
In the Matter of
The challenges and potential solutions relating to First Nations infrastructure on reserves
Standing Senate Committee on Aboriginal Peoples

Submission of Chief Michael Yellowback
Manto Sipi Cree Nation, Manitoba

Senate of Canada, Parliament Buildings, Ottawa, Ontario – January 28, 2015

The practice of Aboriginal Affairs and Northern Development Canada to provide major capital funding to upgrade central and essential community infrastructure while at the same time not providing adequate capital resources to ensure the retrofitting of homes to receive these upgraded services is one of the most significant challenges relating to First Nations infrastructure on reserves.

For example, although AANDC invested in the major capital project to connect the Manto Sipi Cree Nation to the Manitoba Hydro integrated transmission system in 1997 (through the North Central Transmission Project) and although AANDC funded the major capital project to construct water and wastewater treatment facilities at the Manto Sipi Cree Nation, AANDC did not provide a corresponding capital allocation to ensure that our homes could actually be hooked up to these newly upgraded essential public services.

As a result of AANDC having apparently neither secured (as part of any capital authority) nor allocated (as part of any capital budget or capital plan) the costs to retrofit homes to receive the upgraded electricity, water and wastewater services, Manto Sipi was faced the prospect of:

- experiencing an extended and indeterminate delay in connecting homes to these upgraded services (as well as experiencing the additional health and social costs arising from the delay) while pressing AANDC for an allocation of the necessary capital funds to retrofit our homes in order to receive newly upgraded electricity, water and wastewater services;

or, as the alternative to the prospect of extended delays in connections,

- proceeding with the retrofits by incurring a long-term indebtedness which would place a “first charge” on a significant portion of Manto Sipi’s Band Base Capital for more than 10 years, and which would require a commitment of almost all of Manto Sipi’s “discretionary” funding for 20 years and which would also require a commitment of other significant amounts of “Band Funds” in order to secure commercial financing.

Manto Sipi chose to proceed with the self-financing of the retrofitting of 80 homes and to incur the costs and indebtedness in order to ensure that our citizens had access to modern electricity services and to clean, running water and to wastewater treatment facilities. By having no alternative but to proceed without any additional funding from AANDC to pay the cost of the retrofits, Manto Sipi sacrificed its financial well-being for an extended period of time.

Manto Sipi’s March, 1998 Electrification Proposal identified 80 homes to be retrofitted to increase service capacity from 15 amp service to 200 amp service, which would permit – for the first time - the ordinary day-to-day use of appliances and baseboard electric heating. At that time, the cost of retrofitting the 80 homes to receive electricity service at 200 amps was estimated at \$10,000 per unit, for a total cost of \$800,000. As discussed above, the cost of these retrofits was to be funded as an advance on Band Base Capital to be repaid over 10 years.

The retrofitting of the 80 homes to receive 200 amp electricity services was completed over a period of two years, with the first 59 units being retrofitted prior to February, 1998 at a cost of \$590,000.00 and the remaining 21 units were retrofitted in the summer of 1998 at a cost of \$210,000.00.

In September, 2000, Manto Sipi entered into a Section 10 CMHC loan arrangement for \$769,250 which required Manto Sipi to commit a further \$256,100 in Band Funds, including a pledge of Shelter Allowance funds toward repayment of the Section 10 CMHC loan.

This debt borrowing and the commitment of virtually 100% of existing “discretionary” Band funding enabled Manto Sipi to proceed with the plumbing retrofits of 74 houses necessary for these homes to access clean, running water and to access the wastewater treatment system. As part of the preparatory phase for these plumbing retrofits, Housing Demonstration funds were applied to “modernize” the plumbing of 44 homes.

The Manto Sipi Cree Nation was placed into financial co-management in 2001-2002 as a direct consequence of the indebtedness and repayment obligations arising from the advance of \$800,000 in Band Base Capital and the Section 10 CMHC loan of \$769,250, together with the negative cashflow impacts of the commitment of \$256,100 in existing Band Funds.

As a further outcome of being placed into financial co-management largely due to retrofitting-related indebtedness, Manto Sipi was ineligible to receive a Ministerial guarantee as security for CMHC housing loans until 2008-2009.

In turn, this resulted in Manto Sipi not constructing a single new home between 2001-2002 and 2008-2009, which significantly exacerbated the already-existing overcrowding of homes in the community.

Were any reasonable person placed in a similar circumstance as was Manto Sipi, the balance of consideration must inevitably result in a decision to take every step possible to ensure timely community-wide access to the same basic level of electricity, water and wastewater services which the majority of ordinary Canadians receive and take for granted.

On **February 2, 2011** and during a meeting with AANDC Deputy Minister Michael Wernick, representatives of the Manitoba Keewatinowi Okimakanak described in detail the significant long-term adverse financial and governance impacts of the costs, indebtedness and the long-term commitment by Manto Sipi of effectively 100% of Band Base Capital in order to complete electricity service upgrades to 80 homes and to complete plumbing service upgrades and connections to the water and wastewater treatment systems of 74 homes.

In response to the description of Manto Sipi's retrofit related costs, indebtedness and pledges of revenue sources, AANDC Deputy Minister Wernick responded by saying, "**they** (Manto Sipi) **shouldn't have to do that**".

Both Manto Sipi and MKO viewed the statement of the Deputy Minister as an expression of a core AANDC policy principle regarding the appropriate approach to Departmental investments in infrastructure on reserves, and in particular, Departmental investments in housing retrofits of electrical and water and wastewater services.

Manto Sipi also views the AANDC Deputy Minister's assertion that "**they** (Manto Sipi) **shouldn't have to do that**" as the general agreement of AANDC with the essence of Manto Sipi's position that Manto Sipi should not be obliged by AANDC to experience the significant, adverse and long-term impacts of the costs and indebtedness incurred by Manto Sipi in order to ensure that our homes could actually be hooked up to the same essential public services which had been recently upgraded as part of AANDC-funded major capital projects.

In response to the AANDC Deputy Minister's statement on February 2, 2011, Manto Sipi carried out a detailed analysis of the total costs and impacts of the Manto-Sipi funded retrofit project with the intention of seeking a reimbursement.

On **March 28, 2011**, Manto Sipi highlighted the results of a detailed analysis of the costs of the electricity service and water and wastewater retrofits in a letter to AANDC Deputy Minister Wernick and requested that AANDC reimburse the \$1,945,975 in retrofitting-related costs expended by Manto Sipi as of March 28, 2011 and that AANDC waive or discharge the \$633,205.02 in remaining indebtedness as of March 28, 2011, for a total cost recovery request of \$2,579,180.02.

Manto Sipi's letter to the AANDC Deputy Minister of March 28, 2011 presented the following specific requests to address the cost of the retrofit project and to restore the financial health and governance of Manto Sipi:

1. That AANDC forgive repayment by Manto Sipi of \$150,000 in Band Base Capital remaining to be repaid by Manto Sipi against the \$800,000 of Band Base Capital previously advanced by AANDC to Manto Sipi in order for Manto Sipi to complete electricity service upgrades to 80 homes;
2. That AANDC reimburse Manto Sipi the \$650,000 in Band Base Capital repaid to date by Manto Sipi against the \$800,000 of Band Base Capital previously advanced by AANDC to Manto Sipi in order for Manto Sipi to complete electricity service upgrades to 80 homes;
3. That AANDC arrange to assume or to fully pay out and discharge the remaining balance of \$483,205.02 of the CMHC Section 10 loan agreement in the original principal amount of \$769,250.00 entered into by Manto Sipi in order to complete plumbing service upgrades and connections to the water and wastewater treatment systems of 74 homes;
4. That AANDC reimburse Manto Sipi the \$1,039,874.00 in principal (\$483,205.02) and interest (\$556,668.98) paid to date against the balance of the CMHC Section 10 loan agreement entered into by Manto Sipi in order to complete plumbing service upgrades and connections to the water and wastewater treatment systems of 74 homes; and
5. That AANDC reimburse Manto Sipi the \$256,100.00 in "Band Funds" paid by Manto Sipi as Manto Sipi's contribution toward the CMHC Section 10 loan agreement in order to complete plumbing service upgrades and connections to the water and wastewater treatment systems of 74 homes, including the Shelter Allowance funds pledged toward the repayment of the CMHC Section 10 loan

On **May 7, 2012**, AANDC Deputy Minister Wernick provided AANDC's initial response to Manto Sipi, stating:

"Thank you for your letter of March 28, 2012, regarding your request to have Manto Sipi's home retrofitting costs reimbursed by Aboriginal Affairs and Northern Development Canada."

*“Please be advised that **departmental officials** have carefully reviewed the information you provided to support your request and **have determined that the expenses identified are not eligible for reimbursement.**”*

During a meeting on **October 4, 2012** with AANDC Deputy Minister Michael Wernick in the Deputy Minister’s Ottawa offices, as Chief of Manto Sipi, I reiterated the significant long-term adverse financial and governance impacts of the costs of the Manto Sipi retrofit projects, including the 7-year suspension of the housing program. I also again reminded the AANDC Deputy Minister of his February 2, 2011 statement to MKO that *“they (Manto Sipi) shouldn’t have to do that”*. On behalf of Manto Sipi, I requested that the Deputy Minister agree to re-examine the determination as set out in AANDC’s letter dated May 5, 2011 that the costs and indebtedness related to retrofit costs were not eligible for reimbursement by AANDC.

Deputy Minister Wernick responded to my requests by assuring Manto Sipi that AANDC would assign a senior official **“to take a fresh look”** at Manto Sipi’s letter of request and supporting documentation dated March 28, 2011.

On **October 23, 2012**, the MKO Grand Chief wrote to AANDC Deputy Minister Wernick to confirm “what MKO heard” during the meeting of October 4, 2012, saying:

*“In respect of our discussion regarding the package of detailed documents presented by the Manto Sipi Cree Nation in support of Manto Sipi’s request dated March 15, 2012 that DIAND pay to Manto Sipi the \$1,945,975 in retrofitting-related costs expended to that date and to waive or discharge \$633,205.02 in remaining indebtedness as of March 15, 2012, **MKO appreciates your commitment to have your senior officials “take a fresh look” at the request of Manto Sipi.**” [emphasis added]*

On **January 16, 2013**, Manto Sipi again wrote to AANDC Deputy Minister Wernick to request an update regarding the “fresh look” that the Deputy Minister had committed AANDC to take of Manto Sipi’s requests regarding the recovery of retrofitting costs:

“Manto Sipi appreciates your October 4, 2012 commitment to have your senior officials “take a fresh look” at these requests of Manto Sipi. Manto Sipi requests an update of the status of the “fresh look” being taken by your officials.”

“Manto Sipi also requests that you provide the contact information for those officials assigned by you and with whom Manto Sipi will collaborate in taking this “fresh look” at Manto Sipi’s request to recover the retrofitting related costs we discussed on October 4, 2012 and as set out in Manto Sipi’s letter to you of March 28, 2012.”

Finally, on **January 31, 2013**, the AANDC Deputy Minister wrote to Manto Sipi in response to Manto Sipi’s letter dated January 16, 2013 and stated:

“Regrettably, I must inform you that my response of May 7, 2012, in which the Manto Sipi Cree Nation was advised that the expenses were carefully reviewed and determined to be ineligible for reimbursement, is still valid.”

“Again, thank you for writing and for your continued commitment to improving the on-reserve-community-infrastructure services for the members of the Manto Sipi Cree Nation.”

In the end, despite the AANDC Deputy Minister’s opinion that **“they** (Manto Sipi) **shouldn’t have to (...)**” incur significant cost and long-term indebtedness and imposition of third party management and the suspension years of Manto Sipi’s housing program for seven years in order to connect homes to newly upgraded infrastructure and services, AANDC did not reimburse any of Manto Sipi’s documented retrofitting costs.

As well, AANDC did not agree to discharge Manto Sipi’s outstanding indebtedness related to the retrofit program. In this regard, Manto Sipi can confirm that Manto Sipi’s commercial loan had been maintained in good standing.

As to the commercial bank loan taken out by Manto Sipi related to the retrofit project, it should be noted that the difference between the borrowing rate of the Government of Canada and Manto Sipi is approximately 300 basis points and that all of this difference in interest cost is ultimately paid with federal dollars to a private banking institution.

Similarly, despite the AANDC Deputy Minister's commitment to "*take a fresh look*" at Manto Sipi's request for reimbursement of retrofit costs and supporting documentation, AANDC did not reimburse any of Manto Sipi's retrofitting costs in order to connect homes to newly upgraded infrastructure and services.

Conclusions:

1. The facts set out by Manto Sipi in this submission are representative of the challenges faced and the significant adverse effects experienced by Manto Sipi - and by other northern Manitoba First Nations - in order to actually connect our homes to newly upgraded infrastructure and services in our community.
2. Ultimately, there will be no new "magic bullet" that emerges from the Committee's study that will resolve the challenges relating to the retrofitting of homes to connect to infrastructure on reserves. As has been stated by numerous presenters before you, and now by Manto Sipi, the central solution here is clearly increased direct investment by Canada in infrastructure and related retrofits on reserve.
3. AANDC's insistence that Manto Sipi enter into a complex series of sub-optimal financial arrangements in order to finance retrofits, including a commercial loan, results in higher retrofitting costs and an inefficient use of federal dollars.
4. The record of the dialogue between Manto Sipi and the AANDC Deputy Minister regarding the Manto Sipi retrofit project indicates that AANDC is not prepared to make significant direct investments in retrofit costs in order to ensure the most efficient use of federal dollars and in order to ensure that the benefit of major capital projects result in the greatest net positive benefit and effect for First Nation citizens and value for Canadians.

Recommendations:

1. That this Committee express its concurrence with the general principle expressed by AANDC Deputy Minister Wernick on February 2, 2011 that First Nations **“shouldn’t have to”** enter into a complex series of sub-optimal financial arrangements and long-term pledges of virtually 100% of limited Band revenues in order for a First Nation to retrofit and connect homes to newly upgraded community infrastructure and services that were built with AANDC capital dollars.
2. That this Committee recommend that AANDC commit, as a matter of policy relating to future infrastructure projects on reserve:
 - a) 100% of the capital resources necessary to conduct the retrofit of homes and infrastructure to connect to and receive the benefit of upgraded infrastructure and services; and
 - b) The capital cost of such retrofits is included as part of the capital allocations and authorities approved for the major capital project related to these upgrades of infrastructure and services.
3. That this Committee recommend that AANDC commit, as a matter of policy relating to previous infrastructure projects on reserve:
 - a) To reimburse any First Nation for the expenses incurred to date in relation to retrofit projects to connect homes to upgraded infrastructure and services, including interest paid on debt and Band Base Capital invested in the retrofits, where a First Nation submits a claim to AANDC supported by documentation; and
 - b) To discharge the outstanding indebtedness of any First Nation where such indebtedness is related to retrofit projects to connect homes to upgraded infrastructure and services where a First Nation submits a request to AANDC for such a discharge supported by documentation.