

March 16, 2022

Hon. Steven Guilbeaut  
Minister of Environment and Climate Change Canada  
Fontaine Building 12<sup>th</sup> Floor  
200 Sacre-Coeur Blvd  
Gatineau, QC K1A 0H3

Dear Minister Guilbeault,

**Re: Petition for the Designation of Lake Diefenbaker Irrigation Projects as a Designated Project under *Impact Assessment Act***

The undersigned petitioners, in support of the Federation of Sovereign Indigenous Nations' June 16, 2021 request, hereby request that you exercise your discretion under s.9(1) of the *Impact Assessment Act* (IAA) to designate the proposed Lake Diefenbaker Irrigation Project (the Project) as a designated project as detailed in the attached petition.

We further request that you establish a review panel under s. 36(1) of the IAA to conduct the impact assessment.

Petitioners are convinced that such a designation and referral to a panel review is in the public interest given that the proposed project may cause adverse effects within federal jurisdiction and adverse direct or incidental effects, and that public concerns related to those effects warrant a designation. As well, there is concern that the three-phase description of the project may lead to inadequate environmental assessment of the overall project. In particular, Phase II is dependent on Phase I because of the pumping station upgrade as a requirement.

Assuming a one foot (30 cm) irrigation duty the proposed project will consume 500,000 acre-feet or 600,000 dam<sup>3</sup> of water annually. According to the project proponents, the maximum pumping rate to the Westside projects could be as high as 120 m<sup>3</sup>/s. This has significant consequences for downstream water users, given that required conservation flow from Lake Diefenbaker is 42.5 m<sup>3</sup>/s and the target flow is 60 m<sup>3</sup>/s. The water levels of Lake Diefenbaker and flows downstream on the South Saskatchewan River under various operating scenarios have to be clearly understood.

Petitioners assert that the following effects of the Project are within federal jurisdiction and

should be assessed before project construction begins:

- Direct and cumulative effects to areas of federal jurisdiction (e.g., fish and fish habitat, species at risk, migratory birds) that may not be mitigated through project design or the application of standard mitigation measures;
- Impacts on Aboriginal and Treaty rights (e.g., hunting, fishing and gathering) recognized and affirmed by section 35 of the *Constitution Act, 1982* and matters related to Indigenous peoples within federal jurisdiction;
- Impacts of draining wetlands that will result in long-term GHG emissions;
- Impacts on transboundary water quality and quantity caused by increased water use by the proposed project and by global climate change. These include effects on the ecological integrity of the Saskatchewan River Delta, the largest such delta in North America, as well as hydroelectric power generation at ten stations in two provinces.
- Impacts on the Qu'Appelle Lakes and Lake Winnipeg from the combination of nutrient and pesticide run-off from irrigated farms, together with water surges through the Qu'Appelle chain and into Lake Winnipeg.

Further, Petitioners maintain that public concerns relating to the Project warrant its designation under the *Impact Assessment Act*.

Thank you in advance for considering this petition; we look forward to your reply.

Sincerely,



Executive Director (on behalf of the below listed organizations)

Nature Saskatchewan

Lower Qu'Appelle Watershed Stewards

Sierra Club Canada Foundation - Prairie Chapter

Calling Lakes Eco-Museum

Public Pastures, Public Interest

Nature Canada

Citizens Environmental Alliance (Sask.)

National Farmers Union

Saskatchewan Alliance for Water Sustainability

Eco-Friendly West

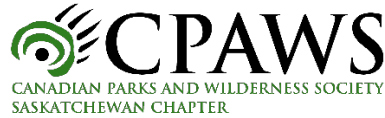
Qu'Appelle Valley Environmental Association

CPAWS Saskatchewan

Saskatchewan Environmental Society

Last Mountain Lake Stewardship Group

cc. Hon. Warren Kaeding, Minister of Environment, Saskatchewan  
Brady Pollock, Executive Director, Saskatchewan Environmental Assessment and Stewardship  
Erika Ritchie, Saskatchewan NDP Environment Critic  
Federation of Sovereign Indigenous Nations  
Kyle Seeback, Federal Conservative Environment Critic  
Laurel Collins, Federal NDP Environment Critic



# **Petition for the Designation of Lake Diefenbaker Irrigation Project as a Designated Project under *Impact Assessment Act***

March 2022

## **1.0 Introduction**

The Government of Saskatchewan is proposing “the largest single economic project in Saskatchewan’s history”, a \$4 billion, 10-year project to irrigate up to 2020 square kilometers (500,000 acres) of land using 1.1 million dam<sup>3</sup> (900,000 acre-feet) of water drawn from Lake Diefenbaker, more than doubling the irrigated land in Saskatchewan.

The Lake Diefenbaker Irrigation Project includes three sub-projects:

- Phase 1: *Westside Irrigation Rehabilitation and Expansion* - of the existing Westside irrigation canal system increasing the amount of irrigable land by over 32,000 ha. (80,000 acres).
- Phase 2: *Westside Irrigation Project North* (the area originally planned between Lake Diefenbaker and Delisle and Asquith) providing infrastructure to irrigate 152,000 ha. (377,000 acres) requiring 740,000 dam<sup>3</sup>(600,000 acre-feet of water annually; and
- Phase 3: *Qu’Appelle South Irrigation Project* (an upland canal from Lake Diefenbaker to Buffalo Pound Lake serving the Regina -Moose Jaw corridor) providing infrastructure to irrigate 45,000 ha. (110,000 acres) requiring 352,000 dam<sup>3</sup>(285,000 acre-feet) of water annually.

Lake Diefenbaker is a reservoir formed by the construction of the Gardiner and Qu’Appelle dams across the South Saskatchewan and Qu’Appelle Rivers respectively. Construction of these dams began in 1959 with the reservoir filled in 1967. Lake Diefenbaker is 225 kilometres long with water levels regularly fluctuating three to nine metres annually. Lake Diefenbaker provides water for agricultural irrigation, potash mining, hydroelectric power, flood protection, and recreational uses. Additionally, it is the source of drinking water for half of the province's population.

Lake Diefenbaker currently provides irrigation water for 109,879 acres through infrastructure on the east side of the South Saskatchewan River. The Saskatchewan government stopped construction of irrigation infrastructure on the west side of the South Saskatchewan River in 1973 because farmers preferred to dry farm.

Downstream of Lake Diefenbaker, the South Saskatchewan River flows north, joining the North Saskatchewan River east of Prince Albert before flowing east to the Saskatchewan River Delta, ultimately emptying into Cedar Lake and Lake Winnipegosis in Manitoba. The Qu’Appelle River flows east from Lake Diefenbaker joining the Assiniboine River near St. Lazare then continuing east to empty into the Red River at Winnipeg.

The three phases of the Lake Diefenbaker Irrigation Project will impact the South Saskatchewan River, the Saskatchewan River, the Qu'Appelle River, their tributaries and the Lake Diefenbaker itself.

Irrigation developments degrade water quality of surface runoff and return flow by adding excess nutrients, pollutants and dissolved salts into the water. This notably exacerbates blue-green algae blooms negatively impacting commercial and recreational fisheries.

Furthermore, water withdrawals can have adverse effects on fish by impacting staging and spawning grounds. The effect could reduce water levels required for the staging and spawning habitats of several spring spawning species such as Goldeye, Walleye, Sauger, Lake Sturgeon and Bigmouth Buffalo. Reduced instream flows and water levels in the Saskatchewan River and Qu'Appelle River systems may also change the availability of habitat for fish species such as Lake Sturgeon and Bigmouth Buffalo.

The irrigation development area is proposed to take place in the core region of the breeding range of most dabbling duck and several diving duck species and in numerous Important Biodiversity and Bird Areas ("IBAs" under Birds Canada Program). Furthermore, this area also provides critical breeding and migration habitat for numerous other bird species, including such priority species as Franklin's Gull, Yellow Rail, and Piping Plover. Baird's Sparrow, Sprague's Pipit, Wilson's Phalarope, Marbled Godwit, Horned Grebe, and American Avocet are among the many priority non-waterfowl species breeding in the project area.

The Project claims to build climate resilience; however increased GHG emissions resulting from the Project must also be accounted for. These GHG emissions include carbon dioxide emissions from water pumps and nitrous oxide emissions from irrigated lands. Stored carbon in native prairie and wetlands will be released into the atmosphere as they are converted to cropland as a result of increasing land-use pressures.

Environmental effects from the Lake Diefenbaker Irrigation Project are likely to have the potential to result in significant impacts to Indigenous rights. The provincial government has not made information on the full extent of the Project ramifications available prior to the planning and engineering phases, which means it has not had the opportunity to consider the responses of Indigenous people who practice their rights on the land. As determined in several Supreme Court of Canada decisions, governments must conduct meaningful consultations with First Nations before projects begin, not after.

## **2.0 Minister's Authority to Designate under *Impact Assessment Act***

There is currently no federal or provincial environmental assessment planned for the proposed Lake Diefenbaker Irrigation Projects.

The Impact Assessment Agency of Canada has indicated that only Phase 3 pertaining to the Qu'Appelle South Irrigation Project will undergo an impact assessment under the IAA. This news is distressing as there are public concerns relating to all three phases of the Project warranting its designation under the *Impact Assessment Act*. These public concerns are especially important given that Saskatchewan may be seeking infrastructure funding for the Project from the federal government. It is also true that these projects are interconnected in terms of the activities, desired outcomes, and financing and management. By not assessing the impact of the entire project, that is to say all three phases of the project, the government is "splitting" part of a single, connected project. This will make it likely that the proposed impact assessment will be incomplete and consultations performed as part of the assessment will be inadequate. Likely outcomes will be that cumulative impacts of the project are underestimated or missed altogether, as will opportunities for adaptive management and mitigation.

The Minister of Environment and Climate Change has discretion to designate the proposed project under the *Impact Assessment Act* and ensure it is subject to an impact assessment:

**9 (1)** The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

**(2)** Before making the order, the Minister may consider adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada — including Indigenous women — recognized and affirmed by section 35 of the *Constitution Act, 1982* as well as any relevant assessment referred to in section 92, 93 or 95.

Under s.109(b) of IAA, the Governor in Council created the *Physical Activities Regulations* (Project List) which sets out those physical activities or classes of physical activities that are designated projects, and hence subject to impact assessment under the IAA. The Lake Diefenbaker Irrigation Project does not appear to be a designated project included on the Project List.

The Minister must not make a designation under s.9(1) if:

- (a) the carrying out of the physical activity has substantially begun; or
- (b) a federal authority has exercised a power or performed a duty or function

conferred on it under any Act of Parliament other than this Act that could permit the physical activity to be carried out, in whole or in part.<sup>1</sup>

The carrying out of the Lake Diefenbaker Irrigation Project has not begun and no federal authority has exercised a power or performed a duty or function conferred on it by any Act of Parliament to permit the physical activity to be carried out.

### **3.0 Minister's Authority to Refer Environmental Assessment to a Review Panel**

The Minister may refer an environmental assessment to a review panel, where he is in the opinion that it is in the public interest:

**36(1)** Within 45 days after the day on which the notice of the commencement of the impact assessment of a designated project is posted on the Internet site, the Minister may, if he or she is of the opinion that it is in the public interest, refer the impact assessment to a review panel.

In considering whether the referral of the environmental assessment of a designated project to a review panel is in the public interest, the Minister must consider the factors set out in S.36(2):

**36(2)** The Minister's determination regarding whether the referral of the impact assessment of the designated project to a review panel is in the public interest must include a consideration of the following factors:

- (a)** the extent to which the effects within federal jurisdiction or the direct or incidental effects that the carrying out of the designated project may cause are adverse;
- (b)** public concerns related to those effects;
- (c)** opportunities for cooperation with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project or any part of it; and
- (d)** any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982.

Section 4.0 Potential for Adverse Impacts will demonstrate how the proposed project meets the relevant standard. Further, the submission of this petition demonstrates public concerns in regard to the potential effects of the proposed project.

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<sup>1</sup> IAA s.9(7)

#### 4.0 Potential for Adverse Impacts

Two purposes of the IAA are:

**6(1)(b)** to protect components of the environment, and the health, social and economic conditions that are within the legislative authority of Parliament from adverse effects caused by a designated project; . . .

**(g)** to ensure respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act 1982, in the course of impact assessments and decision-making under the Act; . . .

Section 2 of the IAA defines “effects with federal jurisdiction”, in part, as

(a) a change to the following components of the environment that are within the legislative authority of Parliament:

(i) fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*,

(ii) aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*,

(iii) migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*

(b) a change to the environment that would occur

(ii) in a province other than the one where the physical activity or the designated project is being carried out . . .

(c) with respect to the Indigenous peoples of Canada, an impact – occurring in Canada and resulting from any change to the environment – on

(i) physical and cultural heritage

(ii) the current use of lands and resources for traditional purposes, or

(ii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance

(iii) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada . . .

This petition focuses on potential adverse impacts on fish and fish habitat, aquatic species at risk, migratory birds and notes public comments by Saskatchewan Indigenous leaders concerning the impacts of the Lake Diefenbaker Irrigation Project on their rights. These adverse effects would result from the Project’s proposed withdrawal of up to 1.1 million dam<sup>3</sup>(900,000 acre-feet) of water with resulting changes to water flows and quality in the South Saskatchewan and Qu’Appelle Rivers.



### ***Adverse Effects to Water Quality***

Surface runoff and return flow from irrigated fields often contain dissolved salts and other pollutants such as chemical fertilizers and pesticides, which wash into nearby watercourses or leach through the soil into underlying groundwater.

Nitrogen and phosphorus are commonly found at a higher rate in return water flows. These nutrients entering the watersheds will further stress nutrient rich, eutrophic lakes in Saskatchewan causing blue-green algae blooms to worsen. Multiple factors, including warmer temperatures, have simultaneously increased the severity of the blooms in recent years. This has consequently led to summer fish kills and winter blooms. Nutrient loading from irrigation return waters would continue to exacerbate the issue and decrease water quality in Saskatchewan freshwater ecosystems. This will result in negative social impacts for local recreational users, fishing communities (winter and summer anglers), and indigenous communities; economic impacts for lakefront property values and recreational and tourism businesses; all in addition to the negative environmental impacts.

### ***Adverse Effects on Fish and Fish Habitat***

The Saskatchewan and Qu'Appelle River system is host to many fish species including the Goldeye, Walleye, Sauger, Lake Sturgeon and Bigmouth Buffalo. The Saskatchewan to Nelson River populations of Lake Sturgeon is designated as a threatened species (2009). The Qu'Appelle River harbors the only known population of Bigmouth Buffalo, designated as a fish species of Special Concern (2011). The *Management Plan for the Bigmouth Buffalo (Ictiobus cyprinellus) in Canada (Saskatchewan-Nelson River populations), 2019 (proposed)* has been developed to maintain existing Bigmouth Buffalo population levels and distribution, and protect habitat within watersheds in which the species is found.

Seasonal water level stability and instream flows are important ecological factors for healthy fish and fish habitats. The adverse effects to fish and fish habitat may be observed with the timing of withdrawing water from the system. The effect could reduce water levels required for the staging and spawning habitats of several spring spawning species like Goldeye, Walleye, Sauger, Lake Sturgeon and Bigmouth Buffalo. Reduced instream flows and water levels in the Saskatchewan River and Qu'Appelle River systems may also change the availability of habitat for fish species such as Lake Sturgeon and Bigmouth Buffalo that depend on this habitat for the development and protection of both young and mature individuals. Ecologically, the potential reduction of water levels and instream flows can influence the timing, availability, and potential presence or absence of other aquatic organisms that fish rely on for food.

The Qu'Appelle River extends 430 km's east from Lake Diefenbaker to join the Assiniboine River just across the boundary to Manitoba near St. Lazare. Along the stretch of river are several relatively shallow lakes (Pasqua, Echo, Mission, Katepwa, Crooked and Round) and associated marshy areas. The lakes are populated with Walleye, Northern Pike, and Perch,

while the marshy areas provide ideal spawning habitat for Bigmouth Buffalo, a global fish species of concern found only within the Qu'Appelle river system in Saskatchewan. Lower water levels have already adversely impacted their spawning habitat and further fluctuations could result in further degradation of this habitat.

Studies in the Qu'Appelle chain of lakes have shown a drastic reduction in oxygen levels creating earlier and longer blooms of blue-green algae resulting in winter kills of fish impacting commercial and recreational fisheries. The warming waters due to climate change only exacerbate this situation and further reduction of water flow along the river will increase this problem.

### ***Adverse Effects on Migratory and Nesting Birds***

The Prairie Pothole Region is the most important waterfowl production area on the North American continent, but is threatened by ongoing extensive wetland drainage and tillage of native grasslands. Conversion of wetlands and native upland areas to cropland has a direct effect on species occurrence, abundance, and nesting success. Environment Canada ranks the threats to these habitats as very high even without the proposed Project and continued wetland degradation and fragmentation of remaining habitats threaten future suitability of the Prairie Pothole Region for all of these birds.

Breeding dabbling duck density can reach up to 50 pairs per square mile in some areas. The area in Phase 2 is recognized as being nationally important to breeding waterfowl including Pintails, ducks whose populations are in decline. The northeastern portion of Phase 2 also contains part of the North American Waterfowl Management Plan's Key Target Area known as Trampling Lake East. Also located within the irrigation development area are Goose Lake and Rice Lake that are important moulting and staging habitats for waterfowl and other birds.

The irrigation development area is proposed to take place in the core region of the breeding range of most dabbling duck and several diving duck species. Furthermore, this area also provides critical breeding and migration habitat for numerous other bird species, including such priority species as Franklin's Gull, Yellow Rail, and Piping Plover. Baird's Sparrow, Sprague's Pipit, Wilson's Phalarope, Marbled Godwit, and Horned Grebe and American Avocet are among the many priority non-waterfowl species breeding in the project area. Other species include Western Meadowlark and Sharp-tailed Grouse. Wetland areas also provide key migration feeding and resting sites for Sandpipers.

The irrigation development area contains Rice Lake which has been designated an Important Bird Area and Biodiversity Area (IBA). The lake and surrounding area provide important wetland habitat for waterbirds, especially Franklin's Gull. Over 3,000 pairs of nesting Franklin's Gulls, representing more than 1% of the estimated global breeding population, have been recorded at this site. Other birds breeding at this site include Eared Grebes (375 birds) and Black-crowned Night-Herons. During the summer and fall, moderate numbers of moulting and

staging waterfowl use the lake. Although few surveys have been completed, almost 9,000 moulting ducks and smaller numbers of staging waterfowl are also found here.

Some of the more common species include Green-winged Teal, Northern Pintail, Mallard, and Canada Goose. The nationally endangered Whooping Crane occasionally stops here during fall migration. The IBA lists as a threat chemical runoff from agricultural activity flowing into the lake causing the potential for water pollution.

Lower water levels in the fall as a result of increased irrigation at the upper end of Lake Diefenbaker will impact the available staging areas for waterfowl at the Galloway and Miry Bay Important Bird and Biodiversity Area (IBA). In the fall, staging migratory White-front and Snow Geese, as well as other waterfowl, number in the hundreds of thousands. The shorelines of Lake Diefenbaker are utilized by the globally listed endangered Piping Plover for nesting. Altered water flows will also result in reduced available habitat if water levels fluctuate unnaturally to accommodate irrigation use.

### ***Adverse Effects on Species at Risk and Species of Concern***

The irrigation development area contains amphibian species such as Northern Leopard Frog and Western Tiger Salamander. The Northern Leopard Frog is currently on Saskatchewan's Interim Species at Risk List, and the Western Tiger Salamander an amphibian species of Special Concern. Draining and cultivating wetlands and reduced water levels in marshy areas of the rivers could impact habitat and populations for these species.

### ***Concerns Regarding Water Levels and Competing Water Usages at Lake Diefenbaker***

Lake Diefenbaker is currently used for hydro-electric power, recreational purposes, flood prevention, and irrigation. Each user has a preferred water level, irrigation and recreational purposes benefit from stable water level compared to hydro and flood prevention fluctuate water levels.

Climate change models indicate that both drought conditions and flooding events will intensify over the years. To our knowledge, climate change modelling has not been reflected in water budget models for project development. Climate change will also increase evaporative losses from Lake Diefenbaker which is a major factor in determining water availability.

### ***Interprovincial Water Availability and Quantity Considerations***

The South Saskatchewan River is a water stressed system. Data in 2021 from Alberta Environment and Parks sets the potential low flow this year in the South Saskatchewan River for the last 25 years of the past century. In addition to the lower natural flows of the river,

multiple development projects in the south of Alberta raise concern about allocating water licences from this already over-allocated river. These additional developments include the Meridian Dam, multiple coal mine proposals as well as the Project. A water demand study model has predicted that the total water demand will increase 133% by 2060 in the South Saskatchewan River.

When considering downstream water flows, increased water use for irrigation will ultimately result in reduced flows downstream which will impact upon the water reaching Cedar Lake and Lake Winnipeg.

While the required amount of water is available now, researchers have noted the challenging factor for government will be the more extreme variations in precipitation expected due to global warming.

### ***Concerns with Pressure for Land-use Changes***

Lands prepared for intensive pivot irrigation require relatively flat topography void of natural features including wetlands, native prairie and parkland. Unintentional consequences of the Project are likely to include pressures for land-use changes. More specifically, there is concern that the Project will lead to both loss of native prairie converted into agricultural fields as well as increased wetland drainage in fields to accommodate irrigation equipment.

A further loss of native grassland areas can be expected for development to irrigated cultivated acres. This will also affect the habitat for several bird species at risk, including; Sprague's Pipit, Baird's Sparrow and Long-billed Curlew. In 1991, Lake Diefenbaker supported the largest population of nesting Piping Plovers in North America. Fluctuations of Lake Diefenbaker due to changes in water demand will also negatively affect Piping Plover nesting habitat.

The resulting drainage of wetlands also increases downstream releases of methyl-mercury causing concentrated deposition in lakes and eventual uptake into the food webs which include human consumption.

### ***Adverse Effects on Greenhouse Gas Emissions***

The IAA impact assessment is needed to calculate total projected loss of existing wetlands and the projected impact of GHG emissions resulting from the Project. Irrigated lands emit more greenhouse gases (GHGs) such as nitrous oxide than non-irrigated lands. Nitrous oxide is a greenhouse gas that is 298 times more potent than carbon dioxide. In 2018, Saskatchewan emitted 22.04 kt of nitrous oxide, the equivalent of 6,569.4 kt of carbon dioxide from agricultural soils alone<sup>2</sup>. Projected plans to double irrigated lands in Saskatchewan will increase nitrous oxide emissions.

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<sup>2</sup> Canada's Greenhouse Gas Inventory

During the construction of the irrigation infrastructure, an increase of carbon emissions will be expected from both the burning of fossil fuels from machinery as well as that lost from the disturbance of soil for constructing conveyance canals, particularly in the case where native habitat is destroyed.

The Project will have additional GHG emissions associated with the pump stations that are required to continually pump water through the irrigation canals.

Draining wetlands required to accommodate canals and industrial agriculture will result in the emission of about 16 tonnes of CO<sub>2</sub>eq ha<sup>-1</sup> yr.<sup>1</sup>. There are many thousands of hectares of wetlands that the project will impact. A conservative estimate is this will release over 1 million tonnes CO<sub>2</sub>eq ha<sup>-1</sup> yr.<sup>1</sup> into the atmosphere. This is a significant amount if the price of carbon rises to \$170/tonne/year in 2030. The proponents have stated they will replace the wetlands in other places during construction. Research indicates this is not feasible.

### ***Risk to the Saskatchewan River Delta***

The Saskatchewan River Delta has important ecological and cultural significance especially for Indigenous communities. One of the largest inland deltas in North America, and one of the most biologically rich landscapes in Canada, the Saskatchewan River Delta is a 10,000 km<sup>2</sup> network of waterways, wetlands and low-lying forests. The land and waters of the Delta provide habitat for millions of waterfowl and other migratory birds, including White Pelican, while the area's forests sustain Lynx, Wolf, Black Bear, Moose, and Elk. Two Important Bird Areas (Tobin Lake IBA, Cumberland Marshes IBA) in the Saskatchewan River Delta in Saskatchewan have been identified as globally significant, while the Saskatchewan River Delta IBA in Manitoba has been identified as globally significant as well. This large complex of wetlands, marshes and bogs is a large store of carbon.

Downstream flows as a result of high water demand and climate change will impact the already changed habitat of the Saskatchewan River Delta. Reduced water flow downstream to the Saskatchewan River Delta will cause areas of the marsh to further dry and reduce spawning habitat for Indigenous, commercial and recreational fisheries. This will additionally impact wildlife species such as Muskrat, Beaver, Moose and Elk.

### ***Adverse Effects on Indigenous Rights and Federal Lands (Reserves)***

Indigenous rights, as defined under Canadian law, consist of a broad spectrum of legal rights possessed by Indigenous people in Canada. While the rights defined to date are not exhaustive, courts have recognized the right to occupy the land, to fish, hunt, trap, and generally use the "products" of the rivers, forests, and streams. This also includes the Indigenous right to protect both water quality and quantity, on behalf of both humans and the ecosystem.

First Nations have raised concerns publicly and through an FSIN Designation Request. Petitioners are unaware if any meaningful process for consultation has been developed to begin to address these concerns.

Petitioners note that Federation of Sovereign Indigenous Nations Chief Bobby Cameron has been quoted to say that the provincial government should have consulted First Nations before announcing the \$4-billion Project. Chief Cameron noted the Supreme Court has repeatedly ordered governments to conduct meaningful consultations with First Nations before projects begin, not after. The federal government policy is that those consultations must attempt to obtain "free, prior and informed consent" before any major project affecting First Nations begins. As Chief Cameron succinctly put it: "That's the whole purpose of communication, right? You get input prior to any plan coming forward."

In a media release Prince Albert Grand Council, Grand Chief Brian Hardlotte said an analysis of how the project may further impact the whole Saskatchewan River delta needs to be undertaken. He said upstream dams had already altered and threatened biodiversity upstream.

"Water security, healthy wildlife and a healthy environment are foundations of First Nations health, culture, food security, and way of life. The Lake Diefenbaker Irrigation Project will impact lands and waters throughout many First Nations territories across Saskatchewan and across multiple Treaty territories and Provinces," he said in the release.

Chief Todd Peigan, Pasqua First Nation stated, "To date, there is nothing in that plan that shows the benefits for the Lower Qu'Appelle," Chief Peigan said. "I'm against it until they prove to me how it will benefit, not financially but environmentally." He said the government hasn't shown how the project will affect water levels in the Qu'Appelle system.

Chief Roberta Soo-Oyewaste Chief of the Standing Buffalo Dakota Nation also voiced concerns over the impacts to the environment and therefore her people. Chief Soo-Oyewaste, along with many First Nations leaders, are concerned the condition of the lakes could worsen if the province moves forward with its \$4 billion irrigation project. "If there is less water downstream, it will mean more degradation of the Qu'Appelle chain of lakes," Chief Soo-Oyewaste said. "We are already in poor conditions."

Cumberland House Cree Nation Chief Rene Chaboyer was quoted as saying that "the government failed to consult First Nations, even though the Supreme Court of Canada has been clear that before a major infrastructure project begins, every attempt must be made to obtain free, prior and informed consent from affected First Nations. It's commonly known as the "duty to consult".

Chief Chaboyer said he's assembling a coalition of First Nations and will make his case to the government. He said legal action is a last resort, but he isn't ruling it out. "We depend on the delta to provide our people with natural products like fish, moose, ducks, medicine. We rely on the roots and what it provides for us. This project doesn't help anything. It's just going to

expedite the drying out of the delta and turn it into dry lands.”

## **7.0 Conclusion**

Petitioners urge the Minister to require that an impact assessment be undertaken by an independent review panel prior to the commencement of the Project in order to demonstrate a commitment to making evidence-based decisions related to the Lake Diefenbaker Irrigation Project. The Minister should exercise his discretion to designate the proposed irrigation project as a designated project under s. 9(1) of the *Impact Assessment Act* and refer the impact assessment to a review panel under s. 36(1) of the IAA.



*A Voice for Nature*  
IN SASKATCHEWAN

