR project has had significant, prolonged adverse effects on the environment, including the health and ecological integrity of Lake Winnipeg.
101. New evidence exists, based on both First Nations' cultural and traditional knowledge and western scientific literature, which confirms the significant, ongoing impacts of the LWR project.
102. The LWR project has never been subject to an environmental assessment under the *Environment Act*. The full extent of the impacts of the LWR project on the health of Lake Winnipeg and the living entities which depend on the Lake have never been fully assessed.
103. The renewal of the Final Licence as contemplated under the *Water Power Act* and Water Power Regulation will allow Manitoba Hydro to continue its commercial use of the LWR project under its current operating rules, and in turn, materially increase and prolong the existing and ongoing impacts on the health, wellbeing and autonomy of the Lake and on each of the Individual Plaintiffs.
104. The Minister has discretion, pursuant to s. 46(3) of the Water Power Regulation, to order a public hearing to determine whether the Renewal Application is in the public interest, and if so, on what terms and conditions.
105. The Plaintiffs therefore seek the relief described in paragraph 8 herein.

## AUTHORITIES

106. The Plaintiffs plead and rely on:

- (a) *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act (UK), 1982, c. 11.*
- (b) *The Environment Act, CCSM c E125;*
- (c) *The Manitoba Hydro Act, CCSM c H190;*
- (d) *The Path to Reconciliation Act, CCSM c R30.5;*
- (e) *The Water Power Act, CCSM c W60;*
- (f) *The Water Power Regulation, MR 25/88R;*
- (g) *United Nations Declaration on the Rights of Indigenous Peoples, UNGA, 61st Sess, UN Doc. A/61/295; and,*
- (h) such other legislation or regulation as may apply.

DATED: \_\_\_\_\_, 2024.

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