

Document Three

In 1966, the Manitoba Government announced the details of a massive hydroelectric project to be undertaken on the Churchill and Nelson Rivers in the northern part of the province. Opposition to the project was voiced almost immediately by northern Native residents in the impact zone, and by southern professionals, environmentalists and members of the general public. In mobilizing to fight the project, the Native people formed the "Northern Flood Committee" and appealed to the federal government for financial assistance to conduct an impact assessment and to hire lawyers to act on their behalf. Subsequently, these lawyers initiated legal action to stop construction on the project.

Perturbed that the federal government appeared to be meddling in Manitoba's internal affairs by violating a 1966 agreement between the two governments, Premier Edward Schreyer wrote the following letter to Prime Minister Pierre Trudeau.

MANITOBA

OFFICE OF THE PREMIER

July 31, 1974

The Right Honourable Pierre E. Trudeau, P.C., Q.C., M.P.
 Prime Minister of Canada
 Ottawa, Ontario
 K1A 0A2

My dear Prime Minister:

I believe that it should be of some concern to the federal government that the province of Manitoba has recently been informed by a solicitor representing a group designated as the Northern Flood Committee that this group intends to seek an injunction restraining the province of Manitoba from continuing to proceed with its hydro development program. We are also informed through statements made in the media that funding of the activities of this group, which include political mobilization of northern communities in Manitoba and legal costs relative to such procedures, is being undertaken by the federal government.

In view of the federal government's relationship to this process, I believe it becomes necessary that there be a meeting just as soon as possible at the First Ministers' level to discuss the implications of these events. I would see value in

the attendance of the Honourable Messrs. Jean Chretien and Sidney Green along with whomever else you may suggest.

Pending such a meeting being arranged, I believe it would be of some value for the Manitoba government to clarify to you our understanding relative to these matters.

On February 15, 1966, representatives of the Government of Canada and of the government of Manitoba entered into an agreement relating to hydro-electric development in northern Manitoba, a copy of which is enclosed. Specifically the agreement provided that:

" 2. Manitoba shall, at Manitoba's expense, design, construct and place in service the electricity generating facilities according to a schedule which calls for the Station to be placed in initial service on or before the 30th day of November, 1971."

Electricity generating facilities as defined in the agreement under clause 1.(d) are as follows:

"1.(d) 'electricity generating facilities' includes

- (i) the Station;
- (ii) a control dam on the Churchill River at the outlet of Southern Indian Lake, a diversion structure for releasing water into the Rat River, a tributary of the Burntwood River, which flows into the Nelson River, and certain other ancillary works for the purpose of making available considerable water storage on Southern Indian Lake and to increase the potential capacity of the hydro-electric sites along the route of the Churchill River diversion; and
- (iii) a control dam, spillway, and flood control works to be located in the vicinity of the outlet of Lake Winnipeg, which works will be designed to permit the levels of the water of Lake Winnipeg and the outflow to the Nelson River to be regulated and controlled."

Since the execution of the agreement, the province of Manitoba has proceeded to execute its obligations thereunder and to that end has completed the Kettle Rapids generating station and has under way at various stages of development all other components of the Nelson River development program.

On May 11, 1973, a license was issued by the Manitoba Water Resources Branch, authorizing the final component, namely, the Churchill River Diversion, and work on this diversion program has been in progress since then.

You may be aware that some controversy took place in Manitoba relative to this program. In 1969 an attempt was made by the then Conservative administration to proceed with the project by elevating South Indian Lake by some 30 feet. Objections were raised as to whether there was the necessity of raising water levels to such an extent, since it was acknowledged that massive environmental consequences would result and that an entire native community would have to be relocated.

Following the change of government a re-assessment of the project was undertaken and it was subsequently decided that with the establishment of Lake Winnipeg regulation, also provided for in the agreement, the diversion project could be effected with reduced water levels and consequent reduction of environmental effects and problems. In particular, the community of South Indian Lake would not have to be relocated and construction of a new townsite is presently under way at the existing location.

Concurrently with the decision to proceed with the new and less damaging program, the provincial government also established a \$2 million federal-provincial study to ascertain in advance possible or probable consequences of the diversion project, with power to recommend as to how such problems could be dealt with. A copy of the federal-provincial agreement relating to said study is enclosed.

The federal-provincial study board has been proceeding with its work and from time to time has issued reports and has provided Manitoba Hydro with information consistent with the board's terms of reference. Pursuant to such reports Manitoba Hydro officials made aware to the community at Nelson House that there were possible effects on that community, which the corporation wanted to assess further so that they could be dealt with in accordance with the Manitoba government commitment.

As a result of this procedure the community of Nelson House has refused further access to the community by Manitoba Hydro officials and has appealed to the Minister of Indian Affairs for financial assistance in order to take legal steps against the Manitoba government. The Honourable Mr. Chretien subsequently

provided such financial assistance and the Manitoba government has received information from counsel for the Nelson House Band as well as other communities in northern Manitoba, to the effect that these communities will be seeking an injunction to prevent work being continued on the diversion program.

Having briefly outlined the history of this development, I now wish to clarify as precisely as I can the position of the government of Manitoba:

1. The government of Manitoba [has] taken the position that the federal and provincial governments, in signing the enclosed agreement in 1966, had full legal authority to do so and had the power to take such steps as are necessary to deal with any private interests that may be involved, either through the legislative authority of the provincial or of the federal governments.
2. The Manitoba government takes the position that the federal government, in signing the agreement, obligated itself to do all those things that were necessary within its jurisdiction to facilitate the program being proceeded with. As a corollary the federal government also undertook not to take any action which would hinder the development.
3. The Manitoba government recognizes its responsibility to satisfy any and all claims of a private or community nature which may arise as a result of the program being proceeded with. In this connection the Manitoba government has already indicated its willingness to compensate persons adversely affected and to permit such compensation to be established by an independent tribunal.

The Manitoba government is completely open to suggestions as to how the tribunal could be established. It is quite willing to have a federally appointed judge act as arbitrator and is even willing to consider arbitration by the Honourable Mr. Richardson. We make this statement not to place such responsibility on these individuals, but merely to indicate that the Manitoba government is willing to take any reasonable steps to demonstrate that it does not intend that such arbitration will be subject to any influence whatsoever by the provincial government.

4. There has been some suggestion that the Manitoba government is withholding information. For your information I enclose a copy of a letter which was forwarded to the communities concerned and also a copy of a letter which was forwarded to the Honourable Minister of Environment Canada on May 16, 1973. You will note that all of the information being requested is now available to the federal and provincial governments. The Manitoba government has indicated its willingness to release all reports made by the Study Board. As a matter of governmental policy we have not been revealing background documents and as a matter of fact such documents have not been forwarded by the Study Board to either myself or the Minister of Environment Canada. However, although it is our policy that background

documents are not properly subject to governmental release, we have no desire to inhibit the federal government in this connection. All of the documents referred to which have not been made public are presently in the possession of, or available to a Minister of the federal government. We accordingly hereby authorize the federal government to release to Mr. Chretien any and all information presently in the possession of the Study Board, and furthermore authorize that same be released with the understanding that Mr. Chretien will be permitted to make these available to any persons demanding same. Whether the federal government does or does not wish to make these documents public is entirely the prerogative of the federal government. We wish to make it clear that the Manitoba government has no intention of hiding information and, as a matter of fact, it is through our initiative and programming that this information is available.

5. The Manitoba government is willing and ready to discuss any and all of the hereinbefore mentioned principles and is prepared to modify such principles upon reasonable suggestions being received from the federal government in connection with same. The only qualification is that the Manitoba government will not negotiate as to whether or not it has the right to proceed with the Churchill River Diversion. We consider that right to have been established eight years ago and we consider that the two governments who were signators to the agreement have all legislative and executive powers necessary to complete the program.

Although it has not been specifically stated, it would appear that certain of Mr. Chretien's statements imply that an Indian band in northern Manitoba has a veto power over this program if reserve lands are affected. It is also the case that the federal government is financing a legal position which implies such veto power.

I believe it is important that the government of Manitoba point out to the federal government that all the funds thus far expended and the potential loss in benefits which would result from such veto power are directly in conflict with the federal government's obligations under the 1966 agreement. It will therefore be our legal position to hold the federal government responsible for any damages suffered by the people of Manitoba as a result of federal actions inconsistent with their contractual obligations.

It is my earnest belief that, given reasonable consideration on all sides, these matters can be resolved. You will, however, appreciate the fact that the Manitoba government will be required to take all such steps as are necessary to

protect its own legal position.

I would be pleased to hear from you at your earliest convenience so that a meeting between the Government of Canada and the government of Manitoba may be held to discuss this matter.

Yours sincerely,

Edward Schreyer