



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de la
Conférence du désarmement

Note No.: YTGR0190

Reference: Response to the Special Rapporteur on the Rights of Indigenous Peoples

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit to the Special Rapporteur on the Rights of Indigenous Peoples Canada's response to his letter of 12 February 2013.

The Permanent Mission of Canada to the Office of the United Nations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 23 April 2013.



RESPONSE OF CANADA TO THE LETTER OF REQUEST FROM THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES REGARDING THE SITUATION OF RESIDENTS OF THE LAKE ST. MARTIN FIRST NATION

1. INTRODUCTION

By way of letter dated 12 February 2013, the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, advised Canada of information he had received concerning the situation of certain members of the Lake St. Martin First Nation.

In response to the information received, the Special Rapporteur requested the following information:

- Views on the accuracy of the information by the Special Rapporteur;
- Specific measures that have been taken by the Federal and Manitoba governments to address the Lake St. Martin First Nation members' requests regarding the location of their new permanent reserve, and specifically their request to move to "Site 9"; and
- Information regarding any food, education, health and housing assistance programs, as well as culturally appropriate counselling services, which are available to the First Nations communities in Manitoba that were evacuated in May 2011.

This response provides pertinent background information relating to the situation of the evacuated members of Lake St. Martin First Nation, as well as responses to the specific questions posed by the Special Rapporteur. This response to the letter from the Special Rapporteur focuses primarily on the situation of the Lake St. Martin First Nation, though some general information is also provided regarding other First Nations affected by the flood of 2011.

2. BACKGROUND

Lake St. Martin First Nation

Lake St. Martin First Nation has a membership of approximately 2400 people. The First Nation conducts its elections in accordance with the election provisions of the Indian Act and is governed by an elected council, consisting of a chief and six councillors.

Lake St. Martin First Nation – Reserve Lands

Over time Canada has set aside two parcels of reserve land, for a total of 3595.30 hectares, to be held for the use and benefit of Lake St. Martin First Nation. That reserve land is located in an area of the province of Manitoba known as "the Interlake." This is a large geographical area of many lakes and rivers, situated between the two largest lakes in the province; Lake Manitoba and Lake Winnipeg.

Until recently, approximately 1400 of the 2400 members of Lake St. Martin First Nation lived on the First Nation's reserve lands, and particularly on a parcel known as The Narrows 49, which is located approximately 225km northwest of the City of Winnipeg, also in the Province of Manitoba.

Flood Control Works in Manitoba's Interlake

Portions of the Province of Manitoba are prone to flooding, and over time the government of Manitoba has constructed and operated various flood control works in response to that flooding.

In 1955, the shoreline areas of Lake Manitoba experienced severe flooding. In response, the government of Manitoba built the Fairford River Water Control Structure (FRWCS), which was completed in 1961. The purpose of this Water Control Structure was to regulate the level of Lake Manitoba by controlling the amount of water flowing from Lake Manitoba into its only outlet, the Fairford River; the Fairford River flows east into Lake St. Martin, which in turn drains into the Dauphin River, which itself empties into Lake Winnipeg.

In 1970, the government of Manitoba completed another flood control work: the Portage Diversion. The Diversion is located in southern part of Manitoba near the City of Portage La Prairie. The Diversion forms part of the flood protection system for the City of Winnipeg, by allowing for the diversion of water from the Assiniboine River into Lake Manitoba. By way of context, the City of Winnipeg (population 760,000) is home to the largest concentration of people in Province of Manitoba (population 1,250,000).

A map illustrating the approximate locations of the flood control works is attached as Annex 1.

Over the years since the construction of the Fairford River Water Control Structure in 1961 and the Portage Diversion in 1970, the people of Manitoba, including residents of First Nations reserve lands, have experienced times of both low water and high water. The impacts of the operation of these flood control works have been the topic of litigation, as well as ongoing discussions, between various First Nations, Manitoba and Canada. Lake St. Martin First Nation filed a Statement of Claim for alleged flooding damages against the government of Manitoba and the Attorney General of Canada in 1999, and with the assistance of a team of legal counsel and other advisors continues to pursue that litigation, as well as discussions with the government parties.

The Flood of 2011

While in any given year, any part of Manitoba can experience high water, 2011 was an unusual year.

In the spring of 2011, water levels were high in many parts of the province of Manitoba, including areas along the Assiniboine River and around Lake Manitoba. Ultimately, flooding did occur in several parts of the province, and the result has been described by some sources as a "once-in-350 year" flood. Flood control works, including the Fairford River Water Control Structure and the Portage Diversion, were operated in an attempt to manage the high water levels, and in the summer of 2011, an emergency outlet channel was built to allow water to drain more quickly from Lake St. Martin into Lake Winnipeg.

Evacuations were carried out in several communities as they began to experience flooding. Some First Nations communities were evacuated from their reserve lands, including Lake St. Martin First Nation, but there were also other non-First Nation communities who had to be evacuated.

Eventually, water levels in Manitoba did decrease. By the fall of 2012, water levels on both Lake Manitoba and Lake St. Martin were back to below flood-stage levels.

3. RESPONSE TO THE FLOOD OF 2011

Emergency Response and Evacuation

General preparations began in January of 2011 in response to forecasts indicating that significant flooding was likely to occur in Manitoba in the spring of 2011. Government officials started working with First Nations, including Lake St. Martin First Nation, to develop emergency plans in anticipation of the flooding.

In March 2011, Lake St. Martin First Nation received government funding to support flood protection activities on their reserve lands. By May 2011, a total of approximately CAD \$2.0 Million in grants and accountable advances had been provided to the Lake St. Martin First Nation to assist with the First Nation's flood preparations.

In early May 2011, high waters began to affect road access to portions of Lake St. Martin First Nation's reserve lands, and the First Nation evacuated 424 people from its lands, with the support of the governments of Canada and Manitoba.

By the end of May 2011, the First Nation had evacuated a further 163 people.

In total, the First Nation evacuated 1057 people from its reserve lands, which represents approximately 180 households. Not all of these 1057 people were evacuated because their homes were directly affected by high water; some were evacuated because they could not access their homes, and others because some of the infrastructure on reserve lands was not being operated by the First Nation.

Housing of Evacuees

At the time of their evacuation, some of the members of the Lake St. Martin First Nation were initially provided with temporary housing in the City of Winnipeg. Contrary to the information received by the Special Rapporteur, only 98 out of the 1057 evacuees are currently housed in hotel rooms. The majority of the evacuees from Lake St. Martin First Nation are now housed in private accommodations, for which government funding support is provided. These accommodations include rental properties and family homes, some of which are in the City of Winnipeg.

As to the temporary housing near the First Nation's reserve lands, after the evacuation had begun in May 2011, the First Nation's council proposed that an interim village be constructed for evacuees until arrangements were made for permanent housing. The government of Manitoba and the First Nation's council together chose as an interim village site a former Canadian Forces radar base near Gympsumville, Manitoba, approximately 33km from the First Nation's reserve lands, and housing acquired by the government of Manitoba. However, after construction of housing on the site had begun, the First Nation's council withdrew their support for this site. Construction of the interim village was completed in early 2012, and rent-free accommodations at this interim village continue to be provided to flood evacuees who wish to live there. Contrary to the information received by the Special Rapporteur, snakes do not infest the area where the houses are located in the interim village near Gympsumville, Manitoba. There is a native species of snake, the Red-Lined Garter Snake, which lives in Manitoba's Interlake: it is small, non-venomous, and entirely harmless to humans. At certain points in the year, these snakes will gather in large numbers in their denning areas, none of which are located in the interim village.

Education for Evacuated Children

The provision of education for evacuated children has been an ongoing priority for all involved levels of government, who have been working together since the evacuation to establish ongoing educational opportunities and support for the students at a location that is safe, culturally appropriate, and conducive to learning. Funding support has been provided for Lake St. Martin First Nation for the lease of appropriate school facilities, as well as lunch programs, after-school programming, and student transportation.

Benefits for Evacuees

The Special Rapporteur has requested information regarding the assistance programs provided to the members of Lake St. Martin First Nation, and particularly those regarding food, health and housing.

It is important to distinguish between assistance programs which are triggered by an evacuation, and those which are triggered by the personal circumstances of an individual (regardless of their evacuation status):

- Where an evacuation has taken place, programs are available for people who have been evacuated. Services include assistance for shelter, meals, and an emergency daily living allowance in support of additional personal costs related to the evacuation. And in this case, we can advise that Lake St. Martin First Nation has also been funded to provide counselling services to its evacuated members; and
- Whether or not an evacuation has taken place, there are social assistance programs available for people who meet certain eligibility requirements, such as financial need. Specific benefits can include basic assistance for food, clothing, and household expenses, as well as specific assistance for items such as work clothing, therapeutic diets, and infant formula.

With respect to the emergency daily living allowances provided to people who were evacuated as a result of the flood of 2011, it is important to clarify the “emergency” aspect of such an allowance: in the early days of evacuations across Manitoba, these allowances were provided at a level that recognized that the situation of evacuees was not stable and more support was required. Since this time, while the situation of the remaining evacuees – including the evacuated members of Lake St. Martin First Nation – is less than ideal, it has stabilized. People who continued to be evacuated now have more stable interim accommodation, and the allowance was reduced to reflect that the situation is no longer one of emergency. The daily living allowances for evacuees at this recovery stage are to allow for compensation for incidental expenses incurred by individuals as a result of still not living in their former homes or other more permanent new homes. They are not intended to cover the costs of all living expenses. Many evacuees have other sources of income, including work, and those who are eligible can still avail themselves of non-emergency social assistance programs that provide help with living expenses.

It should be noted that some of the members of Lake St. Martin First Nation (166) who had been receiving evacuee benefits were later found to be ineligible for those benefits: they were not living on reserve at the time of the evacuation.

Also, it is important to highlight that any changes made to the level of evacuee benefits had no impact on the eligibility of an evacuee for other social assistance benefits (such as Income Assistance), and would not have resulted in a reduction of those benefits.

4. A LONG TERM SOLUTION FOR THE MEMBERS OF LAKE ST. MARTIN FIRST NATION

Significant work has been undertaken since the flood of 2011 to explore options for long-term solutions for affected communities in Manitoba, including Lake St. Martin First Nation.

- On May 24, 2011, Canada and Manitoba issued a joint statement indicating that they would work with First Nations affected by the flooding on a variety of issues, and agreed to:
 - Raise protective dikes and to support adequate ongoing pumping capacity
 - Establish suitable temporary housing for evacuated families
 - Fund a two-phase study to immediately determine whether the present location of Lake St. Martin First Nation is viable in the long term, and to assess long term flood mitigation alternatives for communities on Lake St. Martin
 - Repair or replace all flood-damaged houses
 - Restore road access to Dauphin River First Nation
 - Establish a housing trades apprenticeship training program as requested by Lake St. Martin First Nation and in accordance with existing program models
 - Negotiate fair compensation for affected communities through a modern formal tripartite agreement on flooding and damages related to the operation of the FRWCS
- In July 2011, Canada appointed a Minister's Special Representative to investigate the flooding in the Lake St. Martin basin and how the operation of the Fairford River Water Control Structure may have contributed to the flooding issue. The Minister's Special Representative submitted his final report on December 15, 2011.
- On December 16, 2011, it was announced that the Minister's Special Representative would be appointed as Chief Federal Representative to dialogue with the Province of Manitoba, the Lake St. Martin, Little Saskatchewan, Pinaymootang, and Dauphin River First Nations to explore possible options for long-term solutions to flooding and the restoration of their communities.
- On April 10, 2013, Minister Valcourt met with the Chiefs of the Lake St. Martin and Little Saskatchewan First Nations respectively; Chief Federal Representative, Sid Dutchak; and, Minister Eric Robinson of Manitoba Aboriginal and Northern Affairs to discuss issues surrounding the 2011 Manitoba Flood, and affirm the continued commitment to work together toward a resolution. This group also participated in a helicopter tour of flood affected areas including the Lake St. Martin and Little Saskatchewan First Nation communities, the Provincial Evacuation Site and the Emergency Channel.

As for Lake St. Martin First Nation, throughout 2011 and the earlier part of 2012, the First Nation, Manitoba, and Canada continued to meet to discuss emergency measures, flood protection activities, assistance for

evacuees, and plans for the future. Beginning in April of 2012, these discussions continued as a more formal, but confidential, process.

New reserve lands for Lake St. Martin First Nation

The letter from the Special Rapporteur indicates that the members of Lake St. Martin First Nation wish to move to land known as "Site 9." Because the First Nation, Manitoba and Canada are currently engaged in confidential discussions, it is not possible to respond directly to this assertion. However, it can be said that in those discussions Lake St. Martin First Nation receives funding support from both Manitoba and Canada, and is represented not only by its chief and council, but also by legal counsel and other advisors.

CONCLUSION

The governments of Canada and Manitoba responded to the flood of 2011 with a view to assisting both individual evacuees from all evacuated communities, and assisting leaders of affected communities.

This submission focuses particularly on the situation of the members of Lake St. Martin First Nation who were evacuated from their reserve lands in 2011. Canada trusts that this information provided in response to the request by the Special Rapporteur has assisted in providing clarity, and that it is understood that the First Nation, Manitoba and Canada continue to work together to find long term solutions for the affected people.

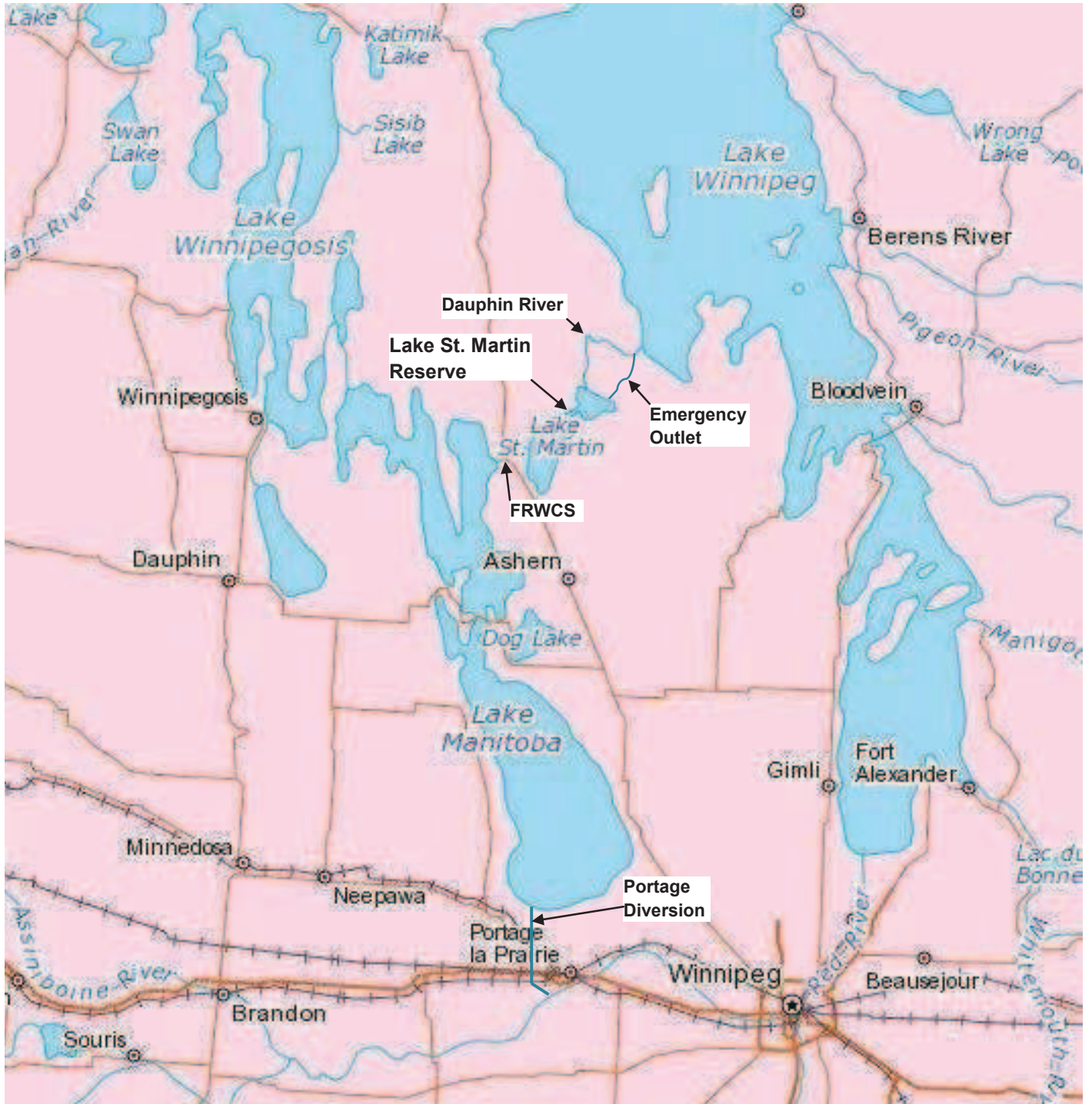
Canada remains available to provide additional information to the Special Rapporteur should he request it.

Ottawa
April 19, 2013

Annex:

Annex 1 – Map illustrating locations of certain flood control works in Manitoba.

Annex 1



Note: All locations are approximate and map is for illustration purposes only.