



Fast

FACTS

CANADIAN CENTRE FOR POLICY ALTERNATIVES - MANITOBA

March 14, 2013

Nine Appeals and Seven Months Later

Manitoba Conservation and Water Stewardship is not living up to its name. Problems with the Environment Act, the environmental assessment, licensing and appeal process, and crown-indigenous nation relations become obvious in the case of the Daly Irrigation Development Group (DIGD) Environment Act License 3010, issued on July 5, 2012.

The next day, Water Licensing gave DIGD the go ahead to install irrigation equipment and to withdraw water from the Little Saskatchewan River to irrigate potatoes and other crops near Rivers, Manitoba.

Nine appeals of the decision to grant the licence were submitted to Minister Gordon Macintosh last August. Seven months later, the department still hasn't started its appeal review. The irrigation season will begin soon.

While the appeals are under review and awaiting ministerial/cabinet decisions, the irrigators can continue acting on licenses and permits. DIDG has installed irrigation equipment to take water from the River this spring. Appellants are worried that DIDG's monetary investment and the delay in the appeal process places significant political pressure on government to dismiss the appeals.

Local First Nations, who are part of Treaty 2, have put the Province on notice that, on this project, the constitutionally guaranteed and Supreme Court affirmed consultation and accommodation processes have yet to be honoured.

Environmental Licensing staff acknowledged the Crown's duty to meaningfully consult with First Nations and accommodate their rights in the summary report of the Environment Act public consultation process. Yet, they assert that adverse effects on surface water or habitat for wildlife or fisheries are not anticipated. They claimed that since resource use is not affected by the project, Crown- Aboriginal consultation is not required.

This assertion can't be justified. Although inadequate, Licence 3010 does contain provisions to mitigate harm to fish, wildlife, endangered species and their habitat. These very conditions are evidence that adverse effects are anticipated on the life in and around the River, which are Treaty 2 traditional lands. However, the licence puts DIDG's economic demands ahead of everything else.

The Little Saskatchewan River Conservation District appealed the licence. Their own government-approved Integrated Watershed Management Plan made the completion of an in-stream flow study of the River a priority before any development. That study hasn't been finished. Manitoba Fisheries also recommended that an in-stream flow study be done before any licences are issued.

Minister Macintosh gets his information from his assistants. In this case, the lead

there is an alternative.

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bureaucrat on the appeals is Assistant Deputy Minister of Climate Change and Environmental Protection Dan McInnis. During a December meeting with an appellant, McInnis advised that even if serious omissions in the license conditions were exposed the only outcome expected could be amendments to the licence. He made it clear that the license would not be pulled (quashed), while providing assurances that the appeal process was arm's length from a political ministerial decision. He admitted he was unfamiliar with the content of the appeals.

McInnis also confirmed that the same staff who conducted the project's environmental assessment and issued the licence, and those who granted permits under the Water Rights Act, would be reviewing the appeals and submitting a report to him. He would meet with them and report to the Minister, who would then make a decision.

Quashing this licence is a legal option for the minister in the Environment Act but will this be recommended when his main advisor has pre-judged the outcome of the appeals without knowing their content and he is relying on staff who are assessing their own decisions? This appeal process is fatally compromised. An objective assessment of the propriety of issuing the licence is not possible, similar to a judge hearing an appeal on his own ruling.

Also worrisome is the fact that after the December meeting it was discovered that at least one appeal had disappeared. While it was resubmitted directly to McInnis, had the appellant not been persistent in finding out who was responsible for receiving appeals before a decision had been made the substantive issues and evidence provided in that appeal would not have been known, let alone considered. It was only then that McInnis committed to personally review the content of all the appeals. Have other appeals also gone missing?

Clearly, the legal right to appeal under the Environment Act has been administratively

thwarted in order to prevent independent scrutiny and review of bureaucrat decisions.

There's more. The Water Rights Act guarantees any person who is affected by an order or decision the right to appeal departmental decisions taken on behalf of the minister to the Municipal Board. Yet, a public appeal of the DIDG development permits was rejected by the Board, who claim its policy confers this right exclusively to developers. Only DIDG could appeal if they thought the Department's decision interfered with their economic interests. If the public, residents, or First Nations anticipate injury, appeals to the Municipal Board have been eliminated by the Board's unilateral interpretation of the Act.

Conservative Party Leader Brian Pallister and MLA Leanne Rowat have said it is not appropriate for them to comment on a matter under appeal. They dismissed a further appellant request for help with these problems by referring them to the Minister.

Premier Selinger, too, after having been apprised of the same problems, including the pre-judged appeal outcome and having been urged to fulfill his duty to Treaty 2 First Nations, referred all matters to the Minister. This, despite having been reminded that he and cabinet had an equally important role to play in the appeal process. Cabinet is legally required to review the Minister's decision on appeal and can support, modify or overrule him.

Will Macintosh, Selinger and cabinet fix the fatally flawed system, consult with Treaty 2 First Nations and make the right decision based on an independent assessment of the project, licence and appeals? Will they put environmental protection ahead of corporate profits?

Ruth Pryzner operates an ecological family farm in the RM of Daly

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