SaskPower Small Modular Reactor Siting Review Report Manitoba Métis Federation

March 15, 2024



1.0 Introduction

The Manitoba Métis Federation (MMF) is the democratically elected self-government representative of the Red River Métis, the largest Indigenous community in Manitoba. The Red River Métis are a distinct Indigenous People whose rights have been recognized and affirmed as protected by section 35 of the Constitution Act, 1982, as well as by the courts, and through agreements with the Crown. The National Homeland of the Red River Métis includes seven MMF Regions within Manitoba and extends beyond these provincial boundaries (Figure 1). Section 35 rights are collectively held throughout the National Homeland of the Red River Métis.



Figure 1: National Homeland of the Red River Métis

The MMF have been engaged by SaskPower on the siting of their proposed Small Modular Reactor (SMR) in southern Saskatchewan, within the National Homeland of the Red River Métis. SaskPower has acknowledged through their initial documents and presentations that early siting decisions for the project have the potential to adversely impact section 35 rights, and accordingly, SaskPower as a Crown entity, along with the governments of Saskatchewan and Canada, hold a duty to consult and accommodate those potentially impacted.

The MMF agrees that the SMR project has the potential to adversely impact Red River Métis rights, claims, and interests and will work with SaskPower and other Crown entities through all stages of the proposed project to ensure that the input of Red River Métis Citizens is meaningfully incorporated on an ongoing basis. The MMF views early and ongoing engagement throughout the project's lifecycle, along with meaningful consultation and engagement processes, as an essential part of this relationship.



As a first step in the MMF's engagement with SaskPower on the potential SMR, this report provides an initial summary of Red River Métis values and potential concerns related to the proposed project and potential sites being explored, along with general recommendations for avoiding impacts to Red River Métis values. Beyond this initial review, the MMF expects that a project-specific Métis Knowledge and Land Use study focused on the potential sites will provide a much more fulsome understanding of potential impacts to the Red River Métis, should the project proceed within the National Homeland. The study will also provide critical input on the siting decision anticipated to be made by 2025.

This report should be viewed as only a preliminary overview of Red River Métis values and concerns related to the project. The contents of this report should not be construed as a replacement for meaningful and ongoing consultation and engagement with the MMF related to the project, or a fulsome picture of related Red River Métis values and interests. Rather, this report should serve as an initial step in SaskPower's engagement with the MMF surrounding the SMR.

1.1 SaskPower Small Modular Reactor

SaskPower is exploring the development of nuclear power in Saskatchewan through an SMR in effort to address climate goals, higher prices on carbon emissions, changing customer expectations, and a rising demand for power in the province (SaskPower, n.d.).

Small nuclear reactors are similar in design to conventional nuclear reactors, though smaller in size and in the amount of energy produced. SaskPower specifically has selected a GE-Hitachi BWRX-300 nuclear technology that would use uranium fuel to generate heat, producing approximately 300 MW of electrical output (SaskPower, n.d.). The uranium fuel required for this SMR would need to go through an enrichment process to reach the appropriate concentration, the process of which is currently only possible using facilities located in the United States (SaskPower, n.d.).



This project is currently in the planning phase, though SaskPower anticipates a site to be selected by 2025 and an Impact Assessment to be completed with a decision in 2029, with operation happening as early as 2035 (Figure 2).

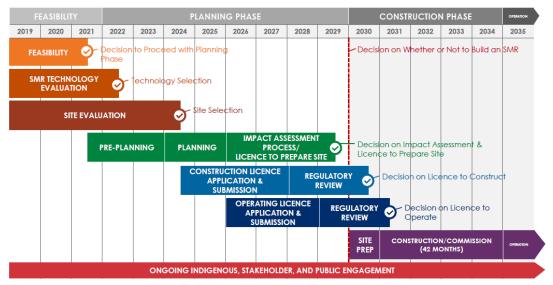


Figure 2: SaskPower's anticipated project timeline (SaskPower, 2023)



SaskPower's site selection criteria include a location near a large lake reservoir, existing power infrastructure, an existing workforce, and emergency services. They have shortlisted two potential sites for the potential SMR, in Elbow (Figure 3) and Estevan (Figure 4), Saskatchewan.

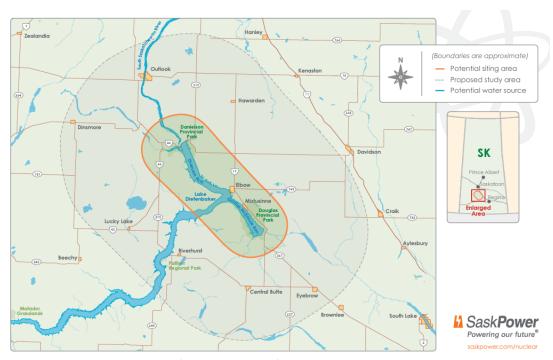


Figure 4: Elbow Study Area (SaskPower, n.d.)

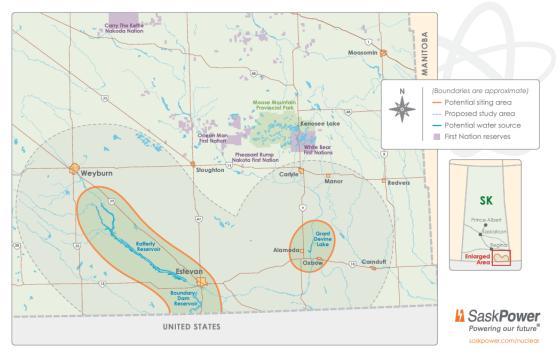


Figure 3: Estevan Study Area (SaskPower, n.d.)



SaskPower has detailed their engagement efforts to date, which include the establishment of two Regional Indigenous and stakeholder committees made up of nominated representatives from both Estevan and Elbow and the completion of four workshops. These efforts are part of their Regional Evaluation Process to gather feedback on the siting decision, along with "broader public engagement and Indigenous consultation processes." (SaskPower, n.d. p.7) The MMF has participated in preliminary but limited engagement with SaskPower to date.

Both potential sites for the SMR are within the National Homeland of the Red River Métis and have the potential to adversely impact Red River Métis Rights, claims, and interests. This demonstrates the need for early and ongoing engagement with the MMF, as well as for further project-specific studies detailing Red River Métis values in proximity to the sites being explored in order to effectively assess avoidance, mitigation, and accommodation measures as well as to provide opportunities for SaskPower and the MMF to work collaboratively to ensure the distribution of equitable benefits from the project to the Red River Métis.

2.0 The Red River Métis and the MMF

2.1 The Red River Métis

The Red River Métis is an Indigenous collectivity and Aboriginal People within the meaning of section 35 of *the Constitution Act, 1982*. Based on our emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the Province of Manitoba, the Red River Métis holds rights, interests, and claims throughout and beyond the Province of Manitoba.

Since 1982, Métis rights have been recognized and affirmed by section 35 and protected by section 25 of the *Constitution Act, 1982*. These rights were further confirmed and explained by the Supreme Court of Canada ("SCC") in *R. v. Powley, 2003* SCC 43. Manitoba Courts also have recognized Red River Métis rights in *R. v. Goodon, 2008* MBPC 59. These decisions have affirmed that the Métis hold existing Aboriginal rights throughout their traditional territories. Our Citizens and harvesters, rely on and use the lands, waters, and resources of our traditional territory throughout the Province of Manitoba and elsewhere within the historic Northwest, including in and around the area of the Project, to exercise their constitutionally protected rights and to maintain their distinct Red River Métis customs, traditions, and culture.

2.2 Red River Métis' Rights, Claims, and Interests

Based on its emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the Province of Manitoba, the Red River Métis holds rights, claims, and interests throughout and beyond the Province of Manitoba consistent with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to self-determination.



The MMF is mandated to promote, protect, and advance the collectively held Aboriginal Rights of the Red River Métis. Through this mandate, the MMF engages with governments, industry, and others about potential impacts of projects and activities on our community. In 2007, the MMF Annual General Assembly adopted Resolution No. 8, which provides the framework for engagement, consultation, and accommodation with the Red River Métis. Designed by Métis, for Métis, Resolution No. 8 sets out the process that is to be followed by governments, industry, and other proponents when developing plans or projects that have the potential to impact the section 35 rights, claims, and interests of the Red River Métis. It was unanimously passed by MMF Citizens and mandates a "single-window" approach to consultation and engagement with the Red River Métis through the MMF Home Office.¹

In engaging the MMF, on behalf of the Red River Métis, the Resolution No. 8 Framework calls for the implementation of five phases:

Phase I: Notice and Response;

Phase II: Research and Capacity;

Phase III: Engagement and Consultation;

Phase IV: Partnership and Accommodation; and

• Phase V: Implementation.

This project has the potential to impact Red River Métis rights, claims, and interests and as such, engagement and consultation with the MMF, through the process set out above, must be followed. The project is located within the Traditional Territory of the Red River Métis, and in the heart of our Homeland. At one time, this was the "postage stamp province" of Manitoba. This is the birthplace of the Red River Métis and where we currently have an outstanding claim flowing from the federal Crown's failure to diligently implement the land grant provision of 1.4 million acres of land promised to the Red River Métis as a condition for bringing Manitoba into Confederation and set out in section 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.²

² Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, [2013] 1 SCR 623 ("MMF Case"). The Supreme Court of Canada recognized that this outstanding promise represents "a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the Constitution Act, 1982 and underlying s. 31 of the Manitoba Act, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import" (para. 140).



¹¹ More information about Resolution No. 8 is available online at: http://www.mmfmb.ca/docs/2013-Resolution%208%20Booklet-VFinal.pdf

Red River Métis section 35 rights are distinct from First Nations rights and must be respected. The Manitoba Métis Federation is the national government of the Red River Métis.

Prior to the creation of Manitoba, the Red River Métis had always exercised its inherent right of self-determination to develop its own self-government structures and institutions centred around the Red River Settlement and throughout the Northwest. As described by Louis Riel in his 1885 memoirs, Métis self-government was well-established and functioning when Canada came to the Red River Métis in the late 1800s:

When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it... but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.

Métis self-government has evolved and changed over time to better meet the needs of the Red River Métis. Today, the MMF is the recognized, democratically elected, self-government representative of the Red River Métis and on July 6, 2021, it signed along with the Government of Canada, the Manitoba Métis Self-Government Recognition and Implementation Agreement.

Since 1967, the MMF has been authorized by the Red River Métis through a democratic governance structure at the Local, Regional, and national levels. As part of this governance structure, the MMF maintains a Registry of Red River Métis Citizens.³ By applying for Red River Métis Citizenship, individuals are confirming the MMF is their chosen and elected representative for the purposes clearly set out in its Constitution,⁴ including as related to the collective rights, claims, and interests of the Red River Métis.⁵

The MMF Constitution confirms that the MMF has been created to promote the political, social, cultural, and economic rights and interests of the Red River Métis. The MMF is authorized to represent the Red

⁵ Behn v. Moulton Contracting Ltd., 2013 SCC 26 at para 30: "[A]n Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s.35 rights."



³ MMF Constitution, Article III outlines the citizenship definition and application process. This definition ("Metis" is defined to mean " a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation ") aligns with the definition of what constitutes a section 35 rights-bearing Metis community as outlined by the Supreme Court of Canada in *Powley* at para. 30.

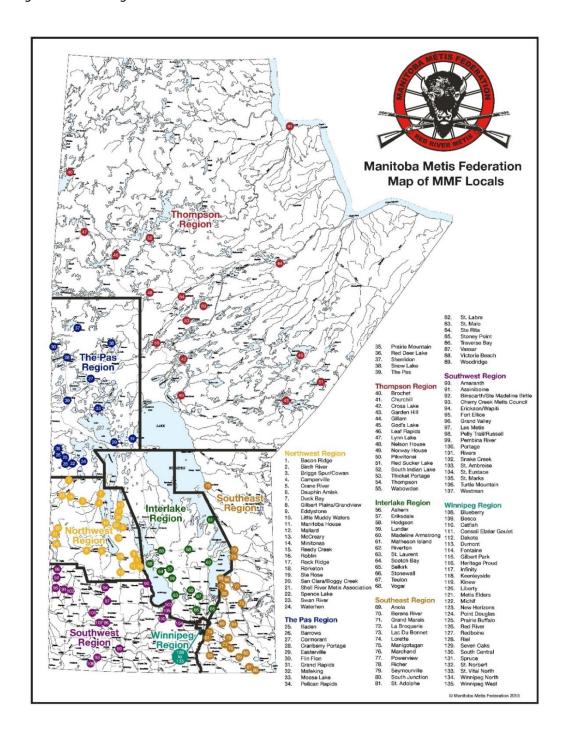
⁴ Newfoundland and Labrador v. Labrador Metis Nation, 2007 NLCA 75 at para 47: "Anyone becoming a member of the [Labrador Metis Nation] should be deemed to know they were authorizing the LMN to deal on their behalf to pursue the objects of the LMN, including those set out in the preamble to its articles of association. This is sufficient authorization to entitle the LMN to bring the suit to enforce the duty to consult in the present case."

River Métis' collective rights, interests, and claims. This authorization is grounded in the MMF's democratic processes that ensures the MMF is responsible and accountable to the Red River Métis.

The MMF governance structure includes a centralized MMF President, Cabinet, Regions, and Locals. There are seven (7) Regions and approximately 135 Locals throughout Manitoba (Figure 1). There are more than three thousand Citizens who live outside of Manitoba. All MMF Citizens are Members of a Local. Locals and Regions work together to authorize and support the MMF Cabinet, and the MMF's various departments and offices. Through elections held every four years, Citizens choose and elect the MMF Cabinet consisting of the MMF President, who is the leader and spokesperson for the MMF, a Vice-President of each Region, and two Regional Executive Officers from each Region. The MMF Cabinet also includes the spokeswoman from the Infinity Women Secretariat.



Figure 5: MMF Regions and Locals





The MMF, as the duly authorized representative of the Red River Métis, has been recognized by both the federal and provincial governments in agreements, policies, and legislation. For example, in 2002, *The Child and Family Services Authorities Act* recognized the MMF for the devolution of child and family services to MMF institutions. This act establishes a series of child and family services authorities to administer and provide the delivery of services to various distinct Indigenous communities in Manitoba. It creates a Métis Authority, the directors of which are appointed by the MMF.

In 2008, the courts in Manitoba further recognized that "[t]he Métis community today in Manitoba is a well organized and vibrant community. Evidence was presented that the governing body of Métis people in Manitoba, the Manitoba Métis Federation, has a membership of approximately 40,000, most of which reside in southwestern Manitoba." In 2010, the Manitoba Government adopted a Manitoba Métis Policy, and stated that:

The Manitoba Metis Federation is a political representative of Métis people in Manitoba and represents in Manitoba the Métis who collectively refer to themselves as the Métis Nation....

Recognition of the Manitoba Métis Federation as the primary representative of the Métis people is an important part of formalizing relationships.⁷

In 2012, the *MMF-Manitoba Harvesting Agreement (2012)* negotiated between the MMF and the Manitoba Government recognized some of the collective section 35 harvesting rights of the Red River Métis and relied on the Citizenship processes of the MMF as proof of belonging to a rights-holding Aboriginal community:

For the purposes of these Points of Agreement, Manitoba will recognize as Métis Rights-Holders, individuals who are residents in Manitoba and who hold a valid MMF Harvesters Card, issued according to the MMF's Laws of the Hunt. [... and will] consult with the MMF prior to implementing any changes to the current regulatory regime that may infringe Métis Harvesting Rights.⁸

In 2013, the SCC recognized the "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada." It went on to grant

⁸ MMF-Manitoba Harvesting Points of Agreement (September 29, 2012), ss. 3, 6-7.



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⁶ R. v. Goodon, 2008 MBPC 59 para 52. Note that the number of MMF Citizens (40,000) identified by the Court was as of 2007

⁷ Manitoba Métis Policy, September 2010 at 4, 12, online (PDF): http://www.gov.mb.ca/ imr/ir/major-initiatives/pubs/Metispolicy_en.pdf

the MMF standing as the "body representing the collective Métis interest" in the MMF Case.⁹ Additionally, in 2016, the MMF-Canada Framework Agreement stated:

The Supreme Court of Canada recognized that the claim of the Manitoba Métis Community was "not a series of claims for individual relief" but a "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada" and went on to grant the MMF standing by concluding "[t]his collective claim merits allowing the body representing the collective Métis interest to come before the court.

[and that] Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF.¹⁰

On July 6, 2021, the MMF and Canada signed the Manitoba Métis Self-Government Recognition and Implementation Agreement which immediately recognized the MMF as the national government of the Red River Métis.

3.0 Red River Métis Values and Concerns

Given the location of the SMR sites being explored within the National Homeland of the Red River Métis, it is critical that SaskPower understand and effectively integrate the presence of Red River Métis values in their siting decisions, and throughout the project's assessment after a site is chosen. Additionally, SaskPower should work to identify and address the concerns of the MMF and Red River Métis Citizens about the project and associated potential impacts on an ongoing basis.

The MMF expects that—to more appropriately identify Red River Métis values that need to be considered in the process of site selection, the project's Impact Assessment, and more generally the development of avoidance, mitigation, and accommodation measures—SaskPower will provide capacity support for a project-specific Métis Knowledge and Land Use study focused on the sites being explored and on potentially impacted areas downstream within the Saskatchewan River or Assiniboine River basins. Additionally, the MMF expects that SaskPower will provide support for the MMF to conduct consultation and engagement activities with Red River Métis Citizens to effectively identify and communicate concerns to be addressed about the project.

¹⁰ MMF-Canada Framework Agreement on Advancing Reconciliation, November 15, 2016, Preamble.



⁹ MMF Case, supra note 6 at para 44.

3.1 **Red River Métis Values in the National Homeland**

In advance of a project-specific study being undertaken, and as a first step in this discussion, the MMF has provided here a list of preliminary values that may need to be considered over the lifecycle of this project. It is important to note that this list is not site-specific, but rather reflects Red River Métis values throughout the National Homeland more broadly. These preliminary values should not be interpreted as a substitute for comprehensive and project-specific consultation and engagement with the MMF, or input from Red River Métis Citizens.

Preliminary Value	Description
Subsistence Harvesting Areas	Areas where Red River Métis Citizens exercise their section 35 rights and harvest for subsistence including: Hunting Fishing Trapping/snaring Gathering medicines, plants, and other natural materials Otherwise harvesting for subsistence purposes
Commercial Harvesting Areas	Areas where Red River Métis Citizens participate in traditional economies including: Hunting Fishing Guiding Trapping/snaring Gathering medicines, plants, and other natural materials Other harvesting for commercial purposes
Métis Ecological Knowledge	Areas where Red River Métis Citizens hold specialized knowledge of the lands and waters including: • Fish spawning areas • Mammal habitat • Migration routes and corridors • Bird habitat • Reptile and amphibian habitat • Spring water • Plant habitat • Species at Risk • Other significant and sensitive habitat or ecological features
Cultural and Historical Sites	Sites that are culturally and historically significant to the Red River Métis, including: • Spiritual, ceremonial, and sacred areas



Preliminary Value	Description
	 Historical family, village, or settlement sites Burial sites Areas of archaeological significance Contemporary and historic gathering places for the Red River Métis Sites that are otherwise culturally or historically significant
Access	Areas used by Red River Métis Citizens to access the lands and waters throughout the National Homeland including: Trails Water routes Other areas used for access purposes
Оссирапсу	Areas used by Red River Métis Citizens to stay out on the land including: Cabins Campsites Overnight locations Places used to otherwise stay out on the land
Other Areas	As the MMF have not yet undertaken a project-specific MKLUS, there may be other values within the areas being explored that must be included in SaskPower's planning and assessment.

Red River Métis Concerns 3.2

The following is a list of general issues of concern to the Red River Métis pertaining to nuclear projects within the National Homeland of the Red River Métis. As with the Red River Métis values identified within this report, these should not be interpreted as a comprehensive list or substitute for meaningful and ongoing engagement with the MMF on SaskPower's proposed SMR. Rather, these should be considered a preliminary step in an ongoing process.

Concerns relevant to nuclear projects identified by Red River Métis Citizens, and through Red River Métis Knowledge and land use data collected across the National Homeland, include the following:

- Concerns for future generations of Red River Métis Citizens, and the availability of land for future generations to use for harvesting purposes and to exercise their section 35 rights
- Uncertainty about the long-term health effects related to nuclear energy and reactors, especially those specific to Red River Métis Citizens who may harvest or otherwise participate in cultural and land-based activities nearby



- Impacts to water quality around the project as well as downstream, through leakage or seepage, especially water sources used by Red River Métis Citizens for drinking, canning, and other purposes
- Compromised safety of the site or reactor as a result of erosion in nearby water bodies
- Accidents as a result of severe weather and natural disasters, which are becoming a source
 of increasing concern in the context of climate change
- Effects of radiation or contamination on the health of plants, fish, and wildlife and associated impacts to the safety or perceived safety of traditional foods harvested by Red River Métis Citizens due to both direct contamination, and bioaccumulation
- Uncertainty regarding how the site and reactor would be decommissioned, including the technologies and materials used for decommissioning
- Lack of information, communication, and engagement with the MMF and Red River Métis Citizens throughout the entire life cycle of the project
- Concerns about the transport of uranium, nuclear fuel, and nuclear waste through the National Homeland of the Red River Métis
- Lack of equitable benefits from the project for the Red River Métis (e.g. procurement of goods and services, support of Red River Métis businesses, jobs for Red River Métis Citizens, other economic and social development initiatives)
- Little or no consideration of the context of cumulative effects throughout the National Homeland of the Red River Métis in the project's planning and assessment, especially given that Red River Métis Citizens are or have experienced impacts as a result of other developments including hydro development, transmission lines, mining, other nuclear projects and the transport of nuclear waste, and natural disturbances such as flooding

The information provided here, though preliminary, is indicative of Red River Métis values and concerns that must be considered and addressed as part of SaskPower's decision-making and impact assessment processes for the SMR project. Further, the general concerns outlined here can be viewed as issues or questions the MMF expects SaskPower to address moving forward.

4.0 Recommendations

This section outlines input from the MMF surrounding how SaskPower can best work to minimize impacts to the Red River Métis through their siting decisions and project activities more generally,



including expectations for engagement and consultation with the MMF and Red River Métis Citizens moving forward.

- It is evident from the preliminary information provided here that a project-specific Métis Knowledge and Land Use study will be critical in effectively identifying and developing appropriate avoidance, mitigation, and accommodation measures for Red River Métis values that may be identified surrounding the potential sites and in the areas downstream, as well as ensuring the project does not adversely impact Red River Métis rights, claims, and interests. Additionally, a Métis Knowledge and Land Use study will provide valuable input from Red River Métis Citizens about the environment and ecology of the sites being explored that should be included in SaskPower's baseline and technical studies prior to a siting decision, and as the project progresses.
- Valued Components (VCs) identified with this project will be critical to inform both siting
 decisions and the overall assessment more generally. The MMF must be meaningfully
 engaged by SaskPower on the development of VCs, specifically those that pertain to the Red
 River Métis, including the exercise of section 35 rights and other traditional land use
 practices, to ensure they are comprehensive and reflective of Red River Métis values,
 concerns, and perspectives.
- The MMF expects that the project, and potential project sites, will be assessed within the broader context of cumulative effects and their associated impacts to Red River Métis Citizens. Impacts from any given project do not occur in isolation but are connected to and intertwined with impacts occurring as a result of other industrial and natural disturbances. The assessment of cumulative effects is critical to avoiding or mitigating potential adverse impacts from the project and should occur in consultation with the Red River Métis and in partnership with the MMF. The project should also be considered alongside other projects proposed within this Region of the National Homeland of the Red River Métis (i.e., the Saskatchewan River watershed or Souris/Assiniboine River watershed), including possible future projects such as the Diefenbaker Canal expansion project.
- To effectively minimize and avoid potential impacts to Red River Métis Rights, claims, and interests, it is critical that SaskPower and the MMF work collaboratively to undertake productive consultation and engagement activities related to the project throughout its lifecycle. Additional community-level engagement is necessary to gain insight into the specific questions and concerns of Red River Métis Citizens who will be locally and regionally impacted. Understanding these concerns will be critical to effectively crafting future assessments to examine potential impacts. The MMF appreciates SaskPower's engagement and this early stage, and expects the following moving forward:



- That SaskPower's consultation with the MMF, along with any relevant provincial or federal regulatory bodies, follows Resolution 8 as outlined in Section 2.0 of this report and detailed further by the MMF's Engagement and Consultation Department (MMF, n.d.)
- SaskPower's consultation and engagement efforts, including any reports, documents, or assessments created through these efforts, recognize the MMF as the National Government of the Red River Métis, and that the potential project sites being explored in both Elbow and Estevan are within the National Homeland of the Red River Métis
- That SaskPower and the MMF work collaboratively to develop a plan for addressing the MMF's questions and concerns related to the project, including but not limited to:
 - How does SaskPower plan to assess potential impacts to Red River Métis Rights, claims, and interests related to the proposed SMR project?
 - How does SaskPower plan to engage the MMF to gather input from Red River Métis Citizens relevant to the project, and at what stages of the project?
 - How will SaskPower ensure the MMF remains informed, and meaningfully engaged, through all stages of the project from planning to decommissioning?

5.0 Conclusion

The information provided here is intended to serve as a first step in SaskPower's consultation and engagement efforts with the MMF related to their proposed SMR project within the National Homeland of the Red River Métis. The MMF has offered a preliminary list of values, as well as a compilation of concerns raised by Red River Métis Citizens about nuclear projects more generally, that may all apply to the proposed SMR project.

It is critical that SaskPower continue to engage the MMF in the planning process for the proposed SMR project to foster a positive working relationship in advance of their siting decisions, and any other decisions made about the scope, scale, and design of the project. The MMF expects that this engagement will continue throughout the lifecycle of the project. In order to effectively avoid, mitigate, and/or otherwise accommodate any potential impacts to the Red River Métis as a result of the project, SaskPower needs to fund community consultation sessions and a project-specific Métis Knowledge and Land Use study.



The MMF looks forward to ongoing meaningful engagement and the negotiation of equitable opportunities for Red River Métis Citizens with SaskPower as this project moves forward.



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