IMPLEMENTING THE
PROPOSED CANADIAN
NAVIGABLE WATERS ACT
Submission from Chemawawin Cree Nation

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March 29, 2019
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1. Who we are

Chemawawin Cree Nation ("CCN") is a Cree community of over 1,700 members, located 440km north of Winnipeg on the shore of Cedar Lake. CCN is a signatory to Treaty 5 (signed 1875) and exercises our existing rights and jurisdiction over navigational waters within our territory. Our people continue to work to maintain safe navigation access and passage throughout our territory to support a range of activities, including but not limited to commercial fishing, transportation, cultural and ceremonial activities, rights-based hunting and fishing, as well as educational and recreational purposes. Managing and protecting navigation on Cedar Lake — the central feature of our territory, an inland delta of the historically and culturally significant Saskatchewan River — is critical to us.

2. Introduction

With this submission, CCN is writing to provide input on how the federal Crown should implement An Act respecting the protection of navigation in Canadian navigable waters ("Canadian Navigable Waters Act" or "CNWA"). In particular, it is our understanding that the Crown is seeking input on the following regulatory instruments:

- A new Major Works Order that would include types of work that would always require approval;
- Updates to the existing Minor Works Order, which would include requirements for works that are considered pre-approved; and
- A new Order-making process that would add navigable waters to the Schedule of the Act.

In preparation of our comments, CCN has reviewed the following discussion papers and information pieces from the Let's Talk Navigation website:

- Major Works Order (2018)
- Categories of works in the proposed Canadian Navigable Waters Act (2018)
- Adding navigable waters to the new Canadian Navigable Waters Act Schedule (2018)

Specific recommendations relevant to implementation of the CNWA are included under sections 2 and 7, below. To provide the context necessary to reach a full understanding of our recommendations, in particular, the importance of designating Cedar Lake as a Navigable Waterway and developing a partnership between Transport Canada and CCN for the co-operative management of navigation on Cedar Lake, the submission includes additional sections that provide critical information related to the past and current context of navigation within our territory, including CCN's current co-management of the Cedar Lake Resource Management Area with the provincial Crown.
3. Recommendations

Based on our review of the relevant discussion papers, the following recommendations are proposed. Background and discussion are provided in subsequent sections.

Recommendation 1: Given Cedar Lake’s ongoing ecological and navigational vulnerability, historical significance and the continuing importance to the commercial and rights-based activities of CCN and the surrounding region, this key navigable waterway should be given priority consideration by the Minister for addition to the Schedule of the Act.

Recommendation 2: Any process for the designation of navigable waters to the Schedule of the Act should be adequately funded and responsive in a timely way to CCN’s application, including but not limited to:

- Adequate funding provided at the front-end of the application to support CCN participation throughout the process, including CCN’s collection and provision of community knowledge and expertise in advance of and during the assessment and decision phases of the process;
- Serious consideration of CCN knowledge and expertise during the assessment and decision phases;
- Face-to-face engagement with Transport Canada staff on the ground in our community during the assessment phase;
- Opportunities for CCN information to be shared directly with the Minister before decisions are made;
- Decision-making must seriously consider/ provide more weight to the ability of Indigenous peoples to exercise their rights (as compared to other criteria), the vulnerability of waterways to navigational obstruction and the importance of safe navigation on a waterway to support a local economy;
- Establishment of reasonable timelines for the assessment and decision phases to take place, to ensure sufficient time is afforded Indigenous groups to collect and submit information; and
- Transparency in the Minister’s reason for decision.

Recommendation 3: Given CCN’s existing jurisdictional authority for the management of navigation on Cedar Lake provided through Treaty 5 and the 2004 Comprehensive Forebay Agreement between Manitoba and CCN, it is recommended that Transport Canada enter into a partnership arrangement with CCN for the co-management of navigation within the Cedar Lake Resource Management Area, building upon CCN’s existing programs and expertise.
Recommendation 4: Policy and/or regulation for the new CNWA should include a provision for immediate opt-in mechanism for a formal partnership arrangement where a First Nation is already party to Crown-First Nation arrangements that recognizes the co-management of navigable waterways within the respective First Nation’s territory that is listed on the Schedule to the Act. The partnership arrangement will include specific measures for the effective co-management of the navigable waterway listed on the Schedule to the Act (e.g., Cedar Lake).

Recommendation 5: As part of partnership arrangements with Indigenous Nations, Transport Canada should provide resources for effective co-management of important indigenous navigable waterways, such as Cedar Lake.

Recommendation 6: Regulation and policy for Major Works should require that each Scheduled Waterway have a list of existing Major Works, and additional provisions should require that any proposed changes to those listed Major Works be subject to a scoping review to determine, in accordance with pre-established criteria, whether they are “substantial” in nature, thus requiring a formal approval process. Any changes that qualify as substantial changes to an existing major project should require a formal approval process. Any substantial changes to existing major works, such as the Grand Rapids Dam, that would change the conditions of navigation on the affected navigable waterway should be deemed a “Major Works” and be subject to full review by Transport Canada.

Recommendation 7: Regulation and policy for Minor Works should require the consideration of cumulative effects on a given waterway and consultation with relevant Indigenous governing authorities related to the coordination of laws and authorities, prior to providing any exemptions from Transport Canada review and approval.

4. Impacts of the Grand Rapids Generating Station

In 1964, our ability to use and navigate Cedar Lake was impacted at the same time our Nation was forced to relocate from our reserve community due to Manitoba Hydro’s construction of the Grand Rapids Generating Station ("the Project"), a project that resulted in the flooding of more than 200,000 hectares of land, placing a substantial portion of our traditional territory, including our home community, under water. Prior to relocation, our people participated in a

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rich economy based on the lands and waters of our traditional territory. Development of the Grand Rapids dam and our relocation resulted in substantial environmental, social, and cultural impacts, including but not limited to:

- Ongoing influx of floating debris resulting from dislodgment of submerged vegetation and shoreline erosion, disrupting navigation and fishing;
- Difficulties locating fish populations following flooding of the lake;
- Closing of the commercial fishery for extended period due to mercury contamination in the 1970s and 2000s;
- Loss of trapping productivity due to the flooding of moose, beaver and muskrat habitat;
- Decreased access to hunting moose due to the flooded shorelines of the lake;
- Dramatic changes to our cultural landscape; and
- Negative socio-economic impacts from damage to the land-based economy.

While CCN members have had to suffer the impacts from this development, we have not seen the benefits. A 2006 report estimated that the Grand Rapids Generating Station accrued over $1.08 billion in revenue between 1982 and 2006 alone; the full amount accrued between 1965 and the present day would be substantially more. Canada has not yet addressed the historic injustice our members have been living with for decades.

5. Challenges and Importance of Navigation on Cedar Lake

Despite the burden of historical changes from Manitoba Hydro’s establishment of the reservoir, Cedar Lake remains a core transportation route within CCN traditional territory. Significantly, safe navigation on Cedar Lake is essential for the ongoing viability of CCN’s commercial fishery on Cedar Lake – an economic lifeline for our community. The protection of the Cedar Lake fishery and enhancement of opportunities for CCN members in the fishery is a priority for CCN.

Equally as important, Cedar Lake retains a central cultural importance to our community and provides CCN with access to the ability to practice Treaty rights throughout the territory. At a workshop respecting navigation held in the CCN community on March 21, 2019, members noted that people use Cedar Lake throughout the year to access:

- Fishing sites;
- Hunting sites;

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• Cultural and spiritual sites;
• Camping and cabin sites; and
• Recreational sites.

Given the ongoing use and importance to CCN Treaty rights and commercial fishery, Cedar Lake is a significant waterway that should be added to the CNWA Schedule of Navigable Waterways.

*Cedar Lake should be recognized as “vulnerable” navigable waterway*

As noted previously, CCN members have already experienced a myriad of effects due to the creation of the reservoir. Many of these effects continue to this day. At the above-noted workshop held at the CCN community, leadership and members identified the ongoing impacts to navigation in Cedar Lake, including but not limited to the following:

• Fluctuating water levels making the waterway dangerous to navigate:
  o The water levels are elevated and lowered, without CCN control or consent, to meet the requirements of Manitoba Hydro;
  o Shoreline is constantly in flux due to reservoir levels changing, creating additional hazards and burdens on CCN members;
  o Natural systems are thrown out of order by “market-demand” factors that influence the water levels (selling Hydro power to customers in the USA)

• Freezing and melting times of Cedar Lake have changed in relation to changes in reservoir water levels, creating new hazards to navigation and safety.

• The historic flooding of forest cover, as well as the ongoing regular erosion of shorelines resulting from changes to water levels in the reservoir, causes ongoing dislodging of wood debris that poses risks and obstacles to navigation on Cedar Lake, including hazards to navigational routes and shoreline access;

• The greatly increased size of the lake has resulted in greater wind velocities that can impair navigation.

*Given these existing impacts, Cedar Lake should be considered “vulnerable” to new development by Transport Canada and added to the Schedule.*
6. CCN-Manitoba Co-Management Agreement for Cedar Lake

CCN is already involved in the management of Cedar Lake through partnership with the provincial Crown. Since 2004, CCN has been party to a co-management agreement with the Province of Manitoba ("Manitoba") over the waters and resources of Cedar Lake and therefore has recognized shared jurisdiction over navigation for the Lake. CCN entered into the Comprehensive Forebay Agreement ("the Agreement") with Manitoba following negotiations aimed at establishing, "the cooperative management of the lands and waters within the Cedar Lake Resource Management Area." CCN co-management of Cedar Lake includes environmental monitoring and the maintenance of safe navigational channels on Cedar Lake through the Cedar Lake Community Program (formerly called the Debris Program).

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7 Ibid., p. 2.
CCN’s Cedar Lake Community Program (Formerly the Debris Program)

The Cedar Lake Community Program is an example of the ongoing exercise of CCN co-management role in managing Cedar Lake. In particular, the Project supports navigational safety and community-involvement in maintaining navigational access within the territory through:

- marking of safe passage routes on Cedar Lake;
- monitoring those routes to ensure that they are free from floating debris;
- involving up to 50 community members annually.

At the outset of the Program, a key objective was the maintenance of safe navigation routes through Cedar Lake, “... to remove Debris for the use of Chemawasin and where it interferes
with navigation or with Chemawawin use and enjoyment of Cedar Lake." CCN has been actively involved in this program since its inception.

Given CCN's existing jurisdiction and management responsibilities, CCN seeks to partner with Transport Canada in the management of navigation within the Cedar Lake Resource Management Area, building upon CCN's existing programs and expertise.

7. Comments on Implementation of the New Canadian Navigable Waters Act

The following provides additional comment on implementation mechanisms proposed for the new CNWA.

*Order Making Process for Adding Navigable Waters to the Schedule of the Act*

CCN supports a tailored process for Indigenous applications for navigable waters to be added to the schedule. In general, CCN supports a process that is accessible, affordable, timely and easy to use in establishing our territorial waters as part of the Schedule. Therefore, CCN recommends that any process for the designation of waterways to a schedule be adequately funded and responsive in a timely way to CCN's requests including but not limited to:

- Adequate funding provided at the front-end of the application to support CCN participation throughout the process, including CCN's collection and provision of community knowledge and expertise in advance of and during the assessment and decision phases of the process;
- Serious consideration of CCN knowledge and expertise during the assessment and decision phases;
- Face-to-face engagement with Transport Canada staff on the ground in our community during the assessment phase;
- Opportunities for CCN information to be shared directly with the Minister before decisions are made;
- Decision-making must seriously consider/ provide more weight to the ability of Indigenous peoples to exercise their rights (as compared to other criteria), the vulnerability of waterways to navigational obstruction and the importance of safe navigation on a waterway to support a local economy;
- Establishment of reasonable timelines for the assessment and decision phases to take place, to ensure sufficient time is afforded Indigenous groups to collect and submit information; and
- Transparency in the Minister's reason for decision.

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8 Ibid., Article 16, Subsection 16.3.1, Debris Program, p. 2.
Cedar Lake must be added to the Schedule for enhanced assessment for any new "works", projects or activities that would impact navigation. CCN asserts that Cedar Lake meets the criteria for an important navigable waterway:

- Cedar Lake meets the definition of a "navigable water" under the proposed Act because it is presently used for transport and travel by CCN members, is co-managed by CCN and the Crown, and is accessible to the public;
- Cedar Lake has past, current and anticipated navigation by CCN members as Indigenous peoples to exercise rights recognized and affirmed by the Constitution Act, 1982;
- Cedar Lake supports ongoing commercial fishery, an indigenous food, social and ceremonial fishery, and a non-Indigenous recreational fishery;
- Cedar Lake is already being managed by CCN for navigational hazards that continue to result from the construction of the Grand Rapid
- Cedar Lake, as the inland estuary for the Saskatchewan River, has substantial historical and cultural importance, not only to CCN, but to all Indigenous and non-Indigenous Canadians as the main historical transportation water gateway to western Canada during the fur trade era;
- Cedar Lake has already experienced substantial cumulative impacts therefore the cumulative impact of works on navigation in the navigable water must be considered in the decision.

**Major Works Order that would include types of work that would always require approval**

Given that CCN members are already living with the impacts from a "Major Works" it is critical that existing major projects that undergo any substantial change resulting in a change to the conditions of navigation on the affected navigable waterway must require robust review. CCN recommends that a provision be made (in policy or regulation) that any substantial changes to an existing major projects, like the Grand Rapids Dam, that pose ongoing effects on navigation on a waterway, be deemed a "Major Project" and be subject to full review by Transport Canada. Further, each Scheduled Waterway should have a list of existing Major Works and provisions that any proposed changes to those listed Major Works be subject to a scoping process to see if they are "substantial" in nature, thus requiring a formal approval process.

**Minor Works Order include requirements for works that are considered pre-approved**

Given the cumulative impacts occurring in our territorial waterway CCN is concerned that all Minor Works will be pre-approved regardless of the vulnerability of the waterway. CCN therefore recommends that consideration of cumulative effects must be given on a waterway prior to providing any exemptions to a minor project from Transport Canada review and approval.
8. Need for Federal Partnership with CCN on Navigation

Given the Crown’s commitment to advancing the principles of the *UN Declaration on the Rights of Indigenous Peoples* and reconciliation, federal partnership with CCN on the navigation on Cedar Lake is a logical next step. In particular, we support the vision presented by Transport Canada on “what needs to change”, in particular, “Indigenous peoples need to play a greater role in administering navigation protections.” Partnership arrangements between Transport Canada and CCN could further support CCN jurisdiction on Cedar Lake. CCN wants to enhance the arrangements already in place (i.e., Comprehensive Forebay Agreement, co-management with Manitoba) and access new opportunities for training and management initiatives. CCN is pleased that Transport Canada has committed to supporting new partnership opportunities and providing, “funding to support agreements with Indigenous peoples who want to play a role in the navigation protection system”. CCN strongly urges Transport Canada to follow through on these commitments, and Cedar Lake is a prime testing ground for this.

As previously noted above, CCN recommends that Transport Canada, in connection to the new Act, develop an adequately funded mechanism for establishment of a partnership agreement that can be implemented to support CCN’s ongoing work of ensuring safe navigation on Cedar Lake. Through a Nation-to-Nation partnership, CCN’s seeks to achieve:

- A “partnership” that advances reconciliation, addresses historical wrongs and supports CCN’s inherent jurisdiction
- A “going forward” relationship in managing Cedar Lake, including:
  - Co-management of navigation on Cedar Lake;
  - Identification and management of cumulative effects; and
  - Environmental monitoring.
- Improved CCN access to potential training and/or funding opportunities for management of navigation on Cedar Lake.

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10 “The Canadian Navigable Waters Act will advance reconciliation and create new opportunities for Indigenous peoples to partner with Canada. For example, it will: enable partnership agreements with Indigenous groups to help monitor navigable waters, enforce the rules, and make decisions...” [https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/navigation-protection.html](https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/navigation-protection.html); “To support new partnership opportunities, Transport Canada would also: provide funding to support agreements with Indigenous peoples who want to play a role in the navigation protection system; provide training and support to Indigenous peoples that partner with Canada to enforce the Act in their traditional territories and jurisdictions.” [https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/navigation-protection.html](https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/navigation-protection.html). Accessed March 27, 2019.
CCN therefore recommends that Transport Canada develop policy and/or regulations specific to “Partnership Arrangements with Indigenous Nations” that include a provision for an immediate opt-in mechanism for First Nations that are already parties to existing Crown-First Nation arrangements where the First Nation has a recognized management role over navigable waters within their traditional territory.

9. Conclusion

CCN appreciates the opportunity to provide comment on implementation of the new CNWA. In general, CCN supports Transport Canada’s efforts to align the implementation of the CNWA with Canada’s path to reconciliation by increasing partnership with Indigenous peoples. To honor these commitments, we call upon Transport Canada to seriously consider, respond to, and incorporate our recommendations regarding implementation of the CNWA.

CCN looks forward to collaborating with Transport Canada to further develop these recommendations and building a partnership that builds upon CCN’s existing co-management arrangement for Cedar Lake. To discuss this submission with us further, please contact Chief Clarence Easter by email at chiefeaster@chemawawin.ca or by phone at (204) 329-2161.