

Appendices No. 6 PFRA & WED Breach of the Canadian Constitution

The Government of Canada is Constitutionally bound to be; “At Arms Length” of Municipalities of a Province. The below is where Canada crossed this line.

We don't do this sort of thing in this great country, Canada.

The below tells the story.

From: Godin,Jeannette [Edm] [Jeannette.Godin@EC.gc.ca]
Sent: Wednesday, June 08, 2005 10:24 AM
To: Clifton, Paul
Subject: RE: Mr. Vollmershausen - I'm Seeking To Confirm
Sensitivity: Personal

Good morning, Mr. Clifton: Your e-mail message and attachment sent June 7 have been received by both Jim Vollmershausen and myself.

Jeannette Godin
Environment Canada
Edmonton

-----Original Message-----

From: Clifton, Paul [mailto:peclifton@hydro.mb.ca]
Sent: June 7, 2005 7:52 AM
To: Vollmershausen,Jim [Edm]; Godin,Jeannette [Edm]
Cc: Neggersc@agr.gc.ca; Dion,Stéphane [NCR]
Subject: Mr. Vollmershausen - I'm Seeking To Confirm
Sensitivity: Personal

Manitoba Project EA File No. 4967.0

Good Morning Mr. Vollmershausen and Ms. Godin

I am seeking to confirm that the attached letter to your Minister was forwarded to the Regional office of Environment Canada for permanent record. Specifically, did Prairie and Northern Region receive copy of this letter? Secondly, could EC provide me your file copy of Minister Anderson's reply to this letter?

Because of the importance of this request, please ASAP acknowledge receipt of this transmission.

<<Anderson Minister of EC February 22, 2003.pdf>>

Regards Paul Clifton

From: Neggers, Carl [neggersc@AGR.GC.CA]
To: Clifton, Paul
Sent: Tuesday, June 07, 2005 9:31 AM
Subject: Read: Mr. Vollmershausen - I'm Seeking To Confirm

Your message

To: neggersc@AGR.GC.CA
Subject:

was read on 6/7/2005 9:31 AM.

February 22, 2003
Paul Clifton
Group 5 Box 16 RR #1
St. Norbert, Mb. R3V 1L2

Mr. David Anderson, P.C., M.P.
Minister of the Environment, Canada
Ottawa, Canada K1A 0H3

Re: Manitoba Red River Flood Protection of the City of Winnipeg

Dear Minister Anderson:

I write to you on two matters relating to Red River flooding and flood protection of the City of Winnipeg.

1. Revised Operating Rules for the existing Floodway and,
2. Floodway Enhancement Study, currently before Canada for a funding commitment.

Firstly, I wish to bring to your attention that recommended changes to the Operating Rules (Rules) for the Red River Floodway were procured. This procurement then allowed Manitoba on December 19, 2000 by way of letter to your Director General, Mr. Jim Vollmershausen to seek Federal approval per the 1962 Greater Winnipeg Floodway construction agreement.

Secondly, I will detail that the subsequent representation from Manitoba by way of the Nov. 2001 KGS Group, Flood Protection Studies for Winnipeg (Proposal), the Enhanced Floodway Project with an estimated cost of \$660 M was submitted to Canada for a funding commitment. This given that the Federally approved Operating Rules approved on April 26, 2001 became the basis to which the proposal would measure and quantify damages from operation of the Floodway.

Mr. Anderson, the public record that I have obtained through Federal Access to Information Act requests and Provincial Freedom of Information and Protection of Privacy Act requests is extensive. Often obtained after complaints to The Information Commissioner of Canada and the Manitoba Ombudsman and detail a record trail and serious breach of trust by many and include: The Government of Canada, through PFRA Manitoba, the Province of Manitoba by Intergovernmental Affairs and the Provincial Water Branch, the City of Winnipeg by the Water and Waste Department and the Municipality of Ritchot by its Reeve.

The enticement of the Municipality of Ritchot by Canada had followed leveraging by the City of Winnipeg of the Director of PFRA. Canada and Manitoba then partnered with the Municipal in the cost shared funding of Rural Municipal Water Pipelines for Ritchot starting at the northern reach of the Municipality, or the Floodway Inlet area.

Through this arrangement Manitoba sought and received your approval validating some ten feet of artificial flooding at the Inlet for extreme floods and without the negotiated right to do so. I hope and suspect that your approval was granted without your knowledge of such a deal.

This breach has been by partnered by among others, the Manitoba Director of Agriculture and Agri-Food Canada - PFRA Manitoba, Mr. Erminio Caligiuri. The Manitoba Director of the Provincial Water Branch, Mr. Steve Topping. The Director of the City of Winnipeg Water and Waste Department, Mr. Barry MacBride and the Mayor of the Rural Municipality of Ritchot, Mr. Robert Stefaniuk.

This validation of revised operating rules was then carried forward by Manitoba, the City of Winnipeg and Canada through the Proposal Steering Committee, Chairman, Mr. L. Whitney formally with Manitoba Conservation, Mr. A. Vermette for PFRA Manitoba and Mr. D. McNeil of the City of Winnipeg. Thus the proposal presently before the Government of Canada by Manitoba is tainted by the breach of trust that is assuredly immoral and quite likely illegal.

Mr. Anderson you need to immediately conduct a fact-finding mission through your local Regional Director General in Edmonton, and PFRA Director General in Regina. Another source to validate my claim is likely the Information Commissioner of Canada, who has undertaken extensive adjudication of my complaints against the two Federal ministries.

You then must advise the Premier of Manitoba that he must undertake full and complete study of the very serious problem of Red River Valley flooding. You both must undertake and ensure a basin wide flood protection study as recommended by the International Joint Commission. You need to remind Premier Doer, that nothing less than a fully inclusive participation by all interested stakeholders will do in allowing for enhanced Manitoba flood protection.

The Canadian Environmental Assessment Act, requires and demands as validated by successful Court actions by others against Environment Canada, that should Canada fund a project they must also mitigate any projects adverse effects that are likely to occur. The present offer by Manitoba to "Legislate Compensation" will not stand a Court test under CEAA should Canada intend to "steam roll" a plan such as Manitoba would wish.

I would be only to glad to share and detail the public record with any Federal employee not listed above, in an effort to put this very difficult and complex issue to rest. Please advise of your intended remedy given the above and for now I thank you in advance of your actions.

Yours truly,

P.E. Clifton

EnvCan\030222.1L

-----Original Message-----

From: Pagtakhan, Rey D. - M.P. [SMTP:Pagtakhan.R@parl.gc.ca]
Sent: Monday, May 10, 2004 11:09 AM
To: paul clifton
Subject: RE: Federal Misconduct - Red River Level Control in Manitoba

Hello,

This is to acknowledge the receipt of your email dated May 6th, 2004.

Thank you for your cooperation.

-----Original Message-----

From: paul clifton [mailto:pclifton@mts.net]
Sent: May 6, 2004 6:26 PM
To: 'rey.pagtakhan@wed.gc.ca'; Pagtakhan, Rey D. - M.P.
Cc: 'david.anderson@ec.gc.ca'; Scott, Andy - M.P.; Owen, Stephen - M.P.
Subject: Federal Misconduct - Red River Level Control in Manitoba

Second attempt to send.

Regards

-----Original Message-----

From: paul clifton [SMTP:pclifton@mts.net]
Sent: Thursday, May 06, 2004 5:22 PM
To: 'rey.pagtakhan@wed.gc.ca'; 'Pagtakhan.R@parl.gc.ca'
Cc: 'david.anderson@ec.gc.ca'; 'scott.a@parl.gc.ca'; 'owen.s@parl.gc.ca'
Subject: Subject: Federal Misconduct - Red River Level Control in Manitoba

Manitoba File 4967.00 / WED

Mr. Pagtakhan

For expediency, I provide this electronic correspondence to you as the current Minister of Western Economic Diversification (WED), copy to David Anderson as Minister of the Environment. Additionally I copy the Minister of State (Infrastructure) and Minister of Public Works and Government Services. I request that each named Minister as a courtesy immediately acknowledge receipt of this message.

I attach copy of a facsimile dated September 14, 2003 sent to the then Deputy Minister of WED Manitoba that has to date not been fully responded to. It is my understanding that this facsimile was immediately forwarded by Mr. Buffie when received to HQ in Ottawa. Ottawa then sent same to WED HQ in Edmonton and that is where the record has gone cold.

Mr. Pagtakhan, I am requesting if not demanding that immediate and focused attention is given to reply to points 2 and 3 of the facsimile. Advise when I may view the financial records of Canada's complete funding contributions to Manitoba under the May 1, 1997 agreement on Red River Valley Flood Protection program. As well, advise when I may expect Canada's earliest written and complete reply to my question Number 3.

All of the above is respectfully submitted.



ADM Buffie. WED
03 09 14.doc

Regards

PE Clifton
852 Red River Drive
Howden, Mb R5A 1J4

paul clifton

From: "paul clifton" <pclifton@mts.net>
To: <Jim.Vollmershausen@EC.gc.ca>; <neggers@agr.gc.ca>
Sent: Sunday, September 14, 2003 10:18 PM
Attach: FAXCOV~1.DOC
Subject: Copy of Request for WED Records

My File 4967.00 WED

Gentlemen

I provide for your information and record, request for documentation from the federal department of Western Economic Diversification. This following receipt of requested records under the Access to Information Act for document previously sheltered under Privy Council, 69 (1) certificate . This record had been improperly withheld by Canada since 2000, simply to limit further enquiry by me. The Information Commissioner of Canada has assisted me in this matter.

Regards

PE Clifton

FAX

To: Mr. Orville Buffie
Assistant Deputy Minister
Western Economic Diversification
250-240 Graham Avenue
Winnipeg, MB R3C 1A5

Fax: (204) 983-0966

xc: J. Vollmershausen, RDG P/N-EC
C. Neggers, DG – A&AFC, PFRA

Pages Two

From: Paul Clifton, Group 5 Box 16 RR#1 Howden, Mb. R3V 1L2

Date: 03 09 14

Facsimile: (204) 275-8142

Re: Request for Privy Council References – Red River Valley Flood Protection

My File No: 4967:00 WED

Mr. Buffie

On May 1, 1997 Canada and Manitoba had signed an agreement committing themselves in principal to cooperate in a number of specific actions on flood response, one of which was development of a long-term plan outside of the Disaster Financial Assistance Arrangements for improved diking and flood proofing in the Red River Valley.

Cabinet has since 1997 approved a total of \$65 million federal toward two phases of a federal-provincial flood protection program (\$15 M in phase 1 which ended in March 31, 1999, and \$50 M for phase 2 which terminated in March 31, 2003.)

Please provide the following:

1. Privy Council numbers or orders for respective expenditures, dates of these orders and corresponding Provincial Order in Council numbers accepting these funds if available.
2. Advisement when I or my delegate may scrutinize, on a line by line basis, the \$15 M and \$50 M expenditures.
3. Advisement on how federal monies from this Western Economic Diversification funding, was directed into the Federal, Provincial and Municipal projects: Rural Municipality of Ritchot - Water Supply Pipeline, Projects; MWSB No. 701 or MWSB 715, administered by the Provincial Department on Intergovernmental Affairs and it's Water Services Board.

June 18, 2005

Mr. Assistant Deputy, because of the pending deadline for public comment on the Manitoba proposal for Red River Floodway Expansion, closing on October 14, 2003 , I require reply by October 1, 2003.

Regards

PE Clifton

Hi Mr. Clifton,
Yes I have received your email correspondence.
Thanks
Patrick

Patrick Cherneski, M.Sc.
Executive Assistant / Adjoint exécutif
Office of the Director General / Bureau du Directeur général Agriculture & Agri-Food Canada - PFRA / Agriculture
et Agroalimentaire Canada - ARAP
Telephone / Téléphone: 306.780.3133 Fax / Télécopieur: 306.780.6533
408-1800 Hamilton Street / 408-1800, rue Hamilton
Regina, Saskatchewan S4P 4L2
cherneskip@agr.gc.ca

-----Original Message-----

From: Clifton, Paul [mailto:peclifton@hydro.mb.ca]
Sent: Monday, May 16, 2005 11:39 AM
To: Cherneski, Patrick
Cc: Jim.Vollmershausen@EC.gc.ca; jeannette.godin@EC.gc.ca; Marilyn.kapitany@wd.gc.ca
Subject: RE: [Fwd: Re: Mr. Minister -- As Advised Further Attachments for the Public Record!]
Sensitivity: Personal

Manitoba EA Project File No. 4967.00

Good Afternoon Mr. Cherneski

I send this correspondence to you from remote and isolated Manitoba, via my Corporate system by necessity.

I seek conformation that you are in receipt of the below e-mail correspondence that was sent to Minister of the Environment, The Hon Stéphane Dion and CC'd to you. I am not asking whether you are in agreement with it's content, but that you are simply in receipt of the transmission.

Regards

PE (Paul) Clifton
pandmax@mts.net

>
> From: "paul clifton" <pclifton@mts.net>
> Date: 2005/05/15 Sun AM 01:10:30 CDT
> To: "paul clifton" <pclifton@mts.net>, <stephane.dion@EC.gc.ca>
> CC: "Vollmershausen,Jim [Edm]" <Jim.Vollmershausen@EC.gc.ca>, <neggersc@agr.gc.ca>, <Grady.Keith@infrastructure.gc.ca>, <owensl@parl.gc.ca>, <marilyn.kapitany@wd.gc.ca>, <Mills.B@parl.gc.ca>, "Mills, Bob - Assistant 1" <MillsB0@parl.gc.ca>, <John_Bertrand@cbc.ca>, <gerald.flood@freepress.mb.ca>, <paul.samyn@freepress.mb.ca>, <pandmax@mts.net>
> Subject: Re: Mr. Minister -- As Advised Further Attachments for the Public Record!
>
> Minister Dion and Others:
>
> My last attachment for now, is an e-mail to PFRA HQ, Regina SK cc to Environment Canada's Regional HQ, Edmonton AB. At the bottom of the page is an active link to Manitoba Legislative Hansards of June 7, 2004
> Committee hearings on Bill 23 - The Red River Floodway Act.

>
> Within, all please find the detail by "Paul Clifton" at the 9Min. 30 Sec. Of a ten minute representation, detail of
> the Breach of the Canadian Constitution through past actions of the former Director of PFRA Manitoba.
> This Director has since been removed from his Directorship for cause, and has retired.
>
> Mr. Grady please acknowledge receipt of this transmission.
>
> Regards
>
> PE (Paul) Clifton
>
>
> ----- Original Message -----
> From: "paul clifton" <pclifton@mts.net>
> To: <stephane.dion@EC.gc.ca>
> Cc: "Vollmershausen,Jim [Edm]" <Jim.Vollmershausen@EC.gc.ca>; <neggersc@agr.gc.ca>; "Grady, Keith"
> <Grady.Keith@infrastructure.gc.ca>; <owens1@parl.gc.ca>; <marilyn.kapitany@wd.gc.ca>;
> <Mills.B@parl.gc.ca>; > "Mills, Bob - Assistant 1" <MillsB0@parl.gc.ca>; "John Bertrand"
> <John_Bertrand@cbc.ca>; <gerald.flood@freepress.mb.ca>; <paul.samyn@freepress.mb.ca>;
> <pandmax@mts.net>
> Sent: Saturday, May 14, 2005 11:22 PM
> Subject: Fw: Mr. Minister -- As Advised Further Attachments for the Public Record!
>
>> Minister Dion and Others:
>>
>> As noted below, now my second transmission complete with five attachments. Mr. Grady, please advise of
>> receipt of this complete transmission.
>>
>> Regards
>>
>> PE (Paul) Clifton
>> 852 Red River Drive
>> Howden, MB R5A 1J4
>>
>> Phone (204) 269-7760
>>
>> ----- Original Message -----
>> From: "Grady, Keith" <Grady.Keith@infrastructure.gc.ca>
>> To: <pclifton@mts.net>
>> Sent: Friday, May 13, 2005 10:40 AM
>> Subject: RE: Mr. Minister -- Where Is The Money From?
>>
>>
>> Paul
>> Transmission received. Thank you. K
>>
>> Keith Grady
>> Senior Environmental Coordinator/
>> Coordonnateur principale en environnement
>> Infrastructure Canada
>> 613-954-1372 / grady.keith@infrastructure.gc.ca
>> facsimile/télécopieur 613-946-9888
>>
>> -----Original Message-----
>> From: pclifton@mts.net [mailto:pclifton@mts.net]

>> Sent: May 13, 2005 11:09 AM
>> To: stephane.dion@EC.gc.ca
>> Cc: Jim.Vollmershausen@EC.gc.ca; neggersc@agr.gc.ca; Grady, Keith; > owens1@parl.gc.ca;
>> marilyn.kapitany@wd.gc.ca; Mills.B@parl.gc.ca; MillsB0@parl.gc.ca; john_bertrand@cbc.ca;
>> gerald.flood@freepress.mb.ca; paul.samyn@freepress.mb.ca; pandmax@mts.net
>> Subject: Mr. Minister -- Where Is The Money From?
>>
>>>
>>> Transmission less attachment, Mr. Grady please confirm receipt of this
>>> transmission. Regards Paul
>>>
>>>
>>> Minister Stéphane Dion, and Others:
>>>
>>> It appears that Canada is intent in funding their way around proper governance in Canada, this also and
>>> especially being the case in Manitoba. I provide a supplementary attachment for your record and
>>> action, with further transmissions to follow.
>>>
>>> My second transmission, will be complete with further details of the Breach of the Canadian Constitution by
>>> Canada. This as it relates to the Canadian Federal Government supposedly being at Constitutional arms
>>> length to Municipalities of a Province, and in this case, the Rural Municipality of Ritchot.
>>>
>>> There is a long and detailed trail of disclosure made to Canada or it's servants of Canada in this regard, again
>>> formally on or about April 22, 2003 with no favorable resolution. Further more, PM Paul Martin on or
>>> after February 29, 2004 when formally advised of the brutalization of ten Manitoba families of Canadians, as a
>>> direct result of Canada's partnered actions, and was incapable of proper and appropriate resolution.
>>>
>>> All of this further validating the need for political removal of all Ministers or servants of the Crown, including
>>> PM Dithers Martin, who are unwilling or unable to protect minority rights under the Canadian Constitution of
>>> our great country.
>>>
>>> Regards
>>>
>>> PE (Paul) Clifton
>>> 852 Red River Drive
>>> Howden, Manitoba R5A 1J4
>>>
>>> Phone (204) 269-7760
>>>
>>>>
>>>> From: <pclifton@mts.net>
>>>> Date: 2005/05/10 Tue PM 06:00:09 CDT
>>>> To: <Stephane.Dion@EC.gc.ca>
>>>> CC: <Jim.Vollmershausen@EC.gc.ca>, <neggersc@Agr.gc.ca>
>>>> Subject: Mr. Minister -- Where Is The \$ 27 M From??
>>>>
>>>> Manitoba EA Project No. 4967.00
>>>>
>>>>
>>>> Winnipeg Free Press Disclosure - \$ 27 Million to Final Floodway
>>>> Engineering Design!!!
>>>>
>>>> Minister Dion, I don't what to rain on anyone's parade, though I will if necessary. Is the \$ 27 M announced
>>>> for final Floodway design a fact, and is a penny of it federal dollars?
>>>>

>>>> Does this recent public posturing by the Treasury Board President Minister Reg Alcock not fly in the face of
>>>> the ongoing Canada / Manitoba environmental assessment of the Floodway Expansion project? I don't
>>>> threaten but this has got to be fixed in advance of major joint funding and not steam rolled in Manitoba.
>>>> Please advise as to whether Infrastructure Canada monies are now into this project. If not, are any portion of
>>>> the \$ 27 M from another Canadian government source?

>>>>

>>>> The Environment Minister's signature of April 26, 2001 after Federally lead misconduct has come home to
>>>> further haunt us sir. What will you be doing to make it right?

>>>>

>>>>

>>>> Regards

>>>>

>>>> PE (Paul) Clifton

>>>>

>>>>

>>>>> -----Original Message-----

>>>>> From: pclifton@mts.net [mailto:pclifton@mts.net]

>>>>> Sent: Wednesday, May 04, 2005 2:01 PM

>>>>> To: Clifton, Paul

>>>>> Subject: [Fwd: Response to your e-mail]

>>>>>

>>>>>

>>>>>>

>>>>>> From: Dion,Stéphane [NCR] <Stephane.Dion@ec.gc.ca>

>>>>>> Date: 2005/05/04 Wed AM 10:38:36 CDT

>>>>>> To: <pclifton@mts.net>

>>>>>> Subject: Response to your e-mail

>>>>>>

>>>>>> Mr. Paul Clifton

>>>>>> pclifton@mts.net

>>>>>>

>>>>>> Dear Mr. Clifton:

>>>>>>

>>>>>> Thank you for your e-mail of December 24, 2004, concerning flood damage from the 1997 Red River
>>>>>> flood. As you already know, the resolution of this matter falls under the jurisdiction of the Province of
>>>>>> Manitoba. With respect to the current environmental assessment of the proposed Winnipeg floodway
>>>>>> expansion project, the Departments of Infrastructure Canada and Fisheries and Oceans Canada are
>>>>>> the responsible federal authorities, as defined under the Canadian Environmental Assessment Act.

>>>>>>

>>>>>> I have therefore, forwarded a copy of your e-mail to my colleagues, the Honourable John Godfrey,
>>>>>> Minister of State (Infrastructure and Communities), and the Honourable Geoff Regan, Minister of
>>>>>> Fisheries and Oceans, for their information and consideration.

>>>>>>

>>>>>> I appreciate your taking the time to write.

>>>>>>

>>>>>> Yours sincerely,

>>>>>>

>>>>>>

>>>>>> Original signed by:

>>>>>>

>>>>>>

>>>>>> Stéphane Dion

>>>>>>

>>>>>>



Public Works and
Government Services
Canada

Travaux publics et
Services gouvernementaux
Canada

Canada

Français	Contact Us	Help	Search	Canada Site
Search GEDS		FAQ		HOME
			3	8
			0	2
			6	1

Patrick L Cherneski

Executive Assistant to the Director General

Agriculture and Agri-Food Canada
Director General's Area

1800 HAMILTON ST

REGINA, Saskatchewan
Canada

S4P 4L2

Telephone:

(306) 780-3133

Fax:

(306) 780-6533

X.400:

/C=CA/ADMD=GOVMT.CANADA/PRMD=GC+AGR/O=W/S=Cherneski/G=Patrick
C=CA;ADMD=GOVMT.CANADA;PRMD=GC+AGR;O=W;S=Cherneski;G=Patrick

Internet: cherneskip@agr.gc.ca

Mail System: GroupWise

Word Processor: WordPerfect

Creation Time: 2004-07-20 05:32:13

Last Modified Time: 2005-05-17 05:07:18

Position within Government of Canada organizational hierarchy

- Government of Canada
- Agriculture and Agri-Food Canada
- Prairie Farm Rehabilitation Administration
- Director General's Area

Last updated: 2005-01-19

Important Notices

[Français | Search GEDS | FAQ]
[Help | Contact Us | Home]

>> ----- Original Message -----

>> From: "Neggers, Carl" <neggersc@AGR.GC.CA>

>> To: "paul clifton" <pclifton@mts.net>; <Jim.Vollmershausen@EC.gc.ca>

>> Cc: <Jeannette.Godin@EC.gc.ca>; "Cherneski, Patrick"

>> <cherneskip@AGR.GC.CA>

>> Sent: Thursday, June 24, 2004 12:18 PM

>> Subject: RE: Manitoba - Greater Winnipeg Floodway Deviation from the Natural

>>

>> I received it Paul and thanks

>>

>> -----Original Message-----

>> From: paul clifton [mailto:pclifton@mts.net]

>> Sent: Thursday, June 24, 2004 2:05 PM

>> To: Neggers, Carl; 'Jim.Vollmershausen@EC.gc.ca'

>> Cc: 'Jeannette.Godin@EC.gc.ca'

>> Subject: Manitoba - Greater Winnipeg Floodway Deviation from the Natural

>> Importance: High

>>

>> Director General, Neggers and Regional Director General, Vollmershausen

>>

>> Thanks for the brief opportunity to sit down with you in Regina

>> yesterday Mr. Neggers, and allowing me with little notice to further

>> articulate my concerns with regard to federal activities on Red River

>> flood protection in Manitoba. I provide below a link to Page No. 1 and Pages 18 to 23 of

>> Hansard records of The Manitoba Legislative Committee hearings of Bill

>> 23 - The Red River Floodway Act, that I left with you. As promised, I

>> provide as additional attachments records of Manitoba's deviation from the

>> "Natural" in floodway operations since completion of the Red River

>> Floodway in 1968.

>>

>> By way of this correspondence to you Mr. Vollmershausen and accompanying

>> registered mailing in due course, I expect this documentation on

>> historic deviations through floodway operations to be placed on

>> Environment Canada's Red River Floodway historic file. Thank you both for your

>> requested actions on Upstream residents behalf. As a courtesy, I

>> request an electronic acknowledgment of this message from both PFRA and

>> Environment.

>>

>> Manitoba Legislature Hansards Bill 23 - The Red River Floodway Act

>> available at: >> www.gov.mb.ca/legislature/hansard/2nd-38th/sed_04/sed_04.html

>>

>> Regards

>>

>> PE Clifton

>> 852 Red River Drive

>> Howden, Mb R5A 1J4

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON SOCIAL AND ECONOMIC DEVELOPMENT

Monday, June 7, 2004

TIME – 6:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Marilyn Brick (St. Norbert)

VICE-CHAIRPERSON – Mr. Bidhu Jha (Radisson)

ATTENDANCE – 11 – QUORUM – 6

Members of the Committee present:

Hon. Mr. Ashton, Hon. Ms. McGifford, Hon. Messrs. Sale, Selinger

Ms. Brick, Messrs. Dewar, Faurschou, Goertzen, Jha, Mrs. Mitchelson, Mr. Rocan

APPEARING:

Hon. Jon Gerrard, MLA for River Heights

Mrs. Mavis Taillieu, MLA for Morris

WITNESSES:

Bill 23–The Red River Floodway Act

Mr. L. James Shapiro, Private Citizen

Mr. Jack Jonasson, Coalition for Flood Protection North of the Floodway

Mr. Jim Stinson, Private Citizen

Mr. Robert Duerksen, 768 Association Incorporated

Mr. Ian Wishart, Keystone Agricultural Producers

Mr. Paul Clifton, Private Citizen

Mrs. Maxine Clifton, Private Citizen

Mr. Doug Chorney, Private Citizen

Bill 10–The Gaming Control Amendment Act

Ms. Valinda Morris, Provincial Council of Women of Manitoba

Ms. Elizabeth Fleming, Provincial Council of Women of Manitoba

WRITTEN SUBMISSIONS:

Bill 23–The Red River Floodway Act

Mr. Gerry Bristow, Private Citizen

Bill 35–The Credit Unions and Caisses Populaires Amendment Act

Mr. Garth Manness, Chief Executive Officer, Credit Union Central of Manitoba

Mr. Fernand Vermette, General Manager, Fédération des caisses populaires du Manitoba, Inc.

Mr. Bill Saunders, Chief Executive Officer, Credit Union Deposit Guarantee Corp.

Mr. Claude Bru, General Manager, Société d'assurance-dépôts des caisses populaires

Mr. Bob Lafond, Credit Union Central of Manitoba

MATTERS UNDER CONSIDERATION:

Bill 10–The Gaming Control Amendment Act
Bill 23–The Red River Floodway Act
Bill 31–The Floodway Authority Act
Bill 33–The Public Servants Insurance Amend-ment Act
Bill 34–The University of Winnipeg Amend-ment Act
Bill 35–The Credit Unions and Caisses Popu-laires Amendment Act
Bill 38–The Fisheries Amendment Act

Madam Chairperson: Good evening. Will the Standing Committee on Social and Economic Development please come to order.

This evening the committee will be considering the following bills: Bill 10, The Gaming Control Amendment Act; Bill 23, The Red River Floodway Act; Bill 31, The Floodway Authority Act; Bill 33, The Public Servants Insurance Amendment Act; Bill 34, The University of Winnipeg Amendment Act; Bill 35, The Credit Unions and Caisses Populaires Amendment Act; and Bill 38, The Fisheries Amendment Act.

We do have presenters registered to speak to Bills 10, 23 and 31. It is the custom to hear public presentations before consideration of bills. Is it the will of the committee to hear public presentations? *[Agreed]*

I will then read the names of the persons who have registered to make presentations this evening. On Bill 10, The Gaming Control Amendment Act: Elizabeth Fleming from the Provincial Council of Women of Manitoba. On Bill 23, The Red River Floodway Act: Dr. L. James Shapiro, private citizen; Jack Jonasson, Coalition for Flood Protection North of the Floodway; Jim Stinson, private citizen; Ian Wishart, Keystone Agricultural Producers; Paul Clifton, private citizen; Robert Duerksen, 768 Association Incorporated; Maxine Clifton, private citizen; Gaile Whelan-Enns, Manitoba Wildlands; and Doug Chorney, private citizen. On Bill 31, The Floodway Authority Act: Gaile Whelan-Enns, Manitoba Wildlands.

Those are the persons and organizations that have registered so far. If there was anyone else in the audience that would like to register or has not yet registered and would like to make a presentation, would you please register at the back of the room; just a reminder that 20 copies of your presentation are required. If you require assistance with photocopying, please see the clerk of this committee.

I understand that we have some out-of-town presenters in attendance this evening. These names are marked with an asterisk on the presenters list. Is it the will of the committee to hear from the out-of-town presenters first? *[Agreed]*

We have also been requested to have special consideration for Robert Duerksen. I would like to request permission from the committee to move Robert Duerksen from The Red River Floodway Act up to No. 4. *[Agreed]*

Mr. Denis Rocan (Carman): Madam Chair, I wonder if it would be appropriate at this time for you to canvass the committee members that when we start working on the bills that are before us this evening that there be some sort of a resolution that, once we start, to complete the business that has been scheduled for this committee tonight.

Madam Chairperson: Is that the will of the committee? *[Agreed]*

I would also like to inform the committee that written submissions have been received from the following individuals and/or organizations: Gerry Bristow, private citizen, on Bill 23; Bob Lafond, Credit Union Central of Manitoba, on Bill 35. A copy of these briefs was made for committee members and was distributed at the start of the meeting. Does the committee grant its consent to have these written submissions appear in the committee transcript for this meeting? *[Agreed]*

I would like to inform presenters that, in accordance with our rules, a time limit of 10 minutes has been allotted for presentations and 5 minutes for questions from committee members. As well, in accordance with our rules, if a presenter is not in attendance, their name will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, their name will be removed from the presenters list.

I would also like to advise all in attendance that, in accordance with our rules, if there are fewer than 20 people registered to speak at 6:30 p.m., the committee may sit past midnight. I would like to advise that as of 6:30 p.m. tonight, there were 11 people registered to speak. Therefore, this committee may sit past midnight.

Just prior to proceeding with public presentations, I would like to advise members of the public of the process when it comes time for questions from committee members on your presentation. The proceedings of our committee meetings are recorded in order to provide a verbatim transcript. Each time someone wishes to speak, whether it be a member of the committee or a presenter, I have to say, first, the MLA or the presenter's name. This is the signal for the Hansard recorder to turn your mike on and off. Thank you very much for your patience.

We will now proceed with public presentations on Bill 10, The Gaming Control Amendment Act. Excuse me, Bill 23, because it is the out of town presenters, The Red River Floodway Act.

Bill 23–The Red River Floodway Act

Mr. L. James Shapiro (Private Citizen): Madam Chairperson and members of the committee, my name is Jim Shapiro and I live at 130 Greenview Road. Greenview Road is just south of the floodway in the city of Winnipeg. I have experienced the floods of 1979, 1996 and 1997. The last two floods were at my current residence on Greenview Road. From these experiences I can tell you that there is only one question that residents in flood-prone areas want to have answered and that question is, "Will I get wet?" If the answer is "yes," then the potential flood victims two greatest fears become loss of life and loss of personal possessions. When someone loses their personal possessions they lose their history. They lose the mementos that contribute to, if not define, who they are and where they have come from. There can be no compensation for loss of life or one's personal possessions. For all else, however, compensation becomes very important.

Bill 23 deals with this issue. I feel that changes in the bill's wording, or lack of wording, would improve its effectiveness. Now, unfortunately, the answer to the resident's question, "Will I get wet?" is, "Yes, in all probability you will get wet." Why? With the current strategies being employed by the Province of Manitoba, an individual can either put their home on a pad or they can surround their residence with a permanent ring dike. The latter is usually in the form of a horseshoe with an access available for vehicles and service units. In many cases, however, neither of these options is chosen or these options are not available to the homeowner, instead sandbags are relied upon to protect the residence. None of these solutions are foolproof, efficient or safe which means that compensation will be required. For the Province and other funding agencies it becomes expensive and just another way of saying, "We were not there for you."

* (18:40)

Which brings me to Bill 23. It is my understanding that compensation will be based upon the homeowner's actions to protect his or her property. However, there are instances when the best course of action is to evacuate your house completely and let the floodwaters come in unimpeded and then wait for them to recede. For many reasons this is the most cost-effective way of preserving life and one's personal possessions. The secret to successfully fighting a flood in the Red River Valley is to be prepared to evacuate your house, have a plan by which this can be done, and to have a designated storage site for your personal belongings.

Bill 23 makes no provision for such a course of action. If one's house is not on a pad, or if it is not surrounded by a ring dike, then one has the option of not using sandbags. There are good reasons for not using sandbags. You cannot build the sandbag dike on frozen ground. The sandbags can freeze, rendering them useless, but, more importantly, the frozen earth under the dike will thaw when the warmer water above it covers it. Then the water seeps inevitably under the sandbag dike and enters the home through the window wells, from then on it is game over for the homeowner.

In order to build a proper sandbag dike during a flood of 1997 or greater proportions, a shallow trench must be dug in the ground before the dike is erected and sandbags placed in it. That way, after the dike has been completed and when the warm water thaws the frozen ground the water cannot seep under the dike. However, Madam Chairperson, remember we are in a flood situation. Time is of the essence. The ground is frozen and no homeowner has the equipment to dig a trench in the frozen ground all around one's house.

So the proper method of constructing a sandbag dike is not available to the homeowner. Now, sandbags placed on top of existing dikes or used to close up an opening in a permanent dike are also not desirable and they are not safe. The force of the water at the junction of the sandbags and the permanent dike is a weak link in the dike and it will collapse.

Bill 23 does not provide for a situation where compensation will be granted if a homeowner does not have a pad or a ring dike and does not use sandbags to protect his or her home. However, there are advantages to not using sandbags. There will be no damage done by inexperienced volunteers attempting to build a sandbag dike. There will also be no damage done by heavy equipment coming onto soft ground, after the flood, to remove that which the volunteers inefficiently and inappropriately built.

There are also situations such as my own, where the government does not allow the building of a permanent dike around the house or placing the house on a pad. For me, the only suggested alternative is a temporary sandbag dike which, as I have just explained, is totally useless.

Now I have a plan of action that allows me to know what moving company will pack up my personal possessions, where the designated storage site will be, where I will stay during the flood, and how I will be able to return to my property even before the repairing and replacing of my house begins. However, I will not be doing anything of a physical nature apparent to the public. That puts me in a position of being accused of not trying to protect my property and disqualifying me for financial compensation. This situation should not be allowed to occur.

I am suggesting to you that Bill 23 make provision for homeowners to register a plan of action with the Disaster Assistance Appeal Board or the Emergency Measures Organization, prior to any flooding, so that alternative flood-proofing methods can be approved by them and assure the homeowner that he or she will not risk the loss of compensation.

Now with respect to the wording of Bill 23, I have seven concerns. If you have the bill in front of you, I would suggest that you might want to look at it and follow along as I discuss particular parts of the bill.

My first concern is in Part 2, titled Compensation For Artificial Flood Damage and Economic Loss, subsection 2(c) and 3(a) and 3(b). These subsections refer to flood-proofing criteria as defined in the designated flood area regulation. However, this regulation pertains to the construction of new buildings, not to the protection of existing buildings. Compensation in Bill 23 should encompass damage to existing buildings as well.

My second concern is also in Part 2.4(3), and is titled Claimant's acts may affect compensation. This subsection deals with the very situation I have previously outlined. This subsection states that "compensation may be reduced in whole or part if the claimant's acts or failure to act allowed the damage or loss to occur or contributed to its occurrence." Bill 23 must be very careful not to penalize homeowners who have acted responsibly to protect lives and their home and property, while at the same time minimizing the cost of doing so.

According to Bill 23, such a determination will be made by personnel from the Emergency Measures Organization, which brings me to my third concern, also in Part 2.3(2), titled Emergency Measures Organization determines claims.

This subsection has serious deficiencies associated with its intent. After a flood, the EMO employs untrained, part-time, inexperienced personnel to investigate claims made by homeowners. EMO has no front-line, experienced personnel trained in the complexities of evaluating flood damage. Its guidelines exist on paper. It is a top-down approach to the resolution of a flood victim's claim. I suggest that it should be a bottom-up procedure, with the EMO training homeowners as a standard operating procedure, say, associated with obtaining one's homeowner's insurance—

Madam Chairperson: Doctor Shapiro, you have 30 seconds left.

Mr. Shapiro: —buttressed with required evidence confirming a plan of action, a moving company hired or on retainer to remove one's personal belongings and to store them for the duration of the flood. A place to stay and a plan of action to account for one's activities after a flood all contribute to a population of potentially flood-prone residents who know what to do, and who are confident that there will be no loss of life or loss of personal possessions. These homeowners are less likely to panic—

Madam Chairperson: Doctor Shapiro, if you could conclude your remarks, please.

Mr. Shapiro: I will stop now, Madam Chairperson, and distribute copies of my presentation.

Madam Chairperson: Thank you very much. Are there questions?

Hon. Jon Gerrard (River Heights): Thank you for the presentation and for some clear recommendations to improve the legislation. Maybe you would comment about your experience in using sandbags. Clearly, you have had some not very positive experience, from the sound of your comments.

Floor Comment: The experience with sandbags is exactly as I—

Madam Chairperson: I have to recognize you, Doctor Shapiro.

Mr. Shapiro: Madam Chairperson, through you, the experience that I have had indicates that you cannot use sandbags in our climate when the ground is frozen. Using sandbags with warm water engulfing the home that you are trying to protect, because the warm water thaws the ground under the dike and the water, through the force of the pressure of the water above it, will force that water under the dike and into the window well of the home, flooding the home.

Therefore, the only way to make sure that everything in that house is safe and secure is to get rid of it. What I am suggesting is that as an alternative to using sandbags, if that is not advisable, that Bill 23 recognize that there are alternative ways of protecting one's life, protection of livestock and home possessions.

One can submit that plan to EMO or the Disaster Assistance Board, have it approved, carry out your plan and you qualify for compensation. If you do not do that, then I can tell you that the plan as outlined now by EMO is going to be more expensive.

You are going to have a house filled with water with 90 000 sandbags around it, with volunteers who do not know how to build a dike and a panicked homeowner who also does not know how to build a dike. You are going to have heavy equipment coming across your lawn which will not be compensated because you are only compensated for the land under the dike. It will be hugely expensive.

Also remember the problem with flooding in Manitoba is not the flooding. The problem is letting homeowners be aware of what they have to do. If they know what they have to do, then calm prevails. They have a plan of action. They carry it out. They get out of there. The government has less compensation to provide for these homeowners because there are less of their possessions that are ruined.

* (18:50)

So what I am suggesting is that Bill 23 encompass alternative plans of saving one's home, have them approved and it may even be legislated so that this has to be part of one's homeowner's insurance. Then, every two or three years, just as you have to have your licence to drive renewed, you have to demonstrate you have a plan of action. You have a carrier hired, or on retainer, to empty your house. You have a place to stay. You know what you are going to do after the flood.

Now, the government's role is to make sure that homeowners in a flood-prone area are prepared. You do not leave homeowners as susceptible to panic, to worry, to not knowing what to do because the time to fight a flood is not during the flood, it is now, before the flood.

Mr. Kelvin Goertzen (Steinbach): Mr. Shapiro, thank you for your presentation. I wonder if you could comment a little further on section 32 where you make comment that, perhaps, quite apart from the bottom-up approach of flood planning, there must still be somebody who does an assessment of damage. You raise some concerns perhaps about EMO doing the assessment. If you could provide us some indication of who you think might be better for that. Do you have concerns as well with the government not allowing appeal outside of the EMO process?

Madam Chairperson: Doctor Shapiro, you have about 45 seconds to answer.

Mr. Shapiro: It has been my experience that the EMO is a paper organization. It plans for disasters, but after the disaster occurs and I, the homeowner, am now in my home asking for someone to assess the damage, those individuals are not trained. They are part time. They are inexperienced. They want to get into the public service. They do not have a job. They get into the public service; they find that it is too much; they quit. All of a sudden, I have a new assessor on my hands and we have to start all over again.

What I am suggesting is, as I have outlined here, the homeowner should be able to say, "Hey fella, you are not competent. I want another assessor." Also, where the government is protected by this legislation later on, and I did not have an opportunity to discuss that, you should not protect yourself from incompetence because your incompetence is putting my life in jeopardy. It is destroying my future. My present is gone. The past is rendered useless. I should be able to sue you in a court of law if you send me an incompetent assessment.

Madam Chairperson: Thank you very much for your presentation, Doctor Shapiro.

Bill 23—The Red River Floodway Act

Madam Chairperson: The committee will now revert to Bill 23, The Red River Floodway Act, and the next presenter is Jack Jonasson from the Coalition for Flood Protection North of the Floodway and he has indicated that he is from out of town.

Mr. Jack Jonasson (Coalition for Flood Protection North of the Floodway): Not that far out of town.

Madam Chairperson: Mr. Jonasson, do you have presentations to distribute to the committee members?

Mr. Jonasson: There are several up here.

Madam Chairperson: Okay. Please proceed.

Mr. Jonasson: Madam Chair, committee members and fellow presenters, I am going to make some general comments about the bill first, the concerns that we have, those of us who live north of the floodway. We had asked for compensation to be considered, not just for what this bill addresses, which is artificial flooding, but if you are going to protect Winnipeg from a 1-in-700-year flood, what are you going to do for the rest of us who are outside the protection of that floodway? When it was announced that there would be a compensation bill, our hearts were filled with the generosity of the government. However, on reading the bill, it appears that from the content of this act it is more about protecting the government and its agencies and employees from court action, regardless of how negligent and/or incompetent, from blame or consequence then it is about developing a system to treat those not protected by the construction of the floodway in a fair and reasonable manner.

The fact that this act speaks only to artificial flooding caused by construction and/or operation of the floodway demonstrates very clearly that the framers of this bill have little understanding of the many and varied impacts that the floodway will have on those living outside its protection and in the path of its construction.

* (19:10)

On asking for compensation, our group was expecting that if the government was protecting some of the residents of the Red River basin from a 1-in-700-year event, it would find ways to compensate those it chose not to or could not protect to that level. Compensation methods may include buying property that cannot be protected; purchasing easements, that is, the right to store water on land that cannot be protected and will be used to protect other lands from flooding; or, in lieu of flood protection, a one-time compensation that will allow continued use of the land with severe restrictions on land use and construction, but forever excluding further compensation.

The way in which those outside the protection of the new and expanded floodway have been dealt with historically and now there is this law which in essence is not a new concept because historically the law against flooding your neighbour is a long-standing law in Canada. The government, if they artificially flood anyone, is obliged under existing law to provide compensation. The only thing new in this law is that it strips away the right of access to the courts to those harmed by the actions of the government and its agencies.

I would like to now go through some of the provisions. No. 1, this proposed act speaks only to artificial flooding. We want to know what is proposed to do with other effects of the floodway expansion, i.e., damage to the aquifer, interruption of municipal services, ambulance, fire, student transportation, other municipal services like road maintenance, surface drainage. What of the loss of revenue to the municipalities from lands expropriated to build the floodway, and why the name? Would not the principles and conditions here in this proposed law apply to any like situation anywhere in Manitoba, that is, a hydro dam, the Portage diversion, drainage ditches. It should all be the same.

Then when we get into the definitions at the beginning of the act, it talks about natural level. This is not defined in the act. We want to know what it is and how it is calculated. The government is obliged, according to this act, to compensate people only if they artificially flood them.

Ladies and gentlemen, historically the people north of the floodway have been told they are not adversely affected by the operation of the floodway. Well, the historic record indicates that, in fact, they are. We need a way to have that recognized. If the government says we were not artificially flooded, they do not have to compensate us.

Extreme spring floods. There is a section there that talks about extreme spring floods upstream of the floodway. It never mentions downstream. Well, we are also there, and we get extreme floods too. As a matter of fact, we had floods downstream this year when nobody else had extreme floods.

Rules of operation. The legislation must clearly state how these rules are developed, who is involved in the process and the consequences of not acting according to those rules. This is as crucial to establishing a fair and reasonable process to deal with compensation, as is the definition of natural level.

In part 2.2(1)(b), there is mention of the development of regulations by the Lieutenant-Governor-in-Council. Well, how can we comment on this bill if we do not know what those regulations are? It may be fine. Maybe the concerns that I have and members of our coalition have are unfounded, but in the regulations we do not see.

There are questions in 2.2. What is the difference between real and personal property? What about intellectual property?

In 2(2)(c) it talks about the government being exempt from compensating someone if they have not dealt properly with flood proofing their property. The problem is we are talking about artificial flooding. There is no requirement to protect your property from artificial flooding. It does not apply, should not apply.

There is a section that says compensation is provided only if the economic loss occurs in Manitoba. What about a contractor who has a contract to do work in Ontario, but his equipment is drowned in a flood because he is resident in the basin of the Red River?

Emergency Measures Organization determines claims, 3(2)(b), EMO determines whether artificial flood damage to property and whether it is eligible property. I ask what is the expertise available to EMO to make this determination.

Madam Chairperson: Mr. Jonasson, you have one minute remaining.

Mr. Jonasson: Many residents north of the outlet have been turned down by government for assistance in flood protection because it was determined they did not reside within the flood plain, this despite the fact that they have flooded and will continue to be flooded. We have no idea as to who and how those determinations were made. Furthermore, there is an appeal process. This, again, is done by the same agency, EMO, who is under the same ministry. I think this is a classic case of conflict of

interest, particularly when the act says you have no appeal after appeal to the EMO. This does not make sense to me.

Madam Chairperson: Mr. Jonasson, if you could conclude your presentation, please.

Mr. Jonasson: I guess our concerns are with the whole concept of this act. It does not address any of the concerns that we, as residents north of the floodway, put forward to the various hearings that were held in January 2002. It misses the point altogether and it does not provide compensation. It provides protection from the government.

Madam Chairperson: Thank you, Mr. Jonasson. Are there questions for Mr. Jonasson from the committee?

Hon. Jon Gerrard (River Heights): I want to say thank you for your presentation. You have been quite thorough in reviewing this, and I would like to ask you to comment briefly on the phrase "natural level," what it means or does not mean and what it should mean if it is going to be in this legislation.

Mr. Jonasson: It is a theoretical construct. It does not exist. It basically says that the government is not obliged to compensate people if, in fact, they would have been flooded to that level anyway.

Now, how do you calculate this mythical construct called natural level? It is a level that the water in the river would have existed at during a flood, were there no floodway or were there no dikes or were there no whatever.

I do not know how they can calculate this, but they have apparently been confident enough to use this in the act. I think this would have to be worked out by a very, very extensive cross section of academics, engineers and people who have experienced what happened in the floodway. A good example is we are always told north of the floodway that you would get all that water anyway, so why are you complaining?

Do you know, ladies and gentlemen, in 1826, all of the water did not flow down the river through Selkirk? A good portion of it went around Selkirk, west through the bog, a river as much as three miles wide, six miles long, a huge amount of water that now has to go by Selkirk.

* (19:20)

It also went east of Birds Hill into the watersheds of Devils Creek and Cooks Creek. So all of the water did not go by Selkirk. All of the water now has to go by Selkirk. So how do you define natural level? I do not know. I think it is a mythical concept.

Hon. Steve Ashton (Minister of Water Stewardship): Thank you, and if I could, as we were out of time last time, I would also like to thank Doctor Shapiro for his presentation. I know he is certainly correspondent with the department and myself, and I want to indicate that I will be responding in writing to many of the issues that were raised. I just do not have the time to get into all of them, and I certainly appreciate that.

Also, I would like to thank Mr. Jonasson. I can indicate to Mr. Jonasson in terms of natural levels that I think Mr. Jonasson is aware we are—in fact, we have a specific engineering study that has been ongoing to make sure that there is a current scientific definition of natural flooding. I certainly encourage him to participate at the hearings and put forward any issues or concerns of that nature.

We have a well-known engineering company here which is looking at that, and I certainly appreciate that that is key to this bill, which is aimed at compensation for flooding above natural levels, as compared to what I would call non-artificial flooding, if you like, which is covered by Disaster Financial Assistance.

So I did want to thank Mr. Jonasson. I realize we are short of time, so I do not really have a chance to ask detailed questions on a lot of the points that were raised, but, certainly, if you are interested, I would be more than happy to provide you with the latest information on the natural level issue, which I know we have discussed directly at our previous meetings. So, thank you.

Madam Chairperson: Thank you very much for your presentation.

Mr. Jonasson: I have a handout and it addresses a lot more issues in the bill.

Madam Chairperson: Thank you very much.

Our next presenter is Jim Stinson, a private citizen. Mr. Stinson, do you have a handout for the committee?

Mr. Jim Stinson (Private Citizen): I apologize, Madam Chairperson, I do not.

Madam Chairperson: Okay, please proceed.

Mr. Stinson: I did not have a photocopier at home and I did not believe it was available.

Madam Chairperson: That is fine. Please proceed.

Mr. Stinson: Madam Chairperson, members of the Legislature, first off, I want to thank you very much for the opportunity of speaking on this bill. I am just a private citizen. I am not an engineer or anything like that. I am just a resident of the R.M. of St. Clements.

I have lived in the R.M. of St. Clements since 1990. First, I would like to say that I hope Bill 23 never has to be used, but, in the event it does, I believe that some areas must be addressed and/or clarified. If you have the bill with you, in front of you, it may help assist when we go through it.

The first thing is definitions. Under definitions of the act, No. 1. "artificial flooding," part (a), "caused by floodway operation during spring flooding." When are the dates for spring? They are not pointed out. Why is this Bill 23 limiting it to springtime? Anytime the floodway is in operation should be covered. The floodway, in fact, operates in the summer, and a deadly example of when it was operating was in August of 1993, when a gentleman drowned at the outlet of the floodway when it was in full operation. That is not springtime operation, the way I would look at it, I suggest.

Part (b), "in which the Red River exceeds its natural level at the time of the event." Like was mentioned before, what is the natural level? As late as April of this year at a floodway expansion presentation in St. Norbert, Mr. McNeill of the floodway expansion authority admitted that there were in fact some discrepancies now as to what natural level actually is.

The next definition on the next page, "rules of operation means the rules of operation of the floodway control structure approved by the minister under The Water Resources Administration Act."

Twice now, I personally have asked the Floodway Authority for the present-day rules of operation and still have not received them. With the proposed floodway expansion, I understand that there will be new rules of operation. Does this proposed Bill 23 pertain to the present day rules of operation or under the expanded floodway?

I will quickly move to part 2.2(1) deals with claims for artificial flooding and economic loss; 2.2(2) deals with eligibility of property; 2.2(3) deals with "eligible economic loss." In all three subsections, Bill 23, the word "artificial" is used. I have great difficulty with this word "artificial". If the damage caused by the Red River Floodway is to compensate all Manitobans, as Minister Ashton indicated in his press release, then one would believe that any flooding caused by the operation of the floodway would be compensated.

I live approximately three miles northeast of the floodway and draw my water from the aquifer below me. A lot of people are not aware of the aquifer. The aquifer is the water we get from down below. I served 30 years with the RCMP and retired six years ago, at which time I turned down a physical move to anywhere in Canada, completely paid for by the government, strictly because of the quality of life that I had living in the province of Manitoba, in specifically the R.M. of St. Clements. We have horses and therefore quality of water is not only important for human consumption, but animals as well.

In none of these subsections do I see anything to deal with one's quality of life being affected due to the operation of the floodway. I would like to expand on this quality of life and the Red River Floodway. In Minister Ashton's press release, he indicated that The Red River Floodway Act would provide a legislated right to compensation for Manitobans.

The original floodway was built in 1968. The aquifer was breached in at least four locations for several miles. This causes contaminants from the Red River going through the floodway, being subjected to my aquifer, to the water in front of you people. That is the type of water it is subjecting to me. When speaking with members of the floodway expansion, they advised that if drinking water or the aquifer were contaminated then they would possibly have to drill wells deeper. This brings into focus the quality of water and the quality of life again.

There are several sites in Manitoba where due to contamination people have to haul water. If this was to happen, my quality of life and several of my neighbours would be greatly affected with Bill 23. As it is written today, we would not be compensated. I would just like to mention one thing for my uncle, who lives at Breezy Point, 2.2(4), exception to eligibility of certain property. Residents of Breezy Point were required to sign a waiver preventing them from any compensation due to flooding as they were residing on a flood-prone area. These are 21-year leases. Minister Ashton in his press release for Bill 23 mentioned that \$110 million was provided to residents of the valley to improve protection.

The residents of Breezy Point were refused any funding to protect their property when this program was in operation. Now, with the proposed expanded floodway, they will be subjected to additional flooding, still with no funding for flood protection or compensation under Bill 23.

* (19:30)

Under section 7, it says, "no court proceedings for compensation." I find this section very discriminatory and if Bill 23 is supposed to be implemented to protect the residents of Manitoba, why would such a section be required? I feel section 7 should be completely removed.

The last area is under part 3.9(1), extreme spring flooding declaration. It says, "on the advice of the director, or that an extreme spring flooding is occurring or that to occur, the minister may make an extreme spring flooding declaration. The declaration takes effect when it is made." End of the section.

Again, this points to rules of operation and natural level, which I have addressed previously, and must be clarified. Thank you very much for your time and your interest in such a bill.

Madam Chairperson: Thank you very much, Mr. Stinson. Are there questions for Mr. Stinson?

Mr. Gerrard: Thank you. You bring up some important points with regard to the quality of life which I think would need to be better considered than they have been. You also talk about the, I think it is section 7, which deals with the appeal mechanism and I would like you to comment a little bit further on, I mean, this seems, you know, to make it very difficult, particularly if there is not a clear definition of what is artificial flooding and what is natural levels.

Mr. Stinson: Section, section, this is very awkward bending forward like this.

Madam Chairperson: Mr. Stinson. Sorry. Just a moment. Mr. Stinson, go ahead.

Mr. Stinson: It is very awkward in this stepping forward here. Section 7 says, "no court proceedings for compensation." I spent 30 years in the RCMP, 15 years specializing in immigration dealing with people all around the world. In any democratic country, the courts were always open to people This act removes it from us. It takes our democratic right away from us—*[interjection]* I am not a lawyer but—I am sorry.

Madam Chairperson: Excuse me, there is no participation from the gallery. Thank you. You may continue, Mr. Stinson. Did you want to continue?

Mr. Stinson: I apologize, sorry. I am not a lawyer, but I have dealt with laws and dealing and reading in the act, and in 30 years of police, and a lot of you people, or even some of you are quite a few years younger than I am, have you ever seen a law being taken off the books? No. We put laws on the books continually. The way this bill is written, Mr. Ashton, I thank you very much for trying to protect us, but the way this thing is written, it is not protecting us at all. It is a useless act. I am sorry. I apologize. We do not need more acts just to have paper. We need to be protected.

Mr. Ashton: Thank you and I appreciate your presentation and I can indicate I know some concerns have been expressed about the particular section you referred to in terms of appeal mechanisms and I would anticipate once we are finished the hearings, we will be discussing some potential amendments and certainly we are looking at an amendment that would provide some avenue in terms of appeals.

The other thing I wanted to really stress too, by the way, is the good point you raised about the impact on ground water. We have tried very much, through the design of this project, to include that as a major factor. As you are probably aware, we were originally looking at up to six feet of depth for the floodway. It is now two feet or less and the engineering model has now shifted very dramatically for one reason and one reason only, and that is that we said, yes, we have to provide the flood protection but we also have to look at the ground water impacts.

You are quite right about what happened in the 1960s and, of course, in those days, there were no environmental assessments. People did not know what was going to happen, but we know that ground water was impacted, so I can assure you that not only are we designing the project for flood protection, we are going to minimize ground water impacts and, certainly, there is mitigation built in for that.

I realize that is sort of beyond the scope of the bill but I could not agree with you more. I know that is a huge impact and I do thank you for going through this. It is a rather technical bill and I appreciate your perspective, particularly your background in law enforcement. I am sure you have dealt with many bills in the past on the receiving end of implementing it so we certainly appreciate your advice.

Mr. Stinson: Madam Chair, if I could just speak to Mr. Ashton.

Thank you, Mr. Ashton. That is correct. They have got it down from the 2000 report. They were going to go three metres and now it is down to two feet, two feet, two inches. The aquifer is still breached, so every time the floodway is used, my aquifer is subjected to the contaminants. I asked the engineering firm if they could find a way of sealing it, and they said they did not know but they were going to find out. But if they do not, how do we get compensated?

Thank you very much. I appreciate your time.

Madam Chairperson: Thank you very much, Mr. Stinson.

Mr. Robert Duerksen, 768 Association Incorporated. Mr. Duerksen, do you have a presentation to distribute to the committee?

Mr. Robert Duerksen (768 Association Incorporated): Yes, I do, and I would like to hand it out after my presentation, if that is all right.

Madam Chairperson: Please proceed then, Mr. Duerksen.

Mr. Duerksen: I represent the 768 Association Incorporated. The 768 Association Incorporated is a corporation that represents 27 property owners directly south of the floodgates. We are a unique organization in the fact that some of our members are located in the R.M. of Ritchot and some are located in the city of Winnipeg. Because of our close proximity to the flood control works, we are very interested and concerned with the proposed legislation, as well as the Floodway Expansion Project in general.

On May 10 our association wrote the Honourable Steve Ashton and provided our comments in response to the draft summary of the draft legislation that was provided to our association earlier in the year. My presentation here tonight is basically to pull out six points from that letter that we wrote, and just to put those points in a nutshell.

Number 1. The 768 Association is concerned that the legislation says that a flood report may be available to the public. It is our position that a flood report must be available to the public every year and whenever it is written.

Number 2. It is our position that an independent group must determine if artificial flooding was created. The wording of the legislation right now is that it is the government that determines whether artificial flooding is created. This cannot be the case. The 1997 flood was a very good example of how it took the government a whole year-and-a-half and extreme pressure before they ever admitted, after countless times coming out, I remember the Premier (Mr. Doer) standing on TV saying that there was no artificial flooding created, basically lying to the public, it took them a year-and-a-half before the truth finally came out. It is just a good example of how, if you do leave it up to the government to determine if artificial flooding is created, you might not necessarily get the truth. There has to be an independent group established with fair representation from outside the city of Winnipeg.

Number 3. The rating curve must be part of the legislation by which artificial flooding is determined, or at least a process by which the rating curve is determined must be identified in the legislation. There has to be public involvement and public scrutiny as to how this rating curve is determined. To date, the Manitoba Floodway Expansion Authority has rolled out a new rating curve and there has been no public involvement and there has been no public scrutiny of that rating curve. We are asked to trust the government that these are the natural levels. There must be public involvement and it must be tied to the legislation. There must be consensus on what natural levels are and how they are determined.

Number 4. The legislation requires existing properties to be flood proofed ahead of time but it is not clear what this entails or, as a previous presenter has mentioned, it is not broad enough in its definition of what flood proofing could be.

Number 5. The proposed legislation precludes litigation as a last resort. It is our position that this is contrary to the Canadian Charter of Rights and Freedoms. The Canadian Charter of Rights and Freedoms provides equal protection and equal benefit under the law. One might think that this is equal or the same as no-fault Autopac insurance but it is our position that this is very different. No-fault Autopac insurance is applied equally to all citizens across the board in the province of Manitoba. This legislation, if it were to go through, would not allow certain segments of the population the right to sue if they were caused damage. So again, it our belief that it is contrary to the Canadian Charter of Rights and Freedoms.

Number 6. There are more ways of causing artificial flooding than are described in the legislation. Other presenters have spoken to this point here tonight. For example, ice jams caused by gate operations. That has nothing to do with natural levels or not. Those are localized events. They can be caused by the early operation of the gates when there is still ice on the river.

Those are six points that we presented in our letter to Mr. Ashton on May 10. I thank the committee for hearing me tonight.

Madam Chairperson: Thank you very much, Mr. Duerksen.

* (19:40)

Mr. Kelvin Goertzen (Steinbach): Thank you very much for your presentation. I appreciate your comments regarding the difference between no fault insurance and what Bill 23 proposes. Certainly, quite apart from the Charter argument, although perhaps you could make one there, there is also more of a policy argument in that I think when you are dealing with no-fault insurance you are dealing with two parties separate from government who have been involved in an accident, and the government steps in as a third party to administer a scheme, whereas here it is actually the government itself that has caused the harm through the operation of the floodway, and then they insulate themselves from the harm that they created. I think there is a substantial difference right there.

I wonder if you could indicate, you indicated that you wrote to the minister on May 10 regarding these concerns. What was the response from the minister?

Mr. Duerksen: No response. Can I speak to that point again?

Madam Chairperson: Yes, Mr. Duerksen.

Mr. Duerksen: We received no response that I am aware of from the minister's office. We did copy the Conservative Party. The Conservative Party did phone me and say that there was this committee hearing tonight and that we should register to speak.

Mr. Gerrard: Thanks for your presentation. You mentioned that there should be a process in the legislation with regard to the method used to determine what is artificial flooding. I just want to give you an opportunity to suggest what sort of might be elements of that process to help us in looking at what might be best in terms of changing the legislation if this were to proceed.

Mr. Duerksen: The rating curve and the artificial flooding levels should be part of the environmental hearings by the CEC. Currently, it is not. It is not part of the project description, and it is not being heard in that venue. What the government of Manitoba has done here in our opinion is they have

piecemealed this project out. We have made this point countless times. We have made it at the first CEC hearing, a preliminary hearing about a week ago.

The point is that we have compensation legislation, we have floodway operating rules, and we have the floodway expansion project. They are all three separate streams right now requiring three separate submissions by people, requiring different arguments at different places. It is all one project and it needs to be tied together as such, okay.

The public has not been given any kind of a venue or the resources to hire engineers to independently verify the rating curve that has been presented by the government. That is what we would like. We would like funding through the CEC hearings. That is one possible way. They have intervenor status funding. There needs to be the resources given to the public at large that there is buy-in, because there is a huge, huge mistrust between residents outside of the city of Winnipeg with the government of Manitoba with respect to this project at this point. That gap needs to be bridged.

One other point, in our letter we suggest also that to be open and transparent in this whole process the inlet and outlet structures should have elevation markings on them. They should have flow meters there so the public, anybody from the public can walk up, they can determine what the flow, what the elevation is and do their own calculations. It is not rocket science. It is fairly simple to do.

Mr. Ashton: Thank you. I certainly would like to thank you for your presentation and correspondence. We have actually received some very good, detailed letters. I mentioned Doctor Shapiro before. Actually, given the importance of this bill for people who are impacted, we have made sure that each and every letter that we do receive is given full scrutiny.

I stress that a lot of the letters, and you have mentioned a number of the issues, go beyond the scope of the bill as well. I thought it was important that we not only respond in terms of the bill which is before us today but some of the broader floodway issues and certainly the point you raised about the appeal process. I indicated that I am anticipating once we are finished that we will be able to debate some amendments that we feel will address that concern. I also want to make sure that we are responding in detail to some of the other issues that were raised. I think that there were some very constructive points that were raised both in presentation today and the letters. Thank you very much.

Madam Chairperson: Thank you very much, Mr. Duerksen.

The next presenter is Ian Wishart from the Keystone Agricultural Producers. Mr. Wishart, do you have copies of your presentation to distribute?

Mr. Ian Wishart (Keystone Agricultural Producers): Yes, I do.

Madam Chairperson: The page will distribute those. You may proceed.

Mr. Wishart: Good evening, Madam Chairperson, honourable members, ladies and gentlemen. I am here on behalf of Keystone Ag Producers, called KAP. I am pleased to share our organization's position with respect to Bill 23, The Red River Floodway Act. KAP is a democratically controlled general farm policy organization, representing and promoting the interests of agricultural producers in Manitoba, and it is an organization run and funded by its members' farm units throughout the province.

While we were pleased that compensation will be available for economic loss, as well as property damage, we would like to highlight some of our concerns with this bill and the impact it may have on those affected by artificial flooding.

Within the new Ag Policy Framework, producers will lose their ability to have coverage for unseeded acreage at 100% government contribution, as was the case in the past. Therefore, one area that must receive fair and adequate compensation is in the event that land cannot be seeded due to overland flooding. This has a potential loss of income to producers for a long period, particularly because of the new safety net programs being implemented nationally. Agriculture is vastly different than other commercial businesses and this must be taken into consideration.

Section 2.5(1) deals with appeals of applications for compensation. While it does state the Disaster Assistance Appeal Board which is appointed under the EMO, The Emergency Measures Act determines, assesses or evaluates these appeals, it is not clear if the process will deal with appeals relating to market value of crops and/or a loss of income.

They have no history of working in this area. They have always refused these types of appeals before. It is imperative that farmers have the ability to appeal compensation for any activity or asset that may be impacted by artificial flooding. I am sure, in fact, that a rewrite of the mandate of the EMO appeals organization would have to be done to get them to deal with questions of economic loss.

Many times, when programs have been developed they have not been tested to see if they would work on the ground in the event of a disaster. The reality of how these programs work on the farm vastly differs from how they are promoted by governments. It would have been beneficial to see how compensation plans under this bill would be applied, as well as detailed components of coverage. We want to stress that any undue burden on our industry must be compensated for.

Another area not addressed in the bill is the potential for overland flooding as a result of the construction of the floodway expansion. If, for reasons caused by the construction, the floodway gates cannot be opened, there must be compensation for those affected. The Manitoba Floodway Authority has stated that, failing an emergency, the floodway will not operate in the summer during the project's 2005 to 2009 construction phase, leaving ample opportunity for losses during that period.

In closing, we have kept our remarks very specific to the issue of compensation. We do have some other areas of concern and I will mention those briefly. But after having some discussion with the floodway people, we feel that that is not within the scope of this bill, but there are still areas of concern that I think you would want to hear. I would like to stress that farmers must not, in any way, be put at a disadvantage due to lack of compensation or criteria for application for compensation.

* (19:50)

Just some of the other points, and these are not included in my written presentation, unfortunately. We did not mention the issue of ground and well water. I know they are looking at that and certainly there were changes in plans. Probably, we will reserve any of our comments on this until we see the final design, because it was certainly still in process.

Issues of local drainage have to be dealt with. They keep talking about that they are going to work on some of these and are trying to make improvements, but we do want to see the final design. The issue around the west dike expansion, there are a lot of concerns from the people in that particular area. Things like winter access in the area is impacted by it, also, access during periods of construction, as there are not many alternatives. It actually functions as the main road for the area. We are concerned about the loss of right to sue. I think that that is a major cause of concern.

It seems strange to us as we represent producers from all across Manitoba that we are dealing so specifically with compensation on the Red River Floodway, and we continue to forget issues around the Assiniboine Valley flooding caused by Shellmouth, or anything related to the Assiniboine River

diversion. It does seem like a double standard to us, and, frankly, we would find this very hard to defend to a lot of our members who represent those other areas.

Those are some of my comments, briefly.

Madam Chairperson: Thank you very much, Mr. Wishart.

Mr. Gerrard: Thank you. I would like to ask you to comment specifically on two things.

One is that what I am hearing is that you feel a broader approach when it comes to agricultural lands would be better than one which is just specific to the operation of the floodway. Second, you deal with compensation in the event that land cannot be seeded, but if we are talking summer flood, problems with the floodway, what have you, not operating and lands being flooded, we are talking crops being drowned out. So there are clearly a variety of different circumstances where there could be agricultural producers adversely affected. Is that right?

Mr. Wishart: Yes, Doctor Gerrard. You kind of touched on it. There are actually kind of three sets of circumstances where compensation will come into play. The first is if it stays wet for a prolonged period and producers will never get to sow that that particular year. In the past, we had programs in place in Manitoba called unseeded acreage insurance that all producers participated in. It was built into the basic crop insurance program. As long as you carried crop insurance, it was covered.

Under the Ag Policy Framework, as we are one of the few provinces to offer this, because it is almost specific to flood-prone areas in the country, it will be discontinued because it is national in scope. So now we are going to be in a position where the other way producers can get that is by buying it, paying good money out of their own pockets to get that. We think that creates a disadvantage to them to not have it. It leaves you at a situation under the new CAIS program, where your coverage levels will be impacted if you do not carry it on an ongoing basis. You have to protect yourself on that front too. So it does create quite a disadvantage.

You also mentioned that we could lose the crop after it is sowed, during the course of the summer. Now, we insure ourselves, generally speaking, against that through the crop insurance program. But should it not also be covered by this if it is generated by natural or by artificial flooding. Really, who should be paying on that? Should the crop insurance program, which is one-third producer money actually going up to 40 percent producer money, be paying that or should the Province be paying that? It is a good question. Then again, in the fall, to actually grow the crop and then not be able to get it off, another set of circumstances.

Mr. Goertzen: Thank you very much, and thank you for your presentation here tonight on behalf of the organization. It is an interesting point you raised near the end of your presentation regarding potential for flooding as a result of the construction of the floodway and the inability to perhaps operate the floodway during those times.

Have you had the opportunity to raise those concerns prior with either the minister responsible for Disaster Financial Assistance, the Minister of Agriculture (Ms. Wowchuk), the Minister of Water Stewardship (Mr. Ashton), the Floodway Authority, and have you heard a response on that particular concern?

Mr. Wishart: To be quite honest, we have not had time yet to make presentation on that particular point. It occurred to us fairly recently that what happens if we get a major rainfall event during the construction phase and it cannot function, we will obviously bear the brunt of that, as the largest landowners in Manitoba, farmers in particular. So I think we need to maybe look at that. We did mention that to the Floodway Authority, but of course that is not something they feel mandated to deal with.

Mr. Ashton: I would like to thank you for your presentation. Certainly, we look forward to any further feedback. I appreciate why KAP would focus on The Water Protection Act, which is a pretty comprehensive bill. It probably took the vast majority of your time.

Just on the issue of coverage, when you are dealing with extreme spring flooding, you are generally dealing with pre-seeding. Certainly, the act is designed to look at economic losses that would be impacted, for example, by delayed seeding. The definition of damage is quite broad, in terms of including economic losses, not just damage to property. That is quite different from Disaster Financial Assistance, which is very much focused in on damage to property. So I can certainly assure you that this goes far beyond crop insurance and actually anticipates the kind of scenario that is most likely, which is where you have unseeded crops.

So I appreciate the concern that has been raised. I think if you see the legislation, if we have the opportunity to discuss it in more detail, that broader concept of economic loss is built right in. That is very much keeping in mind the kind of situation that agriculture is often faced with. It is not the value of the seeds, it is the loss of income from delayed seeding or prevented seeding. Thank you very much.

Madam Chairperson: Thank you very much, Mr. Wishart.

Paul Clifton, private citizen.

Mr. Paul Clifton (Private Citizen): Madam Chair, I wonder if I could seek leave and have a lady before gentleman, my wife first. My wife would like to present with a board, it is a poster board, a natural resources poster of the 1997 flood at flood crest; 2000 square kilometres were inundated in that flood. We would just like to put it up on a chair beside Maxine as she presents, if you grant me leave.

Madam Chairperson: Okay, just a moment, please. Is there leave from the committee to allow a visual presentation to be used as part of this presentation? *[Agreed]*

Please come forward. Leave has been granted to allow Maxine Clifton to use a visual presentation.

Mrs. Maxine Clifton (Private Citizen): I hate it when he does this to me.

Madam Chairperson: Just a moment. Is there leave to allow Maxine Clifton to present? *[Agreed]*

Please proceed.

Mrs. Clifton: Madam Chairperson and committee, thank you so much for coming out on the biggest hockey night of the year to listen to us. I wanted to show you on this map the area that I am from. I represent the Ritchot Concerned Citizens.

Can everyone see this? This is a map to identify Manitoba Conservation of the flood that occurred in 1997. I live right here as do the committee members that I represent. Grande Pointe is over here. Ste. Agathe is south. St. Adolphe is here. The west dike is over here. The water comes up from the south, hits the west dike, comes sloshing by the Turnbull Drive dike, the Cloutier dike, comes up into the neck of the floodway where we live.

The Grande Pointe dike is now preventing any water from going this way so it is all going to come. We had water 10 feet deep in this area in 1997. It was all flowing in this direction. It was very high and very fast. So, when I talk about the legislation, I am representing the group of people that live in the neck, here.

Again, I thank you for coming out to hear us tonight. I want you all to know that this flood fight is our life. We have been at it continually for seven years. Although the 1997 flood might be a distant memory for all of you, I can tell you we are living it minute by minute.

I am here to talk about Bill 23. There are a couple of facts that you may or may not know. Back when they were deciding on a flood protection option for Winnipeg, Ste. Agathe detention structure was dismissed for a number of reasons, one of which was the necessity of obtaining flood easements from the residents there.

* (20:00)

You may not know it but flood easements have never been obtained in the upstream area of the current floodway, possibly because there was a promise made at the construction of the floodway, verbally and in writing, that there would never be natural levels exceeded. That has occurred many times since the floodway was built, most recently with the summertime operation in 2002, where there was five feet of additional flooding. Our claim, among others, was denied because the damage caused by that was material losses.

Another point, the upstream area is guaranteed in a large flood to be completely inundated. This is just as likely to happen in 100 years, 50 years or even next year.

At a meeting this week, it was again confirmed that even with a 1997 flood equivalent, the water would be at the top of our brand new 1997-plus-two-feet flood protection levels and, quote, "The wake of a boat going by will overtop this protection, never mind any wind set up or rain at the time," unquote.

This indicates, among other known facts, that even though this project will be excellent for the provincial economy, Mr. Doer needs it desperately, Winnipeg needs it and Winnipeg needs it for sewer relief, that there are citizens who lose with this project and lose badly. The province has clearly advertised compensation issues would be dealt with in separate hearings, and now this has gone.

The IJC that is commonly touted recommends full and complete consultations with the upstream residents regarding flood protection, which has not been done. We have been in discussions for a year with a consultant who will assist us with negotiating a flood agreement so we can have some peace in our lives.

I should mention here that pleas for pre-flood buyouts when everything in our area was in ruins fell on deaf ears. Many months ago at a meeting with Mr. Ashton regarding the flood agreement, I was told by him there will be no negotiations and I said, "No negotiations?" and he repeated there would be no negotiations. This is directly opposite to what the IJC recommends and an affront to what the affected citizens need.

There remain several outstanding flood claims stemming from the 1997 flood and upcoming claims for damages for summertime operation in 2002. Unfortunately, Mr. Ashton was misinformed that there was only one, as he said in the House, but I assure him there are several. The Province and the affected residents are currently before the courts on this very issue with the Province continuing to deny, despite all evidence, that there was any artificial flooding in '97 and further that the Province has any liability in regard to the damage that went well above DFA guidelines.

Perhaps this action should be settled before moving on. Those of us who understand the truth, we cannot even sell out until our claims are settled. Many of the people in our area have decided that when people are well enough assured that the floodway is going to be good, their properties will immediately be for sale if you do not have a big mortgage against it. Because the Province clearly will not, nor has any mechanisms to act on our concerns, but merely hear them through consultations, it is the aim of our community to move the upcoming hearings into a federal panel review where we will insist that a compensation package that we were completely shut out of and has some ghastly holes in it is not considered by the citizens of Canada to be mitigation.

If the Province refuses to negotiate, then we can say, well, we do not want to be flooded. In order for Canada to fund this project, agreed-upon mitigation must be part of the project description. The chair of the CEC has already told us that mitigation or compensation is outside the scope of the CEC and will not be discussed. This is completely unacceptable for us and any Canadian or Manitoba citizen. It is completely insulting that the Province clearly in a conflict of interest here has even proposed taking away our right to sue, showing no faith in this legislation themselves.

Part of this legislation, as you may know, simply assumes the right to flood us and to store water on our property, which has to be illegal, if not immoral. It is gratifying to see this work started, but please do not yet recommend this legislation, as there is more work to be done. It is a very, very difficult position for an average citizen like myself to have to prepare to be painted by the Province as those people who are against floodway expansion. It is of course untrue. It is also unclear why the Province is proceeding in the manner it is when we just as easily could have been allies.

The manner in which we were dealt with by the Province and EMO, who will again be administering this package, was the very worst experience we have ever known or imagined and can never be repeated. We feel unsafe and we are unsafe where we live, and so we are not truly free. Our society cannot accept this or expect citizens to bear this for the salvation of another community. I respectfully ask you to refer this package for negotiation with the impacted citizens. Thank you.

Madam Chairperson: Thank you very much.

Mr. Goertzen: Thank you very much for your very impassioned presentation, Mrs. Clifton. It was very informative. Certainly, I appreciate you also setting the record straight regarding the number of outstanding claims regarding 1997. We have heard several times the minister refer to there only being one claim. I hope that your comments today will prevent him from making that assertion again in the future.

I wonder if you could go into a little bit more depth in terms of the independent consultant and the flood agreement that you said that you might be looking at in negotiation. What components are you looking at in terms of that type of an agreement?

Floor Comment: We have been talking—

Madam Chairperson: Mrs. Clifton, just a minute.

Mrs. Clifton: Sorry. I am not accustomed to this formality. We have a consultant on board that if he works for us, obviously he is going to require payment. His claim to fame is negotiating flood agreements. He has worked across Canada, but, surprisingly, most of his business has proven to be in Manitoba. He has experience with Aboriginal flooding rights. We happen to be his first European clients.

Mr. Gerrard: Thank you for your presentation. Just so you can clarify one thing for me, you say that even if there was a '97 level flood, that you would likely be flooded at '97 plus two. Is that because of the positioning of the Grande Pointe dike?

Mrs. Clifton: No. I appreciate you asking that question, Doctor Gerrard. The latest information from the minister's office has declared that the floodway does not have to be dug as deep as originally thought and that it will be more shallow. I am a little fuzzy on detail here, but my trusty husband will answer. The fact that the floodway will not have to be as deep as originally thought is going to cost us in terms of more artificial flooding than originally thought.

Madam Chairperson: Thank you.

* (20:10)

Mr. Ashton: Thank you, and I appreciate your presentation. One thing that I want to indicate, too. I appreciate that there has been legal action going back to 1999. We are somewhat restricted, obviously, in terms of getting into the details of the legal action. One thing I do want to assure you is we did take the initiative recently of putting in place a mediation process which did result, I know, in some settlements. There are still some ongoing concerns about the process that was put in place. I know you had not contacted me on this, but some other people had who were part of the process. I do not know if this is your view or not, but I was asked to review the mediation process. We will be doing that as well, in addition to the process that did take place with Justice Nurgitz.

Like I said, there may be some possible legal action which does make it difficult for either one of us to get into the details. But I certainly want to indicate that we will be doing that because the claims are all in the artificial flooding. The argument is that there was artificial flooding. It is outside of DFA where, in fact, there was only one case outstanding. I do want to indicate that I have given the undertaking a look at the mediation process as well. I know at least one claim, and even though they did sign, I believe, a settlement, they felt that there were problems. So we are going to look at the process itself, because it was intended to try and see if there was some way outside of the court process. So thanks very much.

Mrs. Clifton: Since Mr. Ashton brought up the mediation, may I comment?

Madam Chairperson: Please, Mrs. Clifton, go ahead.

Mrs. Clifton: The mediation was an underhanded attack. There was no mediation. Judge Nurgitz freely admitted he did not have a chance to mediate or act as a judge. Half of the claimants out of our group were bullied into accepting a single-digit settlement. The rest of us could not do that. That is all I will say.

Madam Chairperson: Thank you very much for your presentation.

Mrs. Clifton: Thank you.

Madam Chairperson: Mr. Clifton, do you have a presentation for the committee?

Mr. Clifton: Yes, I do. I have actually distributed it early and it is quite extensive. I will try and be brief.

Madam Chairperson: Thank you. Mr. Clifton, I just want to give you a preamble. You have 10 minutes for your presentation, and then 5 minutes for questions from the committee. So, whenever you are ready, please proceed.

Mr. Clifton: Could you not start the clock until we fix this mike? I need it turned up so that I can get it up to here, so I do not have to stand down here.

Madam Chairperson: Sure, we can do that for you.

Mr. Clifton: Thank you, Madam Chair. I should explain what I have got before the group. I had made representation to the Clerk of the House asking that I be allowed to present in a video format to date stamp a particular issue. The Clerk of the House advised that she had to talk with the House leaders, the Opposition House Leader, Government House Leader, in that in 1990 there was a ruling that "thou shall not allow videos and the like." I made representation, and I understand that Gord Mackintosh and Leonard Derkach met and talked about it, and they disallowed that we could do any sort of a presentation in storyboard form, video or the like.

On this video is a video representation on CBC national TV, May 2, 1997, May 4, 1997, *The Inundation of the Upstream Valley*, and that is important that it is date stamped here. There are also background records.

My name is Paul Clifton. I am a resident of the R.M. of Ritchot, that we now call the community of Howden, Manitoba. We are clustered on the southern edge of the city of Winnipeg.

I wish to first observe that yesterday we, as Canadians, from sea to sea to sea acknowledged the brave and unselfish contribution some 60 years ago by men and women of Canada in the D-day invasion of Normandy. This in defence of our value of democracy, freedom and way of governance that we hold dear to this day.

Then tonight, a day after this sombre remembrance of a commitment by many, I feel myself in a committee room of the Manitoba Legislature to speak on a draconian piece of legislation. The most draconian yet to be tabled in this House of democracy. Clearly, it is an affront to the fundamental observations of a citizen's rights possible. This is to remove the right of impartial review of government decisions, actions or lack thereof to the courts of this province. The rights of citizens to be legislated away with little or no strenuous voice from opposition, save for the Member for Morris, Mavis Taillieu, and the Leader of the Liberal Party, Mr. Jon Gerrard, and his colleague.

The court was in the vision of the late Pierre Elliott Trudeau and his repatriation of the Constitution to have government actions of legislative review at higher court than the government, to the highest court of the land, the Supreme Court of Canada. The court would be a check and a balance against the abuse of government of the day.

That said, I will be speaking tonight in reference to two reference packages, the first a spiral-bound book and five additional pages paginated. I did not have time. I received the one this morning at six-fifteen in the morning from Environment Canada out of Ottawa. So it is numbered page 44, I believe. I did not get a chance to number the next pages, but it is 45, 46, 47 and 48. I will make reference to those as I go.

The second book is titled *Supplementary Background*. Records will be used to demonstrate the government of Manitoba and the government of Canada's true actions as relates Red River flooding induced upstream on citizens of Canada and citizens of Manitoba.

I will be detailing from the available public record past actions of the current government, to shelter records fundamental to complete an unbiased review of this legislation and the project Red River Floodway Expansion to continued action of Manitoba to shelter records of its participation with the Government of Canada on or about May 1, 1997, under the floodway emergency operation to inundate the upstream area for the exclusive salvation of the city of Winnipeg.

With the proposed legislation now to remove the right of judicial review relying solely on two Manitoba government institutions, that of Manitoba EMO and the adjudication of disputes to the Disaster Assistance Appeal Board for compensation issues, I will be detailing the sheltering of Manitoba commission records and post-amalgamation operations by Ernst & Young and its appendices of public scrutiny.

I will be strongly recommending that these two items of record be provided to the committee of the House, you folks, to Manitobans and to Canadians, for that matter, without exclusion or severing of portions except for personal names to protect personal identity.

I will be demanding from the Government House Leader that he petition his federal counterpart, the honourable Jacques Saada, Government House Leader, Minister responsible for Democratic Reform, to undertake and initiate a comprehensive judicial review of matters of Red River flood control in the province of Manitoba, this to cover from the date of the government's deal, that is, Canada and Manitoba, to wilfully and deliberately flood the valley and forward to the present date, to today.

I will be demanding that the issue of environmental assessment of the Floodway Expansion Project be moved following judicial review to mediation. This by the Premier of Manitoba, immediately advising the Minister of Environment, Mr. David Anderson, that he wishes to most expediently advance Manitoba flood protection and his full and complete support of the option of mediation under The Canadian Environmental Assessment Act. This is the best option for Manitobans and Canadians to see Red River Valley flood protection, including flood protection for the city of Winnipeg.

I am going to start from the spiral-bound book to start. First is a reply from Water Stewardship on an access to information request. I will note that I have been chasing federal records for six years. How can you fix something, how can you make it better with understanding how it was supposed to work? That is where it started. Six years later, I am down to the deal between the Government of Canada and the government of Manitoba, that I will be detailing later, to inundate the valley. To date full compensation by Canada and Manitoba has not been received by residents affected by that deal.

* (20:20)

The first two pages are Water Stewardship denying me access to these records. The third page is my letter to the Ombudsman on a complaint currently before the Ombudsman in which I allege there was a deal between the Government of Canada, the mayor of the City of Winnipeg and the Premier of the day of the government of Manitoba to initiate an emergency operation of the floodway. Also, I note at the end that the Ernst & Young investigation and the lack of release of the Ernst & Young report of how EMO actually does operate was denied after a year and a half of research by the Ombudsman.

Further to that, letter to your partner, the Government of Canada, that wants very much to partner with Manitoba, but they cannot partner if you are screwing upstream Canadians.

Page 6, Suzanne Hurtubise, deputy minister of Environment, recommends strongly to Manitoba that those two pages be provided to Mr. Clifton to help get to the truth here. The Province is still not going that way.

The next page, No. 7, Ombudsman report, where the Ernst & Young report of the amalgamation of the Disaster Financial Assistance and EMO, that it was amalgamated by the Filmon government in 1996, is not being released. So the very body that is going to pay damages to us, you are not telling me how they really operate.

Page 11: Fundamental to democratic rights is the right to government records, the right to our records. We are government. We pay the taxes. We ensure integrity through the right to access. The dates on all this stuff are very important. In 1998, I requested information specific to federal approval of the operating rules for the Red River Floodway.

Page 12, I had to pay money to get that information, and, subsequently, there was a change of government. On page 13, Mr. Doer was in government and he talked very highly of what he would do. He would get folks behind closed doors and he would solve this problem. So I sent an access request to the Government of Canada in 2000 with the new government in place, thinking that there would be transparency, as recommended by the IJC. Subsequently, I met Mr. Doer on the floodway, as Mr. Doer and company were flooding us again unnecessarily. I challenged Mr. Doer, and in writing I challenged Mr. Doer, on April 16, 2001, saying: "Mr. Doer, you are sheltering the federal approval records. You do not have approval to operate this floodway and you are sheltering," I thought at the time, "13 pages." As it turns out, he was sheltering 11 pages. He corresponded through his department to Environment Canada and said: "Release 9 of 11 records to Mr. Clifton," and they were released.

Madam Chairperson: Mr. Clifton, I want to just tell you, you have 30 seconds remaining in your presentation.

Mr. Clifton: The last page of the second brief is a deal. This is where the director of PFRA bought—after the Municipality of Ritchot refused to sign-off on the operating rules because they were not in the best interests of the valley residents, the director of PFRA, Mr. Erminio Caligiuri, circumvented the rights of all Canadians in that he usurped the requirement that the federal government be at arm's length to provinces. If monies come to municipalities, those monies come to the municipalities through Manitoba, not Canada. Mr. Erminio Caligiuri usurped the rights of citizens of Manitoba by buying approval for the operating rules as—

Madam Chairperson: Mr. Clifton, I am sorry, we will have to conclude. You have time for one last sentence.

Mr. Clifton: We cannot proceed on floodway expansion on lies and deceit. We have \$660 million to spend. It might be a billion and it might be 1.4 billion, but we are going to do it right. The record is there. The record is presently on the federal public registry and the provincial public registry. You will be unable to license this project.

Madam Chairperson: Thank you, Mr. Clifton. Does the committee have questions for Mr. Clifton?

Mr. Goertzen: Thank you very much, Mr. Clifton, for your very detailed presentation. I look forward to going through in more detail the documentation you have provided here this evening.

Certainly, Mrs. Taillieu has spoken well about your knowledge on this issue. She is presently attending another committee hearing in the Legislature. I know she would have appreciated being here and I will be certain to pass along these documents to her, as well, if she has not already received copies of those documents.

Regarding the issue of litigation, specifically, could you indicate for the committee the allowance to appeal to the courts? Should that be separate and apart from the scheme altogether? What I am asking then is, when somebody has a compensation claim, should they have the choice of whether or

not to go through the appeal, the legislated compensation scheme, or to the courts, or would it be acceptable if they were kind of mandated to go through the legislated scheme first but still have the right after that, et cetera, to go to the courts?

Mr. Clifton: There is a bit of a charade, and it comes back to the International Joint Commission. I am sorry, I cannot make a short answer, but the International Joint Commission has tasked Mr. Lloyd Axworthy, detailed, to study valley-wide flood protection. We are not anywhere near studying valley-wide flood protection. The government engineers have determined that we are going to flood-protect Winnipeg, irrespective of valley-wide issues. The Province of Manitoba cannot afford to operate a floodway if they cannot empond water on private property. They have to negotiate the right to empond water on private property on an annual basis because it could flood in any year.

We are not talking about a legislated right to take my rights away to seek judicial review through the courts. Ten minutes goes by very quickly, but I will detail where Maxine did not have the knowledge. Under this judicially assisted mediation, there were 10 families that were brutalized by the Province of Manitoba. They were offered the thought: "If you settle now, we will not charge you costs." They took these folks, with an aggregate loss of \$2.4 million, and out of the 10 families they pieced up \$365,000. On average, that is about 10 percent of their loss, and they were forced to sign a confidential agreement that they could not even tell their mother they were brutalized by the Province of Manitoba.

Mr. Gerrard: You have made what I think is a very important point that the lack of appeal to normal court procedures is terrible. It seems to me, and maybe you would comment, there are some fairly complex issues here in dealing with flooding and there needs to be an ability to have a review which is carried out by a court which is independent of government in order to protect citizens because of the complex nature of the circumstances around flooding and the potential for government to be heavy-handed in its approach.

Mr. Clifton: We have been encumbered by the statute of limitations in the province that you have two years or possibly six years. Very interestingly though, in the Federal Court of Canada, there is no statute. I bring to you an example. The Residential Schools issue, where 30 years ago a wrong was perpetuated among Aboriginal people, is in the courts now. This will move to the courts, and it will delay, but it will go to the Federal Court of Canada. All folks, Government of Manitoba, City of Winnipeg, Province of Manitoba, will be named in the Federal Court of Canada and we will solve this. That is counter-productive to most expedient flood protection of the Red River Valley, including the city of Winnipeg.

Madam Chairperson: Thank you very much, Mr. Clifton, for your presentation.

Gaile Whelan-Enns from the Manitoba Wildlands. Is Gaile Whelan-Enns here? Her name will be dropped to the bottom of the list.

Doug Chorney, private citizen. Mr. Chorney, do you have a presentation to distribute to the committee members?

Mr. Doug Chorney (Private Citizen): I do, I have 20 copies.

Madam Chairperson: Thank you, please proceed whenever you are ready.

Mr. Chorney: Madam Chairperson, I thank the committee for the opportunity to speak regarding Bill 23. I am Anthony Douglas Chorney, life-long resident of East Selkirk. I hold an undergraduate degree in Agricultural Engineering from the University of Manitoba. I am a registered professional engineer in the province of Manitoba, and I am currently self-employed operating a grain and vegetable farm in

the R.M. of St. Clements. I am a member of the Keystone Agricultural Producers and part of the District 5 executive.

* (20:30)

Many shortcomings in Bill 23 require amendment prior to final passage. I will briefly highlight the points which require the committee's consideration. Part I Definitions. "Artificial flooding" This is much too vague. Area residents who have experienced flooding caused by ice jams north of Lockport have historically linked the onset of high water volumes to the operation of the current floodway. This flood event is indeed artificial. When challenged, the government denies the link. This happened in the spring of 2004. Another definition, "natural level." Flooding in the absence of the floodway. That is what is used in the definition that the floodway does not exist, but, in fact, we have been told by the Manitoba Floodway Expansion Authority the current floodway is considered state of nature in all modelling of flood impacts. Why is this excluded from the definition in the act?

Eligible property, Part 2.2(c), flood-proofing initiatives which have been available south of Winnipeg have been denied to residents north of Winnipeg. Will this change in the future? The MFEA has made public presentations which predict flooding near the PTH 4 bridge in the event of a large flood. Why is state of nature deemed to be acceptable for all Manitoba residents outside the floodway and not acceptable to residents inside the floodway?

Part 4, General Provisions, Protection from Liability. Why, if the government only exists to act in the best possible public interest, is it necessary to have liability protection? Would it not be necessary only if the government is planning to knowingly violate the law or constitutional human rights? Any justification of individuals' sacrifice for the benefit of the majority of the public would surely need mitigation and/or remedy rather than avail of legal protection. I trust the public interests can never outweigh individual rights.

Groundwater. I understand the intention of The Red River Floodway Act is to address issues of damages caused by the construction and operation of the floodway system because it is a system. However, the new act fails to address the most significant environmental issues surrounding the project. I reluctantly bring this issue to your attention as it seems that if included in the act, the public again would have no legal recourse or remedy available by legal liability protection which the government is going to have with this act. However, the issue of groundwater supply and quality is paramount and cannot be avoided in any discussion about the floodway as it exists today or the planned expansion in the future.

The KGS Engineering Project Description published in July of 2003 predicts 5200 water wells will experience some degree of draw down as a result of the floodway expansion project. Intrusion of Red River water to the aquifer is a risk from the Birds Hill area north to Lockport. The reports suggests further study is required to define the scope of the problem. The project description includes well water mitigation as a line item in the project budget.

Mr. Vice-Chairperson in the Chair

The MFEA has commissioned further studies and I give them credit for that and now believe the risks are of such magnitude that a redesign of the floodway expansion is necessary. The floodway will no longer be deepened to the planned 6.5 feet. Deepening will be avoided where possible and will be limited to a maximum of 2 feet. I believe that no single technical opinion should be used when risking a resource as important as groundwater.

The importance of groundwater to my community including the town of Selkirk and agricultural industry is critical to our long-term sustainability and viability. My farm operation, like many local residents depends on groundwater for domestic consumption, agricultural applications and geothermal heating. My personal residence is heated and air-conditioned using a geothermal well to well heat pump. Any loss of supply of water quality or supply quantity would be of tremendous economic hardship to our area.

In conclusion, I ask the committee to consider the implications of Bill 23 before passing it into law.

Mr. Goertzen: Mr. Chorney, thank you very much for your presentation. You certainly touched on some of the issues that other presenters have touched on and there seems to be something of a consensus growing around the inability for court action and such things. In your comments on artificial flooding and the effect that you had this spring in terms of the ice jams, that intrigued me in particular because you had kind of a real-life situation that would not necessarily fall under the act, and you question whether or not it would fall under the act to artificial flooding. Could you provide some suggestions, perhaps, on how that vagueness on the term artificial flooding could be addressed? Do you have any thoughts on that, in particular, in relation to the concern that you raised about the ice jams this spring?

Mr. Chorney: It is an intangible number and it gives the act broadening, sweeping flexibility because the definition can be disputed. If you look back to 1826 there was no Highway 44 or Highway 59, natural drainage, municipal drainage projects; so what is natural pre-1826, 1997, 2004? It is a very vague concept. It is a very poor way to base remedying or compensating people who are impacted by flood waters specifically that are man-made. One cannot dispute the fact that the floodway as it exists today is a man-made structure and that it will have an impact on waters entering the river at Lockport.

Mr. Ashton: I appreciate your comments on the definition of artificial flooding and have indicated that there has been the same amount of engineering work that has been going into getting to the root of a lot of the issues here you are referring to, because when you start having concepts, in this case, in legislation, clearly we wanted to insure that the state-of-the-art terms of the scientific data that is there and I certainly would appreciate any feedback you have from your own professional perspective on the work they have been doing.

The only point that I wanted to raise though on the groundwater—I appreciate your presentation and the fact that you indicated the mitigation that will be there as part of the redesign of the floodway—I want to indicate that that was very much driven by the principle of maintaining the flood protection but minimizing groundwater impacts. I just wanted to indicate that in addition to that, I think, you have acknowledged that, that it is also another aspect of the floodway as well which is the actual mitigation in terms of wells. I mean, we are trying to design the minimum impact on groundwater but if there are any impacts with wells that is a specific element of the floodway expansion budget, but obviously, as you have pointed out the more we can minimize groundwater impacts, other presenters made, the better our hope is to not use that line in the floodway authority budget if we have to and the latest engineering work is very encouraging. This act, in fact, will get the flood proofing without the impact on groundwater, so I appreciate your presentation.

Mr. Gerrard: Thank you for your presentation.

My question actually has to do with the groundwater and the wells. The area where you are now, was the groundwater affected by the original floodway construction? How common are the geothermal wells, to well heat pumps, and so on, that you are using to heat your home? What would be your recommendation in terms of how compensation should be approached in terms of ground water problems?

Mr. Chorney: Well, certainly, the effects of the original floodway construction were noticed most evidently at a farm near Lockport, where the well water level drawdown was 60 feet, and they were never compensated for that, and they had to make a new well. That level never recovered.

In the KGS engineering studies that I have read, the drawdown effect after the original construction of the floodway recovered by the early seventies to the vast majority of landowners. However, many local residents have claimed that their water level has, in fact, stayed low.

* (20:40)

The geothermal heating system is quite common. There are various options, well-to-well loops, in-ground loops. Manitoba Hydro is now encouraging Power Smart geothermal heating. I built my house and installed the system 13 years ago because I saw it as a logical thing to do.

Madam Chairperson in the Chair

It is growing in importance and, I think, popularity, and I think we should not do anything to hurt that advantage that Manitoba has as a resource.

Thirdly, the compensation. I am appalled at the—

Madam Chairperson: Mr. Chorney, I am sorry to interrupt you. Your time has come to an end. Thank you.

Mr. Chorney: I thank the committee.

Madam Chairperson: We have one presenter listed for Bill 31, The Floodway Authority Act. Is Gaile Whelan-Enns from the Manitoba Wildlands present here? Her name will be dropped to the bottom of the list.

This is the second time we are reading for Bill 23, The Red River Floodway Act. Gaile Whelan-Enns, from the Manitoba Wildlands? No? Seeing that she is not present, her name is dropped off the list.

For Bill 31, The Floodway Authority Act. Once again, Gaile Whelan-Enns, from the Manitoba Wildlands? No? Seeing that Ms. Whelan-Enns is not present, her name is dropped off the list.

That concludes the list of presenters that I have before me this evening. Are there any other persons in attendance who wish to make a presentation?

Seeing none, is it the will of the committee to proceed with detailed clause by clause consideration of bills 10, 23, 31, 33, 34, 35 and 38? Agreed? *[Agreed]*

Is it the will of the committee to proceed in numerical order for each one of the bills that I have read? Agreed, to go in numerical order for each one of the bills? *[Agreed]* Thank you.

**Manitoba****THE MANITOBA WATER SERVICES
BOARD****NOTICE OF TENDER**

Sealed tenders, marked as follows will be received by the undersigned at The Manitoba Water Services Board, Imperial Square, 2022 Currie Blvd., Box 22080, Brandon, Manitoba, R7A 6Y9, up to 11:00 a.m., prevailing Brandon time on:

March 1, 2002

for the following works:

The supply and installation of approximately 8100 metres of water pipeline, 5700 metres of service pipe, 65 residential service connections, and related appurtenances all located in the Rural Municipality of Ritchot.

MARKED

M.W.S.B. No. 715

**Rural Municipality of Ritchot Rural
Water Pipelines Phase 2 - 2002**

Tenders will be publicly opened and read at the location, time and date specified above.

Each tender must be accompanied by a fully executed BID BOND on the form provided and in favor of the Minister of Finance for the amount shown on the Tender. Under NO CIRCUMSTANCES will a certified cheque be accepted in lieu of a Bid Bond.

Tender documents may be obtained on or after February 18, 2002 at 2022 Currie Blvd., Box 22080, Brandon, Manitoba, R7A 6Y9, on the deposit of a CERTIFIED CHEQUE in the amount of \$50.00 on each Tender. Deposit will be refunded only on (1) the submission of a bona fide tender or (2) the return of the tender documents within seven (7) days after tender closing.

The lowest or any tender may not necessarily be accepted.

Brandon, Manitoba

RURAL WATER DEVELOPMENT PROGRAM

CONTRIBUTION AGREEMENT

This AGREEMENT made in duplicate, this 8 day of August, 2001

BETWEEN:

HER MAJESTY THE QUEEN in right of Canada, hereinafter referred to as "**Canada**", as represented by the Minister of Agriculture and Agri-Food Canada, hereinafter referred to as the "**Minister**".

OF THE FIRST PART

AND

THE RURAL MUNICIPALITY OF RITCHOT, No. 165, a municipality pursuant to the laws of the Province of Manitoba (hereinafter referred to as the "**Applicant**").

OF THE SECOND PART

WHEREAS the Applicant has requested Canada to provide technical and financial assistance for a rural water pipeline as set out in Appendix I of this Agreement (hereinafter referred to as the "**Project**") known as

RITCHOT RURAL WATER PIPELINE - 2001/02;

and

WHEREAS the need for reliable supply of good quality water to serve the agricultural community has been demonstrated; and

WHEREAS the intended use of the water is for domestic and livestock purposes; and

WHEREAS Canada can provide technical and financial contributions to certain works and initiatives (which include the Project herein provided for) pursuant to Section 9 of the Prairie Farm Rehabilitation Act; and

AND WHEREAS the Project has been estimated to cost approximately **Five Hundred Forty Thousand dollars (\$540,000)**.

NOW THEREFORE, THIS CONTRIBUTION AGREEMENT WITNESSES that in consideration of the premises, covenants and agreements herein contained, and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

1. Definitions

- 1.1 (i) "Minister" means the Minister of Agriculture and Agri-Food Canada and anyone authorized to act on the Minister's behalf;
- (ii) "Canada's Representative" means the officer or employee of Canada who is designated by this Agreement, including a person authorized by Canada's Representative to perform any of Canada's Representative's functions under the Agreement;
- (iii) "PFRA" means Prairie Farm Rehabilitation Administration, a branch of the Department of Agriculture and Agri-Food Canada;
- (iv) "RWDP" means the Rural Water Development Program; and
- (v) "Project" means the specific activity described in Appendix 1.

2. Purpose

- 2.1 The purpose of this Agreement is to set out the financial arrangements and other responsibilities between Canada and the Applicant.

3. The Applicant's Responsibilities

- 3.1 Acquire forthwith and prior to commencement of any work, such land and rights of interests in land together with such legal surveys as may be required and obtain such water rights, flood easements, rights-of-way and rights of access as may be required, for the completion of the Project.
- 3.2 Notify Canada when acquisition of lands and the necessary rights, licences and approvals have been formally completed.
- 3.3 Make the necessary administrative and legal arrangements to effect the closure and diversion of roads where required by the construction of the Project.
- 3.4 Award contracts through a tendering or hiring process that has been reviewed by Canada and allow Canada the right to approve the awarding of the contract(s) required for the completion of the Project.
- 3.5 Complete or arrange for the completion of the Project and pay one hundred percent (100%) of the cost of completing the Project.
- 3.6 Commence work on the Project within three months of the start of this Agreement and shall diligently pursue the work prior to the completion date specified in 6.1.
- 3.7 Complete the Project as per design, specifications and plans as approved by Canada and allow Canada, or others approved by Canada, unrestricted access to undertake whatever inspection(s) or audits Canada deems necessary to ensure for itself that the Project is completed according to specification and plan.
- 3.8 Shall not sell, transfer or encumber the Project or any part or component thereof, as identified in Appendix 1, upon acquisition of such components, during the term of this Agreement, without prior consent of the Minister.
- 3.9 Observe and abide by all applicable provincial and federal legislation relating to public health and safety and including but not restricted to the Canadian Environmental Assessment Act and governing provincial environmental legislation.
- 3.10 Assume all and every responsibility for future losses and/or damages of every nature resulting to the Applicant by the said Project.

- 3.11 Upon completion of the Project or portions thereof, provide Canada with a statement of cost which summarizes project costs, indicates Goods and Services Tax (GST) paid, and certifies the portion of the GST which will be refunded to the Applicant. The refundable portion of the GST will not be included as an eligible cost for purposes of this Agreement.
- 3.12 Repay to Canada any overpayment, unexpended balance, or disallowed expense upon demand, which amounts constitute a debt to Canada. All payments which are required to be made to Canada and are not made when due shall be deemed a debt due to Canada with interest thereon, compounded monthly, at the Bank of Canada rate plus 3% per annum, from the date that such payment was due. Until full payment is received, Canada may, in addition to any remedy, exercise the right to set-off and withhold any funds otherwise payable by Canada to the recipient.
- 3.13 Provide Canada's Representative with reports on the progress of the Project on request and in a format as determined by Canada's Representative.
- 3.14 Keep and preserve proper financial accounts and records and prepare summary records in the manner described by Canada's Representative.
- 3.15 Provide access and allow Canada to audit books and records which provide verification of shareable costs as identified in this Agreement, and retain such books and records for a period of not less than one year after completion of the Project as certified by Canada.
- 3.16 Declare all sources of proposed funding for the Project within 30 days of signing this Agreement, as well as upon completion of the Project.
- 3.17 In the event that the Total Government Assistance exceeds the maximum amount identified in the RWDP's terms and conditions, repay Canada the portion of the contribution necessary to reduce the Total Government Assistance to that level identified in the terms and conditions.
- 3.18 The Applicant is responsible for the quality of the water, including testing and treatment of the water for its intended use as well as the proper operation and maintenance of the water treatment system. Further, it is the responsibility of the applicant to decommission the Project in accordance with applicable regulations and generally accepted good practices when the Project is no longer required and to keep the users informed periodically (yearly) as to the water quality, intended use, required treatment of the water and the required operation and maintenance of the treatment system.

4. Canada's Responsibilities

- 4.1 Provide on behalf of the Applicant any technical inspection(s) of the contractor(s) work, and any monitoring of the contractor(s) engaged in the construction of the Project that Canada deems necessary to ensure that the Project is constructed according to specification and plan. Subject to approval by Canada, technical inspection and supervision for portions of the work on the Project may be provided by others.
- 4.2.a. Subject to completion of the Project to Canada's satisfaction, and subject to there being an appropriation of funds by the Parliament of Canada for the fiscal year in which any commitment thereunder would come in course of payment, pay the Applicant a financial contribution of Thirty Three and One Third Percent (33.3333 %) of the final shareable project costs to a maximum of One Hundred Eighty Thousand Dollars (\$180,000). At Canada's discretion and subject to there being an appropriation of funds by the Parliament of Canada for the fiscal year Canada may provide an advance, no greater than 85% of the cost estimate toward the commitment. At Canada's discretion, progress payments may be made towards the contribution, for portions of the Project which have been completed. Should any disagreement arise as to the deemed shareable costs, Canada's decision pertaining to deemed shareable costs will be final and conclusive. Canada's contribution towards the Project will not vest in Canada any proprietary interest in the Project nor does Canada by this Agreement assume any management, operation, maintenance, control, or ownership of the Project.

4.2.b. The financial contribution paid by Canada shall be reduced by the total cost incurred by Canada in providing Contract Administration: Resident Services, when these costs are incurred as a result of a delay in completion of a contract by a contractor. The cost of these services shall become part of the shareable project costs and shall be considered as an "in-kind" portion of Canada's financial contribution.

4.3 Pay the contribution on the basis of paid invoices or proof of payment setting out expenditures actually incurred and paid by the Applicant. Claims shall be submitted in a form satisfactory to Canada and shall be certified correct by an officer or officers duly authorized to carry on business in the name of the Applicant. Payment of the contribution will be conditional upon the Project being satisfactorily completed (as determined by Canada) and all applicable approvals and authorizations being obtained. In addition, no payment shall be made until Canada has had an opportunity to audit the invoices and proof of payments as set out above.

4.4 Canada reserves the right to cancel or reduce the federal contribution to the Project in the event that funding levels to the RWDP are changed by Parliament.

5. Eligible Costs

5.1 Eligible Costs shall include all costs reasonably incurred by the Applicant for the Project hereunder that are:

- i) invoiced by a third party under a contract for goods, services or construction in respect to an activity, study, investigation, public information, project evaluation, or financial audit for the Project;
- ii) the non-refundable portion of GST paid in performance of the Project; and
- iii) expenses otherwise properly incurred in the performance of the Project as defined and determined by Canada's Representative.

6. Termination

6.1 This Agreement shall commence on July 30, 2001, with all project work to be completed by February 28, 2003. It is agreed that no claim for payment will be entertained beyond March 31, 2003.

6.2 If during the term of this Agreement, the Applicant or Canada's Representative determines on the basis of technical, financial or other considerations that the Project should no longer proceed, or that it should terminate earlier, or later than the date provided for Subsection 6.1, the Applicant and Canada's Representative shall consult with each other and the Agreement may be terminated, extended or shortened by agreement in writing of the parties.

6.3 If the Applicant fails to perform any of its obligations under the Agreement, Canada's Representative may, upon one month's written notice, terminate the Agreement, or suspend the work with respect to all or any part or parts of the work not completed, or extend or shorten the term of the Agreement either unconditionally or by requiring the Applicant to accept such terms and conditions as the Minister in his sole discretion considers necessary.

Commencement of construction prior to completion of the federal environmental assessment decision under the *Canadian Environmental Assessment Act* will result in the termination of this Agreement.

6.4 Where notice of termination of this Agreement is given to the Applicant under Subsections 6.2, or 6.3:

- (i) the Applicant is entitled to payment only for work on the Project satisfactorily performed up to the effective date of the termination, for which satisfactory invoices have been submitted to Canada;
- (ii) the Applicant shall immediately return to Canada any amounts paid by Canada that have not been expended upon the Project in accordance with this Agreement, which amounts are recoverable as a debt to Canada and if payment is not made to Canada

when due, shall become a debt due to Canada with interest thereon, compounded monthly, at the Bank of Canada rate plus 3% per annum, from the date such payment was due; and

- (iii) Canada may reimburse the Applicant for any labour and material that the applicant ordered prior to receipt of the notice of termination and that is received within 30 days thereafter.

7. Amendments

- 7.1 Subject to the mutual consent of Canada and the Applicant, this Agreement may be amended. In order to be valid, any amendment must be in writing and duly executed by both parties.

8. Indemnification and Exemption

- 8.1 The Applicant shall indemnify and save harmless Canada, Her Officers, employees, agents or contractors, from and against and be responsible for any action, cause of action, suit, claim, liability, loss, damages, costs and expenses including reasonable solicitor/client fees, administration fees, and disbursements, and any other proceeding whatsoever and by whomever made for personal injury, death, environmental impact or property damage, whether by way of judgement, compromise, or settlement, arising directly or indirectly and whether by reason of anything done or omitted to be done, negligence or otherwise, from the performance of any default or delay in performance of its obligations under this Agreement, or from the remedying of such default by the Applicant, its agent, contractor, employee or licensee.
- 8.2 Canada shall not be liable to the Applicant for any injuries, including death, loss or damages be it personal or property, on the part of the Applicant which may arise from the performance, omission of performance, default, remedying the default or the entering into of this Agreement.
- 8.3 Further, except as specifically agreed to herein, Canada shall NOT be responsible for any cost, expense, or loss resulting from any loan or other obligation which the Applicant may enter into in connection with the Project.

9. General

- 9.1 For the purpose of this Agreement any invoices, reports, notices, consents, or other written communications required to be given pursuant to it, shall be adequate if served personally or sent by post to Canada's Representative below:

John Zyla, District Engineer, or
 Stan McFarlane, Head District Water Programs
 PFRA - AAFC
 Bag 2000
 Beausejour MB R0E 0C0

and addressed to the Applicant as follows:

Mr. Yves Sabourin, CAO
 Rural Municipality of Ritchot
 352 Main Street
 St. Adolphe MB R5A 1B9

and should either Canada's Representative or the Applicant change their address, they shall provide the other party with written notice of such change as soon as possible

- 9.2 No member of the Senate or House of Commons, or of the Legislative Assembly of the Province of Manitoba shall be admitted to any share or part of any contract, agreement, or commission, or to any benefit arising therefrom with respect to any project undertaken pursuant to this Agreement.
- 9.3 It is a requirement of this agreement that no former federal public office holder who is not in compliance with the post-employment provisions of the *Conflict of Interest and Post-*

Employment Code for Public Office Holders shall derive a direct benefit from this Agreement.

- 9.4 The Applicant shall not assign all or any portion of this Agreement without the prior written approval of Canada.
- 9.5 Neither the Applicant nor any of the Applicant's personnel is engaged by the virtue of this Agreement as an employee, servant or agent of Canada. Further, nothing in this Agreement shall be construed as creating a relationship of agency, trust, association, joint venture, or partnership between the Parties; the Applicant shall NOT represent itself, including in any agreement with a third party, as having such a relationship with Canada.
- 9.6 The parties acknowledge that the Project is receiving funding by Canada and as such must comply with Canada's trade obligations, particularly the World Trade Organization-Agreement on Government Procurement (WTO-AGP), the North American Free Trade Agreement (NAFTA), and the Agreement on Internal Trade (AIT). The Applicant will ensure this compliance in the carrying out of this Project.
- 9.7 Any person(s) lobbying on behalf of the Municipality must be registered pursuant to the *Lobbyist Registration Act*.
- 9.8 This Agreement complete with attached Appendices constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof.

PROCESSED UNDER THE PROVISIONS OF THE ACCESS TO INFORMATION / PRIVACY ACTS / REVISE EN VERTU DES LOIS SUR L'ACCÈS À L'INFORMATION OU LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

PROCESSED UNDER THE PROVISIONS OF THE ACCESS TO INFORMATION / PRIVACY ACTS / REVISE EN VERTU DES LOIS SUR L'ACCÈS À L'INFORMATION OU LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

PROCESSED UNDER THE PROVISIONS OF THE ACCESS TO INFORMATION / PRIVACY ACTS / REVISE EN VERTU DES LOIS SUR L'ACCÈS À L'INFORMATION OU LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

PROCESSED UNDER THE PROVISIONS OF THE ACCESS TO INFORMATION / PRIVACY ACTS / REVISE EN VERTU DES LOIS SUR L'ACCÈS À L'INFORMATION OU LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

IN WITNESS WHEREOF, Her Majesty the Queen in right of Canada, as represented by the Minister of Agriculture and Agri-Food, has by Her duly authorized representative on Her behalf, executed this Agreement this 8 day of August, 2001.

Her Majesty the Queen, in right of Canada, as represented by the Minister of Agriculture and Agri-Food

Stan McFarlane
Witness (Print & Sign Name)
STAN MCFARLANE

Emilio Calliuri
Emilio Calliuri, Regional Director
for and on behalf of the Minister of Agriculture and Agri-Food

IN WITNESS WHEREOF, this Agreement has been executed on behalf of The Rural Municipality of Ritchot, this 1 day of Aug, 2001.

Florence May
Witness (Print & Sign Name)

Per: Yves Sabourin
Yves Sabourin, CAO
RM of Ritchot

(Affix Corporate Seal if Applicable)

Florence May
Witness (Print & Sign Name)
FLORENCE MAY

Per: Robert Stefaniuk
Robert Stefaniuk, Mayor
RM of Ritchot

Appendix 1
(Schedule of Work)
PROCESSED UNDER THE PROVISIONS OF THE
ACCESS TO INFORMATION / PRIVACY ACTS
RÉVISÉ EN VERTU DES LOIS SUR L'ACCÈS À L'INFORMATION OU
DE LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

For the purpose of this Agreement, the "Project" will consist of the following items of work:

Water Supply Pipelines	285,000
Service Connections to property line	135,000
Engineering	45,000
Contingencies including financing	75,000
TOTAL	540,000

PFRA SHARE @ 1/3 OF THE COST = 180,000

PAYABLE upon receipt of proof of payment

PROCESSED UNDER THE PROVISIONS OF THE
ACCESS TO INFORMATION / PRIVACY ACTS
RÉVISÉ EN VERTU DES LOIS SUR L'ACCÈS À L'INFORMATION OU
DE LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

PROCESSED UNDER THE PROVISIONS OF THE
ACCESS TO INFORMATION / PRIVACY ACTS
RÉVISÉ EN VERTU DES LOIS SUR L'ACCÈS À L'INFORMATION OU
DE LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

AFFIDAVIT OF WITNESS

CANADA) I, STAN McFARLANE, in the
)
PROVINCE OF) Town of Beaussejour
)
MANITOBA) in the Province of Manitoba
)
) Head, District Water Programs
)
TO WIT:) make oath and say as follows:

1. That I am of the full age of eighteen years;

2. That I was personally present and did see

Stella Fedeniuk
named in the annexed document who is personally known to me
to be the person named therein, duly sworn and execute the same
for the purposes named therein.

3. That the same was executed at the City of Winnipeg in the
Province of Manitoba, on the 6th day of August, in the year 2001.

4. That I know the said Stella Fedeniuk
and in my belief she is of the full age of eighteen years.

SWORN before me at Beaussejour
in the Province of Manitoba
this 8th day of August A.D. 2001

Stan McFarlane

[Signature]

A Commissioner of Oaths
in and for the Province of Manitoba.
My Commission expires June 18, 2002

RURAL WATER DEVELOPMENT PROGRAM
CONTRIBUTION AGREEMENT AMENDMENT

AMENDMENT TO AN AGREEMENT DATED THE 8th DAY OF August
A.D. 2001

BETWEEN:

HER MAJESTY THE QUEEN, in right of Canada, as represented
by the MINISTER OF AGRICULTURE AND AGRI-FOOD,
(hereinafter referred to as "Canada").

- and -

THE RURAL MUNICIPALITY OF RITCHOT No. 163, a
municipality pursuant to the laws of the Province of
Manitoba (hereinafter referred to as the "Applicant").

WHEREAS the Applicant has requested an amendment to the
Agreement made between the parties concerning

RITCHOT RURAL WATER PIPELINE - 2001/02;

AND WHEREAS Her Majesty is agreeable and does hereby
consent to the Applicant's request.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that in
consideration of the premises, the parties hereto mutually agree to
amend the Agreement made between themselves on the 21st day of
February A.D. 2003, in the manner following:

1. The paragraph # 4.2.a. on page RWDP - 3, of the Agreement is hereby amended by deleting therefrom the words and numbers "to a maximum of One Hundred Eighty Thousand Dollars (\$180,000)", and substituting therefor the words and numbers "to a maximum of One Hundred Eighty Five Thousand Dollars (\$185,000)".
2. The paragraph # 6.1 on page RWDE of the Agreement is hereby amended by deleting therefrom the words "It is agreed that no claim for payment will be entertained beyond March 31, 2003.", and substituting therefor the words "It is agreed that no claim for payment will be entertained beyond July 1, 2003."

PROCESSED UNDER THE PROVISIONS OF THE
ACCESS TO INFORMATION / PRIVACY ACTS
REVISE EN VERTU DES LOIS SUR L'ACCES A L'INFORMATION OU
DE LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

RECEIVED

FEB 20 2003

FF/7
CHASSE/...

000010

12

3. Appendix "A" to the Agreement is hereby amended as follows:
 By deleting therefor the complete content of Appendix "A"
 and substituting therefor the revised Appendix "A" as
 shown below.

APPENDIX "A" (REVISED)
 (Schedule of Work)

For purposes of the Agreement, the "Project" will consist
 of the following items of work:

For the purpose of this Agreement, the "Project" will
 consist of the following items of work:

Water Supply Pipelines	285,000
Service Connections to property line	135,000
Engineering	45,000
Contingencies	<u>90,000</u>
TOTAL	555,000

PFRA SHARE @ 1/3 OF THE COST = 185,000

PAYABLE upon receipt of proof of payment

4. The parties hereto hereby confirm that the Agreement as hereby
 amended shall continue in full force and effect in accordance
 with the terms thereof.
5. No member of the House of Commons shall be admitted to any
 share or part of this Agreement or to any benefit to arise
 therefrom.
6. This Agreement shall enure to the benefit of and shall be
 binding upon the parties hereto, their heirs, executors,
 administrators, successors, and assigns of the Applicant, and
 the heirs and successors of Her Majesty.

IN WITNESS WHEREOF Canada has by its duly authorized representatives executed this Agreement the date and year first above written and the Applicant has hereunto affixed its seal attested to by the hands of its duly authorized officers this 21 day of February, A.D. 2003

SIGNED AND DELIVERED)
in the presence of:)

Her Majesty the Queen, in right of Canada, as represented by the Minister of Agriculture and Agri-Food

[Signature]
Witness

[Signature]
R. J. Gillis, District Manager, for and on behalf of the Minister of Agriculture and Agri-Food

IN WITNESS WHEREOF, this Amendment has been executed on behalf of RM of Ritchot this 17th day of February, 2003.

Rural Municipality of Ritchot

[Signature]
Witness

[Signature]
Yves Sabourin, CAO, RM of Ritchot

[Signature]
Witness

[Signature]
Robert Stefaniuk, Mayor, RM of Ritchot

(Affix Corporate Seal)