

**RESOURCE ISSUES AND MULTI-PARTY DECISION MAKING:
A MODEL FOR BASIN PLANNING IN SHOAL LAKE
(MANITOBA & ONTARIO)**

5

By

Dale Hutchison

A Practicum Submitted
In Partial Fulfilment of the
Requirements for the Degree,
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*Resource Issues and Multi-Party Decision Making: A
Model for Basin Planning in
Shoal Lake (Manitoba & Ontario)*

By

Mr. Dale Hutchison

A practicum submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfilment of the requirements of the degree of Master of Natural Resources Management.

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City's water threatened

Miners, developers have plans aplenty for Shoal Lake

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City halts Shoal Lake payments

Indian band breaking promise to protect water, mayor says

WATER WORRIES

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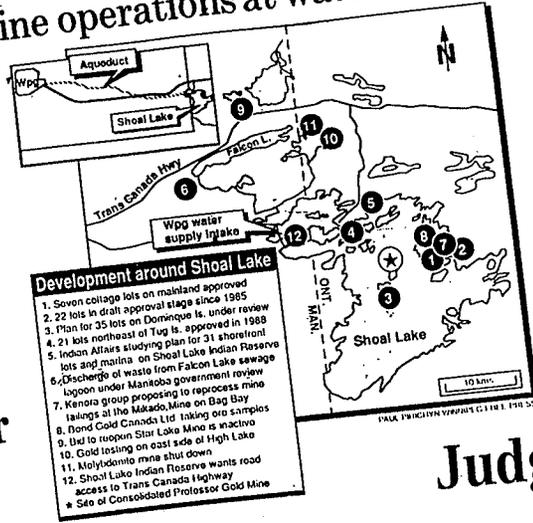
City looks for made-in-Manitoba solution to drinking-water woes

City may have no way to stop mine operations at water source

Water plan 'good step'

Water group seeks funds to fight mine

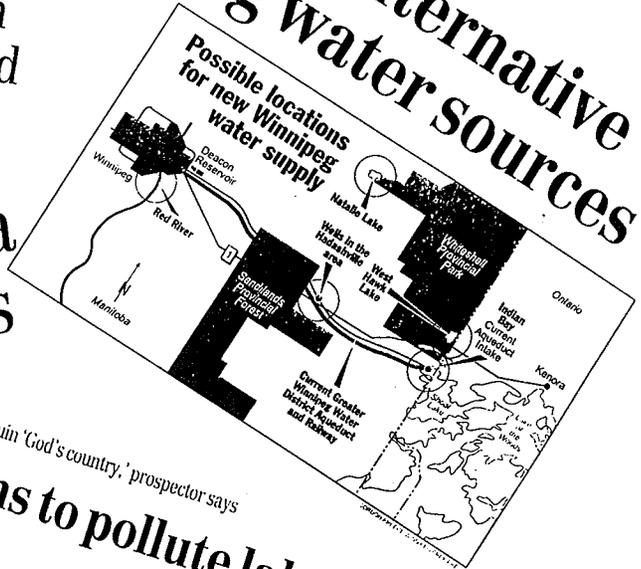
Our undefended water



City seeks alternative drinking water sources

Attack by critics of Shoal mining called hypocritical

Water plan 'good step'



Gold mine won't ruin 'God's country,' prospector says

No plans to pollute lake

City looks for made-in-Manitoba solution to drinking-water woes

Judge clears way to safeguard water

Tax-free payments resumed to Shoal Lake band

Abstract

The presence of several widely dispersed stakeholders, the influence of geopolitics, the lack of overall consensus, and the high transaction costs required to organize co-ordinated approaches to problem solving, have kept several Shoal Lake basin issues at an impasse for decades. The purpose of this research was to determine if a multi-stakeholder decision-making process has merit for resource planning management and conflict resolution in the Shoal Lake basin. Multi-stakeholder decision making (M-S DM) is a process that brings stakeholders together in a forum where consensus decisions can be made. The purpose of the forum is to resolve conflict and foster communication and understanding among basin stakeholder groups while simultaneously developing planning and management approaches for problem areas.

The Shoal Lake basin, situated on the Manitoba and Ontario border, is the setting for this research. The lake measures 286 km² in a basin of 1003 km² on the Precambrian Shield area. The lake serves several stakeholder groups including First Nations, the City of Winnipeg, recreation and cottaging interests, resource extraction interests, and boosts regional economic development in Northwestern Ontario. Management of the various resources used by these interests is complicated by the number of jurisdictions involved, with the result that no arrangements exist to co-ordinate management and development activities to ensure environmentally sustainable development.

Specific objectives of the research were to: document the water and land use issues in the basin; identify mechanisms for making multi-stakeholder decisions and resolving conflict, in both the literature and used by practical examples of multi-stakeholder forums across Canada; determine if these mechanisms are appropriate for a Shoal Lake basin planning body; and to design a multi-stakeholder decision-making model for basin planning at Shoal Lake.

The research is based upon a literature review, a telephone survey with the orchestrators of several practical examples of M-S DM forums, and an in-person survey conducted with representatives of 16 Shoal Lake basin stakeholder groups, organizations and agencies. The model for multi-stakeholder decision making for the basin is based on all aspects of the research, but in particular on three pillars: the conceptual basis for M-S DM; a survey of practical examples of M-S DM across Canada; and on surveys with the Shoal Lake basin stakeholders themselves.

The findings of the research include the existence of support for a M-S DM process and general will among the Shoal Lake basin stakeholders to come to the table to discuss such a process. A problem is uncertainty concerning support of the process by several of the Shoal Lake First Nations. The research recommends promoting the M-S DM process to the Shoal Lake First Nations; a partnership between the Provinces of Ontario and Manitoba, the Shoal Lake First Nations, and the Government of Canada; and initiation of a M-S DM process for Shoal Lake based on this partnership and with the help of a facilitator. Furthermore, if all Shoal Lake First Nations will not support the process, three fallback options are described - holding a conference/workshop suitable for basin stakeholders; renewing efforts on the Shoal Lake Watershed Agreement; or the "do nothing option."

Acknowledgements

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Chapter One

INTRODUCTION

1.0 PREAMBLE

In response to an initiative by Environment Canada, a background report was compiled on the multi-jurisdictional resource management issues in the Shoal Lake basin (Hutchison, 1994). A conclusion reached in the background report was the need to bring stakeholders together in a forum in which cooperative decisions can be made for the whole of the basin. Furthermore, it was concluded that the decision-making process used in the forum needed to be acceptable to all stakeholders. The present research furthers the findings of the background report. This is achieved through the use of a literature review, and survey research and analyses, with the ultimate goal of recommending a multi-stakeholder decision-making (M-S D-M) model for basin planning in Shoal Lake (Manitoba and Ontario).

A certain amount of controversy exists over use of the term "multi-stakeholder decision making". Most of this controversy concerns who constitutes a stakeholder. For example, in certain circles government is not considered a stakeholder, and for this reason First Nations often do not wish to be considered stakeholders. However, despite this controversy, use of the term "multi-stakeholder decision making" is quite popular in a resource management context and for this reason it is used throughout this research document. It is defined on pages 3 and 63.

1.1 BACKGROUND

Shoal Lake lies in a virtually pristine, glacially scoured basin on the Precambrian Shield. The lake measures 286 km² with a basin encompassing 1003 km² (Figure 1). It is connected to Lake of the Woods by a narrow channel called Ash Rapids (Beak, 1983). Politically, Shoal Lake crosses two borders, Manitoba, and Ontario. As a tributary to Lake of the Woods, which is partially located in Minnesota, Shoal Lake is part of an international water body. The southern section of Whiteshell Provincial Park in Manitoba, including Falcon Lake, the site of a popular recreational and cottage area, is within the basin. Seven First Nation reserves are also located within the basin, two of which contain settlements.

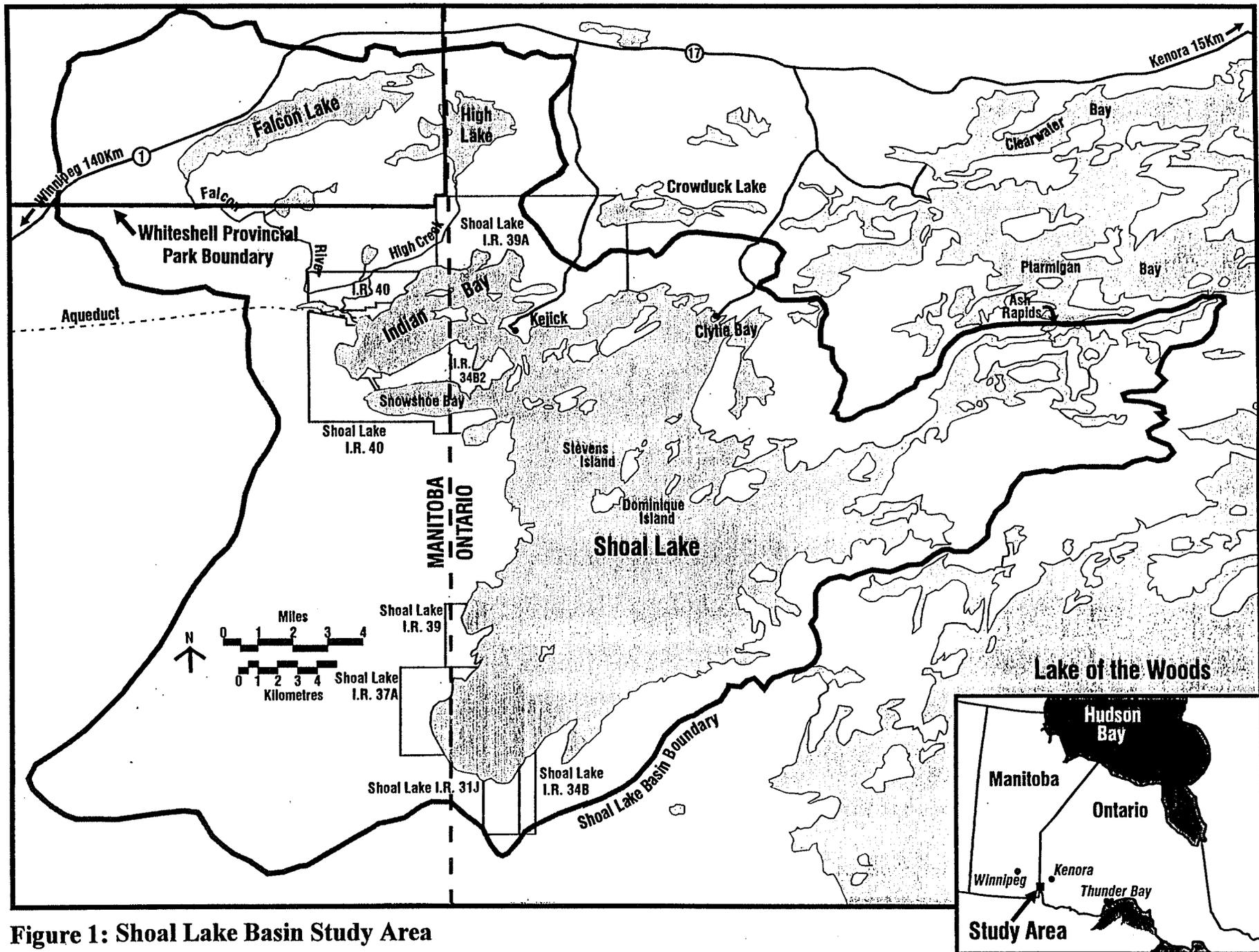


Figure 1: Shoal Lake Basin Study Area

Shoal Lake basin resources traditionally have been used by the Ojibway First Nations and by European settlers. Resource uses have included fishing, hunting, trapping, wild rice harvesting, forestry and mineral extraction (Neskar, 1986). Today, water supply (drinking water and hydroelectric), and recreational and tourism uses exist in addition to the traditional Shoal Lake basin resource uses. These resource uses have evolved to the point where numerous conflicts involve many stakeholders.

The people who use the resources of Shoal Lake are termed 'stakeholders'. More specifically, stakeholders include those who effect, or are affected by, resource management decisions in the Shoal Lake basin, or those who could block or delay these decisions (Hutchison and Sinclair, 1994). The diversity of Shoal Lake basin stakeholders can be classified more broadly by categorizing them into interest groups. These interest groups include stakeholders from First Nations, government, industry, citizen and recreation groups, and others. Geographically the stakeholders are quite dispersed both within and outside of the basin. These many, often competing, interests for limited Shoal Lake basin resources have raised several chronic issues, many of which have resulted in conflicts. At a minimum, these issues include:

- First Nations Economic, Cultural and Spiritual Resource Base;
- Drinking Water;
- Mining;
- Tourism; and
- Living Resources.

1.1.1 First Nations Economic, Cultural and Spiritual Resource Base:

Seven First Nation reserves, with two settlements, are used by five First Nations peoples who have close economic, cultural and spiritual ties to the Shoal Lake basin. The two settlements, on IR 39A (Iskutewisakaygun No. 39 Independent First Nation) and IR 34B2 (Shoal Lake First Nation No. 40) have a combined on-reserve population of 405 residents (Claims and Historical Research Centre, 1991). Resource use activities of all the First Nations extend throughout the basin, well beyond the reserve boundaries (Manitoba Environment, 1993). In 1983 the Ontario Ministry of Natural Resources closed the commercial walleye fishery due to overfishing, thereby leaving the two settlements without an economic base (Neskar, 1986). The Shoal Lake First Nations are currently exploring various means to improve their

livelihood. Diversification and expansion of their economic resource base are likely to include proposals for tourism and natural resource harvesting activities.

1.1.2 Drinking Water:

Several of the Shoal Lake First Nations, cottagers and camps all obtain their drinking water from Shoal Lake. However, the major user of drinking water is the City of Winnipeg. Since 1919, the City has used Indian Bay, an arm of Shoal Lake, to supply its 630,000 citizens with drinking water. The waters of Shoal Lake are of high quality and surpass Canadian Drinking Water Guidelines for all parameters except faecal coliform (City of Winnipeg, 1992). Only the addition of chlorine is required to bring Shoal Lake water quality to within the Guidelines. The City is opposed to any developments on Shoal Lake as these would inevitably lead to an acceleration of eutrophication and a worsening of water quality (City of Winnipeg, 1987; Neskar, 1986).

1.1.3 Mining:

The Shoal Lake basin has a long history of mineral extraction activities. During the 1890s and early 1900s, the Shoal Lake and Lake of the Woods area supplied 50 percent of all the gold produced in Ontario (OMNR, 1981). Base and precious metals, aggregate and ornamental stone deposits are located within the basin. Six gold mines, a molybdenite mine, and a granite quarry are located within the basin. Except for exploratory drilling, only the quarry is active at present. However, Consolidated Professor Ltd. and Kenora Prospectors and Miners Ltd. are actively pursuing the required regulatory approvals to mine for gold on Stevens Island and in the Bag Bay area of Shoal Lake (Winnipeg Free Press, 1993). Mining developments contribute to regional economic development by expanding the region's tax base, and providing local employment. However, these benefits must be weighed against the negative environmental consequences of water quality degradation and long-term scarring of the landscape (Manitoba Environment, 1993).

1.1.4 Tourism:

Canadian Pacific Railway access and a growing Winnipeg population, initiated the development of tourism in the Manitoba/Ontario border region at the start of this century. Subsequently, when highways No. 17 (Trans Canada Highway) and No. 71 were constructed in the 1930s, automobile access opened the area for Winnipeg and American tourists. By

1971, tourism, after forestry and mining, had grown to become the third most important regional economic sector in Northwestern Ontario (Beak, 1983). However, the potential for tourism in the Shoal Lake basin is not as high as might be expected. Aesthetically, the area rates very high. However, its fragile nature imposes limits on the amount, type and location of tourism development (OMNR, 1977).

1.1.5 Living Resources:

The biological resources in the Shoal Lake basin include timber, fish, wild rice, big game, fur bearing animals and waterfowl. The harvesting of most of these resources poses little threat to water quality, apart from the slight risk associated with low numbers of people handling fuel and disposing of waste (Manitoba Environment, 1993). However, the sustainability of these resources can be compromised by over-harvesting or through the degradation of water quality.

Often issues, such as the five mentioned above, are addressed through basin planning. The basin or watershed unit is increasingly being used as the basis for resources planning exercises in Canada. However, the basin unit often does not coincide with governmental administrative boundaries. The challenge is to integrate environmental and economic concerns while recognizing the interests of stakeholders and the various jurisdictions sharing administration of the environmental resources of the basin unit.

1.2 ISSUE STATEMENT

The presence of several stakeholders, the influence of geopolitics, and a lack of overall consensus have kept several Shoal Lake basin issues at an impasse for decades. Ownership of the issues or problems is shared by all of the basin stakeholders. Competing uses of the basin's resources have led to certain stakeholders who are concerned solely with protection of their particular resource use, other stakeholders who wish to develop a particular natural resource in the basin, and yet others whose positions fall somewhere between the two extremes. It is not reasonable for one stakeholder to proceed in isolation with a development that could potentially detrimentally affect other stakeholders in the basin, or the basin environment itself. The resulting pressure on the basin's resources is great - the unsustainable

harvesting of the Shoal Lake walleye is but one example. An integrated basin wide planning process, developed at the normative planning level with the consensus of the multi-party stakeholders, is necessary to resolve these issues.

1.3 PURPOSE & OBJECTIVES

The purpose of this study is to develop an appropriate model for multi-stakeholder decision making (M-S DM) for the Shoal Lake basin, that includes both a process to bring a range of stakeholders together at the normative planning level, and a process to make strategic and operational decisions once stakeholders are brought together.

Specific objectives of the study include the following:

- 1) **To identify and document water and land use issues in the Shoal Lake basin;**
- 2) **To identify and evaluate the mechanisms and processes (Building Blocks) used by various organizations to achieve cooperation, collaboration and consensus among the stakeholders in an integrated resource management decision-making process;**
- 3) **To determine which mechanisms and processes (Building Blocks) identified in (2) are appropriate for decision making by a Shoal Lake basin planning body; and**
- 4) **To design a multi-stakeholder decision-making model for basin planning in Shoal Lake.**

1.4 METHODS

1.4.1 Overview

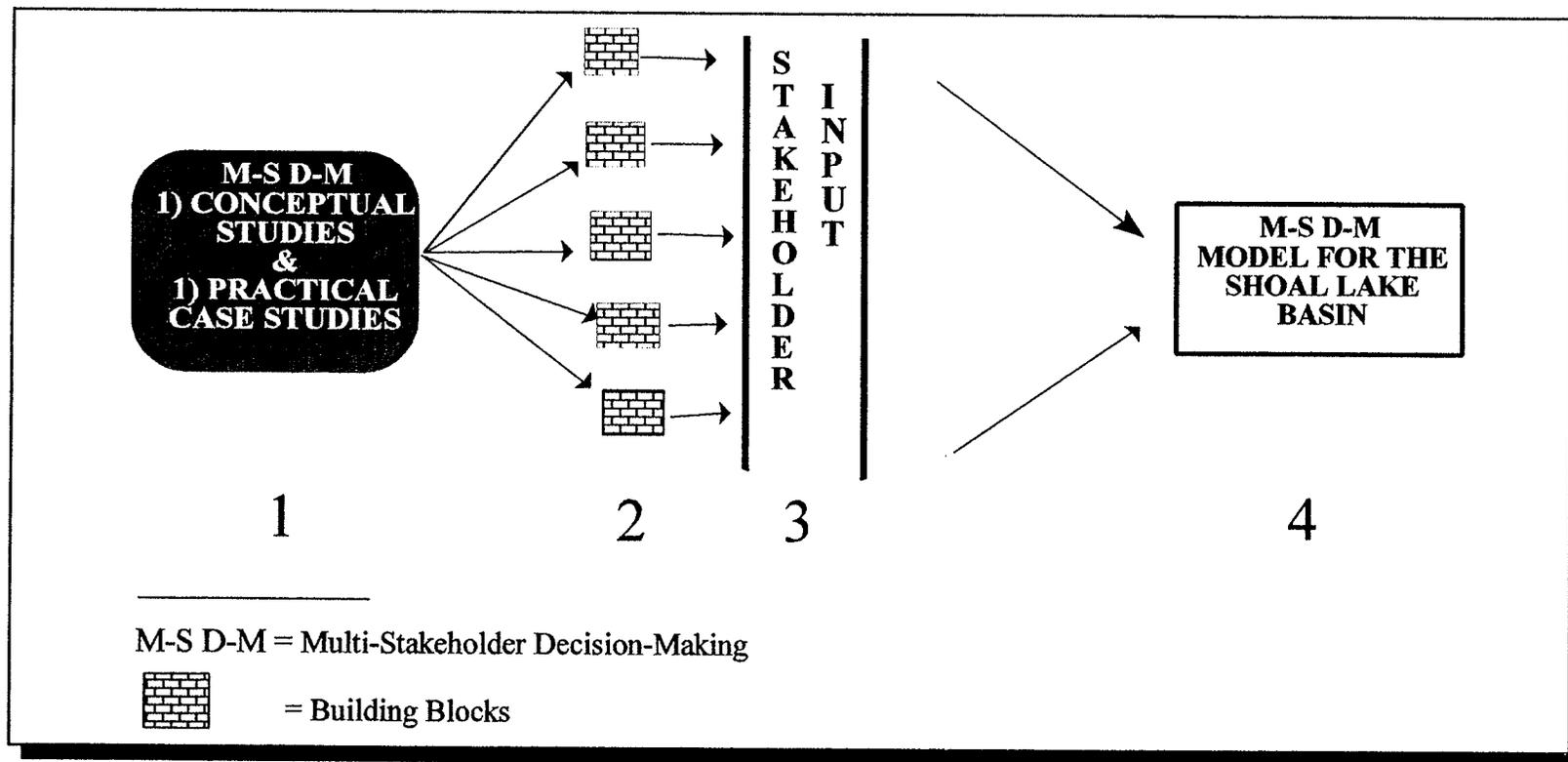
The research procedures used for the practicum consisted of literature reviews and survey interviews. The literature review was used to construct the background to the Shoal Lake

region and the issues that have faced it historically and in the present. Also, the literature is used to examine the theoretical or conceptual basis of multi-stakeholder decision making. Two surveys were also used during the course of the research. One survey was conducted with the orchestrators of several different multi-stakeholder decision-making (M-S D-M) organizations in Canada which were selected as case studies for this research. Another survey was conducted with the various Shoal Lake basin stakeholder groups, including government, First Nations, public groups and others. The intention of these procedures was to narrow down and isolate the mechanisms and processes (Building Blocks) to include in the model for multi-stakeholder decision-making and to determine whether such a process has merit to resolve conflict and facilitate resource planning and management in the Shoal Lake basin (Schema 1).

1.4.2 Research Procedure

The first procedure of the research consists of conducting a literature review, using publications, journals, agency reports and news articles, to identify and document the water and land use issues in the Shoal Lake basin. The review includes documentation of the regulatory, management, legislative and institutional framework currently used for Shoal Lake basin planning and management. Examples of multi-stakeholder decision making in resource management are also identified using the literature and through discussions with academics and resource managers. Twelve examples were identified and these are listed in Table 1. In addition, there are a number of references on multi-stakeholder decision making and consensus building, a review of the literature covering these is used to compile a section on the conceptual building blocks for M-S DM.

The M-S D-M model for the Shoal Lake basin is based on three components. First, the conceptual building blocks derived from the literature review provide a template of the principles and processes required in a multi-stakeholder decision-making process (Chapter 3). Second, using this template, a survey questionnaire is developed to examine the practical aspects or "Building Blocks" of multi-stakeholder decision making used by these case studies to resolve conflict, foster communication and understanding, and develop resource management directions (Chapter 4). Third, based on the conceptual building blocks in the literature and the practical ones identified in the case studies, a second survey questionnaire



MODEL INVOLVES: (a) a process to bring a range of stakeholders together; (b) a process to make decisions once stakeholders brought together.

Research Steps:

- 1 - Find conceptual (i.e. in literature) descriptions of M-S DM and practical models of M-S DM;
- 2 - Isolate aspects (Building Blocks), from conceptual descriptions and from each practical model, which contribute to M-S DM;
- 3 - Conduct survey with Shoal Lake basin stakeholders (representatives) for their views on a Shoal Lake basin M-S D-M forum;
- 4 - Design a M-S D-M model for basin planning in Shoal Lake (based on conceptual and practical building blocks and on stakeholder input).

Schema 1: Research Process Overview

is designed and conducted with the Shoal Lake basin stakeholders to determine their views on the viability of such a process for the Shoal Lake basin (Chapter 5). These three components will be used to determine the viability of the model as well as particular aspects of it.

Scoping of the survey questions for the two surveys took place in two ways. The survey questions were reviewed by academics for content and by the Ethics Committee of the Natural Resources Institute (University of Manitoba). Furthermore, each survey was modified slightly following pilot tests to ensure the required responses were provided. The pilot test for both surveys consisted of conducting two initial surveys prior to modifications.

Table 1: Multi-Stakeholder Decision-Making Case Studies:

- Manitoba Model Forest Inc.;
- The International Coalition for Land & Water Stewardship in the Red River Basin;
- Dauphin Lake Advisory Board;
- Local Round Tables on Environment and Economy (Riding Mountain National Park Management Plan);
- Remedial Action Plans (RAPs) for the Great Lakes (Hamilton Harbour RAP);
- Cooperative Management Agreements (Windigo-Shibogama Planning Board);
- * Ontario Conservation Authorities
- * Manitoba Conservation Districts
- * Northern River Basins Study
- * The Shuswap Nation Multi-Party Stewardship of Watersheds;
- * Fraser River Estuary Management Program
- * Community Forestry in British Columbia

* Denotes case studies excluded from the practicum research.

1.4.2a) Case Study Survey

As listed in Table 1, twelve M-S D-M case studies from across Canada were identified. While conducting background profiles on each of these case studies, six were excluded for various reasons. The Ontario Conservation Authorities and the Manitoba Conservation Districts focus mostly on private land tenure situations, while Crown land is a key element

at Shoal Lake. The Northern River Basins Study (NRBS) has a research-oriented basis rather than a resource management basis which would be required for Shoal Lake. The NRBS is slated to eventually evolve into the resource management realm, at which point it may provide more useful insights into M-S DM. The Shuswap Nation Multi-Party Stewardship of Watersheds and the Fraser River Estuary Management Program are both examples of M-S D-M, however, suitable spokespersons to complete the survey interview were unavailable during the interview period for this research. The District of Mission was selected as an example of Community Forestry in British Columbia. However, during the survey interview with their Director of Forest Management, it was learned that although possessing a good public consultation strategy, only the municipality is involved in forest management decision making. This case study was subsequently excluded as an example of M-S DM.

In all six of the twelve case studies were excluded from the research. The remaining six are considered to be cases which could broadly be considered examples of multi-stakeholder decision making. All involve a variety of stakeholders comprising a forum where decisions on resource management and conflict resolution are made. The orchestrators of each of the M-S D-M case studies were surveyed through telephone and in-person interviews using survey questions based on the conceptual building blocks for M-S DM identified in Chapter 3. The survey questionnaire is listed in Appendix A of this report. The purpose of the survey was to determine the effective and ineffective aspects for multi-stakeholder decision making over a range of case studies which feature Multi-Stakeholder Decision Making (M-S DM) and deal with natural resource issues. The focus of the survey was on the interesting aspects of how decisions are made in the forum and how the forum deals with conflict - the emphasis was on process, not substance. The survey had questions in the following four areas:

- A. DECIDING ON THE PROCESS - Initial characteristics that led to the current M-S D-M process.
- B. DESIGNING THE PROCESS - How were the participants in the process involved and how were the rules of the process established.
- C. USING THE PROCESS - What characteristics helped or hindered getting the process into action.
- D. IMPLEMENTING AND MONITORING AGREEMENTS of the process.

The individual responses to the case study surveys are compiled in Appendix B. Ultimately, analysis of the survey responses in Chapter 4 is used to separate out the contributing aspects (Building Blocks) to M-S DM. These Building Blocks formed the basis for the subsequent Shoal Lake basin stakeholder survey.

1.4.2b) Shoal Lake Basin Stakeholder Survey

A second survey based on the results of the case study survey and the conceptual building blocks for M-S DM was designed and is listed in Appendix C. The purpose of this survey was to determine what, if any, form of basin-wide M-S D-M process would be appropriate to resolve conflict among basin stakeholders and facilitate resources planning and management in the basin. The survey was conducted with 16 of the 29 stakeholder groups identified in the preliminary list of stakeholders (Table 2). All respondents were representatives for their group, agency or organization, and were familiar with Shoal Lake basin issues and with survey design. Most of the surveys were conducted in-person in Winnipeg, Kenora, and at Shoal Lake, while a few from more distant areas were completed over the telephone. Initially, a pilot survey was conducted with two of the stakeholder respondents. This survey was approved by the Ethics Committee of the Natural Resources Institute at the University of Manitoba.

The individual responses to the stakeholder surveys have been compiled in Appendix D. The views and comments most clear from the stakeholders are recorded in Chapter 5. Repeated and individual comments and views as well as trends in the responses were taken into consideration, along with the prior information on M-S D-M contained in this report, and are used to derive the model presented in Chapter 6.

1.5 SCOPE & DELIMITATIONS

The boundaries of the study area include both the bio-physical/functional boundary (i.e. the basin) and the user boundary (i.e. Winnipeg, Kenora, etc.). The scope of the *Research Setting* portion of the study (Chapter 2) considers factors largely affecting, or sensitive to, aquatic and related resource quality within the study area, and did not examine water quantity issues in any great detail.

Table 2: Preliminary List of Shoal Lake Basin Stakeholders/Interests

Ontario Provincial Agencies:

- Ontario Ministry of Environment and Energy
- Ontario Ministry of Natural Resources
- Ontario Ministry of Northern Development and Mines
- Ontario Native Affairs Secretariat
- Ontario Hydro

Manitoba Provincial Agencies:

- Manitoba Department of the Environment
- Manitoba Department of Natural Resources (Parks and Natural Areas, Water Resources)
- Manitoba Department of Urban Affairs

Federal Agencies:

- Indian and Northern Affairs Canada (Thunder Bay)
- Environment Canada (Environmental Conservation -Trans-Boundary Waters Unit, Environmental Protection)

International Agencies:

- International Joint Commission (IJC)

First Nations (FN):

- Shoal Lake FN No. 40
- Shoal Lake FN No. 39
- Shoal Lake FN Northwest Angle No. 37
- Shoal Lake FN Big Island
- Shoal Lake FN Northwest Angle No. 33
- Ontario Chiefs Advisory Services (Kenora)
- Treaty #3 Office (Kenora)
- Bimose Tribal Council (Kenora)

Winnipeg Municipal Agencies:

- Waterworks Waste & Disposal Department
- Mayor's Office

Public Groups/Others:

- Lake of the Woods Community Development Corporation
- Falcon Lake Cottagers Association
- Academic/Research (University of Winnipeg)
- Mining Companies (Consolidated Professor)
- Forestry Companies (Tolko Industries)
- Winnipeg Water Protection Group
- Eco-Network (Winnipeg)

1.6 IMPORTANCE OF RESEARCH

Throughout the literature, two common themes re-occur - water resources need to be managed at the basin level, and the management scheme must involve stakeholders in decision making. The first theme recognizes the need for water resource policy to coincide with natural, not political boundaries (McLeod, 1993; Kennett, 1991; Bartlett, 1986). The Canada Water Act *implies* that management is to be based on the basin unit, given the ineffectiveness of managing water resources incrementally, while the Federal Water Policy promotes this concept. The second theme stresses the importance of cooperation and consensus among the stakeholders during the development and future implementation of the management process in the Shoal Lake basin (City of Winnipeg, 1992; Neskar, 1986). The history of Shoal Lake issues supports both of these themes. The research presented in this practicum addresses these themes.

1.7 ORGANIZATION

The practicum is organized into seven chapters. The first chapter briefly describes an introduction to the research, why and how it was conducted. The second chapter describes the research setting. The third chapter describes multi-stakeholder decision making, the rationale for using it in basin planning, as well as its conceptual or theoretical basis. In Chapter Four, the responses to the M-S DM case study surveys are analyzed, using the conceptual building blocks identified in the previous chapter as a basis to reveal the practical and operational aspects for M-S DM. Chapter Five builds on the findings of the previous two chapters and contains the results of the survey questionnaire conducted with specific Shoal Lake basin stakeholders. The sixth chapter contains the findings from all aspects of the report, in particular on Chapters Three, Four and Five in order to develop the M-S D-M model and determine the potential for it in the case of Shoal Lake. The final chapter contains the conclusions and recommendations for the M-S D-M model and what steps are required for such a process to be initiated in the Shoal Lake basin.

Chapter Two

THE RESEARCH SETTING

2.1 NATURAL AREA OF THE SHOAL LAKE BASIN

The Shoal Lake basin is divided by the Manitoba and Ontario border at approximately 95° west longitude and 49°30' north latitude (Figure 1). The basin covers 1003 km² in both Manitoba and Ontario. However, there are a variety of opinions concerning the size of the basin, and its division within the two provinces. As a tributary to Lake of the Woods, which is partially located in Minnesota, Shoal Lake is part of an international water body. The southern section of Whiteshell Provincial Park in Manitoba, including Falcon Lake, the site of a popular recreational and cottage area, is in the basin. Seven Indian Reserves are located within the basin, two of which contain settlements.

Shoal Lake is located near two urban centres, yet minor transportation links to the lake keep it relatively isolated from human pressure. Shoal Lake is approximately 150 km east of Winnipeg, a city of 630,000 people in 1994. An aqueduct at Indian Bay was constructed in 1919, and supplies water to the City. Shoal Lake is *considered one of the best sources of drinking water for any city on the continent* (Manitoba Environment, 1993, p. 36). Kenora, a city of over 15,000 people, with a burgeoning tourist trade, lies approximately 50 km west of the lake. Access to the Ontario portion of the lake is confined to two 15 to 20 km secondary roads. These run from the Trans Canada Highway to the First Nation settlement at Kejick, and to a quarry and cottage development at Clytie Bay (Figure 1). The only other access from Ontario is by boat through the outflow of Shoal Lake at Ash Rapids. A restricted use railway, operated by the Waterworks Waste and Disposal Department of the City of Winnipeg, connects Winnipeg to the water supply intake at Indian Bay. The railway constitutes the only access to the Lake from Manitoba. The City purposefully avoided road access in order to keep the Lake isolated to preserve water quality. No road or water access is available from Minnesota to Shoal Lake.

In a hierarchical context Shoal Lake (286 km²) is attached to the north-west corner of the Lake of the Woods via a small channel called "Ash Rapids". In their natural state (i.e. before human

regulation), the waters of Shoal Lake drained through this channel into the Lake of the Woods and continued in a north westerly direction through the Winnipeg River system to Lake Winnipeg, north into the Nelson River and finally emptying into Hudson Bay.

Shoal Lake and Lake of the Woods were initially separate bodies of water. The water level at Shoal Lake was approximately one metre higher than the level of Lake of the Woods, as stated by T.R. Deacon, the then presiding Mayor of the City of Winnipeg (Deacon, 1913, p. 1):

There is no question that formerly they were separate bodies of water with a difference in level of from three to four feet. I made the original survey of the Mikado Mining property on Shoal Lake about 1894 and I went up by way of Ash Rapids and at that time I had to have my canoe lifted over the rapids as the rapids were too steep and obstructed by boulders. In very high water they came very nearly to a level but for perhaps eleven months in the year, the Lake of the Woods was the lowest, often three to four feet.

In 1897, owing to the difficulty and expense of navigating this stretch of smaller lakes and rapids, the Government of Ontario had a channel blasted to connect the two water bodies. The channel measured approximately 9 metres wide by 2 metres deep (Deacon, 1913). Since construction of the channel, the lake levels of Shoal Lake and Lake of the Woods have remained approximately equal, with the direction of flow dictated generally by the wind, or by the height of the stage of Shoal Lake as compared to that of Lake of the Woods (Davidson, 1973).

Since the mid 1880s, the level of Lake of the Woods has been subjected to varying degrees of regulation and control. The Norman Dam, the Rollerway Dam, the Kenora - Minnesota Pulp and Paper Company power plant, Mill "A" and Mill "C" channels are located at various outflows of the Lake of the Woods into the Winnipeg River and act to raise the level of Lake of the Woods about a metre above natural conditions (Watt et al., 1972).

Shoal Lake has a mean depth of 9.1 m (max 30.5m) (Roos, 1983). The Lake has an irregular shoreline dotted with numerous islands and shoals. The basin lies in the Precambrian Shield physiographic region. The landscape around the Lake is largely a product of the Wisconsin Glaciation which retreated from the area 15,000 years ago (Hallett and Roed, 1980). Surficial lacustrine and morainic deposits of clay silt and sand remain from glaciation. Shallow soil,

composed of Fibrisols and Mesisols and unsuitable for agriculture, lies up to 7.5 cm deep in certain areas on top of these glacial deposits (Davies, 1965).

The geology of the region is based upon the Archean Era some 2.5 to 2.9 million years ago, and constitutes some of the oldest exposed rocks of North America (Stockwell, 1964). Shoal Lake lies on the Wabigoon Subprovince, a 900 km long, 150 km wide, west to east running granite-greenstone belt situated in the Northwestern Superior Province of the Precambrian Shield. The Subprovince comprises metamorphosed volcanic and sedimentary rocks cut by granitoid batholiths (Blackburn et al. 1991). The bedrock is often exposed or lies near the surface. The land topography consists of weakly to moderately broken plains and uplands (OMNR, 1981).

The area supports a varied population of wildlife and fish, including deer, moose, black bear, wolves, and ruffed grouse and waterfowl. Other species include bald eagles, great blue herons, double crested cormorants and white pelicans (OMNR, 1981). Fish species found in Shoal Lake include walleye, northern pike, whitefish, burbot, cisco, yellow perch and sucker (Beak, 1983).

The forest vegetation of the area has been classified by Rowe (1972) as belonging to the western edge of the Quetico section of the Great Lakes - St. Lawrence Forest Region. Dominant tree species include varieties of pine, aspen, birch, fir and spruce with shrubs of sumac and asters.

The climate of the area is considered a modified continental - cold winters and warm summers. Mean annual temperature is 2.2°C, and 66 cm of mean annual precipitation falls on the region (Chapman and Thomas, 1968).

2.2 HISTORY OF SETTLEMENT IN THE SHOAL LAKE BASIN AREA

The earliest known human contact with the area was the Plano culture some 8,000 years ago. The Plano were a hunter/gatherer people who likely followed the northward retreat of glaciation. Hunting tools and implements constructed during this era have been found near

Thunder Bay and along the Rainy River. The Plano were followed by another people named the "Shield Archaic". Archaic camp sites have been found on Lake of the Woods dating from 5,000 B.C. to 1,000 B.C. (OMNR, 1977). The third documented inhabitants of the area were the Laurel culture around 4,000 years ago. These were the oldest pottery-making people. Their pottery and burial mounds are found in the area. The region contains several sites around the Lake of the Woods where pictographs and petroglyphs give evidence of more contemporary aboriginal activity (OMNR, 1981).

The Salteaux Ojibway people, ancestors of Shoal Lake First Nation people, were hunters/gatherers/fishers who also cultivated wild rice as food sources. The clan village was the basic socio-territorial unit. It was supported through the sustainable use of natural resources in the surrounding area. The demographic history of the Ojibway people since the early 17th century was shaped by the fur trade and the introduction of Euro-Canadian commodities. At that time, the Ojibway's western range was located much further east near Sault Ste Marie which was a centre for inter-tribal feasts and also was becoming a major trading centre for European wares.

By the mid 1600s the Ojibway had established themselves as middlemen in trade between the Cree and Assiniboine, and the Europeans. Through this role they expanded west along the shores of Lake Superior. The continued expansion west and north of Lake Superior by the Ojibway during the 1740s advanced their territory to include areas formerly occupied by Assiniboine and Cree. This area extended from the Albany River in the north, the Ogoki River in the east, west to Lac Seul and along the international border to Lake of the Woods. The population of Ojibway in this area grew dramatically from approximately 400 persons in the 1730s to about 1,500 persons by the year 1800. The establishment of inland trading centres by Montreal traders and the Hudson's Bay Co. led to a sedentization of the Ojibway in their inland locations. Traditional trips to Sault Ste Marie to fish and trade ceased. The Ojibway social organization changed to favour more stationary settlements as trade goods from these inland trading centres became more readily available near their encampments. By the late 1770s, the territory occupied by the Ojibway in Northern Ontario and Eastern Manitoba remains basically as it does today (Bishop, 1974).

French explorers, led by Jacques de Noyan in 1688, were the first Europeans to arrive in the region. Then in 1732, heralding the start of the fur trade in western Canada, and the consequent development of the area, La Verendrye established Fort St. Charles at the Northwest Angle of the Lake of the Woods (Minnesota side). The burgeoning fur trade attracted increasing numbers of Europeans and aboriginals to the area. In 1858, the Hudson Bay Company built a fur trading post at Rat Portage (now Kenora) which became the centre of activity for the region. Forestry became established after 1858, mostly in response to the demand for wood to supply construction of the Canadian Pacific Railway. Several sawmills sprung up in and around Kenora.

In 1870 Manitoba was established as a province. At this time the eastern border of the province was more westerly and did not intersect Shoal Lake. It was not until 1912 that Manitoba's borders were redrawn further to the east to include portions of Shoal Lake (Neskar, 1986).

Gold was first discovered at Clearwater Bay, midway between Shoal Lake and Kenora, in 1883. The ensuing gold rush saw several mines created along the northern margins of the Lake of the Woods and around Shoal Lake. During this period, 50 percent of all Ontario gold produced came from the Lake of the Woods area. After 1910, most of the readily accessible gold had been mined and mining interests turned their attention to new sites in Northeastern Ontario. In the past century, mineral extraction activities have ranged from construction materials (soapstone, mica and feldspar), back to gold in the 1930s when gold prices jumped, to base metals and uranium (1950 - 1978). Recently, gold, trace precious metals and aggregate mining and quarrying interests are active (OMNR, 1981).

The pattern of European settlement in the area has been determined chiefly by the various land use trends - furs, lumber, mining, and the Canadian Pacific Railway which provided easy access to these resources. Remarkably, today, Shoal Lake remains in an almost pristine condition. The basin's wealth of natural resources has attracted many interests. These resources include amongst others: high quality drinking water, significant mineral and gravel deposits, sport and commercial fishery potential, wild rice harvesting, and recreational/residential opportunities.

Without counting Winnipeg, more than 28,000 people live in the immediate vicinity around Lake of the Woods, and most have an interest in the area's natural resources. The Lake of the Woods economy is centered around forest products, tourism, transportation, public and commercial services. The few major industrial employers are limited to Boise-Canada and the Canadian Pacific Railway in Kenora, the Canadian National Railway in Rainy River (Ontario), Solvay Pharmaceuticals in Baudette (Minnesota), and Marvin Windows and Christian Brothers Hockey Sticks in Warroad (Minnesota). The Manitoba and Ontario populations have remained relatively stable around the Lake of the Woods, while Minnesota has experienced over a 30 percent growth in population in this area over the past few years (MDNR and OMNR, 1992).

2.3 WATER AND LAND USE ISSUES IN THE SHOAL LAKE BASIN

Issues are defined as "...*differing and often conflicting points of view about the value of the resources, how they should be used, who should have access to them, who pays for and benefits from their development, and what management strategies are most appropriate*" (Armour, 1986, p. 51). Water and land use issues in the Shoal Lake basin largely concern resource user activities and their potential negative effects on water quality. Resolution of these chronic issues is complicated by a multi-jurisdictional aspect. Five levels of government (International Joint Commission, Government of Canada, Provinces of Ontario and Manitoba, City of Winnipeg, and Shoal Lake First Nations) have degrees of jurisdictional authority for the Shoal Lake basin. "*As a result, there are no universal standards for the area as a whole and there is no provision for specific stringent standards to protect the water quality of Shoal Lake* (Neskar, 1986, p. 3)."

The issues identified in the first chapter included:

- First Nations Economic, Cultural and Spiritual Resource Base
- Drinking Water
- Mining
- Tourism
- Living Resources

2.3.1 First Nations Economic, Cultural and Spiritual Resource Base

The Indians of the Lake of the Woods are in a sadly impoverished condition. Their hunting and trapping rights, under Treaty, have been curtailed--their fishing rights have been handed over to white men--their rice fields have been swept out of existence--and their livelihood has been impaired (Bury, 1929, p. 10).

The Shoal Lake First Nations are currently exploring various means to improve their livelihood. Diversification and expansion of the First Nation economic resource base is likely to include proposals for tourism and natural resource harvesting activities. These activities largely rely on a pollution-free aquatic environment. However, if implemented, these developments have the potential to pollute the water system to a certain degree.

Seven First Nation reserves, with two settlements, are used by five First Nations peoples within the Shoal Lake basin (Table 3). Northwest Angle No. 33 First Nation people do not own reserve land within the basin, however, their resource use activities range within the basin (Peckett, 1994).

Table 3: Shoal Lake First Nations, Reserves, Reserve Area, and Population

FIRST NATION	RESERVES (I.R.)	AREA(ha)	POPULATION (on- reserve)
Shoal Lake No. 40	*I.R. Shoal Lake 34B2	**172	140
	I.R. Shoal Lake 40	2579	
Iskutewisakaygun No. 39	I.R. Shoal Lake 39A	3406	268
	I.R. Shoal Lake 39	419	
	*I.R. Shoal Lake 34B2	**172	
Northwest Angle No. 37	I.R. Shoal Lake 37A	777	(93 outside basin)
	I.R. Shoal Lake 34B1	259	
Big Island	I.R. Shoal Lake 31J	518	(69 outside basin)
Northwest Angle No. 33	***no reserve title within basin	-----	(136 outside basin)
		<u>Total</u> 8130 ha	<u>Total</u> 706 (408 in basin)

* shared reserve

** area only counted once in total

*** traditionally use Shoal Lake basin resources

Source: INAC, 1992

Resource use activities of all the First Nations extend throughout the basin, well beyond the reserve boundaries. The two settlements on Reserve No. 39A (Iskutewisakaygun No. 39 Independent First Nation) and Reserve No. 34B2 (Shoal Lake First Nation No. 40) have a combined on-reserve population of 408 residents (Figure 2). Reserve No. 34B2 is shared by both Iskutewisakaygun No. 39 Independent First Nation and Shoal Lake First Nation No. 40. The latter people are in the process of relocating to their own land on Reserve No. 40. The combined lands of the Shoal Lake First Nations occupy 8,130 ha or 9 percent of the basin (94,000 ha) (INAC, 1992).

In the past, the Shoal Lake First Nations economies were based on hunting, fishing, trapping, wild rice harvesting and some horticulture. In the late 18th century, they became involved with the fur trade through the Hudson's Bay Company (Claims and Historical Research Centre, 1991). The Shoal Lake First Nations No. 39 and No. 40 continue to use Shoal Lake as an economic resource base, means of transportation, and as a domestic water supply (Neskar, 1986).

Commercial fishing for walleye began in the 1920s and formed the base of Shoal Lake First Nations No. 39 and No. 40 economies until 1983 when the Ontario Ministry of Natural Resources closed the fishery, due to over fishing (Redsky, 1983 in Neskar, 1986). The average annual commercial value of the fishery to Shoal Lake First Nation No. 40 between 1970 and 1980 is reported as \$32,000 (\$28,000 of this due to walleye) (Beak, 1983). However, if the subsistence and cultural values were taken into account, the price would have to be placed much higher.

Trapping, hunting and forestry activities also have been decreasing in recent years due to lower returns per unit of effort. These activities are no longer considered viable options for an economic base (Beak, 1983).

Treaty Rights:

The treaties grew out of the Royal Proclamation of 1763 whereby the British Crown asserted its sovereignty over much of the lands in North America. Under the Proclamation, the concept of "aboriginal title" was created which made a distinction between "proprietary title" which is

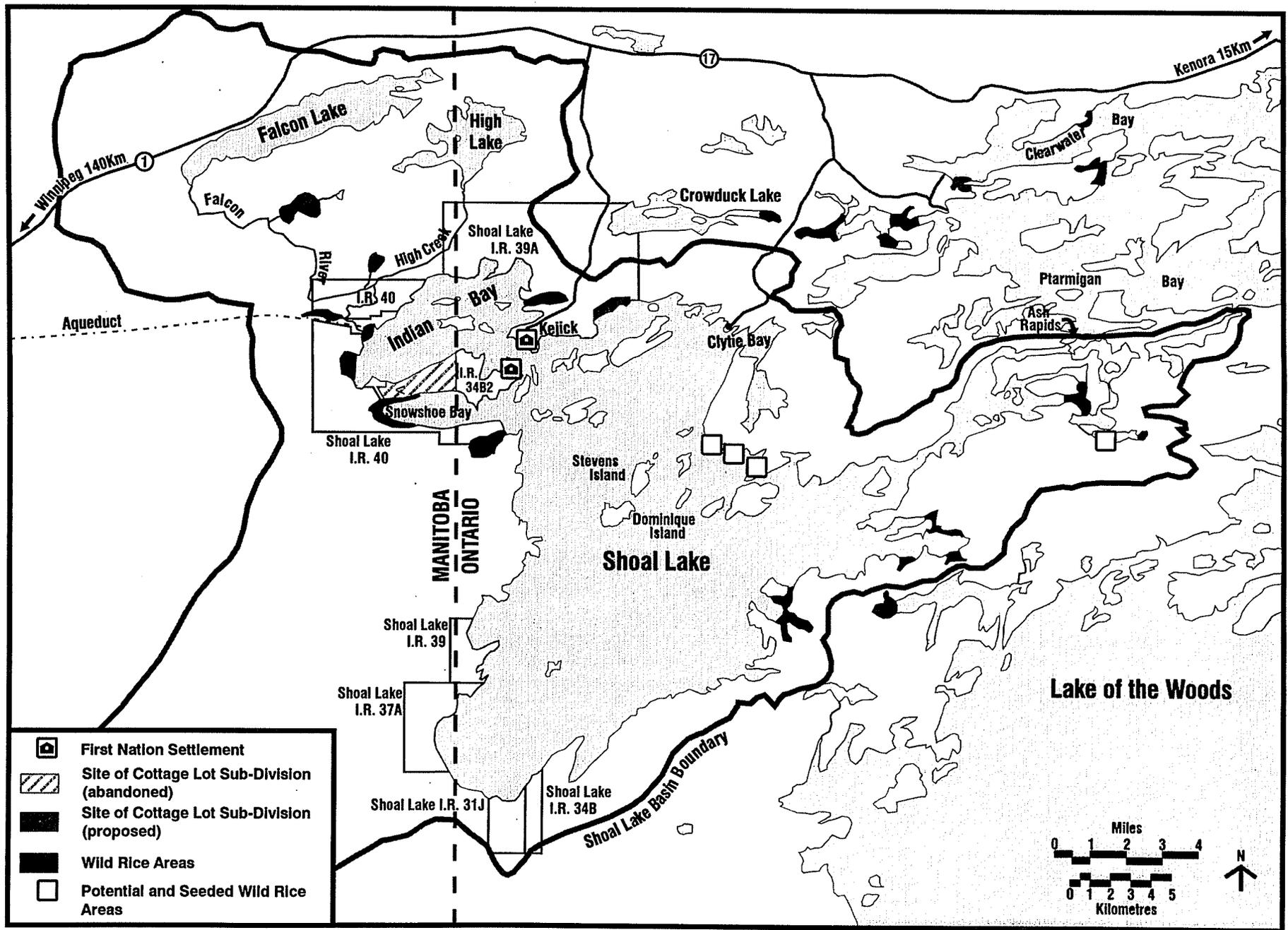


Figure 2: Map of Shoal Lake First Nations Significant Features (adapted from: Neskar, 1986; Beak, 1983)

a legal right of ownership, and "use and possession" of the land. The Proclamation contained the following principles (Boldt, 1993, p. 4):

- 1) *legal proprietary title to all land was vested in the Crown;*
- 2) *the Crown recognized a usufructory/possessory right of Indians in their ancestral lands;*
- 3) *Indian usufructory/possessory right in the lands could be surrendered (or sold) only to the Crown;*
- 4) *the Crown could, at its pleasure, extinguish the Indians' usufructory/possessory right, subject to reasonable compensation; and*
- 5) *selected lands (Indian reserves) were to be set aside for the exclusive use and possession of Indians.*

The Saulteaux Ojibway people (ancestors of the Shoal Lake First Nations) occupied lands in the Shoal Lake basin prior to the Northwest Angle Treaty of 1873 - Treaty No. 3. Treaty 3 encompassed the Lake of the Woods region. Some of the particular conditions of this treaty include promising: "*reserves for farming lands, annual payments in compensation for the lands surrendered, livestock, seed, ammunition, twine, promises of assistance*" while in return the Indians agreed to "*cede, release, surrender and yield up to the Government ... all their rights, titles and privileges whatsoever, to the lands covered by the treaties* (Miller, 1991, p. 168)."

However, the understanding of the meaning of the treaties differed between the government and native negotiators. This was in large part due to the natives unfamiliarity with European concepts of land tenure and to the terminology contained in the wording of the treaties. "*The land and its resources were the creation of the Great Spirit, and the Indian was but one inhabitant of the world with obligations to use its resources prudently and pass them on to succeeding generations undiminished. They could not negotiate surrender of title because they did not possess it.*" The government saw the treaties as "*land surrender agreements*" whereas the natives saw the treaties as "*pacts of friendship, peace, and mutual support* (Miller, p. 165, 1991)."

Treaty rights and land claims issues continue to remain undefined by the courts, which adds a difficult element to resource management and planning.

Access to Reserve Settlements:

In the late 1950s a road was built from Highway No. 17 to Kejick, the settlement on I.R. 39A (Beak, 1983). However, the 140 First Nation No. 40 members who mostly reside on I.R. 34B2 on the Shoal Lake peninsula, remain isolated (Figure 2). Boat, barge and a winter road are used to transport people and materials the roughly half kilometre to I.R. 34B2 from Kejick. The peninsula is divided by a diversion channel which is part of the Winnipeg water supply facility, effectively creating an island, and a jurisdictional barrier to road access for the Band members.

Presently, all supplies and construction materials for the settlement on I.R. 34B2 are transported from Kejick in barge or boat during the ice-free months, and on ice roads during winter. Transport from Kejick to I.R. 34B2 during spring and fall, when the ice is either melting or freezing, poses a threat to both water quality and human safety (Beak, 1983). Chemical spills through the ice and in open water have been reported (Neskar, 1986). One of the recommendations of the IEC Beak (1983, p. 1.3) report on protecting water quality in Indian Bay, was that: "*...road access should be developed to avoid the need for barge transport or crossing of the ice by trucks carrying fuels or other hazardous materials which could result in spills into Indian Bay*". A 24 km road would be necessary to connect I.R. 34B2 to Highway No. 17. Another option is for a bridge or causeway to be constructed across the Narrows between I.R. 34B2 and I.R. 39A.

In recent years, both First Nations have been trying to develop and expand their economic base. Recent economic development proposals include tourism ventures and wild rice harvesting, but for Shoal Lake First Nation No. 40, this development is hindered by the lack of road access. However, the Shoal Lake Agreements (below) may provide Shoal Lake No. 40 with the financial and technical support to embark on a variety of sustainable development initiatives.

Shoal Lake First Nation No. 40 is examining the potential to establish a fishery management program for Shoal Lake, complete with a fish hatchery, as a sustainable development initiative. The program would support both a commercial fishery and a sport fishery. Expansion of wild rice harvesting and horticulture, beaver pelt harvesting, and water rights and sales (including a proposal to supply water to the Pembina Valley in Manitoba) are all under investigation (Campbell, 1993, pers. comm.).

Tourism:

In the late 1970s, the First Nations opted for tourism as a means for economic development. Cottage lot sub-divisions, a marina, and a tourist camp include ventures proposed or in operation. In 1978 Shoal Lake First Nation No. 40 submitted a proposal for a 350 lot cottage sub-division in order to "...effect a shift in their economic base which was damaged due to the closing of the fishery on Shoal Lake (City of Winnipeg, 1989, p. 1092)" (Figure 3). The cottage lot sub-division was to be constructed on the Shoal Lake peninsula, which divides Indian Bay and Snowshoe Bay. In 1980 Shoal Lake No. 40 and Indian and Northern Affairs Canada (INAC) created the Snowshoe Bay Development Corporation to oversee development of this cottage lot sub-division. In 1980, Iskutewisakaygun No. 39 Independent First Nation submitted a proposal for a 56 lot cottage sub-division.

The Shoal Lake No. 40 cottage lot proposal was abandoned after a lengthy process which resulted in the signing of two Shoal Lake agreements between Shoal Lake First Nation No. 40, the City of Winnipeg, the Province of Manitoba and the Government of Canada (see Shoal Lake Agreements below). The Shoal Lake No. 39 proposal was revised in 1987 to 32 cottage lots and a possible future marina. Artwork sales, parking and docking services are included in the community. Shoal Lake No. 40 operates a tourist camp catering to sport fishing and is the sole owner of a mini-mall business operating in Ontario near Clearwater Bay along Highway No. 17 (Claims and Historical Research Centre, 1991).

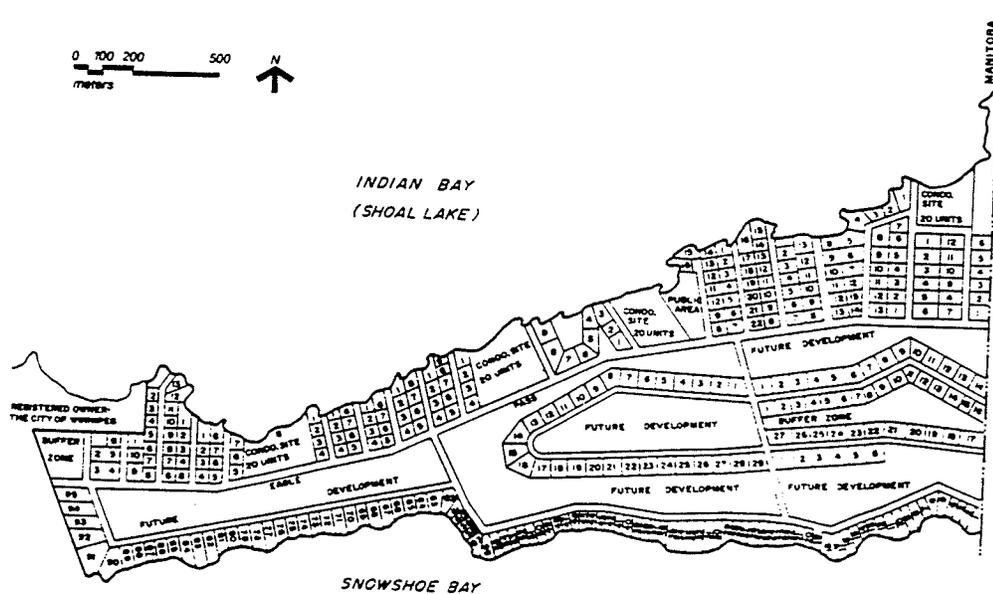


Figure 3: Plan of Shoal Lake First Nation No. 40 350 Lot Cottage Sub-Division (prepared through Snowshoe Bay Development Corporation) (Beak, 1983)

Wild Rice:

Wild rice is considered a 'specialty item', making it a crop of high economic value (OMNR, 1982). It tends to grow in the smaller bays and narrows of the Lake of the Woods in shallow water. Several traditional and potential rice areas exist in the Shoal Lake basin (Figure 2). Shoal Lake First Nation No. 40 has identified 386.2 hectares of traditional rice beds (Table 4).

First Nation No. 40 estimates that manual annual harvest averages 112 kg/ha of rice, and that, in machine accessible areas, a further 450 kg/ha is possible through machine harvest (Beak, 1983). The combination of hand picking and machine harvests could theoretically yield 217,044 kg of rice per year. The current (1994) wholesale price for wild rice of \$4.00 per kilogram places the potential annual value of this resource, in the Shoal Lake First Nation No. 40 traditional areas alone, at \$868,176 (Arsenic, 1994).

In Manitoba, rights to harvest wild rice areas are leased to individuals by the Manitoba Department of Natural Resources, while in Ontario, each reserve is allocated a block of land on which to harvest (Redsky, 1983, in Neskar, 1986).

Table 4: Shoal Lake First Nation No. 40 Traditional Rice Bed Areas (Beak, 1983, p. 5.44)

Wild Rice Location	Rice Bed Area (ha)
Rush Bay	81.1
Crow Duck Island	37.4
Zig Zag Island	38.4
Pine Island	27.5
Carl Bay	15.0
Deception Bay	1.4
Woodchuck Creek	1.4
Labyrinth Bay	28.1
Rice Bay	63.7
Snowshoe Bay	89.0
Queen's Bay	2.0
Portage Bay	1.2
Falcon Bay	---
Snake Lake	---
<hr/> Total Exceeding	<hr/> 386.2 hectares

Agreements with the Shoal Lake First Nations:

There are two agreements involving the First Nations of Shoal Lake:

- A) Shoal Lake Agreements - involve two separate agreements, one between Shoal Lake First Nation #40, the City of Winnipeg and the Province of Manitoba (A1), and the other between the Shoal Lake First Nation #40 and the Government of Canada (A2);
- B) Shoal Lake Watershed Agreement - between several Ontario Ministries and the 5 Shoal Lake First Nations.

A) Shoal Lake Agreements:

The City of Winnipeg and the Province of Manitoba were concerned that the construction and operation of a 350 lot cottage sub-division on the shore of Indian Bay, where the Winnipeg water supply intake is located, would likely have water quality impacts. In addition, they were concerned with sewage and solid waste disposal methods on the reserve. Septic drainage and land-filling are inappropriate methods of waste disposal due to the shallow, clayey soils found on the reserve, as is barge transport of wastes across Indian Bay. These methods pose a hazard to human health on the reserve, degrade the water quality, and have the potential to introduce contaminants into the Winnipeg water supply intake which the treatment process is not equipped to remove (Beak, 1983).

The Shoal Lake No. 40 cottage lot sub-division was required to undergo the Federal Environmental Assessment and Review Office (FEARO) process. A FEARO panel was appointed in 1981 by the federal Minister of the Environment. In 1983, negotiations began for a buy-out of Shoal Lake First Nation No. 40 development rights, by the City of Winnipeg, Province of Manitoba, and the Government of Canada. The City and the Province had a view "*...to developing an agreement which would facilitate the Band's desires and at the same time protect the quality of the drinking water in Indian Bay* (City of Winnipeg, 1989, p. 1092)". These negotiations continued concurrently with the environmental assessment process until 1986, when the environmental assessment activities were deferred pending the outcome of buy-out negotiations. In 1989, the negotiations culminated in the first of two Shoal Lake Agreements. The two Agreements cover four areas: water quality protection, enforcement/ administrative mechanisms, economic and social benefits, and compensation provisions (City of Winnipeg, 1989).

A1) Shoal Lake Agreement Between Shoal Lake First Nation No. 40,
the City of Winnipeg and the Province of Manitoba

The first of the two Shoal Lake Agreements between Shoal Lake First Nation No. 40, the Province of Manitoba and the City of Winnipeg was signed June 30, 1989 (Appendix E). The agreement has a 60 year term. It serves to combine the protection and enhancement of water quality on a cooperative basis to the mutual benefit of all signatories while promoting and providing opportunities for sustainable economic development for Shoal Lake First Nation No. 40 members (Manitoba Environment, 1991).

i) Water Quality Protection:

Specific conditions of the Agreement include the prohibition and regulation of certain activities on the reserve. Mining, heavy industry and the use of toxic chemicals are among the prohibited activities, while tree cutting, logging, light industrial and commercial activity, and road construction will be regulated on the reserve. A proposal to build a bridge or causeway across the Narrows would either have to have agreement from all parties, or be reviewed by the FEARO process. Shoal Lake No. 40 retains their traditional rights to hunt, fish, trap and cultivate or harvest wild rice on the reserve.

The Agreement also includes abandonment of the 350 lot cottage sub-division and the return of this land to full reserve status. In addition, non-residential cottage lots are only permitted on the south shore of Snowshoe Bay. First Nation No. 40 is to spend up to \$2,000,000 on a waste management system (funded by the federal government). This will consist of a piped collection system and mechanical treatment plant. In addition, Shoal lake No. 40 is to collect and dispose of solid waste at a landfill site in Ontario, outside of the Shoal Lake basin. Finally, First Nation No. 40, in cooperation with the City and the Province, is to develop a comprehensive environmental management plan (City of Winnipeg, 1989).

ii) Enforcement/Administrative Mechanisms:

The Agreement is enforced through a Senior Policy Committee consisting of the Mayor of Winnipeg, a representative of the Minister of the Province of Manitoba (Department of Urban Affairs), and the Chief of Shoal Lake First Nation No. 40. A working group including two representatives of each of these parties assists the Senior Policy Committee.

iii) Economic/Social Benefits:

A resource inventory and economic development study will be undertaken by Shoal Lake No. 40 with cooperation from the City and Province, in order to identify environmentally compatible economic development opportunities.

iv) Compensation Provisions:

A trust fund consisting of \$6,000,000 in funds (\$3,000,000 each from the City and the Province) will be established for Shoal Lake No. 40 in recognition of their regulation of certain activities on the reserve. Interest on the capital of the fund is paid to Shoal Lake No. 40 until the end of the 60 year term, at which point the principle will be paid to them. In addition, the final provision of the Agreement requires the Government of Canada to enter into a similar agreement with Shoal Lake No. 40 and to make a *substantially equal* contribution.

A2) Agreement Between Shoal Lake First Nation No. 40 and Canada

The second Agreement between First Nation No. 40 and the Government of Canada was signed on September 18, 1990 (Appendix F). The Agreement confirms and promotes Shoal Lake First Nation No. 40's inherent right of self-government and self-determination, fulfils the federal government's mandate of responsibility for First Nations and reserves, and recognizes the need to promote sustainable economic growth. The Agreement has three main areas: water quality protection, economic development, and administration and implementation (Manitoba Environment, 1991).

i) Water Quality Protection:

The federal government will fund up to \$2,500,000 of the construction, capital, operation and maintenance costs of a waste management system for Shoal Lake No. 40.

ii) Economic Development:

The federal government will contribute \$500,000 to Shoal lake No. 40 to support economic development, will forgive \$234,000 contributed to No. 40 for conducting negotiations, and will provide \$100,000 in technical expertise to assist in implementing the agreement. Shoal Lake First Nation No. 40 will develop a community economic development strategy and is eligible to constitute an economic development corporation.

iii) Administration and Implementation:

The Minister (or a designate), and the Chief and Council of Shoal Lake No. 40 will meet annually to review the agreements implementation and undertake any remedial action.

In early 1993 the City of Winnipeg froze the trust fund account charging that Shoal Lake First Nation No. 40 had not met the terms of the Agreement. In dispute were lands designated for the 350 lot cottage sub-division, which under the terms of the Agreements, were to have been returned to full reserve status by Shoal Lake No. 40. The Chief of Shoal Lake No. 40 and Chairman of the Snowshoe Bay Development Corporation, maintained that the land in dispute does not belong to Shoal Lake No. 40, but instead to the Snowshoe Bay Development Corporation which is not bound by the terms of the agreement, since technically it was not a signatory.

In early 1994, the City released the freeze on the trust fund when Shoal Lake No. 40 agreed to restart the process of returning the land leased to the Snowshoe Bay Development Corporation to full reserve status (Winnipeg Free Press, 1994).

B) Shoal Lake Watershed Agreement:

The agreement, signed by the Ontario Minister of Environment and Energy in September of 1994, consists of an arrangement of five years duration between the Anishinabe Nations of the Shoal Lake Watershed and the Ontario government (Appendix G). Under the agreement two forums are to be set up (Watershed Committee and Working Group) to review ongoing and planned developments within the Eastern (Ontario) section of the Shoal Lake Watershed which may have a significant impact upon the Watershed or the parties in relation to the Watershed, to resolve issues, and to develop a management plan (Schema 2).

Further negotiations agreement include soliciting the involvement of the Province of Manitoba and the federal government. At present (July, 1995), only the Working Group has been organized and no members have been selected for the Committee. Once the agreement is negotiated with the provinces, First Nations and the federal government, the respective governments will represent stakeholders. At present there appears to be no plan for the Working Group or Committee to deal directly with stakeholders as issues develop. Instead, stakeholders will have to go through their government representatives to have their issues addressed.

SHOAL LAKE WORKING GROUP (WG):

Members appointed by each WC representative

Mandate:

- ▶ develops guidelines to determine if planned and on-going developments may have significant impacts
- ▶ reports to WC on a regular basis
- ▶ identifies and resolves issues through consensus



SHOAL LAKE WATERSHED COMMITTEE (WC):

Membership includes:

- ▶ Chief or Council member from each of the five Shoal Lake First Nations
- ▶ Ontario Representatives from Ministry of Natural Resources, Native Affairs Secretariat, Ministry of Environment and Energy, Ministry of Northern Development and Mines

Mandate:

- ▶ oversees and directs WG using a management plan
- ▶ can accept, reject, modify, substitute views or refer back to WG proposals or recommendations
- ▶ strives for consensus in dealing with WG proposals
- ▶ WC representatives report results of its deliberations to their respective governments and ministries
- ▶ implements appropriate action (consistent with agreement, and with approval of parties to the agreement where required) upon conclusion of its deliberations with WG's proposals and recommendations
- ▶ may develop guidelines and procedures (with WG) which they deem useful in carrying out work under this agreement

Schema 2: Organizational Structure and Mandates for the Shoal Lake Watershed Agreement

First Nations Regulatory Framework:

First Nations reserves are primarily the responsibility of the federal government. Indian and Northern Affairs Canada (INAC) is responsible for supporting First Nations economic

development and community economic self-sufficiency (DIAND, 1990). The Manitoba Natural Resources Department and the Ontario Ministry of Natural Resources are responsible for the protection, conservation, management and development of forests, wild rice, fisheries, wildlife, water quantity, parks and Crown land outside of reserve areas (Manitoba Natural Resources, 1993).

2.3.2 Drinking Water

The City of Winnipeg is the major user of drinking water from Shoal Lake. Shoal Lake First Nations No. 39 and No. 40 residents, as well as several cottagers and camps in the northwestern portion of the lake, also obtain drinking water from the lake (Beak, 1983).

History of the Winnipeg Water Supply:

The water from Shoal Lake would require no treatment. No fear need ever be in mind that the sanitary quality of the water would be poor at any time in the future. The shores of the lake are hard rocks of the Laurentian series, entirely unfitted for agriculture, and the country thereabouts must remain in its present wild state indefinitely. There need be no fear of the growth of cities or towns upon the shore of Shoal Lake. The Lake of the Woods constitutes an enormous reservoir of clear, pure and soft water, situated 300 feet above the City of Winnipeg, within 100 miles of the city (Schlichter, 1912, in Administration Board, 1918, p. 9).

Out of four candidate water supply sources identified in 1906 by the Winnipeg Water Supply Commission - artesian wells, Red River, Shoal Lake and Winnipeg River - Shoal Lake was chosen, largely based on Professor Schlichter's above recommendation. On September 6, 1913, the City of Winnipeg passed a resolution to raise \$13,500,000 to cover the costs for construction of a gravity-fed, concrete aqueduct stretching approximately 136 km from Indian Bay on Shoal Lake to Winnipeg (Administration Board, 1913). Work on the aqueduct began that same year and was completed in 1919 (Henderson, 1987). In 1914, the International Joint Commission authorized the City of Winnipeg's application to withdraw up to 455 million litres per day (ML/D) (Henderson, 1987). The aqueduct's firm capacity is 385 ML/D, moderately less than this allotted supply (City of Winnipeg, 1992). The IJC licence only guaranteed water quantity. In 1968, The City applied to the IJC to divert an additional 910 MLD from Shoal Lake. This application was later withdrawn (Chapter Two).

As part of the diversion scheme, the Falcon River, which deposited unfavourable dark coloured muskeg water into the west end of Indian Bay, was diverted through a 1.6 km dike placed in Indian Bay, and then through a diversion channel into Snowshoe Bay (Hering et al., 1913) (Figure 4). A railway was constructed along the aqueduct route from the city to the Winnipeg Waterworks Waste and Disposal Department's (WWWDD) facility at Waugh, on Indian Bay, to transport staff and supplies for repairs and maintenance of the aqueduct.

The land under Indian Bay, near the water intake facility at Waugh and bordering the Falcon River diversion trench between Indian Bay and Snowshoe Bay (1,332 hectares in all) was expropriated from I.R. No. 40 between 1916 and 1921 for the sum of \$3,205 (Beak, 1983) (Figure 4). The list of lands purchased by the Greater Winnipeg Water District From the Department of Indian and Northern Affairs is shown in Table 5.

Table 5: Reserve Lands Acquired by the City of Winnipeg

<u>Reserve Lands Purchased</u>	<u>Area (ha)</u>
(April 4, 1916)	
Indian Bay: land under water and islands.	1,175
I.R. No. 40: right of way and intake site.	126
I.R. No. 40: strip of land for Falcon River diversion channel.	18
(February 26, 1921)	
I.R. No. 40: land for aqueduct intake site.	13
	Total: 1332 ha

(Source: adapted from Beak, 1983, Appendix F)

Shoal Lake Water Quality:

According to many studies (Pick and Lee, 1969; Eco-Logic Ltd., 1970; Pick and Lee, 1970) undertaken in 1969 and 1970, Shoal Lake water quality has remained generally stable for at least the last 50 years. One of these studies was based on paleolimnological techniques incorporating the analysis of diatoms. It concluded that species diversity has remained stable for the past 200 years. The report did, however, recommend that the aqueduct intake be extended to Shoal Lake proper near Dominique Island to take advantage of the superior water quality and cooler water temperatures located there (Eco-Logic Ltd., 1970).

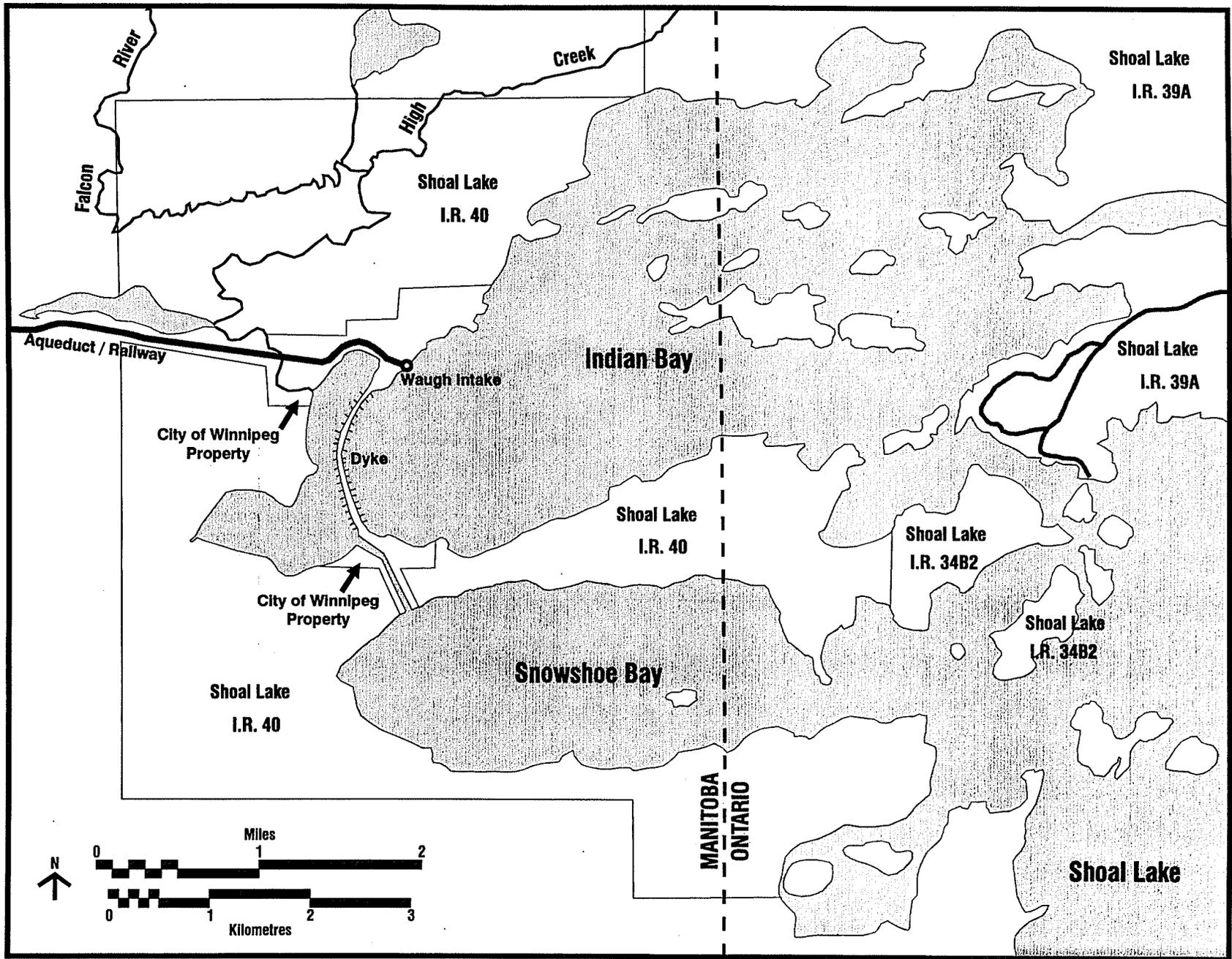


Figure 4: City of Winnipeg Water Supply System at Indian Bay, Shoal Lake (Neskar, 1986, p.12)

Indian Bay is highly mesotrophic (i.e. borderline eutrophic), while Shoal Lake is considered oligotrophic (Eco-Logic Ltd., 1970; Pick and Lee, 1970). The shallower bay waters can be expected to be of slightly poorer quality than the deeper, Shoal Lake waters. Nonetheless, water quality for both water bodies is rated "very good" (Pick and Lee, 1970).

A decade later in 1982, WWWD completed a Shoal Lake Sanitary Survey Summary. The report summarized the results of five surveys conducted on Shoal Lake during 1982. The water quality parameters were chosen to detect pollution resulting from human wastes. The water quality survey concluded that 'no serious abnormalities' were found at the sampling sites (Gay, 1982, in Neskar, 1986).

Beginning in the mid 1980s, Dr. Eva Pip of the University of Winnipeg conducted several aquatic macrophyte studies on Indian Bay and adjacent portions of Shoal Lake. Following are some of the conclusions she drew from a 1985 limnological study:

The short hydraulic residence time in Indian Bay due to withdrawal by the aqueduct is an important factor in delaying radical eutrophication of all of Indian Bay, since many nutrients are removed which would otherwise remain in the system. ... A significant amount of new nutrient influx into Indian Bay comes from Shoal Lake proper. ... Further monitoring is needed because the system is unstable (p. 10).

The Manitoba Department of the Environment has operated a water quality monitoring program since June, 1991. A wide variety of water quality parameters is sampled at roughly monthly intervals at 18 sites throughout the basin (Figure 5). Two of the sites are located along the Falcon River which flows out of Falcon Lake, an area of intensive recreational development.

However, the monitoring results for these sites indicate that, due to the boggy landscape between Falcon Lake and Indian Bay, the river's water is of better quality at the outflow of Falcon Lake than when it enters Indian Bay (Manitoba Environment, 1993).

Environment Canada, under a joint Canada/Manitoba water quality monitoring agreement, has conducted periodic data collection of water quality parameters (chemical and biological) at Indian Bay since 1991 (Chako, 1994).

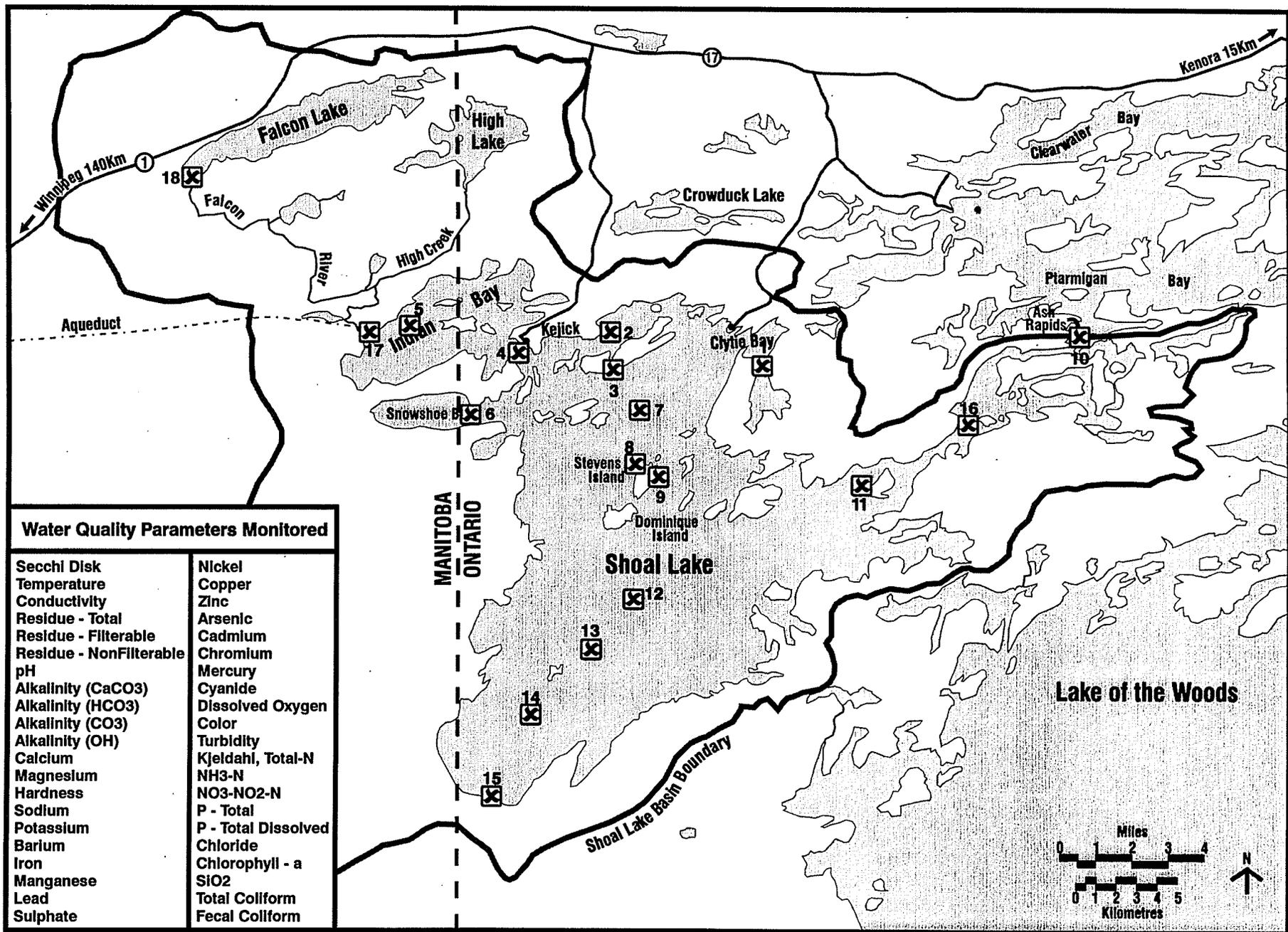


Figure 5: Manitoba Environment Water Quality Monitoring Sites in the Shoal Lake Basin
 (source: Manitoba Environment)

City of Winnipeg Water Supply System - Present and Future Requirements:

Today, Shoal Lake easily supplies the 630,000 citizens of Winnipeg with high quality drinking water (Figure 6). Every ten years the City of Winnipeg WWDD conducts a comprehensive planning study of the regional water supply system to define long-term water quantity and quality needs. The latest (1992) planning study determined that in the near future the City of Winnipeg will be faced with water quantity problems (due to increased demands), and water quality problems (due to changing guidelines) (City of Winnipeg, 1992).

Report projections to the year 2040 anticipate that Winnipeg water consumption demands will be 515 ML/D - 130 ML/D greater than the aqueduct firm capacity. Three candidates were evaluated for a supplemental supply: a second aqueduct to Shoal Lake; an aqueduct to Natalie Lake (the forebay of the Seven Sisters hydro-electric development on the Winnipeg River); and the Assiniboine River. Shoal Lake was selected over the alternative sources using cost, water quality and water quantity criteria.

The Manitoba government currently endorses, under the Public Health Act, the *Guidelines for Canadian Drinking Water Quality* (Table 6). The waters of Shoal Lake surpass guidelines for all parameters, except faecal coliform. Only the addition of chlorine is required to bring Shoal Lake water quality within the guidelines (WWDD, 1992).

The United States *Safe Drinking Water Act* has moved towards increasingly more stringent regulations. One of these revisions is to reduce the maximum allowable 'disinfection by-products' (DCBs) such as total trihalomethanes (TTHM's) to 25ug/L. TTHMs are formed when organic compounds present in water go through the chlorination-disinfection process. Risk of carcinogeneity is associated with low-level exposure to TTHMs (WWDD, 1992).

The Canadian Drinking Water Guidelines are expected to mimic the U.S. revisions, likely within the next decade. Environment Canada has proposed a change in the guideline level for TTHMs from the present 350 ug/L to 50 ug/L. Winnipeg WWDD post-chlorination water does not meet this level. Therefore, treatment of drinking water for the City of Winnipeg will likely be required within the next decade.

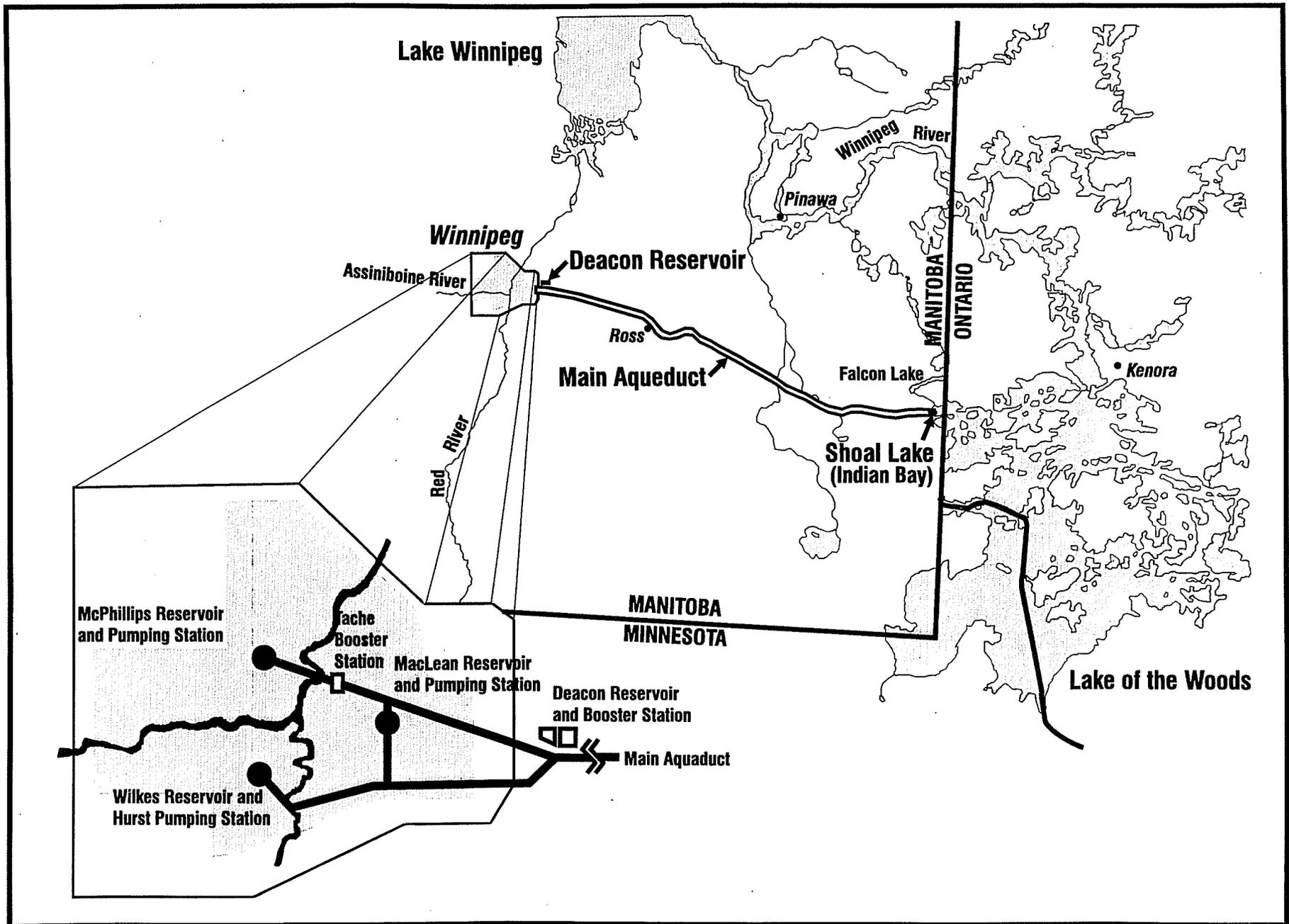


Figure 6: The City of Winnipeg Water Supply System (City of Winnipeg, 1992, p. 1-3)

Table 6: WATER QUALITY CRITERIA COMPARISONS			
Parameter (mg/L unless noted)	Canadian Drinking Water Guidelines	Shoal Lake Raw Water Range	Distribution System Range
Physical			
Colour (TCU)	<15	<5-10	<5-10
¹ Turbidity (NTU)	1	0.3-1.7	0.6-1.0
Odour (TON)	inoffensive	1.2-4.4	1.2-4.4
Taste	inoffensive	na	na
Chemical			
Hardness	ng	60-100	60-100
Iron	<0.3	0.05-0.22	0.05-0.22
Cadmium (<i>ug/L</i>)	5	0.02-0.04	0.02-0.04
Lead	0.01	0-0.0003	0-0.0003
Nitrate	10	<0.01-0.16	<0.01-0.16
Sulphate	<500	<5-10	<5-10
² Total THMs (<i>ug/L</i>)	350	0.05-0.8	80-150
Micro-biological			
³ FCs (#/100mL)	<1	<1-25	<1

na - Indicates No Data Available

(Table adapted from: City of Winnipeg, 1992, p. 3-1)

ng - Indicates No Guideline (hardness of 80-100 generally considered acceptable)

- 1 - turbidity is lower due to algal control at Deacon Reservoir
- 2 - total trihalomethanes (TTHMs) are formed when chlorine reacts with organic matter
- 3 - faecal coliform (FCs) are destroyed by chlorine disinfection

The City of Winnipeg is opposed to any developments on Shoal Lake as these would inevitably lead to an acceleration of eutrophication and a worsening of water quality (WWDD, 1987; Neskar, 1986). Run-off from cottages can carry nutrients from sewage, lawn fertilizers and garbage. Effluent from mining activities can contain toxic metals and chemicals. Power boat use in shallow bays can increase the concentration of suspended sediment in the water. Road access creates opportunities for increased development, and is therefore considered to

be the single greatest threat to water quality in the vicinity of the Winnipeg water intake. The most preferable solution for the City of Winnipeg is to have Shoal Lake maintained as a water quality reserve (Neskar, 1986).

Regulatory Framework for Drinking Water:

The Manitoba Public Health Act classifies the area immediately adjacent to the WWWD intake as a Sanitary Area. As such, construction requires the approval of the Minister responsible. Indian Bay is also considered a Sanitary Area under the Manitoba Clean Environment Act. Any discharge into the lake must meet the standards in this Act (Neskar, 1986). The land under Indian Bay in Manitoba is owned by the City of Winnipeg and the construction of structures on the water such as docks and piers requires approval from the City (City of Winnipeg, 1987).

Water resources management in Manitoba and Ontario is divided between two departments in each province. The Manitoba Department of the Environment and the Ontario Ministry of the Environment and Energy are responsible for water quality matters in provincial waters. The Manitoba Department of Natural Resources and the Ontario Ministry of Natural Resources are responsible for water quantity matters.

In response to a molybdenum mining proposal at High Lake in Ontario by Eco Exploration Ltd., the Manitoba Environment Minister and the Ontario Environment Minister signed a *Memorandum of Understanding* in 1981. The agreement concerned the protection of Winnipeg's water supply against contamination from present and future development on High Lake and in the immediate vicinity of Shoal Lake. The memorandum has been the only Manitoba-Ontario intergovernmental agreement to ensure protection of Shoal Lake water quality from developments in the Shoal Lake basin (Appendix H).

2.3.3 Mining in the Shoal Lake Basin

As described earlier in this chapter, there is a long history of mining in the Shoal Lake basin. Base and precious metals, aggregate and ornamental stone deposits are located within the basin. The 'greenstone belt' of the Wabigoon Subprovince, which is associated with base and precious metal deposits, runs through the northern part of the Shoal Lake basin. Many parts of the basin have a high potential for minerals (Figure 7). Six gold mines (three of which are

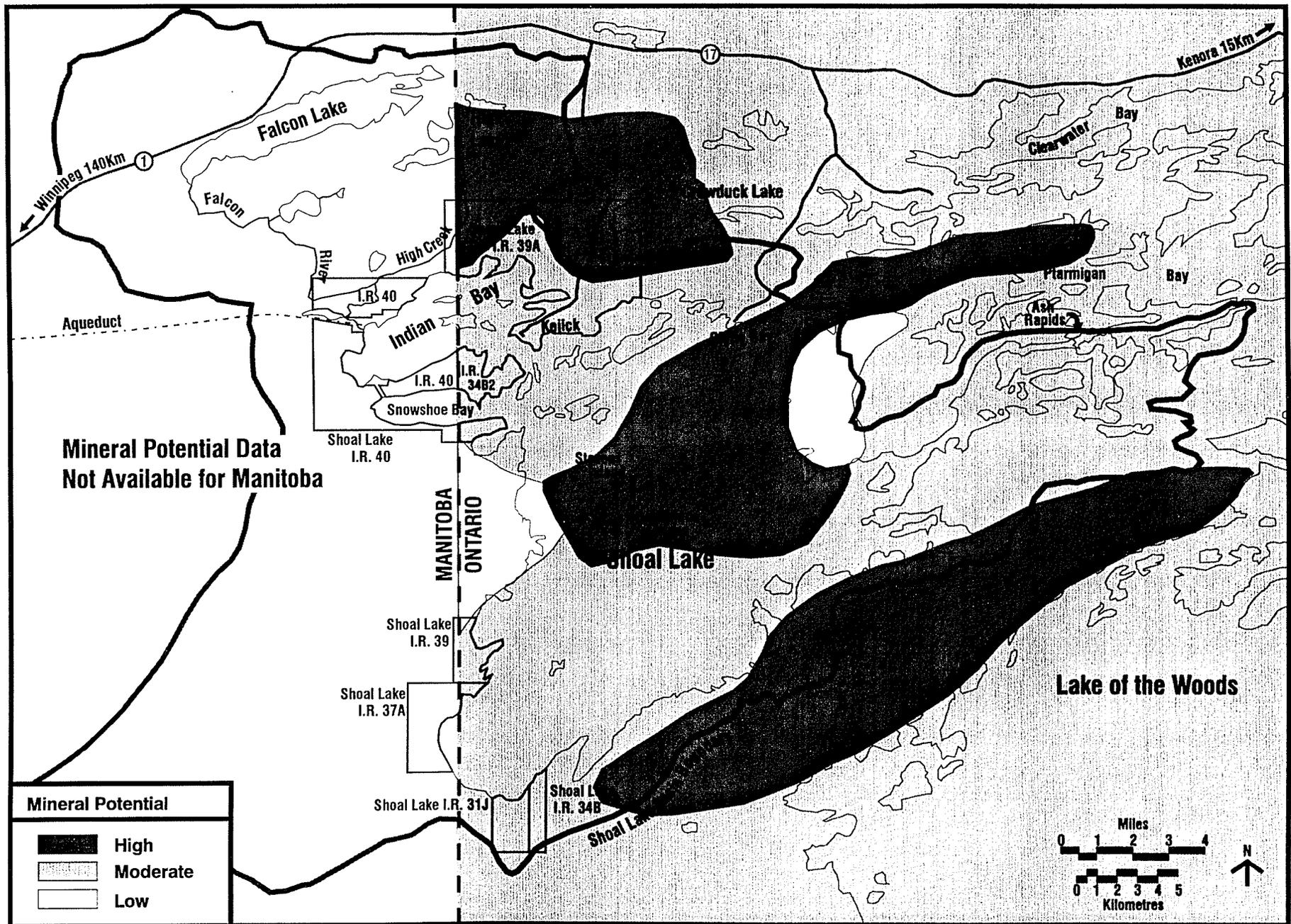


Figure 7: Mineral Potential in the Shoal Lake Basin (adapted from: OMNR, 1981)

exploratory operations), a molybdenite mine, and a granite quarry are located within or near the basin boundary (Figure 8). Except for exploratory drilling, only the quarry is active at present.

Consolidated Professor Mines Ltd. is awaiting an environmental assessment before they can mine for gold on Steven's Island in Shoal Lake (Table 7) (Manitoba Environment, 1991). The proposed mining operation includes underground mining of gold bearing ore at the mine site on Steven's Island of Shoal Lake, and barge and truck transport of this ore to a milling site north-east of the basin boundary. Recent developments indicate that Consolidated Professor Ltd. is actively pursuing the required regulatory approvals and may be close to acquiring them.

Mining developments contribute economic benefits, expand the region's tax base, and provide local employment. For instance, the gold mine operation proposed by Consolidated Professor Ltd. could employ up to 165 people, many of these from the Shoal Lake First Nations, and produce up to \$20 million in gold annually (Winnipeg Free Press, 1989). Modern technology has increased the feasibility of reopening many of the old mines and exploring for new sites in the Shoal Lake area (Beak, 1983). However, fluctuating and low base and precious metal market prices, uncertainties in land tenure, and the high cost and time associated with obtaining regulatory requirements all hinder mining development.

Aside from the economic and employment benefits of mining developments, there are potentially negative environmental consequences of water quality degradation and long-term scarring of the landscape. The short-term benefits of mining must be weighed against the future opportunities for development in the basin which may be forgone if the land and water are aesthetically or chemically degraded to any degree as a result of mining activities. During the course of Consolidated Professor Ltd.'s exploratory work on Steven's Island, which led to its present mining application, two accidental fuel spills occurred, one which resulted in a fine, and a transport barge sank (Winnipeg Free Press, 1989).

Mining activities in the Shoal Lake basin include mineral and aggregate extraction and quarrying. The affects of existing or proposed mining activities on Shoal Lake water quality will depend on several factors including location, construction, operation and processing methods, and adherence and enforcement of environmental regulations (Neskar, 1986).

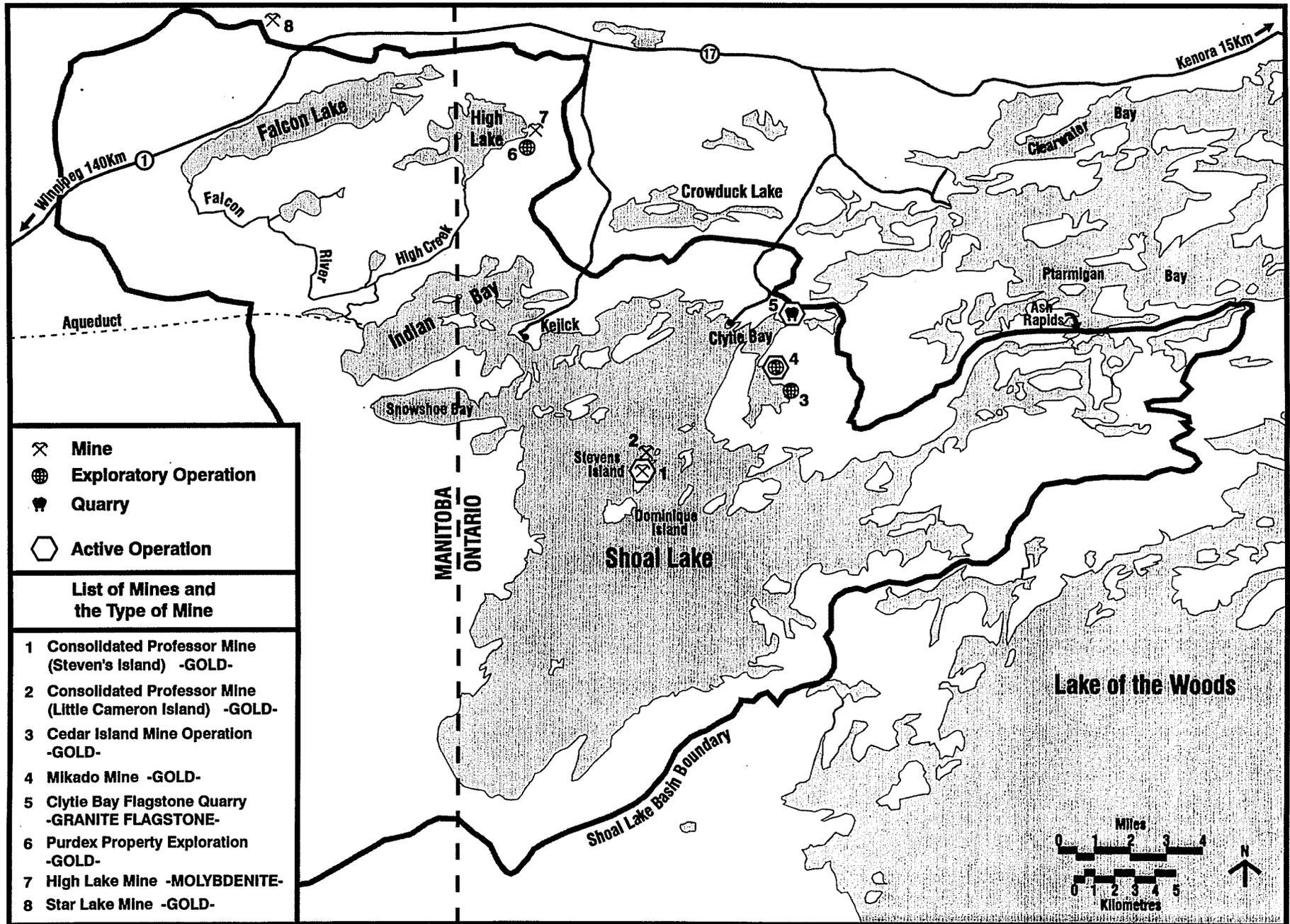


Figure 8: Mining Operations in the Shoal Lake Basin

Table 7: Mining in the Shoal Lake Basin (adapted from Manitoba Environment, 1991)

NAME	PROPONENT	LOCATION	DESCRIPTION	STATUS
Consolidated Professor Mine ¹	Consolidated Professor Mines Limited	Shoal Lake: Little Cameron Island; Steven's Island	gold mining [MINE] - operation involves mining ore body located under lake to extract gold bearing arsenopyrite and pyrite - anticipate reserves of 900,000 tonnes at 0.35 oz/tonne - mill site north-east of basin boundary	STATUS = ON HOLD - application submitted to OMOE in 1989 - 1993 altered plan to mill ore outside basin - application remains under review by OMOE
High Lake Mine ²	Eco-Explorations Limited	High Lake Area (Ontario)	mining and milling of molybdenite [MINE] - anticipate 4 years of operation	STATUS = INACTIVE - 1981 began construction of mine infrastructure - waiting for improved market conditions before continuing
Purdex Property Exploration	Consolidated Jalna Resources Limited	High Lake (east side)	gold exploration [EXPLORATORY]	STATUS = INACTIVE - exploratory cutting and drilling complete - indications of 70,000 tonnes at 0.31 oz/tonne
Mikado Mine	Kenora Prospectors and Miners Limited	Shoal Lake: Bag Bay	gold exploration [EXPLORATORY] - anticipate 2 years of operation - cyanide recycled after leaching process	STATUS = ACTIVE - 1993 received OMOE approval for a 3 year exploratory mine operation - test gravity milling at site (no chemicals)
Cedar Island Mine Exploration	Bond Gold Canada Limited	Shoal Lake: Bag Bay area	gold exploration [EXPLORATORY]	STATUS = UNKNOWN - 1991 applied to OMOE for exploratory drilling at six locations - initial results show 864,000 tonnes at 0.25 oz/tonne
Clytie Bay Flagstone Quarry	Collin Rankin	Shoal Lake: Clytie Bay	granite flagstone quarrying [QUARRY] - conditions of permit include: reserve placed 122 meters from shoreline of Shoal Lake; reserve placed 30 meters from and along any creeks; no fuel tanks stored on-site; domestic and commercial waste deposited off-site at nearest certified waste disposal site	STATUS = ACTIVE - 1990 received aggregate and work permit - 1991 applied for road access
Star Lake Gold Mine	Whiteshell Ventures Ltd.	Star Lake: Manitoba (Whiteshell Provincial Park)	gold mining at old mine site [MINE]	STATUS = INACTIVE - company is investigating alternative ore processing sites in Manitoba and Ontario

- 1 - A multi-jurisdictional inspection of the Consolidated Professor Mines Limited development on Steven's Island was carried out in 1989 by members of Manitoba and Ontario governments and employees of the City of Winnipeg. Concentrations of arsenic, nickel, sulphate, phosphorus and uranium contained in mine-water discharges were found to be entering Shoal Lake. However, the loadings were considered minor and were determined to have no significant impact on Shoal Lake water quality (Beck, 1989).
- 2 - High Lake is partially located in Manitoba, its waters drain through High Creek into the Falcon River and then into Shoal Lake. High Creek is used for spawning of many fish species while the Falcon River is an important spawning area for Shoal Lake walleye (Neskar, 1986)

Regulatory Framework for Mining:

Mining developments are regulated under provincial legislation, and federal involvement can arise in particular circumstances. If the development may pose a risk to fish or fish habitat, the Fisheries Act regulations for mines (Metal Mining Liquid Effluent Regulations), administered by Environment Canada, can be applied. If federal funds or financial guarantees are provided for any aspect of the development, or the project adversely affects federal lands (such as Indian Reserves) or affirmative regulatory duties (such as protection of marine navigation under the Navigable Waters Protection Act), the development may be subject to review under the Canadian Environmental Assessment Act (CEAA).

In Ontario, applications for mineral exploration permits are forwarded to OMNR for approval under the Public Lands Act. Applications are also reviewed by OMOE to determine environmental impacts. OMOE drilling operation guidelines are attached to permits (Manitoba Environment, 1991). The applications may be subject to review under the Ontario Environmental Assessment Act or the less stringent Ontario Natural Resources Act.

2.3.4 Tourism in the Shoal Lake Basin

Canadian Pacific Railway access and a growing Winnipeg population initiated the development of tourism in the Manitoba/Ontario border region at the start of this century. Subsequently, when highways No. 17 (Trans Canada Highway) and No. 71 were constructed in the 1930s, automobile access opened the area for Winnipeg and American tourists. By 1971, tourism, after forestry and mining, had grown to become the third most important economic sector in Northwestern Ontario - supplying employment for 8,200 persons (Beak, 1983).

The potential for tourism in the Shoal Lake basin is not as high as might be expected. Aesthetically, the area rates very high. However, its fragile nature imposes limits on the amount, type and location of tourism development. Water quality is the limiting factor which will dictate the amount and type of tourism use that the basin can sustain. Therefore, increased development in this sector should not be permitted at the expense of impacts to water quality integrity (OMNR, 1977).

Tourism infrastructure includes cottages, camps, lodges and other facilities. The recreational aspects of tourism include fishing, hunting, boating and hiking. The infrastructures for these

activities are dispersed predominantly in the northern part of the Shoal Lake basin. The tourist industry is based primarily on the natural resources available in the area. Fishing, waterfowl and big game hunting appear to be increasing in the Shoal Lake area (Manitoba Environment, 1993). The sports fishery is largely the base of the tourism industry in the area. Declines in the sport fishing (i.e. walleye - see *Living Resources* section of this chapter) have adversely impacted the industry (OMNR, 1977). However, the smallmouth bass is becoming the new sport fish of choice in Shoal Lake (Campbell, pers. comm., 1993). The ability of this species to support the industry is unknown.

Tourism operations tend to be summer seasonal, with the greatest amount of traffic occurring in June and July (OMNR, 1981). The Lake of the Woods region attracts a tourist clientele primarily from the United States: Minnesota; Wisconsin; Illinois; Indiana; and Iowa. A smaller percentage of tourists is Canadian (OMNR, 1981). The Shoal Lake basin's tourist clientele are mainly Winnipeg-based due to the basin's closer proximity to the City of Winnipeg.

Tourism developments such as cottage lot subdivisions can pose several risks to water quality. Erosion can occur along newly constructed access roads, culverts, ditches, and on shorefront lots. Construction sites may contain spills and discarded materials. The greatest risk is for solid and liquid wastes, such as sewage and garbage, to enter the waterways. Once in the lake, these wastes will promote bacterial growth and contribute nutrients for eutrophication.

Over the past few decades the region has had much tourism growth in the form of cottage lot developments. In 1978, the Lake of the Woods Plan (precursor to the Kenora District Land Use Guidelines) recommended a development limit of 1,700 additional cottages in the Lake of the Woods area to the year 2000. Three years later, this allocation was nearly filled (OMNR, 1981).

Considerable blocks of patent (private) lands on the mainland and on the islands in the Northwestern portion of Shoal Lake, especially in the Clytie Bay area, have road access (Figure 9). There are approximately 120 cottages on Shoal Lake and many hundreds more located just outside of the basin where the Trans Canada Highway encroaches on the Lake of the Woods, such as at Clearwater Bay (Manitoba Environment, 1993).

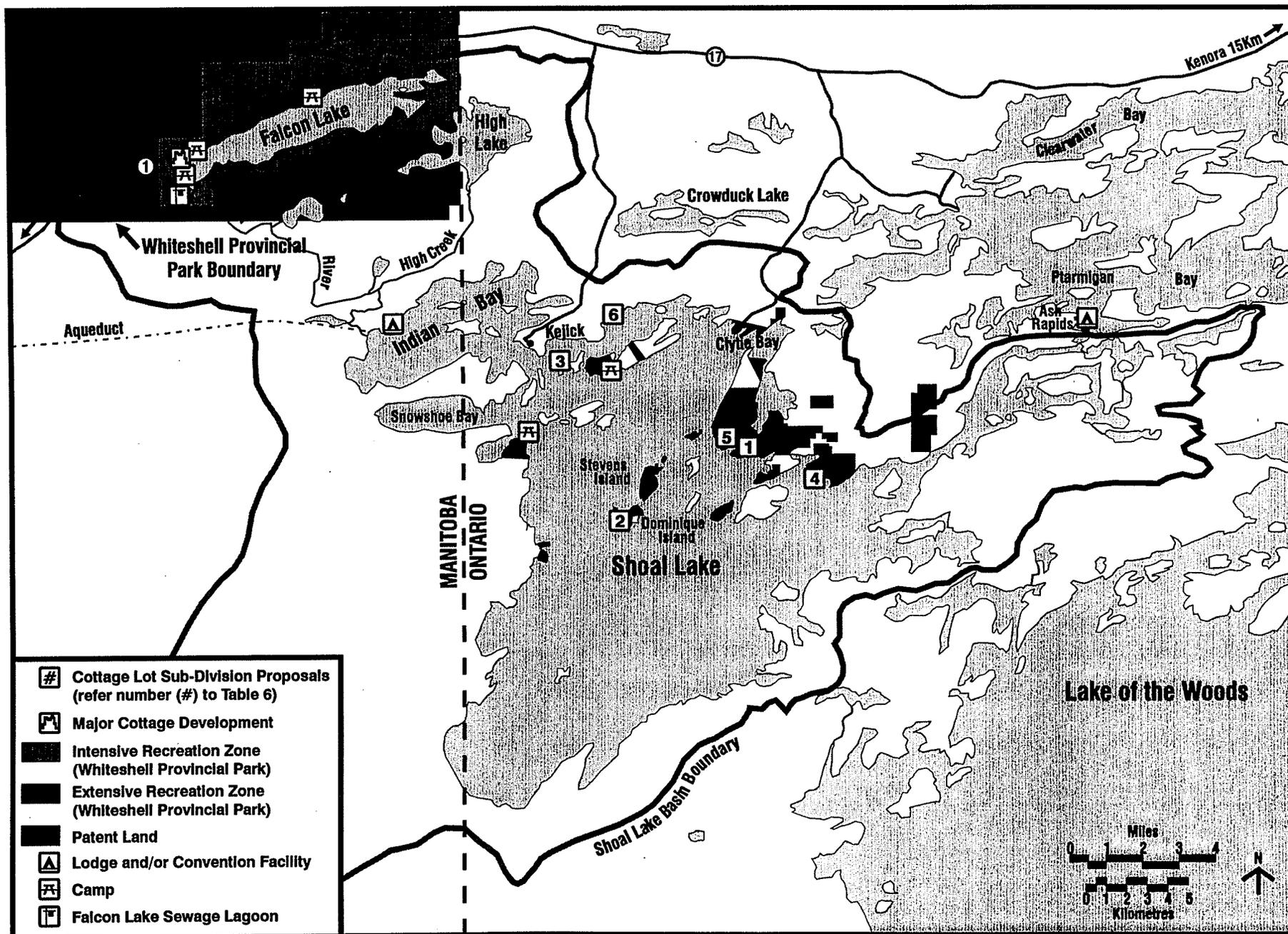


Figure 9: Recreational Development in the Shoal Lake Basin (adapted from: Neskar, 1986; OMNR, 1983A)

Six cottage lot subdivisions have been proposed for Shoal Lake (Table 8). Five of the proposals are from private Winnipeg developers, four of whom had obtained final approval from the Ontario Ministry of Housing in 1990. The fifth proposal, for 22 cottage lots, received draft approval in 1989. The sixth proposal, from Iskutewisakaygun No. 39 Independent First Nation, for 32 shore front lots and a possible marina, is under review (Figure 9) (Manitoba Environment, 1991).

Table 8: SHOAL LAKE COTTAGE LOT SUBDIVISION PROPOSALS (see Figure 9 for locations)		
PROPONENT	DESCRIPTION	STATUS
Private Winnipeg Developers		
[1] Machlin	7 lots	final approval
[2] Winter	35 lots	final approval (1990)
[3] Voth	21 lots	final approval (1988)
[4] Funk	22 lots	draft approval (1989)
[5] 10 - 20 Group	17 lots	final approval (1990)
Iskutewisakaygun No. 39 Independent First Nation		
[6] Shoal Lake No. 39	32 lots and possible marina	under review since 1988 DIAND economic feasibility study

(adapted from Manitoba Environment, 1991)

At least two summer camps for children are operating in Shoal Lake. These are located at Pioneer Camp Island, near the outlet of Indian Bay, and at Mission Point, near the outlet of Snowshoe Bay (Figure 9).

The City of Winnipeg operates a combination recreation and convention facility at its Indian Bay WWDD treatment plant. The centre includes 24 guest rooms, dining and conference rooms and recreational facilities, including a small golf course. Access to the centre is via boat or with the WWDD railway, which, until the early 1980s, was used to conduct weekend fishing trips to the lake (Beak, 1983). Presently the railway is used to transport WWDD staff for intake and aqueduct maintenance, and seminar groups.

As mentioned previously, I.R. No. 39A and No. 40 contain settlements of 408 persons. I.R. 39A contains 90 private dwellings (1991), while in 1976 I.R. 34B2 contained 30 private dwellings (no further census data exist for I.R. 34B2) (Statistics Canada, 1992; 1976). Shoal Lake No. 40 operates a tourist camp at Ash Rapids which caters to sport fishing.

Whiteshell Provincial Park:

The Northwestern portion of the Shoal Lake basin lies in Manitoba's Whiteshell Provincial Park (Figure 9). Provincial parks are intended to provide opportunities for the exploration and appreciation of the outdoors. To accomplish this, access, in the form of roads, trails and boating facilities, are provided for tourists to facilitate their outdoor experience.

The Manitoba Department of Natural Resources completed its Master Plan for Whiteshell Provincial Park in 1983. The park was divided into different zones of permissible activities (Figure 9). The areas surrounding Falcon Lake and West Hawk Lake, which already contained cottage sub-divisions, campgrounds, commercial, recreational and park administrative facilities, were designated as Intensive Recreation Zones. Permissible activities in this zone include small-scale forestry and mining, trapping, wild rice harvesting, hunting and fishing. The remaining park area surrounding the Intensive Recreation Zones was designated Extensive Recreation Zone. Similar permissible activities are permitted in these areas with the exception that forestry, trapping and mining operations would be subject to stricter terms and conditions (Neskar, 1986).

The popular Falcon Lake resort is located within the Shoal Lake basin in the southern portion of Whiteshell Provincial Park. The Falcon Lake area is heavily developed with more than 700 cottages (Manitoba Environment, 1993).

Solid and Liquid Waste Disposal:

Falcon Lake, which drains into Shoal Lake through the Falcon River, has a sewage lagoon associated with it (Figure 9). Due to concerns over phosphorous content in Falcon Lake waste water discharge, Manitoba Environment began a water quality monitoring program at Falcon Lake, Falcon River and Falcon Creek in 1990 (Manitoba Environment, 1991). The program was to have been completed by the summer of 1992, and a suitable method of waste water

discharge determined. In the interim, Manitoba Environment is treating the final effluent for phosphorous removal (Manitoba Environment, 1991).

The Shoal Lake Agreements mentioned previously provide for a permanent solution to solid and liquid waste disposal for the Shoal Lake First Nation No. 40 settlement. A piped collection system and treatment plant are expected in the long run, while a garbage pit on the I.R. No. 40 peninsula and sewage holding tanks have been instituted as temporary measures (Manitoba Environment, 1991).

In both Manitoba and Ontario, private sewage systems are regulated entirely by the Department of the Environment or Ministry of Environment and Energy. OMEE conducted a cottage pollution control survey of Shoal Lake in 1990. Cottagers with deficient systems were instructed to rehabilitate them to comply with 1991 standards (Manitoba Environment, 1991). A sewage holding tank was installed at the Winnipeg WWDD facility at Waugh in 1983 (Beak, 1983).

Regulatory Framework for Tourism:

The Kenora District Land Use Guidelines (KDLUG) outline the Ontario Ministry of Natural Resources goals for recreation, forestry, mining, fishing and hunting for Crown Lands to the year 2000. The Guidelines have been developed under the framework of the Northwestern Ontario Strategic Land Use Plan. The Kenora District is one of six districts classified by the Plan in the Northwestern Administrative Region of OMNR (OMNR, 1983 A).

In 1978, OMNR designated Shoal Lake as a Restricted Area by order made under Section 17 of the Public Lands Act (OMNR, 1983 A). The designation was made in order to exert control against rapid uncontrolled development of mining claims on patent (private) lands in the Shoal Lake area. According to the Restricted Area Order, buildings, structures or alteration of the land is only permitted via a permit issued under the Public Lands Act (OMNR, 1983 A).

The Guidelines classify the land use intent for the Shoal Lake area as primarily for extensive recreation use. In order to prevent risks to water quality, resource extraction activities and other developments will be recommended for scrutiny under the Environmental Assessment Act prior to approval.

The area encompassed by the Shoal Lake Restricted Area Order is not based on the basin hydrological unit and only has jurisdiction within Ontario. The boundaries of this area are limited to Ewart and Glass Townships and the Shoal Lake high water mark from the south-easterly boundary of Glass Township to the Manitoba Provincial Border. First Nation Reserve lands are not included within the Restricted Area Order.

The Guidelines have no legal status. However, planning control of private lands is exercised through the Planning Act of the Ontario Ministry of Municipal Affairs and Housing. All cottage sub-division proposals are reviewed by the provincial government through this channel (Manitoba Environment, 1991).

2.3.5 Living Resources of the Shoal Lake Basin

The biological resources of the Shoal Lake basin include timber, fish, wild rice, big game, fur bearing animals and waterfowl. Many of these resources have been discussed in previous sections of the report. Fishing, hunting, trapping and wild rice harvesting pose little threat to water quality. The commercial cultivation of wild rice does not involve fertilizer or pesticides and "*fishing, hunting, and trapping have comparatively little potential to affect water quality apart from the slight risk associated with low numbers of people handling fuel and disposing of waste* (Manitoba Environment, 1993, p. 37)". However, fish can be directly affected by even a slight degradation to water quality. Of these resources, forestry presents the only significant potential threat to water quality. Therefore, only the fish and forestry resources will be discussed in this section.

Fish Resources of the Shoal Lake Basin:

First Nations people have been consuming fish from the Lake of the Woods for thousands of years. Commercial fishing began in the late 1880s for walleye, whitefish and northern pike. Sport fishing has developed over the last fifty years (Minnesota-Ontario, 1992). Walleye was both the principle commercial *and* sport species sought, and fishing for it was basically unlimited until 1979 when OMNR set catch quotas. That same year, OMNR began a monitoring program to determine the impact of sport and commercial fishing on Shoal Lake walleye stocks. The program revealed that walleye populations were under stress due to over-exploitation, which was the situation throughout the Lake of the Woods. Subsequent 1980 and

1981 studies supported these findings. A ban on commercial and domestic fishing for walleye was initiated by OMNR in May of 1983 (Neskar, 1986). The walleye fishery remains closed and commercial fishing for other species is only permitted using impoundment methods (i.e. trap nets) (Wilgress, 1989).

Shoal Lake provides an ideal environment for fish. It is a large body of water (286 km²), includes numerous islands and shoals for littoral habitat, and contains the proper water chemistry. This combination of parameters creates an environment for relatively high fish productivity (Beak, 1983). Three categories of fishing are practiced in Shoal Lake: domestic, commercial and sport.

Domestic Fishery:

In addition to being a cultural tradition, Shoal Lake First Nations people rely on the domestic fishery to supply subsistence food to the community. No exact catch statistics are available for the domestic fishery. However it has been estimated that 50 percent of the diet is derived from natural sources - in most part from the domestic fishery (Beak, 1983).

Commercial Fishery:

At the beginning of this century, Shoal Lake was subdivided into seven commercial fishing lots. Four gill-net licences were issued to commercial fishermen in 1962 - one each to Shoal Lake First Nations No. 39 and No. 40 and the other two to non-native fishermen. Between 1970 and 1980, the average annual commercial value to Shoal Lake No. 40 was \$32,000, with \$28,000 of this due to walleye harvesting. Besides walleye, commercially valuable fish species include northern pike, whitefish, burbot, cisco, yellow perch and sucker (Beak, 1983).

Sport Fishing:

Tourists and local residents alike conduct sport fishing. It is an important source of revenue for the region. Over-exploitation of walleye stocks, the species of greatest sport value, reduced the sport fishery to a minor role by the early 1980s (OMNR, 1982). According to an OMNR study by Roos et al. (1982), sport fishing effort declined from 101,000 hours of fishing effort in 1977, to 3,000 hours in 1979, to barely registered levels in 1980 and 1981.

Fishery Outlook:

In 1988, the OMNR Shoal Lake Fishery Assessment reported the commercial fish harvest from Shoal Lake at 59 kg of northern pike and 1,005 kg of whitefish. Sport fishing pressure was found to be fairly insignificant with most anglers seeking smallmouth bass, northern pike and muskellunge (Wilgress, 1989). However, day trips by anglers appear to be increasing (Manitoba Environment, 1993). The sport fishery resource, in terms of recreational and economic value, shows the greatest potential for development (OMNR, 1981). Shoal Lake First Nation No. 40 recognizes this potential and for cultural and economic reasons wishes to reestablish both the domestic commercial fishery and the sport fishery (Campbell, 1993, pers. comm.).

Forestry in the Shoal Lake Basin:

Forestry began in the region in 1821 (OMNR, 1977). Today, in conjunction with tourism, it forms the basis of the Kenora region's dominant economic activities. However, forestry has limited capability in the Shoal Lake basin due to past harvests and the lack of available area (OMNR, 1983).

Forestry allocations in the Kenora district are divided into five management units - four Crown Management Units and one Boise Cascade Licence. The Shoal Lake basin is split among two of the Crown Management Units. The majority of the basin lies in the Keewatin Crown Management Unit, while the south-east section of the basin lies in the Aulneau Crown Management Unit. Land areas deemed 'eligible for harvest' within these Units, are mapped for forest management operations covering a twenty year period. The stands are allocated for harvest through short term Order in Council licences and locally issued district cutting licences (OMNR, 1981). "Areas of concern" with respect to timber management are defined as "...geographically-defined areas of value to other users/uses which could be affected by timber management operations, including roads, and which may require modifications of those operations (OMNR, 1987, p. 51)" Areas of concern are designated as "reserves" and are exempt from future forestry activities.

Conifers and hardwood make up the productive forest resource base. The harvested timber is used for saw and pulp mills in Kenora. Moderate timber use capability is recorded for most

of the Shoal Lake basin. Older (>80 years) timber classes are found around the Clytie Bay area and south to I.R. 31J. Two stands, one south of Snowshoe Bay and the other along the southern shore of Shoal Lake were allocated for harvest between 1976 and 1986. The harvesting of timber for use as fuelwood is widespread in the Kenora district. Approximately 400 permits were issued in 1980 (OMNR, 1981).

Timber Management on patent and First Nations lands is outside the jurisdiction of the Ontario Government (OMNR, 1987 (H)). According to a Terra Scan (1972) air photo interpretation survey, most of the I.R. 40 peninsula and adjacent areas are classified as non-productive for forestry. These areas consist primarily of open bogs, muskeg, steep slopes, areas of shallow and excessively drained soils, and bedrock outcrops (Beak, 1983).

Forestry activities pose risks to water quality in the form of access roads, chemical agents such as pesticides and herbicides, and erosion due to the removal of vegetation. The construction and use of access roads present opportunities for erosion products and oil and fuel spills to enter waterways. Herbicides used for maintenance activities and insecticides used for protection purposes can also enter waterways. The greatest concern with the use of these chemical agents is for possible toxic reactions and bio-accumulation. Some bio-accumulation will occur with the present use of organophosphate and carbonate insecticides. However, Manitoba and Ontario do not permit forest harvesting near shorelines, which poses the greatest threat to water quality (Manitoba Environment, 1993). In addition, minimum buffer zone requirements exist for aerial spraying of pesticides, especially around communal and municipal water supplies (OMNR, 1987).

Regulatory Framework for Fish and Forestry:

The Ontario Ministry of Natural Resources and the Manitoba Department of Natural Resources are responsible for the management of fisheries and forestry in the Shoal Lake basin. The federal government can claim jurisdiction under the Fisheries Act if fish habitat or fish health are threatened by developments.

2.4 LEGISLATIVE and REGULATORY FRAMEWORK FOR THE SHOAL LAKE BASIN

2.4.1 Evolution of Water Management Jurisdictions in Canada:

The British North America Act of 1867 and the Constitution Act of 1982 are the legislative basis for federal-provincial interactions. Section 109 of the British North America Act granted provincial jurisdiction of natural resources in the original provinces of Canada. These rights were not granted in the prairie provinces until 1930 through the Natural Resources Transfer Agreements. Under these Acts and Agreement, the provinces have the authority to legislate the use for waters flowing in their jurisdiction for many purposes, including supply and power generation. However, the ability to legislate for the purposes of fisheries, navigation, international relations, federal lands and First Nations is still maintained exclusively by the federal government (Kreutzwiser, 1991). The federal government, using its exclusive rights in these areas, can supersede provincial laws. For example, the Fisheries Act and the Navigable Waters Protection Act are key examples of levers through which the federal government can impose restrictions upon the utilization of water resources in a province. Also, the Parliament of Canada has the power to legislate matters which may have an important 'national dimension'. This power is vested through Section 91 of the 'peace, order and good government' clause and can be used to levy further control over the provinces.

The devolution of federal powers in the area of natural resources management, has given rise to problems in areas of overlapping jurisdictions. Kellow (1994), points to two ways inter-governmental partnerships can address these problems by promoting:

- (1) *cooperation between the provinces since actions in one province may have serious consequences to another, and;*
- (2) *federal-provincial cooperation since both levels of government have important, and to some extent overlapping water-related powers (p. 72).*

One of the main tenets of the Canada Water Act of 1970 is to promote such federal-provincial cooperation in water management. Comprehensive river basin planning initiatives such as the Canada-Saskatchewan-Manitoba Souris River basin study were jointly undertaken by the two levels of government under the auspices of the Act.

2.4.2 Interprovincial Water Management:

Waters of an inter-provincial basin, whose use in a province may have inter-provincial repercussions, is a matter of concern not only for the provincial government, but also for the federal government (Ad Hoc Comm., 1973). However, the governments' application of their Parliamentary powers in interjurisdictional areas is discretionary, and depends to a large degree on circumstances and political will. For instance, in the case of Shoal Lake waters whose use may have inter-provincial repercussions, the federal government has the ability to use the Canada Water Act (1970) for direct federal implementation of water management programs. However, to date, no water quality management areas have been designated under the Canada Water Act, either cooperatively with the provinces or unilaterally by the federal government (Saunders, 1988).

Water resource management (quantity and quality) in Manitoba and Ontario is divided between two provincial departments. One is responsible for water quality aspects while the other is responsible for water quantity aspects in their respective provinces. However, in the case of Shoal Lake another layer of regulatory control exists. Shoal Lake is an interprovincial body of water straddling the Manitoba - Ontario boundary and is also an intermittent tributary to an international water body. The lake has an important natural resource significance to both provinces. Rather than being under the control of the provincial departments, water quantity issues in Shoal Lake are at times handled by the International Joint Commission (IJC), a decision-making body composed of representatives from Canada and the United States. In 1914 when the City of Winnipeg first requested a licence to divert water from Shoal Lake for its municipal supply, the diversion was referred to the IJC since it had the potential to affect navigation interests and the level of a boundary water. The Order of Approval was granted on the basis that the lake was an international boundary water according to the definition of the Boundary Waters Treaty of 1909 (Davidson, 1973).

The vast majority of Shoal Lake lies in Ontario, while at the basin level, the division is almost equal between the two provinces (Table 9). However, there are a variety of opinions regarding the size of the basin and its division within the two provinces. One report places 62 percent of the basin and 13 percent of the Lake within Manitoba (Manitoba Environment, 1993). Four First Nations have title to seven reserves within the basin (Table 3). The Crown, City of Winnipeg and private interests have title to the remaining lands.

When the City of Winnipeg sought to use Shoal Lake as its municipal water supply source, several inquiries were made regarding the lake's jurisdictional status. The 1914 Order of Approval for the diversion was granted on the basis that Shoal Lake was a boundary water. However, a Reference on Lake of the Woods concluded that Shoal Lake was not a boundary water within the definition of the 1909 Boundary Waters Treaty, but merely a tributary to a boundary water. The diversion was nonetheless referred to the International Joint Commission (IJC) since it had the potential to affect navigation interests and the level of a boundary water (Davidson, 1973).

Table 9: Jurisdictional Divisions of Various Shoal Lake Basin and Lake Areas

FEATURE	BASIN KM ²	% of BASIN	LAKE (KM ²)	% of LAKE
Shoal Lake Basin Area	1003	100	-----	----
Shoal Lake Area	286	29	286	100
Manitoba Portion of Basin/Lake	448	45	17	6
Ontario Portion of Basin/Lake	555	55	269	94
City of Winnipeg Land Area ¹	13	1	----	----
First Nation Reserve Land Area	81	9	----	----

¹ includes land under Indian Bay (11.75 km²) (Sources: adapted from INAC, 1992)

Article II of the 1925 Lake of the Woods Convention and Protocol states that any further diversions of water from the Lake of the Woods watershed to any other watershed must have the approval of the IJC. When in 1968 the City of Winnipeg requested a licence to withdraw a further 910 ML/D from Shoal Lake, the application was submitted to the IJC. The application was opposed by several agencies of the Ontario government and in particular by Ontario Hydro which demanded compensation for any power generation losses realized at their Whitedog Falls Generating Station on the Winnipeg River. Due to these circumstances, the application was later withdrawn by the City (Watt et al., 1972).

An Ad Hoc Shoal Lake Committee studied the legal principles governing utilization of Shoal Lake water resources. The Committee's concern was for water quantity, with regards to the

City of Winnipeg's 1968 application for an increased withdrawal licence. However, its study highlights some points which may be beneficial to the present issues concerned with aspects of water quality in the Shoal Lake basin.

The Committee concluded:

...from a study of the law governing the utilization of the waters of a drainage basin that is both international and interprovincial in scope, is the basic concept that co-basin states and provinces must act reasonably in utilizing these waters. This concept being a principle of customary international law and of common law, is, of course, modified by contrary specific provisions in applicable treaties and statutes (Ad Hoc Comm., 1973, p. 18).

Given the international and interprovincial nature of Shoal Lake, many pieces of existing legislation may have an impact on planning or development decisions in the area. The applicability of the legislation will depend upon the type of development or activity proposed and the circumstances surrounding it. Provincially and federally, the following legislation could come into play:

Ontario Legislation:

Municipal Act - R.S.O. 1980 c.302
Environmental Protection Act - R.S.O. 1980 c.141
Planning Act - S.O. 1983 c.1
Environmental Assessment Act - R.S.O. 1980 c.140
Water Resources Act - R.S.O. 1980 c.361
The Bed of Navigable Waters Act - S.O. 1911, c.6
Lake of the Woods Control Board Act - S.O. 1922, c.21

Manitoba Legislation:

Water Rights Act - S.M. 1982-83-84, c.25
Natural Resources Act - S.M. 1930, c.30
Environment Act - S.M. c.E125
City of Winnipeg Act
Public Health Act

Federal Legislation:

Canada Water Act R.S.C. 1970 (1st Supp.), c.5

Fisheries Act R.S.C. 1970 (1st Supp.), c.17

-Metal Mining Liquid Effluent Regulations, C.R.C. 1978, c.819

Navigable Waters Protection Act

Canadian Environmental Protection Act - S.C. 1988, c.22

Guidelines Order - Canadian Environmental Assessment Act (Bill C - 13)

Dominion Water Power Act, S.C. 1919, c.19

Canada - U.S. Boundary Waters Treaty, 1909

Canada Shipping Act R.S.C. 1985, c.S-9

Lake of the Woods Control Board Act, S.C. 1921, c.10

Besides the exercise of Parliamentary powers, intergovernmental agreement is another option to address areas of overlapping jurisdictions, and for promoting interprovincial water management. Intergovernmental agreements are adhered to through political will and good faith. This is the case with the 1981 Manitoba - Ontario Agreement negotiated by the Manitoba Environment Minister, to ensure Shoal Lake water is not adversely affected by developments (Appendix H). These agreements can "*balance competing priorities and interests and would take account of interjurisdictional externalities* (Kennett, 1991, p. 189)". However, without constitutional status, this Agreement is not legally binding and has in fact been a source of continuous contention between the two provinces.

2.4.3 Summary

The utilization of Shoal Lake waters may have both interprovincial and international repercussions, making it a concern for provincial and federal governments, and the administration of First Nation reserves.

In Canada there is a jurisdictional framework pertinent to resource issues. Various federal and provincial statutes can be used to regulate the management of natural resources. However, there are two reasons why there are problems with this framework. First, the legislation which sets up the division of powers between the federal government and the provinces does not

specifically mention management of the environment¹ (i.e. address the interconnectedness of bio-physical factors)(Environment Canada, 1986). Second, there are areas of overlapping jurisdictions, such as with interprovincial waters, where both the federal and provincial governments can legislate. Shoal Lake is an example where the jurisdictional framework poses difficulties for water resource management. In her discussion on management of Chesapeake Bay fishery management in the United States, Buck (1989) states a view very applicable to Canadian interprovincial water management:

Thus before we can address in any constructive way the problems of interjurisdictional management of Chesapeake Bay fisheries resources, we must first determine the source of the problems. If there is indeed no need for a unified - or even a cooperative - management strategy in the bay, then strategies for improvement must address existing institutions, improved communications, and standardized data collection and analysis. On the other hand, if a coherent policy is needed for bay-wide application, then strategies must also include institutional development, changing political coalitions, and state-level acceptance of some external control of fisheries resources (p. 143).

Therefore, in respect of interprovincial waters such as Shoal Lake, a source of problems stems from the fact that there is no basin-wide institutional comprehensive framework for water management. However, although the absence of clearly defined legislation complicates matters, as shown by the case of the Remedial Action Plans (RAPS) for the Great Lakes basin, this complication is not unsurmountable. Therefore, political will is the primary constraint to solving chronic jurisdictional problems in interprovincial water management.

2.5 CHAPTER SUMMARY

In this chapter, many resource uses and conflicts resulting from competing resource uses, have been discussed as well as the legislative regime pertinent to the Shoal Lake basin. The Shoal Lake basin has had a long history of resource uses, starting at least 8,000 years ago with some of the first evidence of human occupation in the area, to the year 1732 with the fur trade, 1883 with the gold rush, and subsequently with renewable resource, tourism and transportation

¹ This is due to the fact that at the time the legislation was formed (1867), there was no widespread concept of environment, only of natural resources.

uses. At present the Shoal Lake First Nations rely on the lake as their economic, cultural and spiritual resource base, the City of Winnipeg for its drinking water supply, industry for its base and precious metals and timber, business for tourism and recreational opportunities, and a host of other stakeholders for sport fishing, trapping, cottaging, camping, swimming, boating, hiking and other recreational pursuits.

Some of the conflicts discussed in this chapter include:

- ▶ the City of Winnipeg and a proposed mine at Shoal Lake which resulted in the 1981 Memorandum of Understanding between the provinces of Manitoba and Ontario;
- ▶ the First Nations who wish to make a living off the lake through expanding their resource base while at the same time maintaining their cultural and spiritual identity, and the City of Winnipeg over road access to a reserve, and concerning a cottage lot subdivision which initiated the FEARO process and finalized in two separate Shoal Lake Agreements in 1989 and 1990;
- ▶ the Shoal Lake First Nations and the Government of Ontario whereby the First Nations want to be able to take part in the resource management decisions that affect them and their territory (e.g. closure of the Walleye fishery since 1983) which resulted in the 1994 Shoal Lake Watershed Agreement;

A variety of provincial and federal legislation exists to govern development of interprovincial water resources. The government's application of these Parliamentary powers as a means of decision making is discretionary. In addition, a host of other factors can enter into the process to delay, confound and frustrate governmental decision makers attempting to allocate resources. The regulatory framework reviewed in this chapter largely serves as a means to address issues, or their technical aspects, in an isolated, *ad hoc* approach. The creation of an integrated and coordinated regulatory or management framework which overcomes this *ad hoc* approach and these interprovincial externalities is required for equitable and sustainable development in the Shoal Lake basin.

Several jurisdictions are responsible for governance of the Shoal Lake basin's resources - involving five levels of government (international, federal, provincial, municipal and the administration of the First Nations territories). A memorandum of understanding and several agreements have been effected in an attempt to overcome these interjurisdictional externalities, yet so far none has been successful. "*As a result, there are no universal standards for the area as a whole and there is no provision for specific stringent standards to protect the water quality of Shoal Lake* (Neskar, 1986, p. 3)". In the next chapter the only as yet untried remaining alternative - multi-stakeholder decision making - will be examined as a way to resolve these chronic issues.

Chapter Three

MULTI-STAKEHOLDER DECISION MAKING

Consider the following scenarios:

... You are a member of one of the Shoal Lake First Nations in Northwestern Ontario. Since time immemorial your people have relied on the resources within the watershed and have close economic, cultural and spiritual ties to the lake. Over the past century you have had very little say over the development decisions that have been made in the watershed, and derived very little benefits from the developments that have occurred. Roughly ten years ago, the provincial government closed the walleye fishery, effectively stopping the practice of a cultural tradition and removing the economic base for your community. Your opportunities to earn a livelihood are hindered by your remote location, and any economic development strategies your community proposes are intensely scrutinized and constrained by a city lying 160 kilometres away because they take their drinking water from your lake and want to keep the lake free of developments. Overall, you are removed from the decision-making process that affects your lake and what you can do on it. You have found the bureaucratic route slow, unresponsive, and frustrating. The judicial route is almost as slow, and very costly. What can you do to be heard? Maybe you decide to take a stand.

... You are a citizen of a large city, and daily face all of the pressures associated with urban life. Everyday you read the newspapers and learn about all of the problems facing your city and country - students protest cuts to the universities, farmers protest cuts to the Crow rate, the city is up in arms over losing its hockey team to a richer American city, etc. Every day you take a shower, make your coffee and wash your dishes. One day as you are reading the paper before rushing off to work, you notice on the front page that a group of First Nations are threatening your water supply. You are outraged, and when you get to work you find that you are not alone as the topic is the centre of discussion in the coffee room.

... You are the CEO of a mining company. Having to balance the vagaries of the world precious metal prices, dwindling stocks of precious metals, all of the government red tape over getting approvals in this new era of "sustainable development", environmental

consciousness and public awareness, while attempting to maintain a profit margin to satisfy your investors. One of your mines is located on an island in Shoal Lake. The mine is close to getting final licencing approval, except that now, due to the lobbying of an environmental group, there are delays and it looks as if you will be required to add costly new technology to reduce pollution discharges to far below the current allowable limits. The cost of this technology threatens to make the mine financially unfeasible.

... You are the manager of a forestry company with the cutting rights in the Shoal Lake basin. You are excited about the economic opportunities that a new oriented strand board plant will provide for your company. The people in the local communities are also excited about the economic boon the new plant will bring in the form of jobs, and spin-offs. The plant will require a large yearly annual cut to keep it in full operation.

... You are a cottage owner in Shoal Lake. Every weekend in the summer, you and your family leave the city and head to the cottage to enjoy a couple days of relaxation in the great outdoors. Your cottage is at Shoal Lake. Once you arrive you notice several construction trucks are preparing a large section of shorefront for a new cottage lot development within full view of your cottage bay window.

Given the host of resource issues affecting the Shoal Lake basin stakeholders presented in Chapter 2, all of the above conflict scenarios are realistic for Shoal Lake. As also discussed in that chapter, there have been institutional arrangements applied in an attempt to address these conflicts (i.e. Memorandum of Understanding, Shoal Lake Agreements, Shoal Lake Watershed Agreement). However, none of these attempts have been successful in alleviating conflict to any great extent and none have addressed the full range of resource conflicts. This and the subsequent chapter will examine how multi-stakeholder decision making has merit as one approach to solving the full range of resource conflicts, and how it has already been applied successfully in several cases in Canada. In addition to M-S DM, conflict and consensus, this chapter will identify the components of current decision making proposed by institutions, including First Nations.

Multi-Stakeholder Decision Making

Multi-stakeholder decision making (M-S DM) is a process that brings stakeholders together at an early, or normative stage of resource planning decision making. Stakeholders include those who effect, are affected by, or who can block or delay resource management decisions. Specific tenets of the process include the bringing together of stakeholders, and the act of making consensus decisions in an environment where there are a number of stakeholders looking out for their own interests. In such a partnership, certain administrative powers may be transferred from government decision-making bodies to the stakeholders (Hutchison and Sinclair, 1994).

3.1 COMPONENTS OF CURRENT DECISION MAKING PROPOSED BY INSTITUTIONS, INCLUDING FIRST NATIONS

A recent federal basin planning workshop identified several principles which should be followed in order to achieve integration in Canadian water management (Environment Canada, 1992). Three principles of particular relevance to this research include:

- Effective management can only be achieved through joint efforts or co-operative partnerships, with each jurisdiction or stakeholder contributing its identified area of interest toward the co-ordination of the overall objective of having national leadership with delivery at the local level.
- Coordination of diverse interests and conflicting views must be acknowledged as a normal aspect of water management, and explicit mechanisms must be put in place to facilitate the bargaining and negotiations required to reach compromise.
- An integrative approach to water planning must provide the opportunity for interaction between stakeholders throughout its entire process by ensuring that relevant information is made available at the right time; that adequate consultation and feedback takes place; that by ensuring that values are shared, consensus is reached through negotiation; that proposed actions that are both feasible and acceptable are developed and adopted.

The use of the basin (a.k.a. watershed or "problemshed", meaning the area that encompasses both the problem and the affected interests (Stoerker, 1993)) unit for management purposes endorses the need for interjurisdictional cooperation. However, no matter how important this cooperation may be, it does not come about so simply - "*Boundary problems become a barrier to, and a rational for, integration* (Mitchell and Shrubsole, 1992, p. 251)." Therefore it is very important to identify appropriate mechanisms and processes of decision making that address conflict and strive for integration. There are a number of institutional arrangements beyond legislation which can be used to integrate Shoal Lake basin issues in an ecosystem and community context, and for fostering multi-stakeholder decision making.

3.1.1 Institutional Arrangements for Decision Making

Institutional arrangements consist of mechanisms which "*define the conditions under which resources are managed*". They "*are a composite of legal powers, administrative structures and financial provisions, which give rise to a definable system of public decision making* (Smith, 1993, p. 30)." Three types of institutional arrangements are identified by Dorcey (1987) and used for co-operative decision making in Canadian water resources management. These include:

1. Political/Bureaucratic

- including the various provisions for cooperation and conflict resolution made by government departments, intergovernmental arrangements, interdepartmental committees, etc.;

2. Judicial

- including legal and quasi-legal forums such as the Environmental Assessment Board;

3. Market

- including the use of prices to encourage cooperation and resolve conflicts between the owners and users of water resources.

The Bureaucratic system is often criticized for the 'baggage' that each agency contains in the form of laws, implementing policies, and administrative formats which do not change rapidly. However, as stated by Steinberg (1993, p. 272-273):

... this 'baggage' is both the strength and weakness in the federal sector. It assures that programs and policies are carried out with some degree of consistency and according to certain standards. Yet, it complicates and delays achieving inter-agency consensus among water resources agencies on issues of mutual concern.

Judicial arrangements in the form of quasi-judicial boards and commissions are the main mechanism used in Canadian water resources management. Political and bureaucratic arrangements are important for establishing the decision-making mechanisms and rules used to foster cooperation and conflict resolution in the routine of water resources management (Dorcey, 1987).

Many of the problems of competing resource uses are addressed through Integrated Resource Management (IRM) principles. IRM has four main tenets (Mitchell, 1986):

- i) multiple purpose, means and participant strategies;
- ii) blending of various resource sectors;
- iii) using resource management as a mechanism for social and economic change;
- iv) striving for accommodation and compromise among stakeholders.

If these principles can be incorporated into a framework for resource management decision making in the Shoal Lake basin, they should provide opportunities for reaching consensual agreements based on an ecosystem and social community context. Such a framework would provide the means to bring stakeholders together, incorporate IRM principles, and provide an environment in which stakeholders can work together to resolve issues, and make decisions that may affect the future management of the basin.

First Nations Decision Making:

The Shoal Lake First Nations political decision-making structure combines both the Ojibway First Nation's traditional structure with structures introduced under the Indian Act - such as the Council (Figure 10). An elected Chief consults with a council and an elders assembly composed of respected elders of the First Nation. Decisions made under this structure follow the "Seven Generation Principle" in which they must be viable, or sustainable over a period of seven generations (Campbell, 1993).

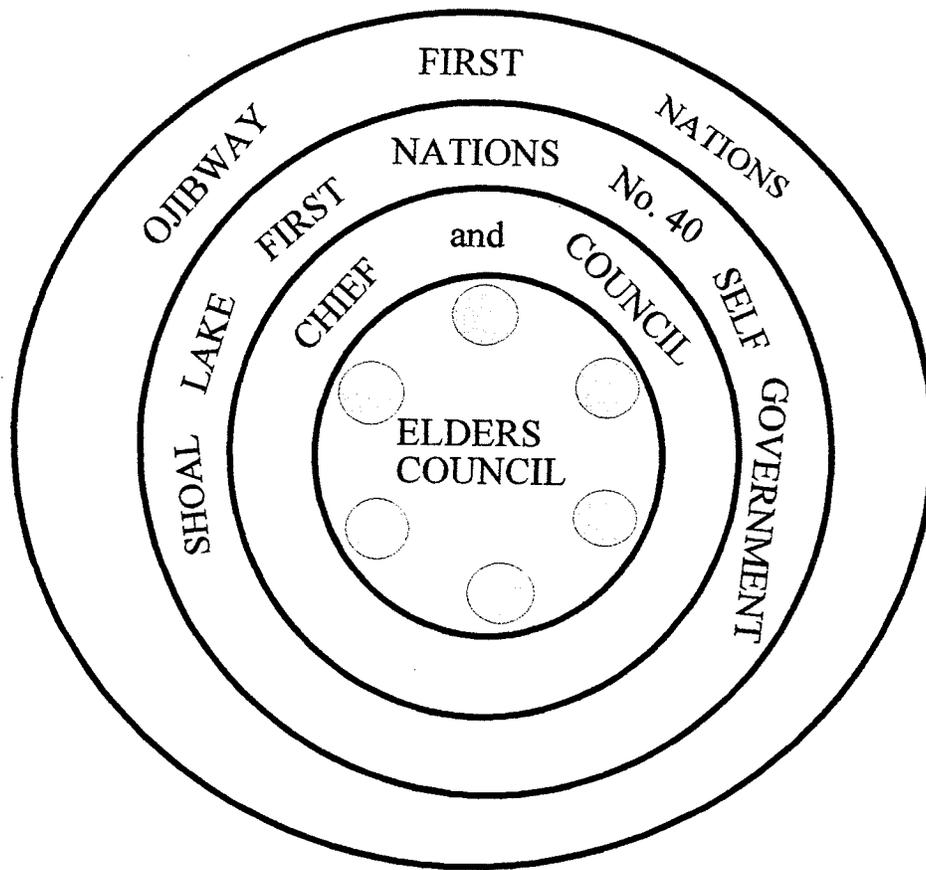


Figure 10 : Shoal Lake First Nation No. 40 Political Organization (Campbell, 1993)

All of the above components of current decision making proposed by institutions have aspects of M-S DM and are all meant to deal with "conflict" and "build consensus" - the subjects of the next two sections.

3.2 CONFLICT

Conflict comes in many forms - from a family disagreement over what to have for dinner, to a full scale battle between nation states. Conflict is part of life. As stated by the B.C. Round Table (1991, p. 3) "*Conflict is also an essential element of a dynamic society. It is through conflict that issues are raised, new constituencies formed, and social changes are effected.*" Therefore, conflict can be good. It can lead to changes in a system or process which is not working well. Also, it can act to clear up misconceptions based on differences in values, experiences, or culture. As individuals are able to examine a conflict or issue from all sides it becomes much easier to "see the light" or realize common ground.

The B.C. Round Table (1991, p. 3) identifies four ways that people deal with conflict:

- a) by avoiding or walking away from the problem, usually when the costs (time and energy) of resolving it are perceived to be greater than the benefits that would be reaped.
- b) by relying on a higher authority, such as government official, arbitrator, appeal board, or court.
- c) by resorting to the use of power, such as lobbying, elections, strikes, or civil disobedience in an effort to impose one's will.
- d) by reaching some accord, reconciling interests through collaboration and joint problem solving.

All of the above approaches can be used in a decision-making or conflict resolution process. Some are based on an adversarial approach such as the courts or judiciary. The adversarial approach results in winners and losers to a decision. Consensus-based approaches to conflict resolution (option d), as mentioned below, are non-adversarial and attempt to result in "win-win" situations.

The best way to start dealing with conflicts is to understand why they are happening. Johnson and Duinker (1993, p. 17) outline five necessary pre-conditions to resolving conflict:

1. all parties must want to resolve the conflict;
2. a common set of data or information must be developed and used by all groups;
3. a common set of ground rules must be developed for addressing the conflict;
4. the groups must be willing to talk and listen (listening is just as important as talking);
5. the needs of the parties involved must be met.

3.3 CONSENSUS

Consensus is most easily defined as "general agreement". It is a decision-making process whereby the participants, who include all those who have a stake in the decision, are able to agree on a final decision, even if they may not agree on all aspects of that decision. Training may be required if the members in the group are unfamiliar with making consensus decisions. Consensus is not about voting. As defined by Havercamp et al., (1993, p. 90)

Consensus decision making can enhance group effectiveness, participation, and satisfaction about decisions made by a group. As a group involvement method, consensus can produce a common understanding and agreement about an idea or proposed action. The consensus process strives to generate agreement where all persons in a group feel they can "live with" a proposed decision. Group agreement is achieved when members concur that a proposed action is the best possible decision. In consensus, each member can object or veto a proposed decision. To get consensus, no decision takes place until all members agree and support a specific action.

The advantages of consensus-based approaches to decision making are as follows:

- ▶ Involving the stakeholders in finding solutions leads to greater commitment to whatever decision is reached. Not involving the stakeholders in the decision-making process often leads to indifference or even resistance to the solution, even if it is a "good one".
- ▶ The stakeholders can bring knowledge and expertise to the decision-making process. Greater creativity, increased resources, and a broader range of potential solutions are made available in a consensus approach relative to other modes.
- ▶ There is greater potential to focus on the real needs and interests that are at stake, rather than on diverging opinions and positions.
- ▶ The need for "winners" and "losers" and the hardening of positions, embitterment, and desire for retaliation that frequently accompany resolution by a majority or by a higher authority are avoided.
- ▶ A decision based on consensus has greater credibility with the parties involved. Future modifications of the decision may be more achievable because the parties are aware of the initial assumptions and the basis for change.
- ▶ Conflict resolution by consensus has a better chance of leading to closure of an issue. The parties are committed to the decision such that they are less likely to appeal or protest it.

- ▶ The parties can achieve a greater understanding of resource management choices and their implications, and some empathy for the dilemmas that resource managers face on a day-to-day basis. Furthermore, the process of seeking consensus builds working relationships among interests that may otherwise never have the opportunity to work together or learn the others' points of view (B.C. Round Table, 1991, p. 6).

This is not to say that consensus decision making is not without its' disadvantages. The main complaint is that agreements will likely take longer to make, which can frustrate those who are used to other forms of decision making. Furthermore, the logistics of having several parties (multi-stakeholder) involved in decisions can be difficult and costly.

The consensus description given above is quite general and would require certain ground rules before it could be made operational in a decision-making process. One of these ground rules is to formally define consensus. The B.C. Round Table provides several different operational versions of consensus:

- ▶ 100 per cent agreement (unanimous consensus);
- ▶ lack of dissension (i.e. silence means acceptance);
- ▶ agreement by the vast majority (i.e. by all but a few of the parties);
- ▶ lack of unanimous consensus leads to an alternative form of decision making such as voting.

A second ground rule is for there to be a clear understanding of what the consequences are for not reaching consensus on a decision. These alternatives may include deferring the decision to a higher authority, voting by majority rule, or other, but it should be clearly understood that all of these alternative consequences are less favourable to consensus and will result in a win/lose decision. Furthermore, decisions made through an alternative process should have the option to be appealed (B.C. Round Table, 1991).

The Canadian Round Tables (1993, p. 8) outline 10 principles that define a consensus process. These include the following:

- | | | |
|-----|-------------------------------|--|
| 1. | Purpose Driven | -People need a reason to participate in the process. |
| 2. | Inclusive not exclusive | -All parties with a significant interest in the issue should be involved in the consensus process. |
| 3. | Voluntary Participation | -The parties who are affected or interested participate voluntarily. |
| 4. | Self Design | -The parties design the consensus process. |
| 5. | Flexibility | -Flexibility should be designed into the process. |
| 6. | Equal Opportunity | -All parties must have access to relevant information and the opportunity to participate effectively in the process. |
| 7. | Respect for Diverse Interests | -Acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus process is essential. |
| 8. | Accountability | -The parties are accountable both to their constituencies, and to the process that they have agreed to establish. |
| 9. | Time Limits | -Realistic deadlines are necessary throughout the process. |
| 10. | Implementation | -Commitment to implementation and effective monitoring are essential parts of any agreement. |

3.4 DEGREE OF DECISION-MAKING AUTHORITY

The various multi-stakeholder forums - advisory boards, round tables, committees, etc., can all use the same techniques for building consensus - negotiation, consultation, facilitation, mediation - however, where they will differ is in the degree of decision-making power vested in the stakeholders or the forum.

A modified version of Arnstein's ladder of citizen participation (1969) provides a good benchmark to see where decision-making authority lies in basin planning (Figure 11).

Self Determination is the highest degree of decision-making authority. At this stage the planning process is conducted directly by the stakeholders. In *Delegated Authority*, some of the decision-making authority is transferred from those having jurisdiction to the stakeholders. *Joint Planning* or partnership is a stage where those having jurisdiction or authority share decision making with stakeholders who are represented on planning forums (Advisory Boards, etc.). *Consultation* is the use of dialogue between those having authority and the stakeholders on pre-determined planning initiatives, such as in environmental assessment (Praxis, 1988).

Degree of Stakeholder Decision-Making Authority	8	Self Determination	Where basin planning is evolving
	7	Delegated Authority	
	6	Partnership	
	5	Consultation	
Degree of Tokenism	4	Informing	Basin planning at present
	3	Education	
Non-Participation	2	Therapy	
	1	Manipulation	

Figure 11: Relationship of various degrees of decision-making authority to present directions in basin planning

Two interesting questions arise at the top two levels of the ladder (i.e. self determination and delegated authority): (1) How will government organizations which have legal mandates that have to be met, be accountable once they give this power away to stakeholders? (2) How will the people delegated authority be accountable for their decisions, and who will they be accountable to? Furthermore, in order for decision-making authority to be transferred to stakeholders requires legislative changes, perhaps even changes to the Constitution. A difficult problem facing M-S DM is that without delegated authority, and the power to actually make final decisions, there may not be much incentive for stakeholders to get involved.

Whether or not stakeholders have delegated authority to make decisions or a consultative involvement in decision making, the process of decision making is basically the same. This process framework, or the conceptual building blocks to multi-stakeholder decision making, is the subject of the next section.

3.5 CONCEPTUAL BUILDING BLOCKS FOR A MULTI-STAKEHOLDER DECISION-MAKING PROCESS

Building a consensus-based multi-stakeholder decision-making process is much like building a house - (i) first you must decide that you want or need a house; (ii) design must be drafted for how to build the house; (iii) construction must take place; and (iv) finally you must move into the house and take care of its maintenance. Except, in the case of a M-S D-M process, the house is being built for several people, all with different perceptions, views and understandings. In order for the house to satisfy everyone, the right building blocks must also be used.

The following ten building blocks in four stages comprise the necessary aspects of a M-S DM process which have been gleaned from the literature. These are also presented in Table 10, following the descriptions of each.

1) Deciding on the Process:

Not all situations are appropriate for a M-S D-M process, and this therefore becomes the first decision to assess. The B.C. Round Table (1991, p. 15) outlines five pre-conditions, or initial building blocks, for this assessment.

Initial Building Blocks:

- I. *There must be an unresolved conflict or potential for conflict.*
- II. *All key stakeholders must have an incentive to seek a decision by consensus.* The stakeholders must share dissatisfaction with the present situation. If one or more are not convinced that the consensus approach is the best approach, or feel that they would fare better using a different process, then the M-S D-M process will not work.
- III. *All key stakeholders must be involved and support the M-S D-M process.* There must be real and tangible support provided by the stakeholders in the form of time, and other resources.

- IV. *There must be political will to see the process through.* The political and bureaucratic stakeholders must also be supportive of the process, and be willing to provide meaningful inputs into the process. This includes the degree of decision-making authority extended to the M-S D-M forum and the weight accorded decisions made by the forum.
- V. *The Presence of a champion is a boon. An influential, widely respected person or entity supporting the consensus process can provide initial credibility to its development and the necessary excuse for adversaries to work together.*

If these initial building blocks exist, then a consensus-based M-S D-M process is appropriate, and can be initiated.

2) Designing the Process:

In this step, the participants in the process must be identified and the rules of the process established.

Building Blocks:

- VI. *Identify the stakeholders and the representatives for the stakeholders.* This is not an easy feat and requires a lot of fieldwork - consulting with stakeholders, organizations, and anyone perceived as having a stake in the situation in order to seek out credible representatives for the various stakeholder groups.
- VII. *Determine the rules of the process.* The stakeholder representatives must meet and determine how the process will proceed. This will comprise the largest building block and includes such aspects as:
- ▶ Defining what constitutes *consensus* and what to do if it can not be reached.
 - ▶ Defining the goals or objectives of the process.
 - ▶ Determining the structure of the process - can additional participants be added later on? Will representatives' positions be rotational? Can technical committees or working groups be added on? Etc.?
 - ▶ Determining representatives responsibilities - attendance at meetings, work required outside of meetings, keeping constituents informed etc.
 - ▶ Confidentiality - should all discussions, documents or data resulting from the process be privileged information? How should data be shared?

- ▶ Limits of discussion - are there any topics which the forum should not address or are beyond its mandate to address.
- ▶ Criteria for success - establish early in the process the criteria by which to assess options.
- ▶ Scheduling, Agendas and Deadlines - how will meetings be set? How will it be decided what to talk about at meetings and the order that it is discussed? How will a protocol be set to determine the deadline for reaching a decision on an issue?
- ▶ Role of the Mediator/Facilitator - Should one be involved in the process, at what point, and for how long?
- ▶ Interim Procedure - what happens to activities (timber harvest, fishing, road access construction) during the designing of the process? (B.C. Round Table, 1991; Canadian Round Tables, 1993; Johnson and Duinker, 1993)

3) Using the Process:

Putting the process into action involves the process members discussing issues and reaching consensus according to the guidelines established in VII above. Goodwill and flexibility should be practiced by the participants in order to fine-tune the process and get the participants "up-to-speed" on consensus-based M-S DM.

Building Blocks:

VIII. *The participants adopt an attitude of goodwill and flexibility in their application of the process.*

4) Implementing and Monitoring Agreements:

Making decisions is only one part of the process. Responsibility for acting on the agreements must be determined and the responsible party must carry through with implementing the decision. Furthermore, a protocol should be established for monitoring the implementation of decisions (Canadian Round Tables, 1991).

Building Blocks:

IX. *Responsibility must be assigned for implementing the agreements.*

X. *There must be monitoring on the progress of the agreements.*

Table 10: CONCEPTUAL BUILDING BLOCKS TO A MULTI-STAKEHOLDER DECISION-MAKING PROCESS		
Step in the Process	Building Blocks	Building Block Specifics
1) Deciding on the Process:	I. <i>There must be an unresolved conflict or potential for conflict.</i> II. <i>All key stakeholders must have an incentive to seek a decision by consensus.</i> III. <i>All stakeholders must be involved and support the M-S D-M process.</i> IV. <i>There must be political will to see the process through.</i> V. <i>The Presence of a champion is a boon. An influential, widely respected person or entity supporting the consensus process can provide initial credibility to its development and the necessary excuse for adversaries to work together</i>	
2) Designing the Process:	VI. <i>Identify the stakeholders and the representatives for the stakeholders.</i> VII. <i>Determine the rules of the process.</i>	<ul style="list-style-type: none"> ▶ Defining what constitutes <i>consensus</i> and what to do if it can not be reached. ▶ Defining the goals or objectives of the process ▶ Determining the structure of the process ▶ Determining representatives responsibilities ▶ Confidentiality ▶ Limits of discussion ▶ Criteria for success ▶ Scheduling, Agendas and Deadlines ▶ Role of the Mediator/Facilitator ▶ Interim Procedure
3) Using the Process:	VIII. <i>The participants adopt an attitude of goodwill and flexibility in their application of the process.</i>	
4) Implementing & Monitoring Agreements:	IX. <i>Responsibility must be assigned for implementing the agreements.</i> X. <i>There must be monitoring on the progress of the agreements.</i>	

(B.C. Round Table, 1991; Canadian Round Tables, 1993; Johnson and Duinker, 1993)

3.6 CHAPTER SUMMARY

As outlined, multi-stakeholder decision making is a forward-looking process used to reach agreement as to how best a proposal with the potential to affect the environment, could proceed in the interest of the whole basin. A multi-stakeholder process would serve as a means of getting stakeholders to work together, and would ensure that no one stakeholder embarks in isolation on a project that could potentially detrimentally affect other stakeholders in the basin, or the basin environment itself.

There are a host of legislative mechanisms, approaches, techniques and models available to facilitate basin planning exercises. A role exists for all of them in managing water and land resources, however "*A key challenge is to identify the appropriate mix of approaches that leads to equitable, effective, and efficient decisions* (Mitchell and Shrubsole, 1992, p. 251)". An objective is to devise a basin planning framework which will address Shoal Lake basin issues in an ecosystem (i.e. based on the basin unit) and community context (i.e. involving the stakeholders of the basin).

A common situation of competing resource uses and a limited amount of resources is ripe for conflict. This situation has existed in the Shoal Lake basin for many decades, as witnessed by the closure of the walleye fishery and potential expansion of the City of Winnipeg's water supply, and is even more apparent at present as resources become more scarce and the First Nations seek greater autonomy. The ways in which we as individuals, groups and society deal with conflict is important to our well-being. Conflicts that are left unresolved and allowed to grow and regress entrench sides, resulting in the need for much more effort to resolve them.

The best medicine is prevention. Rather than treating conflicts on an *ad hoc* basis, without getting to the root of the problem, multi-stakeholder decision making based on consensus is a proactive way to manage conflict and maintain a healthy watershed. Furthermore, rather than the traditional win/lose decisions where one party or parties wins and the other loses, the resolution mechanism advocated in this chapter is consensus-based which is supported

as being the most successful method to make win/win decisions, where all parties can live with the outcome (Johnson and Duinker, 1993).

This chapter has culminated in the findings of ten building blocks in four phases which are described in the literature as necessary aspects for M-S DM. The following chapter focuses on the practical building blocks for multi-stakeholder decision making, using several case studies in which this approach is being used in Manitoba and Ontario. By looking at these real life case studies it should be possible to "ground truth" or verify the utility of the conceptual building blocks presented in this chapter. Chapter 6 of the practicum evaluates if the necessary initial building blocks exist for the Shoal Lake basin stakeholders to embark on this process, and which building blocks need development.

Chapter Four

CASE STUDIES IN MULTI-STAKEHOLDER DECISION MAKING

In Chapter 3, a generic background was provided for M-S DM. The following case studies highlight the operational aspects of M-S DM that may be appropriate for Shoal Lake. In this chapter the multi-stakeholder decision-making organizational bodies identified in Table 1 are examined. The case studies include:

- ▶ Manitoba Model Forest Inc.
- ▶ The International Coalition for Land/Water Stewardship in the Red River Basin
- ▶ Dauphin Lake Basin Advisory Board
- ▶ Riding Mountain National Park Round Table
- ▶ Hamilton Harbour Remedial Action Plan
- ▶ Windigo-Shibogama Co-Management Agreement

Originally twelve case studies from across Canada were identified, however for reasons outlined in Chapter One, only the above six cases were used in the research. These case studies were selected using the literature and through discussions with academics and resource managers as being examples of what could broadly be considered multi-stakeholder decision making. The mechanisms and processes used by these bodies to achieve cooperation, collaboration and consensus among stakeholders are examined for their utility in a Shoal Lake basin decision-making process. Following a description of each case study (4.1.1 to 4.1.6), the results of the case study surveys are presented in section 4.2.

4.1.1 Manitoba Model Forest Inc.

The Manitoba Model Forest Inc. is one in a network of ten model forests across Canada. The Canadian Model Forest Program began in 1991 through the program "Partners in Sustainable Development of Forests" of Canada's *Green Plan*. Some 50 applications were received from across Canada and ten were selected to become Model Forests. The Manitoba Model Forest was initially provided with an \$8 million budget over the five year span of the program - this amount was later reduced to \$5 million. Each Model Forest developed a structure and decision-making process independent of the other Model Forests, yet all share the following three goals of the Canadian Model Forest Program:

- ▶ *accelerating the implementation of sustainable development and integrated resource management in forestry;*
- ▶ *applying new approaches, techniques, and concepts in forest management; and*
- ▶ *testing and demonstrating best forestry practices using the most advanced technology and practices available (Manitou Abi Proposal, 1992, p. 22).*

The Manitoba Model Forest (MMF) consists of an area of 1,047,067 ha (Forest Management Unit 31) in eastern Manitoba. The MMF has no decision-making authority regarding resource use in this area which is composed of crown and private land. It does have decision-making authority over the projects it sponsors, and it is hoped that as "better" forest management approaches are discovered, these will be adopted by the Pine Falls Paper Company, provincial forestry policy, and other stakeholders.

The vision statement for the MMF is as follows (Manitou Abi Proposal, 1992, p. 21):

Building upon the special natural and human features of the region and linkages beyond, we intend to create an operationally-viable, ecologically-sustainable model of forest management and use in which a wide spectrum of interests and values are represented. We shall achieve this vision by integrating these values into a harmonious partnership working towards wiser forest management practices based on an improved understanding of Canada's and Manitoba's Boreal forest ecosystems, their benefits and values and human impacts on them).

Two of the principles that this vision is based upon include:

- RESPECT FOR THE DIVERSE STREAMS OF HUMAN EXPERIENCE, learning and culture that shall guide a multi-faceted appreciation and wise and equitable use of the forest.
- A CANDID AND OPEN PROBLEM-SOLVING APPROACH that faces squarely potentially negative impacts and conflicts and attempts to resolve them in accordance with the principles of respect for the community of life and the human community (Manitou Abi Proposal, 1992, p. 21).

In keeping with these two principles, the main decision-making body of the MMF consists of a Partnership Management Board made up of 20 partners, or Board members. The partners represent the various organizations having an interest in the MMF including

government, First Nations, business, academia, environmental groups and others (Table 11). The Board directs the activities of the Working Groups and staff which carry out the operational side of the organization (Figure 12).

Table 11: Manitoba Model Forest Partnership Management Board Representation

REPRESENTATION:	NUMBER OF SEATS:
Pine Falls Paper Company	1
First Nations	4
Metis	2
Environmental Groups	2
Local Governments	2
Unions	1
Woodlot Owners	1
Province of Manitoba	2
North Eastern Sustainable Development Association	1
Universities of Manitoba	2
Local Business Development Groups	1
Members at Large	1
Forestry Canada and the General Manager are non-voting members of the Board.	

Source: Adapted from Sinclair, 1993

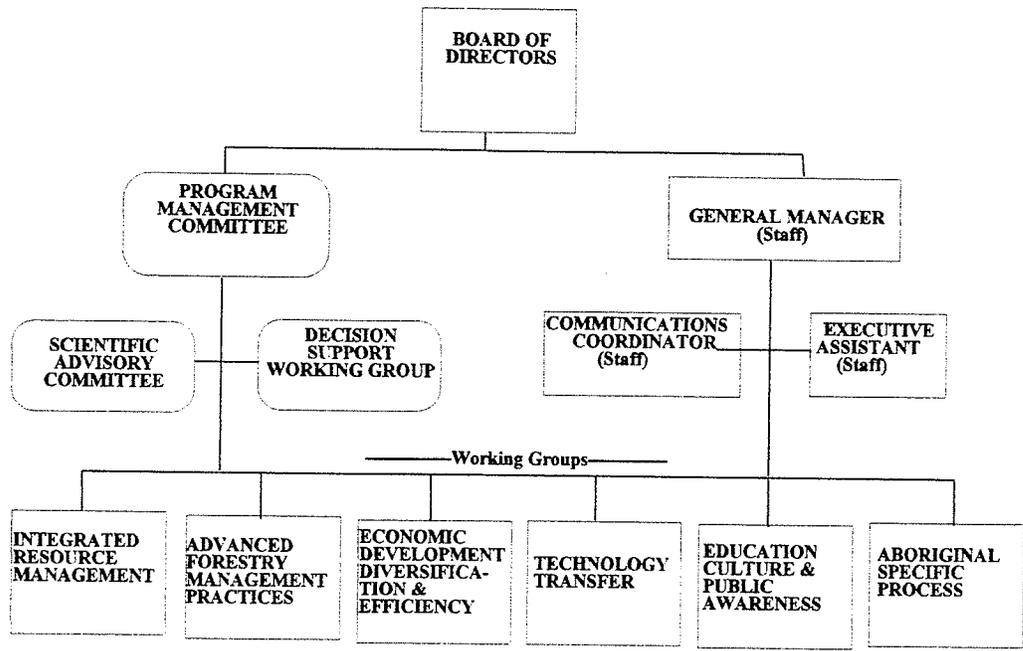


Figure 12: Manitoba Model Forest Organizational Structure (MMF, 1994, p. 4)

4.1.2 The International Coalition for Land & Water Stewardship in the Red River Basin

The International Coalition for Land & Water Stewardship in the Red River Basin has existed for ten years, espousing the philosophy of "respect and appreciation for the guy downstream". Awareness of watershed issues is promoted to a broad spectrum of stakeholders throughout the international basin which spans the States of Minnesota and North Dakota and the Province of Manitoba (Figure 13). Third party mediation is the technique used by the Coalition as a means of consensus building (Osborne, 1994, pers. comm.).

Each year TIC hosts a conference based on different themes or issues facing the Red River basin. Participants at the conference range from a variety of interests both within and outside of the organization. The conference provides a neutral forum where co-operative approaches are used to resolve issues.

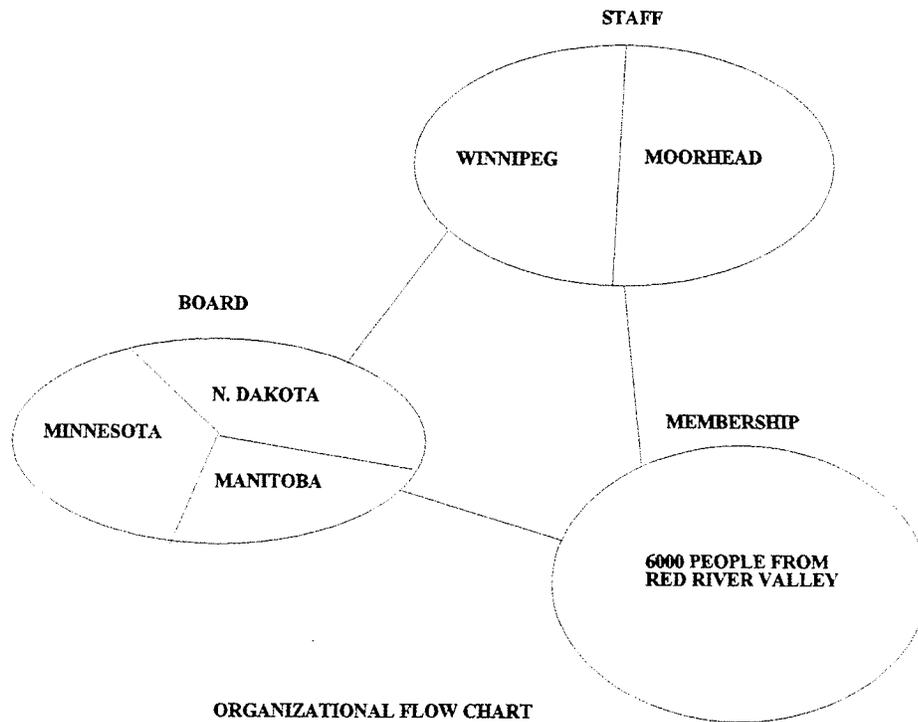


Figure 13: Organizational Flow Chart of The International Coalition for Land & Water Stewardship in the Red River Basin

4.1.3 Dauphin Lake Basin Advisory Board

Since the 1950s, Manitoba's Dauphin Lake basin and its spawning streams have suffered from siltation due to unchecked erosion and runoff. In November 1989, the Manitoba Minister of Natural Resources announced a *Dauphin Lake Basin Enhancement Program* and solicited 59 agencies, local levels of government and interest groups to name representatives to an Advisory Board so that basin residents could participate in decision making. A public meeting was held in Dauphin in December, 1989 by the Minister of Natural Resources where a background report entitled "*Dauphin Lake, Opportunities for Restoration*" was presented.

The 48 member Dauphin Lake Advisory Board was formed out of the 59 nominations, by invitation, in January 1990 (Figure 14). The Board includes stakeholders from seven broad

interest sectors in the basin, including elected officials, game and fish association representatives, farm interests, cottage-owners associations, government specialists and private citizens. The Board is supported by a Technical Advisory Group and an Executive Board (Table 12). It disseminates information to residents in the basin and solicits local input on basin issues, which it then uses to provide advice and guidance to the provincial Minister of Natural Resources.

The Minister of Natural Resources provided the Board with the following terms of reference:

- 1) The Advisory Board shall work together with the various resource owners, users and managers as a team to formulate and coordinate the implementation of a basin management plan that will work toward enhancement of the entire Dauphin lake Basin.
- 2) The Advisory Board shall provide advice and guidance to the Minister on a variety of pilot and demonstration projects which would be proposed by various organizations.
- 3) The Advisory Board shall disseminate factual and educational information to local residents on the problems and opportunities in the basin.
- 4) The Advisory Board shall solicit and synthesize local input on basin issues (Dauphin Lake Basin Advisory Board, 1992, p. 4).

A Draft Basin Management Plan was presented to the basin residents during six public participation meetings and open houses in March, 1992. The Plan was approved unanimously by the Board in December, 1992, and was forwarded to the Minister of Natural Resources. The Board identified five criteria necessary for the successful implementation of the management plan, these include the following (Dauphin Lake Basin Advisory Board, 1992, p. 6):

- ▶ Initiate an educational process that will inform all basin residents of the processes presently degrading the basin and identify the opportunities available to halt and, if possible, reverse those processes.
- ▶ Incorporate the aspirations of the basin residents regarding the environment that they and their children would like to live in, not leave.

- ▶ Establish a viable and ongoing format whereby basin residents can formulate and contribute their opinions, viewpoints and local experiences regarding the basin's natural resources.
- ▶ Recognize the interrelationship of various resource issues and identify resource management programs that return compounded benefits to the basin's ecosystem and economy.
- ▶ Provide an evaluation of program success for the basin residents and for the government.

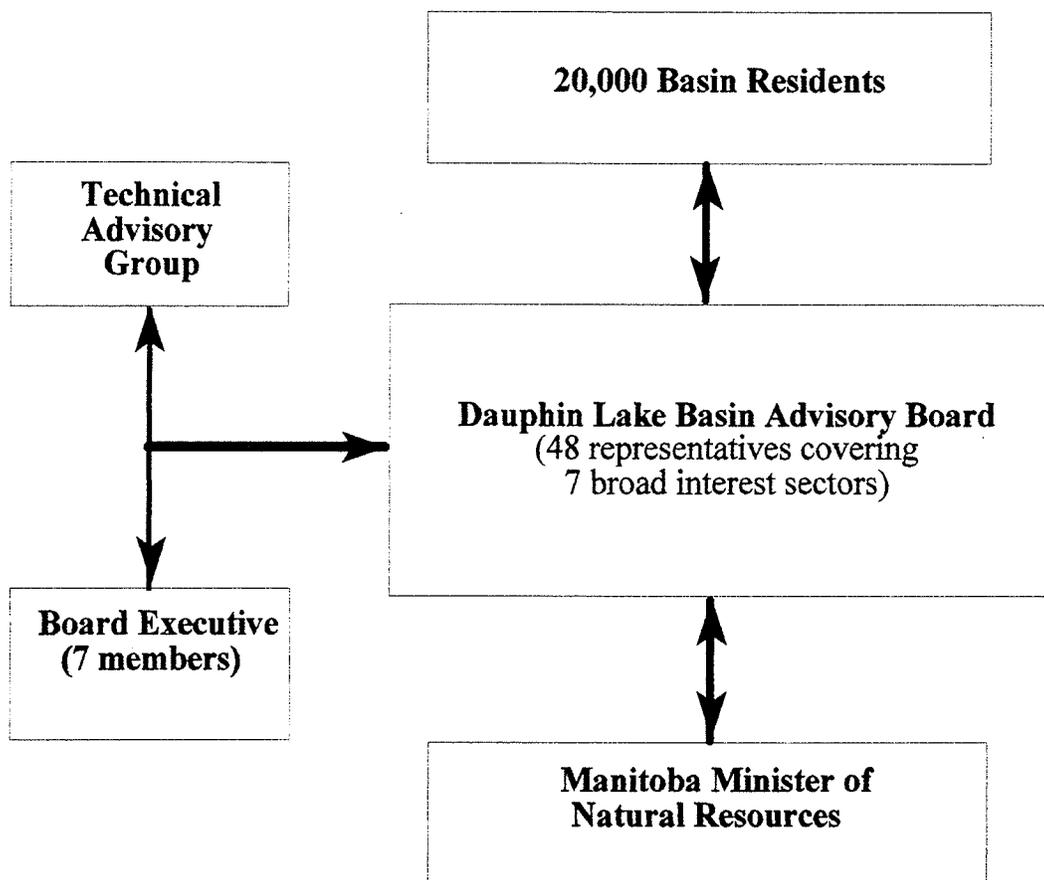


Figure 14: Dauphin Lake Basin Enhancement Program Organizational Structure
(Dauphin Lake Basin Advisory Board, 1992)

Table 12: Dauphin Lake Basin Advisory Board Organizational Structure Information

Organizational Structure	General Information	Representation
Advisory Board	-formed in 1990 under the Dauphin Lake Basin Enhancement Program -consists of 48 member representing seven broad interest sectors - holds approximately 3 to 4 meetings a year -incorporated in 1992 -prepared a constitution and by-laws in accordance with the terms of reference mentioned above	11 Rural Government 6 Urban Government 8 Recreation 10 Wildlife, Fisheries and Resources 3 Business and Tourism 6 Producers 4 Education and Research
Technical Advisory Committee	-began in 1988 by Water Resources Branch of the Manitoba Department of Natural Resources; -chaired by a coordinator who is employed by DNR; -developed a booklet entitled <i>Dauphin Lake, Opportunities for Restoration</i> ; -serves the Advisory Board as a resource.	20 members from provincial and federal government departments and Ducks Unlimited
Board Executive	-nominated by a 5-member nominating committee made up of Advisory Board members. Advisory Board elected 7 members of Executive for a one-year term in February, 1990 ; -Executive elected a chairperson and a vice-chairperson -hold approximately 10 meetings a year	1 Rural Government 1 Urban Government 1 Recreation 2 Producer 2 Wildlife, Fisheries & Resources (original composition)

4.1.4 Local Round Tables on Environment and Economy - the Riding Mountain National Park Management Plan

Several Local Round Tables have formed throughout Canada. The Round Tables comprise a variety of stakeholders, including business and labour representatives, academics and politicians. They serve to outline how economic, environmental and social goals should be pursued simultaneously in the various local districts. The Riding Mountain National Park Round Table on Environment and Economy in Manitoba is one such example.

Riding Mountain National Park (RMNP) is at the end of its five-year management plan. Under the federal National Parks Act, National Parks are required to update this plan and to do so with participation from the Canadian public. The last plan for RMNP took effect in 1987, following several years of development. The Park staff who developed that plan noted that many were not satisfied with the way the public were involved during the process.

In the development of the new management plan, Parks Canada would like to establish a new process in which the various stakeholder interests can have a meaningful role in the development of the next five-year plan.

The approach adopted by Parks Canada for the development of a management plan for RMNP is a consensus planning approach based on the Guiding Principles for a consensus process of the Canadian Round Tables on Environment and Economy (Chapter Three). Staff from the Department of Canadian Heritage, Parks Canada and two hired facilitators decided in consultation with the stakeholders on the round table structure. Over a one year planning program (as directed by Parks Canada), seven open public meetings and seven closed round table meetings will result in the development of an updated 5-year management plan for RMNP.

Parks Canada determined that the goal of the management planning process is to achieve consensus between Parks Canada and the participating stakeholders on a plan to work together over the long term to develop:

- ▶ Park management goals and objectives;
- ▶ a strategy for resolving conflict between the Park and its neighbours;
- ▶ a framework for continuous communication, learning and problem solving (Cressman and Niece, 1994).

4.1.5 Remedial Action Plans (RAPs) - Hamilton Harbour RAP

Toxic pollution in the Great Lakes has been a binational problem for several decades. The Great Lakes Water Quality Agreement of 1972 (revised 1987) commits Canada and the United States, in cooperation with the provinces and states, to develop Remedial Action Plans. These Plans are designed to address the toxic pollution problem in the Great Lakes ecosystem. Two important aspects of the RAPS are the partnerships formed between agencies and citizen groups, and the coordination of jurisdictional difficulties associated with a lake-wide plan (Selles, 1994).

The Hamilton Harbour Remedial Action Plan (HHRAP) is one of 42 RAPs across the Great Lakes. The harbour shoreline at one time consisted of numerous marshes which provided

habitat for wildlife. In the nineteenth century, bass and pike were so plentiful that they were caught with spears, while the harbour's fishery made up 15 percent of the Lake Ontario catch in 1900. However, in this century the harbour has faced much environmental degradation to shoreline habitat and to water quality. By 1926, a quarter of the water area of the harbour had been filled in to accommodate industrial plants. These plants discharged their toxic effluent into the harbour. Commercial fishing in the harbour ceased by 1977.

When "areas of concern", i.e. polluted locations, were identified around the Great Lakes in the 1980s, Hamilton Harbour was identified as one. Today, under the Canada-Ontario Agreement, the federal and provincial environment ministries are working with local stakeholders to develop and implement the Hamilton Harbour RAP. The stakeholders, which organized themselves into a committee, include "people with a direct interest in the harbour" such as municipalities, business and industry representatives, academics and federal and provincial ministry representatives (Canada/Ontario, 1992).

Several stages in the RAP development have been completed to date. The first stage included the completion of a report in 1989 titled *Environmental Conditions and Problem Definition* for Hamilton Harbour. This report was done by the stakeholders in conjunction with a technical RAP writing team consisting of scientists and engineers. The second stage consisted of the stakeholders identifying the necessary remedial actions to clean up the harbour and ensuring input was provided from the residents of the harbour before these were recommended. Presently the HHRAP is now a few years into the implementation stage for these remedial actions.

HHRAP originally had 43 stakeholder groups represented in one forum. However, during the first few years (prior to 1992) of discussion, it was decided to change the configuration for the "Implementation Stage" of the RAP. The citizen groups wanted more independence in the new configuration, the outcome was formation of the Bay Area Restoration Council (BARC). It gets a portion of its funding from the government sponsors of the RAP, and the rest of the funding comes from fund-raising. BARC is composed of citizen and organization members. The remaining 17 original stakeholder groups not represented on BARC comprise a second forum called "Bay Area Implementation Team" (BAIT) which includes industry,

government (federal and provincial governments, Conservation Authority, local municipalities), Royal Botanical Gardens, McMaster University and others. The RAP coordinator sits on both of these structures. As well, each forum has a common member who sits on both forums. In addition, both structures are brought together at quarterly meetings and at an annual workshop.

4.1.6 Cooperative Management Agreements - the Windigo-Shibogama Planning Board

Several natural resources cooperative management agreements, termed "co-management", have been reached by the government and First Nations of Ontario. Co-management creates management regimes for the various natural resource sectors. Co-management can be defined as "*a process of shared decision making between decision-makers and resident stakeholders who learn to optimize their mutual good and plan co-operatively with long-term time horizons* (Pinkerton, 1989, p. 5)."

On February 13, 1992 the Ontario government, the Windigo Tribal Council and the Shibogama First Nations Council and four First Nations (Cat Lake First Nation, Weagamow Lake First Nation, Kingfisher Lake First Nation, Wunnumin Lake First Nation) signed an agreement to establish two interim planning boards in Northwestern Ontario near Big Trout Lake and Pickle Lake. The Windigo Planning Board and the Shibogama Planning Board will advise the Ontario government on the planning of land use, resource development, and associated issues in the 27,000 square kilometres of lands and waters covered by the agreement, for a period of five years. There are about 1,700 residents from four communities in the area of the agreement. The planning Boards have developed community participation models.

Each planning board contains an equal number of representatives from the province and the tribal councils, and a third party neutral chair agreed to by both parties. The Cat Lake First Nation and the Weagamow Lake First Nation are part of the Windigo Tribal Council and each have representatives on the Windigo Planning Board which oversees two areas (15,959 km²). The Kingfisher Lake First Nation and the Wunnumin Lake First Nation are part of the Shibogama Council and each have representatives on the Shibogama Planning Board which oversees one area (11,131 km²). At the end of three years of the five year span of the boards,

an evaluation was done on their effectiveness and more permanent arrangements were established for their future (Grant, 1991).

4.2 M-S D-M CASE STUDY SURVEY ANALYSIS

As identified in the Methods, interviews were also carried out regarding each of the case studies. The Case Study Survey (Appendix A) was conducted during the week of June 12, 1995 to June 16, 1995 with the orchestrators of the various case studies researched. The following discussion is based on the Summary of Responses to M-S D-M Case Study Surveys in Appendix B and is organized from the four sections used in the survey (A-D below). Table 13 is also relied upon in the following discussion as it contains the YES/NO responses to survey questions where such a response was asked.

Throughout the following discussion comparisons are often made with the ten principles of consensus processes described by the Canadian Round Tables (section 3.3). The importance of these principles is confirmed by their frequent reference in the literature on M-S DM, and for this reason they are included in this discussion.

A) DECIDING ON the PROCESS (Assessment Phase) - *The Initial characteristics that led to the current M-S D-M process:*

M-S DM is used as a way to resolve conflict situations and concerns, or to improve the conflict resolution capabilities of prior non-M-S D-M forums. Some of the main reasons for choosing M-S DM over other decision-making processes include: consensus-based decision making; locally-based decision making; ability to accommodate several jurisdictions; provides a means of ground-truthing effectiveness of projects by tapping into a network of stakeholders and their knowledge; a means of ensuring a mutual understanding of what government and people want from industry and what industry wants from government and the people; a more comprehensive process than project specific environmental assessments. These responses satisfy the first two conceptual building blocks identified at the end of Chapter 3. These building blocks describe that an unresolved conflict is required, and that there must be an incentive to seek a decision by consensus. The third conceptual building block ("all key stakeholders must be involved in and support the process") was met by all

Table 13: YES/NO Responses to M-S D-M Case Study Survey						
Selected Question from Survey	Case Study Response					
	MF	IC	PB	RM	HH	DL
2. Did the initiators or participants of the forum have any prior experience with M-S DM?	Y	N	Y	N	Y	Y
4. Are stakeholder representatives sectorally based?	Y	N	Y	Y	Y	Y
6. Is the current forum structure representative of all stakeholder interests?	Y	N	N	Y	Y	Y
7. Is participation in the forum voluntary?	Y	Y	N	Y	Y	Y
8. Did the participants design the forum's organizational structure?	Y	Y	Y	N	Y	N
9. Is the organizational structure flexible?	Y	Y	N	Y	Y	Y
10. Do the members share equally in the decision making of the forum, including access to relevant information?	Y	Y	Y	Y	Y	Y
12. Are participants accountable both to their constituencies and forum?	Y	Y	n/a	Y	Y	Y
13. Is a facilitator/mediator used in the process?	Y	Y	Y	Y	Y	Y
14 (iv). Does the facilitator/mediator position rotate?	N	Y	N	N	N	N
15. Does the forum provide strategic direction?	Y	N	Y	Y	Y	Y
16(i). Are there formal rules concerning how decisions are reached?	Y	Y	Y	Y	N	Y
17. Was there any formal training or discussion provided to the participants on consensus building or conflict resolution?	N	Y	N	Y	n/a	N
18 (iii). If a decision cannot be reached by consensus, is it put to a vote?	Y	Y	N	N	N	Y
19. Is there a formal conflict resolution process?	N	N	Y	N	N	N
21. Were any topics deemed "out of bounds" for discussion by forum?	n/a	Y	Y	Y	N	Y
26. Has the forum been effective at partnering with outside interests?	Y	Y	Y	n/a	Y	Y
27. Does the forum communicate effectively with the community?	N	Y	Y	Y	Y	Y
28. Are there effective opportunities for consensus building and cooperative action in forum decision making?	Y	Y	Y	Y	Y	Y
29. Is the decision-making process open/accessible to outside interests?	Y	Y	Y	Y	Y	Y
30. Are realistic deadlines established for the milestones in the process?	n/a	Y	Y	n/a	N	Y
34. Do you envision any future changes in your forum's D-M or conflict resolution process?	Y	N	N	Y	n/a	Y

Note certain questions have been modified to suit table, refer to Appendix A for exact wording.
Y - yes, N - no, n/a - not answered

MF - Manitoba Model Forest Inc.; IC - The International Coalition for Land/ Water Stewardship in the Red River Basin; PB - Windigo-Shibogama Planning Board; RM - Riding Mountain National Park Round Table on Environment and Economy; HH - Hamilton Harbour Remedial Action Plan for the Great Lakes; DL - Dauphin Lake Basin Advisory Board

but one case study. The Manitoba Model Forest has had much difficulty securing the involvement and support of the First Nations which has been a source of problems over the course of their process.

Several of the case studies had what could broadly be considered "the presence of a champion" either in the form of an individual or an entity. This is another one of the conceptual building blocks identified at the end of Chapter 3. Most had a federal or provincial government entity acting as "the champion." The Hamilton Harbour RAP had a "Mr. Biosphere" helping to initiate the RAP process.

In two-thirds of the cases, the initiators had prior experience with M-S D-M activities. Without such prior experience, the participants of a M-S DM process will likely have more difficulty effectively participating in the process. A facilitator experienced in M-S DM can help with getting unfamiliar participants up-to-speed on the process.

B) DESIGNING THE PROCESS - *How were the participants in the process involved and how were the rules of the process established.*

In all cases, the stakeholders were identified by the initiators of the forum or through a hired facilitator using some form of preliminary list compiled from prior contact with the stakeholders. These stakeholders were asked if they knew of others who would be interested in the forum. As new stakeholders were discovered, they were added to the list. Once the list was comprehensive, the initiators or the facilitator determined which stakeholder groups should be provided with seats on the forum. As the forum developed, missing or new stakeholders were added to the forum by the board.

All except one M-S D-M forum had sectorally-based stakeholder representation. Even the one forum which did not (representatives were regionally-based) strived to achieve a more sectorally balanced representation among the various stakeholder interests.

The various stakeholder groups determine who their representatives will be on the forum. In one case study in which the board had a regional composition, board members were elected annually, after being nominated by other board members, staff, or from a larger membership group.

The Canadian Round Tables suggest that all parties with a significant interest in the process should be involved. Two-thirds of respondents replied that their forum structure was representative of all stakeholder interests. The remaining third either strived to accommodate representation from all interests in their structure, or had as their mandate that all public interests be involved.

Another principle identified by the Canadian Round Tables is that the parties who are affected or interested should participate voluntarily in the process. All except one case study had voluntary participation in the forum. The remaining one had participants employed through the forum similar to public servants.

The Round Tables suggest that the parties themselves should design the process. The forum respondents were divided as to whether the participants designed the forum's organizational structure. Most replied that the participants did design the forum's organizational structure, while two replied that the structure was determined in advance, but that the process and sub-structures were determined by the participants. For instance, HHRAP initially had 43 stakeholder groups represented in a forum designed by the initiators of the forum and a facilitator. However, during the first few years of discussion, the forum members decided to change the configuration into two separate but interconnected structures. The forum members on TIC and MMF also altered their structures once the process had been operational for a few years.

The Canadian Round Tables suggest that flexibility should be designed into the process. Most of the respondents replied that the forum's structure was flexible and that new participants or sub-structures could be added if the board agreed. Only one forum replied that the structure was fixed as far as adding new participants, but even in this case substructures (working groups, sub-committees) could be established by the board. Just over half of the forums had continuity in their positions, with members changing only when they were unable to fulfil their responsibilities to the forum. Two of the case studies had certain positions rotating at varying time frames (1-3 years).

The Round Tables suggest that all parties must have access to relevant information and the opportunity to participate effectively in the process. Respondents were unanimous that the members had access to relevant information and shared equally in decision making - without domination by a particular group, individual or organization. However, approximately half of the respondents provided examples where domination may be a factor. These examples include: the influence of several over one (i.e. "ganging up") in decision making; issues being polarized based on rural-urban lines; and members not speaking up when unsure about certain decisions.

The Canadian Round Tables stress that acceptance of diverse values, interests, and knowledge of the parties involved in the process is essential. Most attempts at this were limited to a workshop or simply through discussions at board meetings. Certain forums had gone to greater lengths to build a common understanding of the values and perceptions of the different members through the use of retreats, annual conferences, and "breaking the bread" at picnics and barbecues.

The Canadian Round Tables recommend that the participants need to be accountable both to their constituencies and to the process that they agreed to establish. Almost all respondents replied that participants were accountable both to their constituencies and to the forum. Members have certain duties to perform on behalf of the forum, and yet would have to provide feedback to their constituencies and provide input to the forum from them. The method of providing feedback to the constituencies and receiving input from them was usually left to the discretion of the participants and the organizations they represent. Participants of HHRAP were asked to wear three hats when they spoke. These hats were the views of their organization, the views of their constituency, and their own personal views. The respondent replied that knowing which hat was being worn when someone spoke helped with the openness of the discussion and led to a better understanding.

All M-S D-M forums used some form of a facilitator/mediator in meetings. Usually it was in the form of a chairperson, while two forums used an independent facilitator. Another forum used an independent facilitator only to help get the process started, and then only on an as-needed basis afterwards.

The role of the facilitator was similar in all of the case studies. This role included chairing the meeting process and making sure the agenda was followed. The role was most often determined by the board itself, even though in certain cases the role was determined before the board was established, but was modified by the board once it was established. Where facilitators were used they were either staff, third party, or were a member of the board. In most cases the facilitator's position was fixed, while in one case the position rotated, and in another, the facilitator was nominated yearly.

All except one forum set a strategic direction - usually in the form of a land use or management plan. The remedial action plan of HHRAP went beyond setting a strategic direction to providing detailed actions, such as recommending no more infilling of the harbour.

All but two forums had formal rules concerning how decisions were to be reached. In one of the exceptions the respondent felt that the forum should have formal rules for decision making, and in the other, a separate structure of the forum had formal rules. All of the forums with formal decision-making rules had produced them at the outset of the forum's development. The board, or the initiators of the forum, after consulting with stakeholders, determined the decision-making process. Just over half of the cases used consensus at meetings. However, if Robert's Rules of Order was used, it was often as a formality after a decision had already been reached unanimously through consensus.

Respondents were evenly split when queried about there being any formal training or discussion provided to participants on consensus building or conflict resolution. What training or discussion there may have been was usually limited to a single event or discussion, or to a few participants' prior career experiences. Certain forum members or the facilitator were relied upon during meetings for their experience with consensus and conflict resolution.

In a situation in which a decision could not be reached by consensus, most of the forums would vote, although this rarely occurred. In one of the forums, the decision would have been deferred to the independent facilitator, while another respondent replied that they would devise a process

rather than vote. Participants in the HHRAP would agree to disagree, or if the issue required a definitive answer, a process would be developed by the participants to reach consensus.

Only one of the forums had a formal conflict resolution process which had been detailed in the initial terms of reference, yet that process had not been used. The process consists of the chairperson making non-binding recommendations for resolution of outstanding issues or proposing an alternate dispute resolution mechanism.

The usual method of keeping participants informed is through forum meetings or where the staff send messages to the participants using phone, fax, mailing of minutes or newsletter. Other methods included annual reports on progress and implementation of agreements and annual workshops.

Almost all forums had "non-negotiables" for discussion. These ranged from non-advocacy approaches, to issues under another agency's mandate, and political issues. These "non-negotiables" were usually determined at the outset of the process by the initiators of the forum or by the board members. One respondent felt that self-regulation of the discussion by the participants was enough to ensure that discussions were held within the goal of the forum.

Staff ranged in number from 1 to 5. Typical positions included an office manager or coordinator and a support position. Other staffed positions included a facilitator, an administrator, a field-researcher, a communications coordinator, a data-base manager and a planner.

C. USING THE PROCESS - *What characteristics helped or hindered getting the process into action.*

Meetings were scheduled either on a fixed schedule (such as the second Tuesday of every month), according to necessity (i.e. workload), convenience of participants, or as budget permitted. The meeting location often rotated among the various communities in the region of the forum. The frequency of meetings ranged from monthly to as few as 3 per year. The staff most often sets the meeting agenda. In one of the case studies, the board set the agenda for the following meeting at the end of each meeting, and any additions to the agenda would be added by the staff. Furthermore, a draft agenda is sent out to the members prior to the meeting, with the option to add agenda items at the meeting.

Attendance varied among the forums from less than half of participants (usually during busy times of the year for farmers) to almost 100 percent. Usually attendance was between these two extremes at about a two-thirds turnout. Lower attendance was only considered to be a slight problem in one of the forums, with another responding that if a participant missed a meeting, they still received the meeting minutes to keep informed and they could then bring up any decisions they did not agree with at the next meeting.

All except one respondent replied that the forum had been effective at partnering with outside interests. The dissenting respondent replied that it was not important at this stage for the forum to partner with outside interests since all interests were represented on the forum. Partnering was usually done on projects with agencies or groups having a parallel interest as the forum or with those who had the ability to help fund forum projects. One respondent felt their forum had been exceptionally effective at partnering. For example, "Project Paradise" by the Royal Botanical Gardens as part of the Hamilton Harbour RAP, raised \$ 2 million from the community and has 20 major partners.

Almost unanimous responses indicated that the forums communicated effectively with the community. Communication is often by member's feedback to the communities they represent, by having meetings in the communities or through projects done with the communities. Newsletters were also a common method of communicating with the community, while two forums used media coverage. One forum has a fairly elaborate communications program consisting of a mobile education centre, presentations at all of the schools in the forum's area, and regular news media coverage. About half of the respondents mentioned the difficulty of effectively communicating with the public. Other methods included annual workshops, quarterly meetings open to the public and presentations to community groups by forum participants.

There was unanimous response concerning effective opportunities for consensus and cooperative action in forum decision making. In almost all cases respondents replied that this was due to the open discussions at forum meetings where there was plenty of time to "speak your mind".

All respondents replied that the decision-making process of the forum was open and accessible to outside interests. The flexibility at forum meetings, where delegations or presentations could be heard by the participants, is the most common method of being open and accessible to outside interests. However, at least one respondent mentioned that it is up to the initiative of these outside interests to come out to meetings. Also, some respondents mentioned that not all meetings were open (i.e. were in-camera) and that meetings were not always advertised in the communities. One of the cases which had monthly meetings had the quarterly meetings, in addition to an annual workshop, open to the public.

D. IMPLEMENTING AND MONITORING AGREEMENTS *of the process.*

The Canadian Round Tables recommend realistic deadlines be established for the various milestones in the process. One of the respondents mentioned that the deadlines established may have been "ambitious". Another respondent mentioned the lack of complaints over deadlines is viewed as substantiating that they are realistic. Another respondent felt that since their forum had a 20 year deadline to get results, the process could have the potential to be unfocused and then not have any solid achievements to show in the end, and for this reason the initial absence of milestones was an issue. Recently, however, they have incorporated milestones. Most respondents felt that realistic deadlines had been established for the various milestones in the process.

Various methods were provided for how forums reached procedural agreements with coordinating agencies. One method was that all coordinating agencies were represented on the forum, another had these arrangements written in the forum's terms of reference, while another either entered into agreements with private land owners or had the government agency represented on the forum do the appropriate arrangements with other government agencies.

The Canadian Round Tables suggest that commitment to implementation and effective monitoring are essential parts of any agreement. Where subgroups were involved, forum members often were involved with them and were able to report back to the board on their progress. Otherwise, staff monitored project status and reported this to the board and partnering agencies.

Several characteristics contributing or not contributing to the multi-stakeholder decision-making processes were mentioned by respondents. The favourable characteristics included: involving all jurisdictions in the region of the forum (i.e. watershed basis); using a consensus-based approach to decision making; using a balanced approach in decision making (economy/ environment/ social aspects); utilizing a pre-existing network of concerned citizens and a large unified community; partnering with a wide range of government and non-government agencies; using a process that is inclusive of all stakeholder interests; using a third-party facilitator; having voluntary participation on the forum (i.e. no payments made); having adequate resources (time, budget) to run process; having commitment and motivation from the forum members in forum activities; the design of the process in which the technical team saw their role as technical people and not as leaders and recognized that M-S D-M group would make decisions; willingness of sponsoring and contributing agencies to put resources into facilitation of process; persistence of stakeholders to work at process; and having the location of technical support and business office near the forum's area of interest.

Those characteristics considered by respondents to be unfavourable or to pose a challenge to the M-S D-M process included: reliance on different and possibly incomplete sources of information; unclear perception of what a consensus process entails; what mandate the process has or what defines a stakeholder; large number of members on the forum posing difficulties for reaching decisions; the complexity and number of issues to be dealt with by the forum; working with two different forms of government (provincial/ First Nations); slowness of bureaucracy; scarce resources (time and money); sticky issues where it is not clear who is responsible; and, diverse representation on the forum.

Respondents were divided over the question of whether they anticipated any future changes in their forum's decision-making processes. None anticipated any changes concerning conflict resolution. Most responded that they were flexible enough to change aspects of their forum's process if necessary, but were in a situation where it was considered unwarranted at present. Certain forum respondents noted that as the process progressed, and developed, changes would likely occur.

4.3 CHAPTER SUMMARY

In this chapter six practical examples of multi-stakeholder decision making were described based on the conceptual building blocks necessary for M-S DM presented in Chapter 3. The results of the M-S DM case study survey analysis highlight several aspects or building blocks which occur repeatedly in the case studies that are mentioned in Chapter Three and a few that were not mentioned in that chapter. These highlighted aspects include:

- ▶ stakeholders identified by forum initiators or by hired facilitator;
- ▶ sectoral stakeholder representation;
- ▶ inclusive of all stakeholders;
- ▶ voluntary participation;
- ▶ even if forum structure is not initially designed by participants, it should be flexible enough to permit participants to modify the structure or to add sub-structures (working groups etc.);
- ▶ members share equally in decision making including access to relevant information;
- ▶ participants accountable both to their constituency and to the forum;
- ▶ an independent facilitator or non-independent chair used to run forum meetings (facilitator may only be used to help initiate process and/or used on an as-needed basis afterwards);
- ▶ facilitator's role is to support and chair forum meetings;
- ▶ strategic direction set through a land use or management plan;
- ▶ consensus used in decision making, or Roberts Rules of Order used as a formality following consensus;
- ▶ formal conflict resolution process likely unnecessary;
- ▶ participants kept informed through meeting minutes, newsletter, annual reports;
- ▶ non-negotiables determined at outset of process by initiators or forum participants;
- ▶ small number of staff, including at least office manager or coordinator, and support position;
- ▶ staff set meeting agenda;
- ▶ partnering with outside interests;
- ▶ communicating effectively with outside interests;

- ▶ having effective opportunities for consensus building and cooperative action in forum decision making;
- ▶ ensure decision making of forum is open and accessible to outside interests;
- ▶ establishing realistic deadlines for milestones in process;

Several problem areas are highlighted in the case study evaluation. These include:

- ▶ little attempt to build a common understanding of the values and perceptions of different forum members;
- ▶ lack of training provided to participants on consensus building or conflict resolution;
- ▶ reliance on voting as a means to settle disagreements which could not be settled using consensus;
- ▶ difficulty in getting First Nation and Métis stakeholders involved in and supportive of M-S DM process.

First Nation and Métis stakeholders were mentioned in three of the case studies examined. One of these was a co-management agreement between the First Nations and the Ontario government where no problem of involvement or support was mentioned. However, the Manitoba Model Forest has had difficulty getting First Nations stakeholders to the table. In addition, Métis participation in the Dauphin Lake Advisory Board stopped apparently due to a lack of interest in the forum.

This chapter has built on the conceptual building blocks presented in the last chapter by comparing them to practical cases of M-S DM. The combination of the conceptual and practical building blocks for M-S DM have been used to develop a survey (Appendix C) designed to elicit the views of the Shoal Lake basin stakeholders on the potential for multi-stakeholder decision making in the basin. The results of this survey are presented in the next chapter.

Chapter Five

COMMENTS FROM THE SHOAL LAKE BASIN STAKEHOLDERS CONCERNING THE VIABILITY FOR A M-S D-M FORUM

This chapter continues to build on the results of the conceptual and practical building blocks presented in the last two chapters. It is important to find the views of the Shoal Lake basin stakeholders themselves on resource management decision making in the basin. These views are determined using a survey conducted with the stakeholders.

The Shoal Lake Basin Stakeholder Survey (Appendix C) was conducted from June 28, 1995 to July 14, 1995 with sixteen respondents (out of 29 identified stakeholder groups including government, First Nations, public groups and others)(Table 14). The purpose of the survey was to determine what, if any, form of basin-wide multi-stakeholder decision making would be appropriate for resources planning and management in the Shoal Lake basin. The individual comments from each of the survey respondents are contained in Appendix D.

All of the government departments involved with Shoal Lake basin issues were surveyed. The only key stakeholders (i.e. those with jurisdiction in the watershed) not surveyed were four of the five Shoal Lake First Nation (Iskutewisakaygun #39 Independent First Nation, Northwest Angle #37 First Nation Northwest Angle #33 First Nation and Big Island First Nation). The reasons for not consulting with them are provided in Table 14 and the implications this presents are discussed later. Other than the four non-participating First Nations, 10 stakeholders remain unsurveyed. Four of these stakeholders deferred participating in the research because they did not consider themselves to be stakeholders. The remaining six stakeholders (three resource-based industries, a university, a cottage association, and a citizens' organization whose mandate is to have such a basin-wide forum initiated) or 20 percent of the identified stakeholder groups, were either on holiday or did not respond to the request for a survey during the survey period. As discussed later, the lack of participation of these stakeholders should not pose a problem for the research.

The chapter is organized in ten sections compiled from the Shoal Lake Basin Stakeholder Survey. In these sections the aspects of M-S DM and problem areas most highlighted by the survey respondents are discussed, as well as comments from previous sections of the research. Table 15 presents a calculation of YES/NO survey responses.

Table 14: List of Surveys Completed for Shoal Lake Basin Stakeholders/Interests

Stakeholders/Interests	Surveyed	Not Surveyed	Why
<u>Ontario Provincial Agencies:</u> -Ontario Ministry of Environment and Energy -Ontario Ministry of Natural Resources -Ontario Ministry of Northern Development and Mines -Ontario Native Affairs Secretariat -Member of Parliament (Kenora-Rainy River Riding) -Ontario Hydro	X X X X X	X	A
<u>Manitoba Provincial Agencies:</u> -Manitoba Department of the Environment -Manitoba Department of Natural Resources -Manitoba Department of Urban Affairs	X X	X	B
<u>Federal Agencies:</u> -Indian and Northern Affairs Canada (Thunder Bay) -Environment Canada (Regina)	X X		
<u>International Agencies:</u> -International Joint Commission (IJC)	X		
<u>First Nations (FN):</u> -Shoal Lake FN No. 40 -Shoal Lake FN No. 39 -Shoal Lake FN Northwest Angle No. 37 -Shoal Lake FN Big Island -Shoal Lake FN Northwest Angle No. 33 -Ontario Chiefs Advisory Services (Kenora) -Treaty #3 Office (Kenora) -Bimose Tribal Council (Kenora)	X* X	X X X X	C C C C D E
<u>Winnipeg Municipal Agencies:</u> -Waterworks Waste & Disposal Department -Mayor's Office	X X		
<u>Public Groups/Others:</u> -Lake of the Woods Community Development Corporation -Whiteshell District Association -Academic/Research (University of Winnipeg) -Mining Companies (Consolidated Professor) -Forestry Companies (Tolko Industries) -Winnipeg Water Protection Group -Eco-Network (Winnipeg)	X	X X X X X X	F A A A F G
TOTAL NUMBER	16	14	

* - indicates that two surveys were conducted with this stakeholder group.

Re: Table 14 - Reasons why certain stakeholders were not surveyed:

- A: Contact did not respond to message requesting survey.
- B: Manitoba Department of Urban Affairs mandate only deals with issue of legal agreement between three parties (Winnipeg, Manitoba and Shoal lake First Nation #40) as part of Tripartite Agreement (1989). Departmental contact replied that in the case of a multi-stakeholder decision-making process, the Manitoba Department of the Environment would be given the lead, therefore, Urban Affairs would not consider itself to be a stakeholder in such a forum (Leach, Department of Urban Affairs, personal communication, June 28, 1995).
- C: After approaching these four Shoal Lake First Nations during the summer and fall of 1994 (two series of FAX's and talking with a representative from each First Nation), agreement had been secured from two of the four First Nations to participate in the practicum research. At this point it was learned that a protocol was being established where all requests must first be forwarded to Shoal Lake First Nation #39. After several attempts to have Shoal Lake First Nation #39 review a request for them to participate in the research, the research proposal was placed on the agenda for a January meeting of the Working Group (under the Watershed Agreement, 1994). The concern raised at the Meeting by Shoal Lake First Nation #39 was that the research could in some way impede the Agreement negotiations (i.e. be used against them by Ontario). It was quite obvious from the meeting that a definite power struggle exists between Shoal Lake First Nation #40 and the other Shoal Lake First Nations. This was clear in the mixed comments concerning "Development of a Shoal Lake Protocol", "Working Together", and "Strength in Anishinabe Sovereignty." These inter-nation politics are likely at least partly to blame for the lack of participation in the practicum by the four First Nations. The decision to participate in the practicum research was deferred to a Chiefs' Committee. To date there has been no verification that this committee has met, or discussed the research proposal.
- D: Contact was uncomfortable with responding to survey since he felt that it was up to the First Nation chiefs to decide such a matter prior to Treaty #3 Office's involvement (Sky, Treaty #3 Office, personal communication, July 4, 1995).
- E: Contact stated that Tribal Council's mandate was only for education, finance and economic development which did not include natural resources and for this reason did not wish to complete survey (Mahachi, Bimose Tribal Council, personal communication, June 30, 1995).
- F: Contact was on holiday during interview period (Dubowits, Whiteshell District Association, personal communication, June 30, 1995; McCullough, Winnipeg Water Protection Group, personal communication, July 7, 1995). However, the primary mandate of the Winnipeg Water Protection Group is to have a basin-wide forum established for resource planning and management at Shoal Lake.
- G: Contact for the Eco-Network replied that the environmental movement in Manitoba is so specific that environmentalists tend to join specific coalitions. Therefore, environmentalists would go through the Winnipeg Water Protection Group and not the Eco-Network if there was any interest in the Shoal Lake basin (Malone, Eco Journal, personal communication, June 26, 1995).

5.0.1 Stakeholder Backgrounds:

The necessity for all participants to have a reason to participate in the process - i.e. be purpose driven - is highlighted by the Canadian Round Tables. The mandates for all of the groups, agencies and organizations surveyed were concerned with some aspect of the Shoal Lake basin stakeholders or of the basin's resources. Many of the mandates had a legislative or administrative basis while others were independent but tended to provide services to those with a legislative or administrative basis. All respondents represented groups or organizations with a mandate that extended into all or some part of the Shoal Lake basin.

5.0.2 Vision for the Future of the Shoal Lake Watershed and Present Concerns:

The topics most specifically mentioned by respondents concerning their vision or ideal for the future of the basin were, in order of greatest response:

- ▶ *Sustainable Development*
 - defined as a balance between development and environmental protection.

- ▶ *Benefits to First Nations*
 - many respondents felt that the First Nations should be involved in resource management and planning in the basin and that the First Nations should benefit from developments that take place in the basin.

- ▶ *Environmental Protection*
 - respondents were not so much against developments but wished to ensure these did not compromise protection of the basin.

- ▶ *Basin Management and Planning Forum*
 - most responses indicate that the First Nations should have a major role in such forum, while responses varied over whether such a forum should be limited to government

members (provinces, federal and First Nations) or open to all stakeholders.

- ▶ *Maintenance of Water Quality*
 - respondents who specifically referred to the maintenance of water quality acknowledged that this did not require an absence of development or other resource uses, only that these did not threaten water quality.

The issues or problems of greatest concern to respondents in the watershed include, in order of greatest response:

- ▶ *Water Quality*
 - how to balance economic development with maintenance of water quality, especially the threats posed from mining and recreational development.
- ▶ *Livelihood of the First Nations*
 - deriving their fair share of benefits from the basin; making a livelihood from the lake.
- ▶ *Cooperation with and Between First Nations*
 - the ability of the Shoal Lake First Nations to cooperate in a resource management process; the ability for non-natives and natives to cooperate/partner together in a resource management process.
- ▶ *Fishery Management* - in particular walleye.

This list of issues involves all of the stakeholders in the basin which means that the first conceptual building block "there must be an unresolved conflict or potential for conflict" exists at Shoal Lake. Other concerns varied from: the lack of environmental protection and enforcement of such regulations in the basin and how the number of jurisdictions

complicates this; too much influence from people outside the basin; a sense that there is not enough resource use in the basin because development has been based on peoples emotions and not enough on science and technology; and concerns that funding, non-cooperation, and jurisdictions will complicate the setting up of a basin-wide management and planning forum.

5.0.3 Views on the Viability of a Multi-Stakeholder Decision-Making Forum to Address Issues and Management in the Shoal Lake Basin

Another conceptual building block identified in Chapter 3 is "*all key stakeholders must support the M-S DM process.*" Besides not being able to account for all of the Shoal Lake First Nations views, discussed later, respondents were virtually unanimous (one unsure response; Table 15) in affirming the viability of a multi-stakeholder decision-making forum. This affirmation is based on the following three purposes: (i) resolve conflicts among basin stakeholder groups; (ii) foster communication and understanding among these groups; (iii) develop planning and management directions for problem areas. Furthermore, only one of the stakeholders surveyed felt that a representative from their organization would not be prepared to meet over the next year to further plan a M-S DM forum (Table 15). However, there were a variety of views expressed on who should initiate it, the legitimacy, mandate, membership, decision-making process, and community involvement aspects of such a forum.

5.0.4 Who Should Initiate the M-S D-M Forum?

The three most favoured entities indicated as having the respect and influence to initiate such a forum include:

- (i) a partnership between the Shoal Lake First Nations and the Provinces of Ontario and Manitoba;
- (ii) federal government due to its multi-jurisdictional mandate; and
- (iii) one or all of the Shoal Lake First Nations.

However, there were a number of respondents who felt there was no individual or entity which had the respect and influence to initiate such a process. Other suggestions included a technically-driven organization such as the Canadian Water Resources Association, or The International Coalition for Land/Water Stewardship in the Red River Basin, or God.

Selected Survey Question	Percentage YES (# responses)	Percentage NO (# responses)	Percentage UNSURE (# responses)
3. Does your organization/group have a spokesperson or representative?	100 % (16)	0% (0)	0% (0)
4. Does your organization have experience working in a consensus process?	100% (16)	0% (0)	0% (0)
7. Do you think the development of a multi-stakeholder forum to address problems/issues and management in the Shoal Lake basin as described would be a viable decision-making forum?	94% (15)	0% (0)	6% (1)
15. Are there any issues which should not be addressed by a M-S D-M forum (i.e. issues that should be considered "out of bounds" for discussion or non-negotiable)?	50% (8)	31% (5)	19% (3)
17. Are you aware of any matters that need to be dealt with before these interests become involved in a M-S D-M process?	69% (11)	25% (4)	6% (1)
19. Should there be a formal conflict resolution process?	56% (9)	13% (2)	31% (5)
20. Should a facilitator/mediator be used to run forum meetings?	75% (12)	6% (1)	19% (3)
22. Are there any other activities similar to, or which could interfere with such a M-S D-M forum that are occurring at present in the Shoal Lake basin?	69% (11)	25% (4)	6% (1)
23. Do you think a representative from your organization would be prepared to meet over the next year to further plan a M-S D-M forum?	88% (14)	6% (1)	6% (1)

Five of the six case studies identified in the last chapter were initiated by the federal or provincial government, following an agreement or based on a government sponsored program. The International Coalition was the only case study that was initiated by a private organization (Mennonite and Lutheran churches in this case).

The Canadian Round Tables recommend "self design" - i.e. that the participants themselves design the process. However, the summary highlights of the case study analysis in Chapter 4 suggest the initial forum structure does not necessarily have to be designed by the participants, only that it be designed flexibly enough to permit future modifications and the addition of sub-structures. For instance, HHRAP structure was initially designed by the initiators, while the participants who eventually joined the structure decided to modify it substantially after a few years of discussion. Similar modifications were made by the Manitoba Model Forest and The International Coalition participants.

5.0.5 Form of Legitimacy for the Forum?

The majority of respondents indicated that the forum should not have jurisdiction, only advisory powers. Several respondents mentioned that management powers could either evolve in time with experience or could also be developed if self-determination was negotiated with the provinces, the federal government and the First Nations. There were a number of respondents that felt the forum should have the authority to manage the natural resources in the watershed:

If the process is acceptable to all stakeholders, their decisions should be accepted by government, this could take the form of a Memorandum of Understanding where stakeholders sign off decisions made. Or, where the Memorandum of Understanding takes the form of a new vision of the watershed and the stakeholders sign on acceptance of this process (Appendix D).

Some also felt that the forum should have the authority to arbitrate disputes in the basin similar to the Prairie Provinces Water Board. Another respondent felt that under the auspices of a "Watershed Act", the forum should have all powers to govern resource use, management, protection and carry out environmental assessments (Figure 15). Another interesting response was that a "Management Authority" consisting of those with jurisdictional authority (provinces, federal government and First Nations) could be set up which could implement planning and management directions for the basin, and develop new collaborative approaches for resolving issues that were developed by the stakeholders (Figure 16). One of the cases identified in the last chapter initially had a single forum structure composed of all stakeholders which was eventually modified by the participants into two distinct structures - one composed mainly of citizen groups, the other mainly of government, industry, university and other larger institutions.

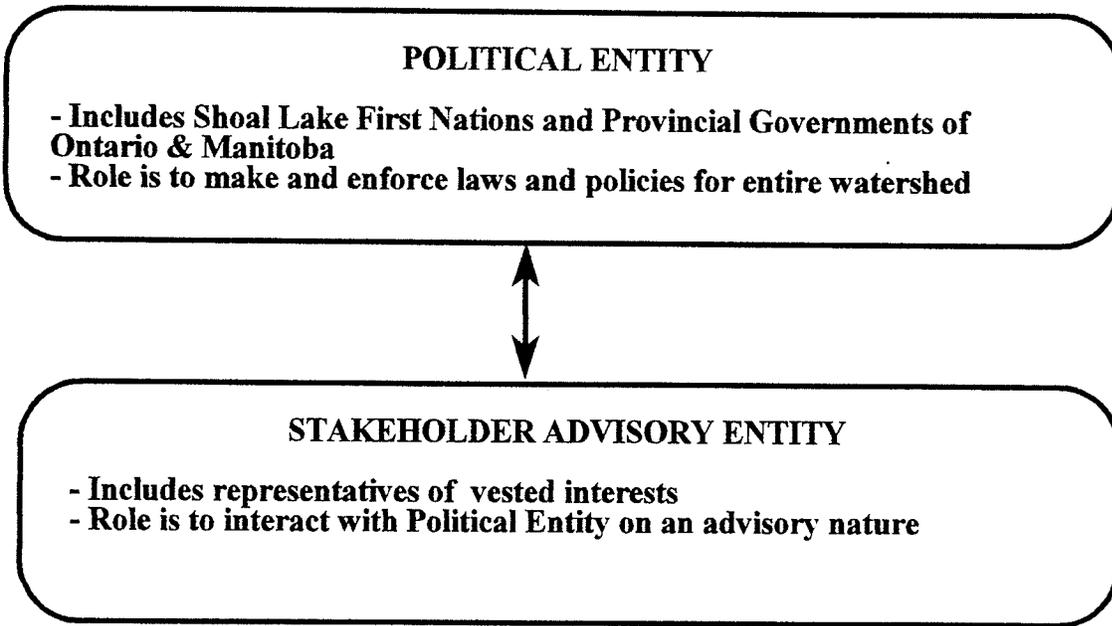


Figure 15: Structure of Forum Legitimized by a "Watershed Act"

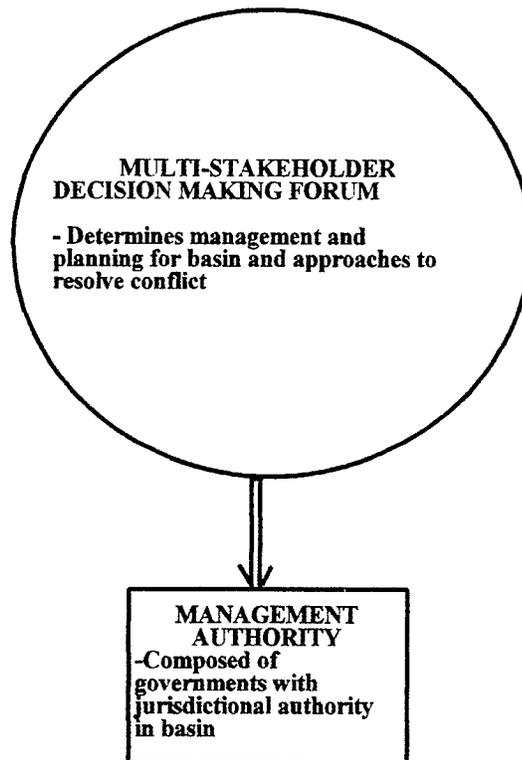


Figure 16: Structure of Forum Legitimized by a "Management Authority" Composed of Governments with Jurisdictional Authority in Basin

The conceptual building blocks outlined in Chapter 3 specify "*there must be political will to see the process through.*" This includes the degree of decision-making authority extended to the M-S D-M process and the weight accorded decisions made by the forum. None of the case studies examined in the last chapter had been accorded jurisdictional authority over resources. However, most had strong persuasive powers through their recommendations. For instance, the HHRAP respondent did not see the need for the RAP to have regulatory authority itself, but stressed the need for someone who sits on the forum to have the authority to regulate. For example, a recommendation of HHRAP is to have phosphorous loading targets ten times more stringent than present regulations. The municipality of Hamilton-Wentworth would look bad if they did not adhere to the more stringent guideline. And if they failed to comply, HHRAP would likely ask Environment Canada, which has a representative on the forum, to regulate them to this target.

5.0.6 What should be the Mandate or Goal of the Forum?

The three most commonly referred to mandates or goals for such a forum include:

- ▶ to bring people together, create understanding, and increase communication among stake-holders, as well as a "*brainstorming forum to try out now ideas on watershed management and planning and new collaborative approaches to resolve conflicts* (Appendix D)";
- ▶ sustainable use and management of resources;
- ▶ review and comment on development proposals, prepare watershed plan (as in Ontario-First Nations Watershed Agreement) and undertake public consultations.

Other mandates and goals recommended for the forum are to maintain water quality and to determine the allocation of available resources in the watershed.

The majority of M-S D-M case studies examined in the last chapter set a strategic direction, usually through a land use or management plan.

5.0.7 Forum Membership

The Canadian Round Tables recommend that membership should be "*inclusive not exclusive*" and that all parties with a significant interest in the issue should be involved in

the process. The case study analysis in Chapter 4 also found that the practical case examples of M-S DM tended to include all stakeholders, generally with sectoral representation on the forum.

As shown in Appendix D for question #16, there are almost as many different scenarios suggested concerning which stakeholders or interests should be represented in such a forum as there were respondents. The two most mentioned membership scenarios were:

- (i) all interests/stakeholders;
- (ii) only government - which most often included the Provinces of Manitoba and Ontario, the five Shoal Lake First Nations and the Federal Government (through Environment Canada).

Most other responses were variations of (i) and (ii). For instance some respondents indicated only vested interests and landowners should be considered stakeholders. A few felt that the City of Winnipeg or the International Joint Commission should also be represented on (ii). Twice respondents mentioned that the forum should include only the vested or affected interests, which in their view did not include the provincial or federal government which would instead act as resource support and facilitators of the process. Some respondents suggested stakeholders could be represented on two separate structures. One such case envisioned is where non-government stakeholders comprised a forum attached to the present Working Group or Committee structure of the Ontario-First Nations Watershed Agreement (1994). Another case envisioned is to have government stakeholders (provinces, First Nations and federal government) in one forum with a second forum composed of stakeholders with a vested interest : "*The first layer (political entity) makes and enforces laws and policies, while the second layer interacts with the first on an advisory nature* (Appendix D)". The HHRAP case forum identified in the last chapter evolved to the point of having stakeholders represented on two separate structures.

Other membership scenarios included: Shoal Lake First Nations and vested interests; all stakeholders but with the provinces and the federal government as only voting members; and all stakeholders represented but a limit on the size of the forum to under 10 representatives.

5.0.8 Making Decisions in the Forum:

The conceptual building blocks presented in Chapter 3 imply that decisions in the forum should be reached by consensus, however the definition of what constitutes consensus and what to do if it cannot be reached, should be determined by the forum participants at the outset of the forum. Other decisions to make at the outset include: defining goals and objectives of the process; determining representatives' responsibilities; confidentiality; limits of discussion; scheduling, agendas and deadlines; role of the facilitator or chair; and an interim procedure. Of the case studies examined in the last chapter, consensus was most often practiced in forum decision making, while Roberts Rules of Order may have been used as a formality following consensus.

The vast majority of respondents (88%) mentioned that members in the forum should make decisions using consensus or some form of it (Table 15). However, the three cases where consensus was defined are not the same. One respondent defined consensus as "*where everyone is in agreement*", while the two others defined it another way: "*it should not mean that all parties agree, only that decisions are accepted without objections being raised to them.*"; and "*provide an ability to see someone's point of view and compromise if can't reach consensus; where decisions are not imposed on one another.*" Another decision-making suggestion for the forum to use included a vote/comment combination where the provinces and First Nations each have one vote while the federal government, City of Winnipeg and stakeholders with a vested interest each have the opportunity to comment prior to a vote. Also one respondent suggested that the forum should not make decisions, but instead should only try to foster communication among stakeholders.

In the event that a disagreement cannot be settled using consensus, four main solutions were suggested by respondents:

- ▶ arbitrate through final decision-making authority (i.e. authority with jurisdiction or Government of Canada) or using an "Arbitration Board" composed of independent respected members of community;
- ▶ put issue aside to permit reflection or until more information becomes available on issue then re-visit it;
- ▶ invoke a conflict resolution process;
- ▶ have facilitator tackle issue.

On the topic of conflict resolution, just over half of the respondents felt there should be such a process. Only a few suggestions were provided on how the process should be structured. For those that were in favour of such a process, most suggested that the group should decide on the type of conflict resolution process to use, perhaps in conjunction with the facilitator, or that this was a role for the facilitator. Many noted that the final decision should be made by a higher decision-making authority or arbitrator.

Respondents generally felt that a facilitator, mediator or chair should be used to run forum meetings (75%) and that it should be an impartial person, acceptable to all forum participants. The role most often mentioned was for the facilitator to "*keep the process on track*", by "*directing traffic*", prioritizing issues and putting disagreements aside to be dealt with later. Other roles include: assuring all parties have the opportunity to express their views; taking on secretarial functions; mediating disputes; bringing the parties together; defining the process, challenging issues and proposing creative solutions. One respondent felt that a CEO or executive manager would be preferable to a facilitator and would format meetings and implement the decisions of the forum.

All respondents who felt a facilitator should be used to run forum meetings indicated that the group should consensually decide on who the facilitator should be. On a couple occasions it was mentioned that an interim facilitator could be hired to initiate the process, but that a permanent facilitator should be chosen by the forum.

Half of the respondents indicated that there were issues which should not be addressed by the forum, while many (31%) felt that all issues should be brought to the table. These people cited the following reasons for permitting all issues at the table:

- ▶ in order to be non-restrictive; to decrease resentment and barriers; forum should be able to advise on anything; if includes all stakeholders forum should have a balanced approach to all issues.

The list of "non-negotiables" included:

- ▶ jurisdictions; treaty rights; legislation and policies; taxation rights or revenue sharing; placement of a moratorium on development; Tripartite Agreement (between

the City of Winnipeg, Province of Manitoba and Shoal Lake First Nation #40); and challenges to the City of Winnipeg's authority to draw water from the lake.

5.0.9 Matters that are Similar to, could Keep Interests Away from, or could Interfere with the Forum

The majority (69%) of respondents mentioned matters that needed to be dealt with before certain interests could become involved in such a forum. Those most indicated include:

- ▶ *political will;*
- ▶ *First Nations acceptance of legitimacy of other stakeholders* (this problem of getting the First Nation stakeholders involved in and supportive of the process was also highlighted in the case study analysis in Chapter 4);
- ▶ *lack of agreement among 5 Shoal Lake First Nations;*
- ▶ *building of trust between Province of Manitoba, City of Winnipeg and the Shoal Lake First Nations;*
- ▶ *jurisdictional issues, and legal clarification of who water belongs to.* In the Summary, following the section on Interprovincial Water Management (section 2.4.3), the Remedial Action Plans for the Great Lakes prove that jurisdictional issues are surmountable, provided the political will exists.

Activities that were similar to or which could interfere with such a forum most often mentioned by respondents include: the Ontario-First Nations Watershed Agreement; environmental assessments (Ontario provincial or Canadian Environmental Assessment Act) such as the designation on the Consolidated Professor Mine; the Forest Management Plan and Advisory Group; the moratorium on the walleye fishery; and politics in general. Other activities include the Winnipeg-Manitoba-Shoal Lake First Nation #40 Tripartite Agreement; Lake of the Woods Control Board; Kenora Land Use Guidelines Restricted Area Order; activities of Shoal Lake First Nation #40; and misinformation from environmental lobbyists from Winnipeg.

5.0.10 Ensuring Openness and Accessibility of the Forum to the Community

The case study analysis presented in the last chapter suggests communicating effectively with outside interests is important to the process. Most respondents indicated that the

representatives on the forum should be responsible for ensuring their constituencies are kept informed and that their input is relayed to the forum. One suggestion was that *"each representative should develop its own communications plan which should be monitored by the multi-stakeholder forum to ensure it is followed (Appendix D)."* Other commonly referred to suggestions include using the media and advertising, and holding public forums and open houses. One respondent suggested the meeting chair could act as a spokesperson for the forum, having certain forum meetings open to the public, and having the minutes made available to the public.

5.0.11 Information Sources to Assist Forum and Other Comments/Suggestions

The variety of information sources mentioned by respondents generally included other forums, processes and technical data bases. The forums and processes mentioned include:

- ▶ the Sisiska Confederacy of Alberta, which is a First Nation with an indigenous management plan;
- ▶ the Shoal Lake First Nation #39 Indigenous Management Plan (unavailable for distribution at present);
- ▶ the St. Croix River Stakeholder Group (New Brunswick) which is Advisory to the International Joint Commission;
- ▶ the Great Lakes Water Levels Reference Public Advisory Committee;
- ▶ the Riding Mountain National Park 5-Year Management Plan process (Chapter 4);
- ▶ the Nishinabi-Aski Nation (NAN) treaty negotiations in Ontario;
- ▶ a time-effective decision-making method called the "Search Process", whereby a larger group breaks into smaller focus groups to tackle issues (Appendix D, #24);
- ▶ technical data are available through the Ontario Ministries, and the City of Winnipeg Waterworks, Wastes and Disposal Department.

General comments and suggestions during the surveys included stressing the importance of *"political will"* for initiating the multi-stakeholder process and having top decision makers participate in the process. Another comment stressed the importance of keeping the political and technical sides separate. Finally, one respondent made the novel suggestion to: *"perhaps kick-off the forum with a conference where all interests could attend and brain-storm ideas, present papers, etc., on how forum could proceed, be structured etc."*

5.1 CHAPTER SUMMARY

The results of the Shoal Lake Basin Stakeholder survey presented in this chapter, with the exception of four of the Shoal Lake First Nations whose views are unknown, highlights the existence of support for a M-S D-M process and a general will among the stakeholders to come to the table to discuss such a process. There was general agreement among stakeholders on many aspects of a M-S D-M process. Many of these aspects were echoed by the Canadian Round Tables and the conceptual building blocks presented in Chapter 3, and by the practical M-S DM case studies discussed in Chapter 4.

The highlights of this chapter concerning the views of the Shoal Lake basin stakeholders include:

- ▶ all stakeholders surveyed have a reason to participate in a M-S DM process;
- ▶ sustainable development including benefits to First Nations is the general vision for the future of the Shoal Lake basin;
- ▶ there are unresolved conflicts or the potential for them in the Shoal Lake basin;
- ▶ general support for M-S DM process and will among stakeholders surveyed to enter into discussion on such a process;
- ▶ government partnership, including First Nations, should be used to initiate the process;
- ▶ M-S DM forum should not have jurisdictional powers, yet the forum should include members who do possess such powers;
- ▶ primary goal of forum should be to bring stakeholders together, create understanding and increase communications, while development of a land use or management plan should be secondary;
- ▶ forum should use consensus decision making, and have participants determine the process to follow in situations in which consensus cannot be reached;
- ▶ use independent facilitator to run forum meetings at least at the outset, a chairperson can be used once process initiated;
- ▶ forum should be open and accessible to community.

Problem areas highlighted in this chapter include:

- ▶ membership on forum - whether forum should be inclusive of all interests or solely composed of the various government entities having jurisdiction, including First Nations;
- ▶ First Nations acceptance of legitimacy of other stakeholders and their willingness to participate in the forum;
- ▶ political will to see the process through;
- ▶ resolution of jurisdictional issue - mentioned that this issue may need to be resolved before certain interests would come to the table. However, the responses to another question indicate that certain respondents felt that jurisdictional issues should be "non-negotiable" at the table and actually fault these issues with the undermining of the Ontario-First Nations Shoal Lake Watershed Agreement initiative.

These highlights are incorporated into the M-S DM model for basin planning at Shoal Lake presented in the next chapter.

Chapter Six

MULTI-STAKEHOLDER DECISION-MAKING MODEL FOR SHOAL LAKE BASIN PLANNING

This chapter will build on the last three chapters and combine the results of the Conceptual Building Blocks for M-S D-M, the Case Study Survey Analysis and the Comments from the Shoal Lake Basin Stakeholders Concerning the Viability for a M-S D-M Forum, to satisfy the requirements for objectives 3 and 4 of the research. These two objectives include determining which of the conceptual, practical and Shoal Lake basin stakeholder-endorsed building blocks are appropriate for decision making by a Shoal Lake basin planning body; and the design of a multi-stakeholder decision-making model for basin planning in Shoal Lake.

Does the Shoal Lake basin contain the initial building blocks to initiate a M-S D-M forum? The chapter will begin by re-examining these five initial conceptual building blocks presented in Chapter 3 ("Deciding on the Process") to see if these exist in the case of Shoal Lake (Table 16). If these initial building blocks exist, then a M-S D-M process may be appropriate.

Building Block	Does Building Block Exist in the Shoal Lake Basin?		
	YES	NO	UNSURE
<i>I. Unresolved conflict or potential for conflict.</i>	X		
<i>II. All key stakeholders have incentive to seek a decision by consensus.</i>			X
<i>III. All stakeholders support M-S D-M process.</i>			X
<i>IV. Political will to see the process through</i>			X
<i>V. Presence of a champion</i>		X ²	

²Note suggestion to use a conference to initiate M-S D-M process.

6.1 EXISTENCE OF PRECONDITIONS AT SHOAL LAKE FOR A M-S DM PROCESS

I. There must be an unresolved conflict or potential for conflict.

Given the history of the issues presented in the second chapter of this report, there undoubtedly exists unresolved conflict and the potential for further conflict. The main areas identified as issues are:

- First Nations Economic Cultural and Spiritual Resource Base;
- Drinking Water;
- Mining;
- Tourism; and
- Living Resources.

II. All key stakeholders have incentive to seek a decision by consensus.

Since the views of four of the five Shoal Lake First Nations, which are key stakeholders due to their jurisdiction in the basin, were not surveyed, there is uncertainty as to whether this building block exists. Judging from the stakeholder survey results, all except one unsure respondent felt that the development of a M-S D-M forum to address issues and management in the Shoal Lake basin was a viable idea. The unsure respondent was not against the idea of a M-S D-M forum, only against the idea of starting another one on top of the present Ontario-First Nation Shoal Lake Watershed Agreement.

Furthermore, 88 percent of stakeholders (14 of 16 respondents) surveyed thought that decisions in such a forum should be made by consensus. And all of the organizations surveyed had prior experience working in a consensus process (Table 15). One of the respondents felt that stakeholders with jurisdiction should vote on decisions which also bears uncertainty as to whether this building block exists.

III. All stakeholders must support the M-S D-M process.

It is difficult to determine the extent to which all stakeholders are willing to provide support to such a forum in terms of time and other resources. This is particularly evident in the case of the four Shoal Lake First Nations who were not surveyed. However, the vast majority of

stakeholders surveyed indicated that a representative from their organization would be prepared to meet over the next year to further plan a M-S D-M forum.

The support of several other stakeholders (besides the non-participating First Nations) is also uncertain. However, as described earlier, several of them felt that they were not stakeholders, and of the remaining agencies and groups (hydro, forestry, mining, university, cottage, citizen), none are expected to pose any negative implications for the research. The resource-based agencies are already involved in aspects of public participation in decision making through such processes as environmental assessment. University, cottage and citizen groups strive for greater involvement in the decision-making processes that affect them - in fact the mandate for the citizen group (Winnipeg Water Protection Group) is to promote a basin-wide resource decision-making forum for Shoal Lake.

IV. There must be political will to see the process through.

Political will was seen by certain stakeholders as a concern for the success of this process. This is evident in the non-participation by four of the five Shoal Lake First Nations from the stakeholder survey. Without their support the process can not be initiated. Furthermore, it was mentioned by one respondent involved with the Ontario-First Nation Shoal Lake Watershed initiative: *"if this fundamental step doesn't work, then another one would not be worthwhile (not worth it to put another process on a process), therefore government would likely want to back out; need momentum on which to build, and that momentum hasn't mobilized in the case of Shoal Lake (Appendix D)."*

However, on a more positive note, besides the respondent above, all of the political and bureaucratic stakeholders surveyed were willing to enter into such a M-S D-M process. Many were in fact quite anxious to get involved in such a process (i.e. *"let's get on with it!"*) and already had discussed this with their representatives: *"Have already determined who would be the lead on this to help process along"*; and their representative *"... is ready to meet today (Appendix D)."*

V. The Presence of a champion.

An influential, widely respected person or entity supporting the consensus process is not essential but can provide initial credibility to its development and the necessary excuse for adversaries to work together.

Most respondents to the stakeholder survey thought that either a government partnership, the federal government or the Shoal Lake First Nations would be the likely candidates to initiate such a process. However, it was also mentioned that there was not a lot of universal respect or trust in any one of these candidates.

As there was not a lot of consensus over what individual or entity possessed the necessary characteristics to get the process going, another idea mentioned by one of the stakeholders was to hold a conference to kick-off the M-S D-M process. The conference could be open to all interests and would serve as a non-binding, non-confrontational brain-storming session at which different ideas could be circulated on how to organize such a process and what form it should take.

6.2 M-S D-M MODEL FOR SHOAL LAKE

The following model is presented in four phases - (1) Start-Up, (2) Search for Common Ground, (3) Establishing the Rules of the Process and (4) Making Decisions and Evolution of the Forum (Figure 17). As pointed out in the previous section, there is uncertainty concerning support of the process by the four First Nations which were not surveyed. The existence of this crucial building block must be stressed. Without support from these four First Nations, any efforts at initiating such a process are likely doomed to failure from the outset (see Recommendations in Chapter 7).

START-UP PHASE

1. A partnership consisting of the provinces of Ontario and Manitoba, the Shoal Lake First Nations and the Government of Canada must be entered into. This partnership should be consolidated through a political agreement or a government sponsored program appropriate

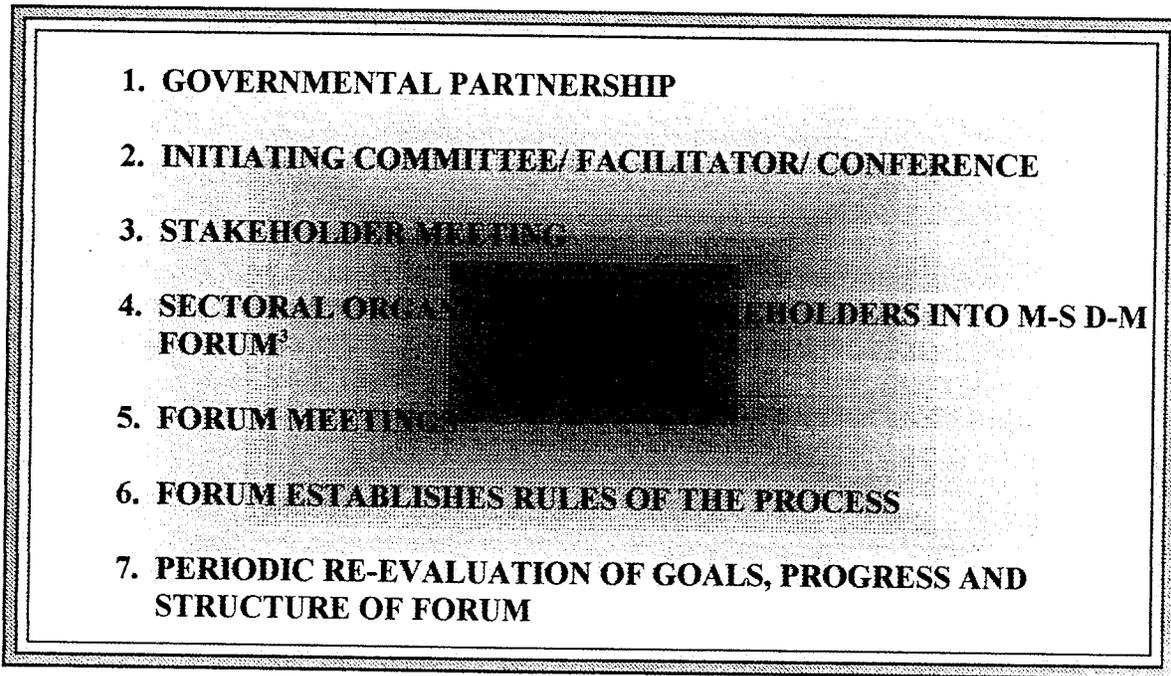


Figure 17: Multi-Stakeholder Decision-Making Model/Strategy for the Shoal Lake Basin

for basing a basin planning M-S D-M process upon. The purpose of the partnership is to show that all parties support the M-S D-M process and that the political will exists to initiate such a process. The idea for a government partnership was a highlight of the Shoal Lake basin stakeholder survey and government also was the initiator in five of the six case studies examined in Chapter 4. Political will to see the process through must be provided through time, funding and other resources.

The modified Arnstein's ladder presented in Section 3.4 and the two issues of government accountability if their decision-making authority is devolved to stakeholders and the accountability of the stakeholders who receive this decision-making authority, pose implications in the case of Shoal Lake. The devolution of authority to Shoal Lake basin stakeholders would be difficult to realize due to the present legislative regime and the lack of precedence, as well the majority of stakeholder respondents to the survey felt that the forum should only have advisory powers. Consequently, a partnership (the sixth level on the

³ The purpose of the forum is to: (i) resolve conflict; (ii) foster communication and understanding among stakeholders; (iii) develop planning and management directions for problem areas.

ladder) is advocated by this research. In time and if so desired, a successful partnership with the Shoal Lake basin stakeholders could eventually develop into a forum with greater decision-making authority.

2. Representatives appointed by the partnership (five Shoal Lake First Nations, Manitoba, Ontario and Canada) will form an "Initiating Committee" to help start the M-S D-M process. A representative from each of these entities will reside on the committee (eight representatives in all). One of the first tasks of this committee will be to select a facilitator and work with this facilitator to help initiate the process by bringing the Shoal Lake basin stakeholders together at a conference. An organization such as the Canadian Water Resources Association (CWRA) or the International Coalition for Land/Water Stewardship in the Red River Basin (TIC) could also serve as the facilitator for the conference. A conference to "kick-off" the M-S DM process was one of the suggestions made in the stakeholder survey. The conference will serve to get interests together at a neutral setting where various aspects of Shoal Lake basin issues and resource management and planning can be explored.

3. The facilitator and Initiating Committee invite stakeholders to a meeting, run by the facilitator, to discuss the idea of a M-S D-M forum, and review topics and ideas presented at the conference. A list of Shoal Lake basin stakeholders is provided in Table 17. This discussion provides stakeholders with a general sense of what a M-S D-M process is about, how it might proceed, what can be expected from it in terms of participation in management and planning decisions of the basin, and what commitment would be required of stakeholders on the forum. The primary goal of the forum is to bring stakeholders together, and create understanding and increase communication. Development of a land use or management plan is secondary.

4. The interested stakeholders from the meeting described in (3) above are organized into sectors by the facilitator and Initiating Committee. The stakeholders in these sectors are then asked to choose their representatives for forum meetings.

Table 17: Comprehensive Shoal Lake Basin Stakeholder List⁴

<p><u>Ontario Provincial Agencies:</u></p> <ul style="list-style-type: none"> -Ontario Ministry of Environment and Energy -Ontario Ministry of Natural Resources -Ontario Ministry of Northern Development and Mines -Ontario Native Affairs Secretariat -Ontario Hydro -Ontario Ministry of Culture, tourism and Recreation - Ontario Ministry of Urban Affairs, District Health Council - Ontario Ministry of Urban Municipal Affairs <p><u>Manitoba Provincial Agencies:</u></p> <ul style="list-style-type: none"> -Manitoba Department of the Environment -Manitoba Department of Natural Resources (Parks and Natural Areas, Water Resources) -Manitoba Department of Urban Affairs -Manitoba Department of Northern Affairs - Manitoba Department of Energy and Mines - Sustainable Development Coordination Unit <p><u>Federal Agencies:</u></p> <ul style="list-style-type: none"> -Indian and Northern Affairs Canada (Thunder Bay) -Environment Canada (Environmental Conservation -Trans-Boundary Waters Unit, Prairie and Northern Region; Environmental Protection - Prairie and Northern Region and Ontario Region; Water Issues Division of Environmental Services Branch, Ontario Region) - Human Resources Canada - International Institute for Sustainable Development - Foreign Affairs Canada <p><u>International Agencies:</u></p> <ul style="list-style-type: none"> - International Joint Commission (IJC) - Lake of the Woods Control Board <p><u>Winnipeg Municipal Agencies:</u></p> <ul style="list-style-type: none"> -Waterworks Waste & Disposal Department -Mayor's Office 	<p><u>First Nations (FN):</u></p> <ul style="list-style-type: none"> -Shoal Lake FN No. 40 -Shoal Lake FN No. 39 -Shoal Lake FN Northwest Angle No. 37 -Shoal Lake FN Big Island -Shoal Lake FN Northwest Angle No. 33 -Ontario Chiefs Advisory Services (Kenora) -Treaty #3 Office (Kenora) -Bimose Tribal Council (Kenora) - Kenora Area Chiefs - Association of Manitoba Chiefs -Business Liaison and Aboriginal Affairs (Winnipeg) <p><u>Public Groups/Others:</u></p> <ul style="list-style-type: none"> -Lake of the Woods Economic Development Corporation -Whiteshell District Association - West Hawk, Falcon Lake Business Community -Lake of the Woods Property Owners Association -Academic/Research (University of Winnipeg, Natural Resources Institute (University of Manitoba), Red River Community College, Brandon University and College) -Mining Companies (Consolidated Professor, Kenora Prospectors and Miners (KPM)) - Northwestern Ontario Prospectors Association -Ontario Mining Agency -Prospectors and Developers Association - Forestry Companies (Tolko Industries) - South-East Quota Association -Kenora Independent Loggers Association -Ontario Federation of Anglers and Hunters -Winnipeg Water Protection Group -Eco-Network (Winnipeg) - The International Coalition for Land/Water Stewardship in the Red River Basin
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⁴ In the course of the stakeholder survey, the Preliminary List of Shoal Lake Basin Stakeholders (Table 2) was shown to respondents and they were asked to mention any others they thought should be included on the list. Table 17 comprises the additions to the Preliminary List.

SEARCH FOR COMMON GROUND PHASE

5. Monthly, facilitated meetings are scheduled for the forum in alternating locations in and around the basin. At this point the Initiating Committee members are integrated into their particular stakeholder sector on the forum as equal representatives. The goal of these initial meetings is to get participants to know one another, and their various understandings, views and perceptions. A fault in the case studies of M-D DM examined earlier in this research was that there had been little attempt to build a common understanding of the values and perceptions of forum members. Informal workshops, presentations by participants and guest speakers should all be used to promote communication and teamwork. For instance a cross-cultural workshop hosted by the First Nations, field trips to various sites around the basin, or a "fish-fry" to "break the bread" are all useful activities. Once participants have a better understanding and respect for the diverse values, interests and knowledge of the parties involved, the focus of meetings should be on getting participants up-to-speed on issues facing the basin, the technical side to these issues, and on the various factors of resource management and planning.

ESTABLISHING THE RULES OF THE PROCESS

6. Once forum participants have established a good understanding of one another and an understanding of the various issues facing the basin, they can, with help from the facilitator, establish the rules of the M-S D-M process. Workshops or presentations on such topics as consensus building and conflict resolution may be helpful at this point in the process. A lack of training opportunities in these topics was cited in the M-S D-M case study analysis of Chapter 4.

- ▶ *Define goals and objectives of the process*

The goal of the process should be to create understanding, communication, and resolve conflicts among stakeholders as well as to develop sustainable use and management of resources. Specific objectives of the forum should include: sustainable development, ensuring development benefits the First Nations, and environmental protection. Also, as with the case study examples, the forum should set a strategic direction in the form of a land use or management plan.

- ▶ *Define consensus and what to do if it can not be reached*

Survey respondents defined consensus in terms of not requiring all parties to agree with a decision, only that they are not so against it that they cannot accept it. Furthermore, decisions are only to be made once all points of view are spoken and understood, and decisions are not imposed.

In the event that consensus cannot be reached on a decision, two solutions are suggested. A conflict resolution process (which could be as simple as putting the issue aside to tackle at a later date or until more information was made available), or reference to a higher decision-making authority (arbitration board or authority with jurisdiction on issue) should be used to make the decision. Of the case studies surveyed, most would have the forum vote to solve disagreement on an issue, yet this was used as a last and rarely used resort.

- ▶ *Determine staff to hire to coordinate, administrate and support forum*

Before staff are hired, these duties, as well as general secretarial duties, are performed by the facilitator and the Initiating Committee.

- ▶ *Determine representatives' responsibilities*

Representatives must be accountable both to the forum as well as to their constituencies. This includes the power for them to speak and make decisions on behalf of their constituencies. Fulfilling this role requires that they ensure that their constituencies are kept informed of forum activities as well as receiving input from the constituencies and providing it to the forum. According to the case study surveys, the method of providing feedback to the constituencies and input from them tended to be at the discretion of the participants and the organizations they represented. However, as mentioned by one of the stakeholders "*each representative should develop its own communications plan which should be monitored by the forum to ensure it is followed* (Appendix D)."

- ▶ *Keep participants informed by sending them minutes of meetings, newsletters and annual reports*

The staff, once hired, will have the responsibility for providing these items.

- ▶ *Determine confidentiality of discussions and information*

The issue of confidentiality of information should be determined by the forum participants at the outset of the process. It would appear from the stakeholder surveys that some of the meetings should be open to the public and that the meeting minutes should be made available to the public.

- ▶ *Determine limits of discussion (non-negotiables)*

The experiences from the M-S D-M case studies reviewed in Chapter Four and the views expressed in the stakeholder surveys, suggest that certain items should be considered non-negotiable for discussion by the forum. These should be verified by the forum members at the outset of the process, but would likely include treaty rights and other legislation.

The topic of jurisdictional issues appears to be a "catch-22" situation. Resolution of jurisdictional issues is mentioned as being something that may need to be resolved before certain interests would come to the table. However, jurisdictional issues were also cited as "non-negotiable" at the table and actually were faulted with the undermining of the Ontario-First Nations Watershed Committee Initiative.

- ▶ *Determine scheduling, agendas, deadlines*

Determining when, where and the frequency of meetings as well as what to talk about at them should be decided by the participants at the outset of the process. Realistic deadlines for the various milestones on the process need to be established. A protocol for establishing deadlines within which to reach decisions should also be determined. In the M-S D-M case study examples, meetings often rotated to various locations in the region, while the frequency of meeting were between one and four months apart. The agenda for meetings should be set by the participants at the end of each meeting, while further items can be added as they arise by the chair or facilitator into a draft agenda which is circulated to members prior to the next meeting.

- ▶ *Determine role of the facilitator or chair*

The participants should decide if a facilitator is required to run forum meetings or if a meeting chair could be selected from the group to run meetings, in which case the facilitator

could be called upon on an as-needed basis. In either case, the facilitator or chair should be acceptable to all forum participants. Their role is to conduct the meeting process (i.e. keep it on track) which includes making sure the agenda is followed, ensuring all parties have the opportunity to express their views, mediating disputes, and putting disagreements to one side. This role is substantiated by both the M-S D-M case study surveys and the stakeholder surveys.

- ▶ *Determine monitoring on progress of agreements*

The forum members need to discuss how decisions and projects will be tracked to ensure progress is made and decisions are acted upon.

- ▶ *Determine interim procedure*

The participants should determine at the outset of the process what happens to the various activities on-going or planned in the basin while the process is being designed.

- ▶ *Partner with outside interests*

The forum should proactively seek out partners for projects - as a way to help with funding of projects, as a way to ensure projects have wide support in the community, and as a way of promoting the forum. Partnering was cited as an important aspect of the process in the M-S DM case studies.

- ▶ *Determine how new members can join forum*

If the forum is to be an on-going and open process, the members will have to decide how new people can be added on as time goes by and how forum participants should be replaced.

- ▶ *Be open and accessible to and communicate effectively with outside interests*

This was cited as important both by the Shoal Lake basin stakeholders, and in the M-S D-M case studies. Some of the methods mentioned in the case study analysis include having certain meetings open to the public, workshops, feedback from participants to their constituents, news letters and media coverage.

MAKING DECISIONS AND EVOLUTION OF THE FORUM

7. After a few years, forum members should have a good understanding of one another and experience with the complex nature of making resource management decisions. At this point participants may wish to reevaluate their goals, the progress made at achieving these goals and the structure of the forum. For instance, members of the Hamilton Harbour RAP modified their forum into two separate structures after a few years.

6.3 CHAPTER SUMMARY

As shown in Table 16, the existence of many necessary components required for a M-S D-M process in the Shoal Lake basin are still uncertain. Political will to see the process through, the support of all stakeholders, and the incentive for all stakeholders to seek a decision through consensus are three of the uncertain preconditions for a M-S DM process existing at Shoal Lake. The model presented in this chapter outlines a framework to follow to develop M-S DM for basin planning at Shoal Lake. Further recommendations to deal with the uncertainties presented above and for development of the model are provided in the next chapter.

Chapter Seven

CONCLUSIONS AND RECOMMENDATIONS

7.0 OVERVIEW

The research presented in this practicum was conducted to fulfil the study goals and objectives outlined in Chapter One. The essence of this research is that the numerous conflicts and issues which have occurred in the past, are occurring at present, and will continue to occur in the future, can be resolved through a process that promises to foster communication and understanding among watershed stakeholder groups and has these groups develop planning and management approaches for problem areas. The recommendations of this process, termed "multi-stakeholder decision-making", for the Shoal Lake basin follow an extensive background description of the water and land use issues in the basin, an analysis of the mechanisms and processes used by multi-stakeholder organizations across Canada, and through the views of many of the Shoal Lake basin stakeholders. A model for multi-stakeholder decision making for basin planning in Shoal Lake is presented in the preceding chapter.

7.1 CONCLUSIONS

Discussion of the objectives, main findings, conclusions and recommendations of the practicum research is provided below, while a simplified listing of these is presented in Table 18.

The first objective of the practicum was to identify and document the water and land use issues in the Shoal Lake basin. As revealed through a literature review in Chapter Two, there are five categories of such issues. These include:

- First Nations Economic Cultural and Spiritual Resource Base;
- Drinking Water;
- Mining;
- Tourism; and
- Living Resources.

Table 18: Listing of the Practicum Research Results

OBJECTIVES	MAIN FINDINGS	CONCLUSIONS	RECOMMENDATIONS
1) To identify and document water and land use issues in the Shoal Lake basin;	<ul style="list-style-type: none"> - several chronic issues in Shoal Lake basin involve a widely dispersed group of stakeholders - interjurisdictional externalities complicates resolution of issues; - previous inter-governmental agreements have not led to resolution of issues 	<ul style="list-style-type: none"> - alternative method should be used to resolve issues by uniting stakeholders, and fostering communication and understanding among them 	<ul style="list-style-type: none"> - Multi-Stakeholder Decision Making should be investigated for use in the Shoal Lake basin
2) To identify and evaluate the mechanisms and processes (Building Blocks) used by various organizations to achieve cooperation, collaboration and consensus among the stakeholders in an integrated resource management decision-making process;	<ul style="list-style-type: none"> - 10 Conceptual Building Blocks for M-S DM identified - Practical Building Blocks identified 	<ul style="list-style-type: none"> - certain Building Blocks are conducive for M-S D-M 	<ul style="list-style-type: none"> - use the Building Blocks found to be conducive for M-S DM to develop a survey to elicit the views of the Shoal Lake basin stakeholders on M-S DM
3) To determine which mechanisms and processes (Building Blocks) identified in (2) are appropriate for decision making by a Shoal Lake basin planning body; and	<ul style="list-style-type: none"> - general support for M-S D-M process by Shoal Lake basin stakeholders and general will to discuss such a process - general agreement by stakeholders on many of the Building Blocks for M-S DM - several problem areas highlighted - refusal of four of the Shoal Lake First Nations to participate in research leads to uncertainty over the existence of a few of the necessary precursors for M-S DM 	<ul style="list-style-type: none"> - need to determine if the four Shoal Lake First Nations which refused to participate in research support M-S D-M process for the Shoal Lake basin - incorporate Building Blocks agreed on by stakeholders into M-S D-M model for Shoal Lake - model should address problem areas raised by stakeholders 	<ul style="list-style-type: none"> - Shoal Lake First Nation #40, as the only First Nation to participate in the research, should take onus to determine if the other Shoal Lake First Nations support M-S D-M process - develop M-S D-M model for Shoal Lake and alternatives to model if all Shoal Lake First Nations do not support it
4) To design a multi-stakeholder decision-making model for basin planning in Shoal Lake.	<ul style="list-style-type: none"> -governmental partnership advocated by stakeholders and found to be most used method in case studies as means to initiate M-S D-M process - third-party facilitator favoured to help initiate M-S D-M process - basin conference suggested as way to "kick-off" process 	<ul style="list-style-type: none"> - base model on partnership using consensus with governments of Shoal Lake basin - governmental partnership should hire facilitator to help initiate process - practicum research or summary of it should be provided to stakeholders as an information package describing basin issues and M-S DM 	<ul style="list-style-type: none"> - if all Shoal Lake First Nations (SLFN) support M-S D-M process, implement it as per specifications of research - if all SLFN do not support process, SLFN #40 or the Ontario government should investigate reasons why and attempt to overcome them - if all SLFN do not support process and this situation cannot be remedied, 3 options exist: <ul style="list-style-type: none"> (i) governments of Shoal Lake basin should host a basin conference; (ii) renew emphasis on Shoal Lake Watershed Agreement; (iii) shelve process;

The difficulty with resolution of these issues is to find the balance between regional and local economic development through land and water use, and environmental protection, particularly maintenance of water quality. Other complicating factors to this balance include a diverse and widely dispersed group of stakeholders within and outside the basin, the Shoal Lake First Nations and their push for self-determination through self-government, and the large number of jurisdictions in the basin. Two First Nation communities live in the basin while three others use its' resources. These people wish to sustain their livelihood from it as they have for countless years, and be able to have a say in the way the basin's resources are developed. Several levels of jurisdiction exist in the basin - two provinces, the federal government, an international body, a municipality, First Nations, as well as private land owners.

Four inter-governmental agreements have been signed in the past 15 years, yet none has thus far successfully led to resolution of the issues plaguing the basin and its stakeholders. Multi-stakeholder decision making is a process which has had success in resolving these types of resource issues. The process is designed to unite stakeholders and foster communication and understanding among them while simultaneously developing management plans for problem areas. The potential for M-S DM in the Shoal Lake basin is investigated in this research.

The second objective of the research was to identify and examine the mechanisms and processes in resource management organizations which promote cooperation, collaboration and consensus among stakeholders. In Chapter One several multi-stakeholder resource management case studies were identified. In Chapter Three, the conceptual mechanisms and processes for multi-stakeholder decision making were identified using the available literature on this topic. In Chapter Four, the case studies identified in Chapter One were revisited and the operational mechanisms and processes used by these cases were examined through the analysis of survey questionnaires conducted with the orchestrators of these cases. In all, ten Conceptual Building Blocks and several Practical Building Blocks for M-S DM were identified in the research. A comparison of these two sets of building blocks found that certain building blocks tended to be conducive to M-S DM. These building blocks were used to develop a survey to elicit the views of the Shoal Lake basin stakeholders on M-S DM.

The third objective of the research was to determine which mechanisms and processes, identified in the literature and in the case studies, are appropriate for a Shoal Lake basin multi-stakeholder forum. A survey was conducted with government, First Nations, public groups and other stakeholders in the basin to determine their views on the viability of, and various aspects of a multi-stakeholder forum to resolve conflict and develop management approaches in the basin.

A finding of the survey was that there is support for a M-S D-M process, and the general will to discuss such a process among stakeholders. Furthermore, there is general agreement by stakeholders on many of the M-S D-M building blocks. These building blocks should be used to develop a model for M-S DM in the Shoal Lake basin. However, other findings of the survey include several problem areas such as disagreement over who should be given membership on the forum, whether the political will to see the M-S D-M process through exists, and what to do about jurisdictional issues in the basin. Furthermore, the refusal of four of the Shoal Lake First Nations (SLFN) to participate in the research, leads to uncertainty over the existence of a few of the necessary precursors for M-S DM at Shoal Lake. These precursors include existence of political will to see the process through, incentive for all stakeholders to seek a decision through consensus, and whether or not all stakeholders support the M-S D-M process (Table 16). Therefore, whether these First Nations support the idea of M-S DM must be determined because this will have a great bearing on the next steps to take for M-S DM in the basin. Shoal Lake First Nation #40 as the only SLFN to participate in the research should take the onus to determine the other First Nations' views. The elders from this First Nation are likely the most appropriate candidates for this task.. Depending on the outcome of the other Nations' views, several alternatives for the M-S D-M model need to be devised.

The final objective of the research was to design a multi-stakeholder decision-making model for basin planning in Shoal Lake. Based on the conceptual mechanisms and processes for multi-stakeholder decision making in Chapter Three, the results of the case study surveys in Chapter Four and the views of the Shoal Lake basin stakeholders themselves in Chapter Five, the viability for such a model in Shoal Lake was evaluated and ultimately the model itself is presented in Chapter Six.

Due to the constraints posed by the present legislative regime over devolution of government decision-making authority, the lack of precedence in this matter, and the general view of the Shoal Lake basin stakeholders, the model for M-S DM in the Shoal Lake basin should be based on a partnership using consensus. A partnership between the Shoal Lake First Nations, the Provinces of Manitoba and Ontario and the Federal Government, as represented through Environment Canada was a highlight suggested by the stakeholders, and the majority of the case studies surveyed had also been initiated by government. The government partnership representatives (Initiating Committee) should hire a third-party facilitator to help initiate the M-S D-M process. An organization such as the CWRA or TIC could also serve in the facilitator's role. A basin conference designed to bring stakeholders together to increase understanding of basin issues and to discuss options for management of the watershed, should be used to initiate the process. Furthermore, to increase understanding of Shoal Lake basin resource issues and M-S DM, the practicum research or a summary of it should be circulated to basin stakeholders who are potentially interested in joining such a forum.

Several resources in the form of funding, time, and in-kind contributions such as time, travel, meeting space and office supplies are required to implement the proposed M-S D-M process. These resources should be provided by the basin governments (Federal Government, Provinces of Manitoba and Ontario, and Shoal Lake First Nations - even though the SLFNs should only be expected to contribute in time). The government representatives on the Initiating Committee of the forum will be required to devote time to the process. Preparation of the partnership agreement will also require a certain amount of time and the provision of funding for legal fees (unless internal departmental staff are used). Funding is also necessary to fill the facilitator's position which would likely be full-time during the start-up period and on an as-needed basis afterwards. The conference will require a large amount of resources including time, volunteer effort and funding. Furthermore, a subsidy should be provided to stakeholders who require one in the form of partial or full reimbursement of transportation/lodging/registration costs to attend the conference. Based on an estimate provided by the TIC office, a 2-day conference of this type with 300 participants would cost between \$25,000 to \$50,000 to hold (Osborne, pers. comm., 1995). Further funding resources are required to run the forum including *per diem* salary and travel coverage to enable certain participants to attend monthly meetings, as well as administration

costs. Many of these costs may be offset through "in-kind" contributions. In order to provide a benchmark on the resources required to initiate and maintain a decision-making forum, the Shoal Lake Watershed Agreement required 3 years to prepare, and a further 2 years to bring to agreement (i.e. signing of agreement). Throughout this time, contribution funding to the Shoal Lake First Nations amounted to approximately \$400,000 annually and will likely continue for the duration of the agreement, while an internal departmental facilitator, and support staff were provided from the four Ontario ministries (Straight, pers. comm., 1995)..

If all SLFNs do not support a M-S D-M process, Shoal Lake First Nation #40 or the Ontario government should investigate the reasons why. If these reasons are surmountable, efforts should be made to correct them and the M-S D-M process implemented as specified. If the reasons are not surmountable, three fallback options exist. **The first fallback option** is to hold a workshop or conference on conflict resolution, and basin planning and management at Shoal Lake. The event should be made suitable for all basin stakeholder groups to attend. It should also serve as an "inquiry" into the Shoal Lake First Nations' vision for conflict resolution and basin planning and into what they would support in this regard. The Canadian Water Resources Association (CWRA), the International Coalition for Land/Water Stewardship in the Red River Basin (TIC) or a similar organization should be solicited to host the conference/workshop based on guidance from representatives from the Shoal Lake basin governments. The event could either be a "stand alone" smaller conference or workshop based on the Shoal Lake basin, or it could fit as a workshop in a larger conference already planned by an organization. The event should be held in either Winnipeg or Kenora to take advantage of the facilities at these locations and their proximity to the basin. Invitations for the event should be distributed to stakeholders identified on the comprehensive list of stakeholders (Table 17), as well as advertised in the communities asking them to present their views at the event, and listing how assistance to attend the event can be obtained.

The resources required for the conference should be provided by the basin governments. A committee made up of representatives of these governments should assist the organization hosting the event. Funding for the event should be made available through the federal government, the Provinces of Manitoba and Ontario and the City of Winnipeg. As

mentioned above, a subsidy should be provided to stakeholders who require one and the projected cost for such an event is in the order of. \$25,000 to \$50,000.

This first fallback option will still allow for progress to be made at resolving issues in the basin. At the least, the conference or workshop will serve as a non-confrontational meeting where stakeholders can meet and present their views, and everyone will gain a clearer understanding of the various perceptions of stakeholders and of how far apart their views may be on certain issues (which is one of the goals of M-S DM). Furthermore, the outcome of the conference may dictate future directions to follow for basin planning at Shoal Lake, and whether M-S DM will be a part of it.

The second fallback option is to renew emphasis on the Shoal Lake Watershed Agreement initiative between the Shoal Lake First Nations and Ontario, which stipulates soliciting the involvement of the Province of Manitoba and the federal government. Based on information obtained during the Shoal Lake Basin Stakeholder Survey (Appendix D), it appears one of the Shoal Lake First Nations may be terminating its support for this agreement. However, if the agreement is implemented in its entirety, with participation by all Shoal Lake basin governments (SLFNs, Provinces of Manitoba and Ontario and the Federal Government), it would definitely constitute an improvement over the present planning and management regime for the basin. Therefore, the basin governments should offer their support to keep this agreement on track. Implementing the conference or workshop mentioned above may be a useful event for the participants in the Watershed Agreement to attend, as it would help them to get a better perspective on how to proceed with implementing the terms of the agreement without committing them to actions which certain participants may be concerned about pursuing. Furthermore, the forum organized under the agreement (Watershed Committee and Working Group) may allow for other structures containing a wider diversity of stakeholder interests to be attached as sub-structures. Such a modification would facilitate stakeholder input on resource issues in the basin.

The final fallback option is the "Do Nothing Option" - simply to shelve the M-S D-M model until the situation among the Shoal Lake basin stakeholders is more favourable for initiating such a process. This is the least desirable option as it means maintaining the status

quo without facilitating resolution of basin resource issues. The consequences of doing nothing are that stakeholders will likely resort to the courts to settle resource management issues. There are several disincentives to using the judiciary to settle resource disputes. The judiciary is a time consuming and expensive process which results in "winners and losers". There is a loss of control over the decision by those involved in resource management and no chance for "public" input. The best decisions for resource and environmental protection may not be made through legal agreement. Only one issue can be dealt with at a time in a court proceeding, therefore decisions lack integration. Finally, if a judicial decision is unsatisfactory, the "losers" may decide to boycott the decision through civil disobedience. It is not beyond comprehension that resource issues at Shoal Lake could flare to the point of a serious standoff between governments and the First Nations. This has been seen in other resource management issues such as the recent month long standoff by Micmac Warriors over fishing rights on the Miramichi River in New Brunswick, as well as many others linked to the west coast fishery. Therefore, the disincentives associated with the courts and of more serious conflicts, provide an incentive to push for a softer approach. Multi-stakeholder decision making is about communication, understanding and keeping conflicts out of the judicial system.

The first two fallback options likely have the political will and stakeholder support to still allow progress to be made on resolving conflicts in the Shoal Lake basin which would be an improvement over the status quo.

7.2 RECOMMENDATIONS

Considering the findings from all aspects of this research, the following recommendations are derived and listed in order of priority. The step-wise progression of the recommendations is presented schematically in Figure 18.

1. Shoal Lake First Nation #40 should determine whether the other Shoal Lake First Nations support a M-S D-M process in the Shoal Lake basin, or the specific concerns they may have with the process.

2. (a) If all SLFNs support M-S D-M process, it should be initiated as specified in this research, including:
- the governments (Provinces of Ontario and Manitoba, Environment Canada, and the Shoal Lake First Nations) should consolidate a partnership based on a political agreement or on a government sponsored program to be used to base a M-S DM process for the Shoal Lake basin;
 - the governments should initiate the process by hiring a facilitator (or an organization such as CWRA or TIC) to help them with organizing a conference or workshop where all Shoal Lake basin stakeholders can be brought together to discuss the various issues surrounding Shoal Lake, ways of resolving them, and resource management in the basin;
 - the practicum research, or a summary of it, should be provided to the forum participants as a background information package to get them "up-to-speed" on the resource issues in the basin and on multi-stakeholder decision making.

- OR -

2. (b) If all SLFNs do not support M-S D-M process, or if SLFN #40 fails to determine if the other First Nations support a M-S D-M process, three fallback options exist:
- (i) Shoal Lake basin governments support a conference or workshop based on Shoal Lake basin conflict resolution and basin planning to be hosted by CWRA, TIC or a similar organization (event may also serve to determine what process SLFNs would support); the governments should follow-up on the findings of the conference;
 - (ii) Shoal Lake basin governments direct their efforts at implementing the Shoal Lake Watershed Agreement between the SLFNs and the Ontario government which stipulates involving the Province of Manitoba and the Federal Government;
 - (iii) shelve M-S D-M process until situation among Shoal Lake basin stakeholders is more favourable for such a process.

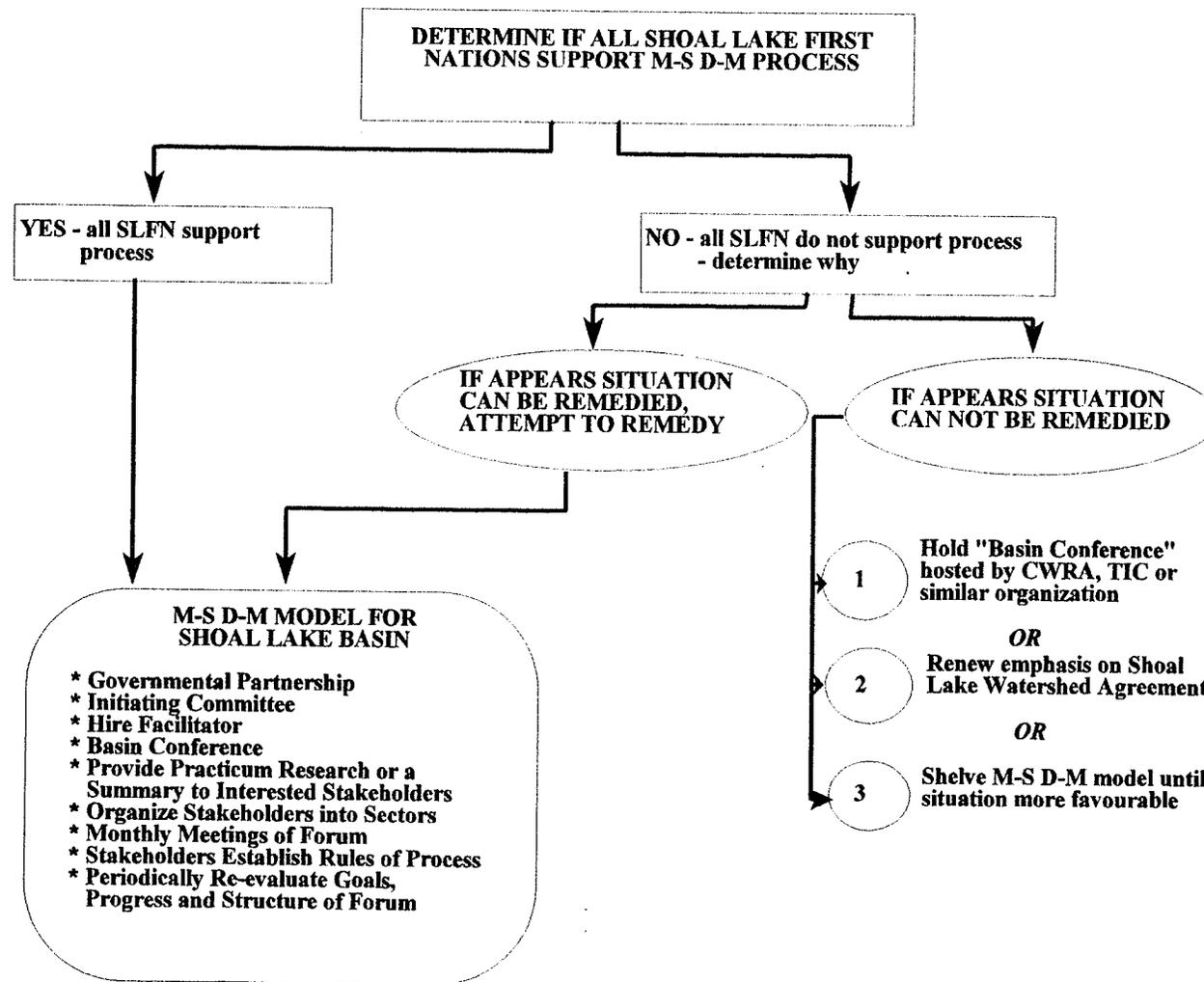


Figure 18: Research Recommendations Flow Chart

7.2.1 Concluding Remarks

The evolving realm of resource management in Canada opens the door to new frontiers in research. Increasing pressure on dwindling stocks of natural resources, the decline of governments' role in monitoring and management of these resources, and the First Nations push for self-determination through self-government are resulting in a greater number, frequency, complexity and magnitude of resource issues and conflicts. Given these forces, there are several directions future researchers could pursue, however, three priority directions for research flow from this practicum.

First, given the author's ethnic background, the practicum largely reflects a "Euro-Canadian" approach. Research dealing with the "Native-Canadian" perspective and more specifically the vision for resource management of each of the Shoal Lake First Nations (also referred to as an Indigenous Management Plan) would be of great use in furthering the recommendations of this practicum.

Second, given the trend in basin planning towards devolution of decision-making power from government to the resource users, (i.e. partnerships and delegated authority - Figure 11), what happens to accountability for decisions, and how do agencies respond to decisions that go against their legal mandate? For instance, how should a situation be handled where a local community is given the power to do the resource developments they want and will benefit from, yet it goes against government policy and is to the detriment of the larger public? Are legislative changes, or even changes to the Constitution required before decision-making authority can be transferred to stakeholders? This is a difficult area for which there is a virtual lack of precedence to study - making it a challenging research direction.

Third, a decision-making format that uses consensus and involves several people from diverse backgrounds and with diverse interests may not be a new concept, however it requires more practical experience. Development of a role-playing game or workshop/seminar which combines all of the attributes of multi-stakeholder decision-making could prove instrumental to familiarize those wishing to initiate, participate in, or learn more about a M-S DM process. The First Nations experience with consensus decision making makes them obvious candidates for such an initiative.

The merits of a process that resolves conflict and fosters communication and understanding among stakeholders while simultaneously develops planning and management directions are obvious - keeping resource issues out of the courts and in the hands of those who are best able to deal with them, and sound resource management decisions based on the will of stakeholders including the government agencies responsible for implementing them.

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APPENDIX A

Survey of M-S DM Case Studies

SURVEY OF MULTI-STAKEHOLDER DECISION-MAKING CASE STUDIES:

The purpose of this survey is to determine the effective and ineffective aspects for multi-stakeholder decision-making over a range of case studies across Canada which feature Multi-Stakeholder Decision Making (M-S DM) and deal with natural resource issues. The focus of the survey is on the interesting aspects of how decisions are made in the forum and how the forum deals with conflict - the emphasis is on process, not substance. The survey is being conducted as part of a Master's Thesis entitled "A Multi-Stakeholder Decision-Making Model for Basin Planning, Shoal Lake (Manitoba & Ontario)." M-S DM is a process that can bring a variety of stakeholders together in a forum where decisions can be made using consensus. The survey has questions in the following four areas:

- A. DECIDING ON THE PROCESS - Initial characteristics that led to the current M-S D-M process.
- B. DESIGNING THE PROCESS - How were the participants in the process involved and how were the rules of the process established.
- C. USING THE PROCESS - What characteristics helped or hindered getting the process into action.
- D. IMPLEMENTING AND MONITORING AGREEMENTS of the process.

The survey will take about 15 to 20 minutes to complete. You are not obligated to answer all of the questions during the interview. Your answers will be held in confidence and results will be in written and tabular form with no reference to specific interviewees. This research has been approved by the ethics committee of the Natural Resources Institute, University of Manitoba. If you have any questions or concerns in this regard please contact Dr. Fikret Berkes, NRI, (204) 474-8373.

Thank-you for providing your time and insight for this survey, copies of the Thesis will be distributed to the Natural Resources Institute (University of Manitoba, 430 Dysart Road, Winnipeg, R3T 2N2 / Ph. 204-474-8373, Fax 204-261-0038).

BACKGROUND DATA

Date and Time: _____

Respondents Name: _____

Position: _____

Address and Ph. _____

Forum: _____

A) DECIDING ON the PROCESS (Assessment Phase) - *The Initial characteristics that led to the current M-S D-M process:*

- 1. Why was a Multi-Stakeholder Decision-Making forum chosen over other Decision-Making forums?**
- 2. Did the initiators or participants of the forum have any prior experience with Multi-Stakeholder Decision-Making activities?**

B) DESIGNING THE PROCESS - *How were the participants in the process involved and how were the rules of the process established.*

- 3. How were the stakeholders (interests) identified and by whom?**
- 4. Are they sectorally based?**
- 5. How and by whom were the representatives of these interests identified and selected?**
- 6. (#2) Is the current forum structure representative of all stakeholder interests? How?**
- 7. (#3) Is participation in the forum voluntary?**
- 8. (#4) Did the participants design the forum's organizational structure? How?**
- 9. (#5) Is the organizational structure flexible (i.e. can additional participants/structures be added on later and how would this be done?) Are positions rotational?**
- 10. (#6) Do the members share equally in the decision making of the forum, including access to relevant information? (no domination by a particular individual, group or organization) How?**
- 11. (#7) What attempts have been made to build a common understanding of the values and perceptions of the different forum members?**
- 12. (#8) Are participants accountable both to their constituencies and to the forum? How?**
- 13. Is a facilitator/mediator used in the process?**
- 14. i) What is the role of the facilitator/mediator? (ii) By whom and how was this role determined? (iii) Are they third party, staff or other? (iv) Does the position rotate?**

15. Does the forum provide strategic direction? How?
16. (i) Are there formal rules concerning how decisions are reached? (ii) At what point in the development of the process was this done? (iii) Who determined how decisions are made? (iv) Are decisions made by consensus/ Roberts Rules of Order or other?
17. Was there any formal training or discussion provided to the participants on consensus building or conflict resolution?
18. (i) What happens if a decision cannot be reached by consensus? (ii) Is there a formal rule covering this? (iii) Is it put to a vote?
19. Is there a formal conflict resolution process? (how does it work?)
20. How are participants kept informed?
21. Were there any topics deemed "out of bounds" for discussion by the forum? How was this done?
22. How many staff are there and what are their positions?
- C. USING THE PROCESS - *What characteristics helped or hindered getting the process into action.*
23. How are meetings scheduled? How frequently?
24. How is the meeting agenda set?
25. How well are meetings attended by participants - is attendance adequate for effective D-M?
26. Has the forum been effective at partnering with outside interests? How?
27. Does the forum communicate effectively with the community? How?
28. Are there effective opportunities for consensus building and cooperative action in forum decision making? How?
29. Is the decision-making process of the forum open and accessible to outside stakeholders/interests? How?

D. IMPLEMENTING AND MONITORING AGREEMENTS *of the process.*

30. (#9) Are realistic deadlines established for the various milestones in the process? How?
31. How were procedural agreements reached between the forum and other coordinating agencies?
32. (#10) How was the monitoring and implementation of forum decisions determined?
33. What factors/characteristics contributed to the success of your M-S D-M process and which did not?
34. Do you envision any future changes in your forum's D-M process/conflict resolution process?

Please mail/fax an organizational structure/flow chart and any information regarding decision-making, consensus building, and conflict resolution.

(#) - refers to the 10 Guiding Principles of a consensus process identified in Chapter Three. Note that the first Principle "People need a reason to participate in the process" has not been included in this survey as it is more relevant in the Stakeholder Survey detailed in the subsequent chapter.

APPENDIX B

Summary of Responses to M-S D-M Case Study Surveys

CASE STUDY SURVEY RESPONSES

1. Why was a Multi-Stakeholder Decision-Making forum chosen over other Decision-Making forums?

- ▶ Chosen from conflict arising over Canada/United States flooding concerns; The church organizations (Lutheran and Mennonite) on the Canadian side of the valley chose consensus as the way to make decisions.
- ▶ In order to solve past dissatisfaction by stakeholders over the way public involvement was done during development of the last management plan. It was decided to try a consensus planning approach.
 - Following public meetings, the facilitators interviewed representatives of organizations known to have an interest in management of the Park. During these interviews the concept of consensus-based planning was tested. Based on the feedback of these interviews, the facilitators concluded that a consensus-based planning approach was a viable alternative.
- ▶ Part of "Partners in Sustainable Development of Forests" Model Forest prerequisites.
- ▶ Follow up to a 1984 Commission report on Dauphin Lake which recommended that an advisory committee be established. In 1988 when the conservative government came in they decided to follow up on the Commission's recommendation, and wrote 59 letters from the Ministers office to the stakeholder organizations.
- ▶ Based on recommendations from the Royal Commission on Northern Environment, ten years ago in Ontario, the province committed itself to trying a more locally-based approach to land use planning. More recently, a number of gold mines were coming on-stream in the Pickle Lake area. There were native concerns over the impacts these mines may have on the aboriginal way of life. The First Nations were suggesting that an environmental assessment (EA) should be done. However, instead of an EA, all parties (First Nation's/ Ontario/ Gold Mining Company) decided on a Joint Planning Agreement that would benefit the whole community. The current prototype 5-year co-management agreement, then called a Planning Agreement came into being.
- ▶ Several reasons: (i) the area of concern (Hamilton Harbour) has various jurisdictions involved (municipal, provincial, federal); (ii) governments needed a way to ground-truth what was being done on Harbour and through M-S DM could tap into network of volunteer groups and their knowledge; (iii) as a means for industry to know what people and government wanted and for people and government to know what industry wanted; and (iv) M-S DM is part of a trend where understood that for something of this magnitude to work need everyone involved to work together; follows ecosystem approach and 1987 Brundtland report.

2. Did the initiators or participants of the forum have any prior experience with Multi-Stakeholder Decision-Making activities?

- ▶ Yes, had experience with other advisory committees.
- ▶ Yes, there was experience with other mine agreements, even though this agreement gave the First Nations more powers (still advisory though).
- ▶ Yes, although not specifically dealing with Harbour; Jack Ballantyne aka "Mr. Biosphere" from DFO was involved as well as Keith Rogers who pushed for M-S D-M process, as well consultant from Toronto (Sally Leppard of Land Use Research Associates (LURA)) was hired as facilitator who was at forefront of M-S D-M processes.

3. How were the stakeholders (interests) identified and by whom?

- ▶ The facilitators first consulted the mailing list compiled by Park staff during previous management planning efforts. Added to this list were any organizations/groups who have interacted with the Park administration since that time, and media advertisements were used. At each interview that the facilitators conducted with representatives of organizations/groups, the interviewee was shown the list (as it developed) and asked to identify missing stakeholder and their representatives. The facilitators also responded to any parties who identified themselves as stakeholder during the interview period.
-Participants at the round table will have the opportunity to determine whether any key interests are absent and what should be done to get them represented at the table.
- ▶ Initially by two consultants who spearheaded the Model Forest proposal using the results of a stakeholder survey completed as part of a contract they had just completed with the timber company in the area.
- ▶ Through the Minister of Natural Resources office, letters were sent to 59 agencies, local levels of government and interest groups for them to name representatives to the Board - of these 48 were chosen.
- ▶ Approach was to form a nucleus of interests from all sectors and ask them who else was interested, these new contacts were phoned and asked who else would be interested et cetera, as well public meetings were held to determine who else was interested; Facilitator identified interests with help from RAP coordinator.

4. Are they sectorally based?

- ▶ No, but strive for balance among sectors.
- ▶ Yes - seven broad interest sectors.
- ▶ Yes, but not inclusive of all sectors, only First Nations and Provincial government.

5. How and by whom were the representatives of these interests identified and selected?

- ▶ Board member's have equal representation by region; Board member's are nominated by anyone with a \$25 membership, other Board member's or staff also nominate Board member's; elections take place each year at annual meeting.
- ▶ The facilitators made the initial suggestions for potential participants in the round table. These suggestions stemmed from an analysis of interviews with the stakeholder representatives and the placement of them into groupings.
Confirmation of the participants rests with the round table itself.
-The representation of interests without an organization to put forward their views, such as non-resident property owners, town site employees, travelling tourists, campers and students, would be considered by the round table as to their best way of ensuring their integration into the planning process .
-Stakeholders were invited to address the issue of common table representatives prior to the first meeting of the stakeholders. If stakeholders have not agreed upon a common representative, each will be invited to send a representative to the first meeting. Hopefully, final decisions on table representatives can be made at that meeting.
- ▶ Original signatories to Model Forest Agreement remained as board members and board determined which new seats to add on board; the various interest sectors chose who would be their representative on the board.
- ▶ Interest groups were free to choose who they wanted to represent them; the methods vary from group to group.
- ▶ The 4 ministries involved (OMNR, ONAS, MNDM, MOE) advertised in the local newspapers for the Ontario representatives to the board. The applications were reviewed by the First Nations. The First Nations decided for themselves who would represent them; the First Nation's chose members as Chief, a Council member and picked one general representative based on experience.
- ▶ Once had comprehensive list of those interested in RAP process, the facilitator, with help from the RAP coordinator winnowed this list down to the core group.

6. (#2) Is the current forum structure representative of all stakeholder interests? How?

- ▶ No, all stakeholders are not adequately represented; have agriculture and municipal councillors represented but no woman or academics and urbanites are under-represented; are striving for greater representation for woman, academics and urban representatives on board.
- ▶ Yes, structure is because it has seats for First Nation's, however, they are not at present occupying these seats.
- ▶ Yes, no groups have spoken out that they are not represented, even though the Métis group has dropped out due apparently to their lack of interest.
- ▶ No, not on board, but boards mandated to involve all public interests.

7. (#3) Is participation in the forum voluntary?

- ▶ Yes - no payments are made, and this is very important to the success of the process.
- ▶ No, members are named in Cabinet by an Order in Council; are similar to public servants and receive remuneration/*per diem*.

8. (#4) Did the participants design the forum's organizational structure? How?

- ▶ Yes, in 1984 board decided on regional representation.
- ▶ No, the Round Table's structure is already set (i.e. that consensus is to be used), however, the participants designed the process.
-although there is no hierarchy in a round table: the Round Table makes decisions; subgroups report to the Round Table; the Minister in Ottawa has the ultimate decision-making authority.
- ▶ Yes, with help from consultant's report.
- ▶ No, organizational structure decided on in 1989 "Opportunities for Restoration" booklet prepared by DNR; however, the bylaws and constitution were designed by the board at the outset (used examples of other groups bylaws and constitution).
- ▶ Yes, all parties signatory to Agreement (Ontario and First Nation's, not the mining companies).
- ▶ Yes; originally had 43 stakeholder groups represented in one forum, however, during the first few years (prior to 1992) of discussion it was decided to change the configuration for the "Implementation Stage" of the RAP; the citizen groups wanted more independence; the outcome was that the Bay Area Restoration Council (BARC) was formed; it gets a portion of its funding from the government sponsors of the RAP, and the rest of the funding comes from fund-raising; BARC is composed of citizen and organization members; the remaining 17 original stakeholder groups not represented on BARC comprise a second forum "Bay Area Implementation Team" (BAIT) which includes industry, government (federal and provincial governments, Conservation Authority, local municipalities), Royal Botanical Gardens, McMaster University; the RAP coordinator sits on both of these forums, as well each forum has a common member who sits on both forums.

9. (#5) Is the organizational structure flexible (i.e. can additional participants/structures be added on later and how would this be done?) Are positions rotational?

- ▶ Yes, would have to go through vote at board; positions are rotational, some yearly, some every 2-3 years depending on position i.e. chair rotates between jurisdictions.
- ▶ Positions are rotated as required; want participants to occupy position as long as they can manage it; alternates are assigned for each position as well.
- ▶ The number of seats is fairly fixed, yet has been flexible to change if necessary (i.e. another First Nation seat recently added; structures have been modified as well; all of these changes are made by the board; certain positions are rotational (municipalities yearly, universities every two years).
- ▶ Yes, have already added new members (Cattleman's Assoc.), and it is the board that makes these decisions; as well task force structures have been set up periodically; have continuation in board members, rotations have been made under certain situations (death, etc).
- ▶ No, agreement is a legal document (Order in Council), yet boards can establish working groups or subcommittees if they want to.
- ▶ Yes, structure is very flexible and responds to the needs of the moment; committee structures are continually reviewed; however a downfall to the two-forum structure is that the two forums do not have a unified voice and the two forums can become polarized on issues - even though there are times where both forums come together (i.e. quarterly meetings); Positions are rotational only for BARC which has 2-year terms; BAIT is composed of companies/organizations and not individuals whose positions remain fixed and only change as people leave or are hired.

10. (#6) Do the members share equally in the decision making of the forum, including access to relevant information? (no domination by a particular individual, group or organization) How?

- ▶ Re: domination, it has been suggested that in certain cases there may be an influence of several over one which is a challenge for consensus.
- ▶ Yes, in theory all have the opportunity to share decision making, yet some may not speak-up when they should if unsure about certain decisions.
- ▶ Yes, even though there is at times a "rural-urban" situation, but this is all part of the process of getting to know each other.

11. (#7) What attempts have been made to build a common understanding of the values and perceptions of the different forum members?

- ▶ Many members value informal inter-border comraderie; a board retreat occurs each year in January where we meet in one location for the day or an overnight; while at an annual conference the board meets for a 3-day event.
- ▶ The facilitators prepared an interview form to discover stakeholder interests, their views about the proposed planning process and relevant information about their organization/group.
-During the course of meetings; opportunities for members to distribute information; opportunities for presentations.
- ▶ Few beyond a cross cultural workshop and the sense that these things are gleaned largely during board meetings.
- ▶ "Pep-talks" were given by the facilitator and he always challenged the board to mentally take off their shoes at the door and get into one another's; the Technical Advisory Committee has "broken the bread" together during meals but there is no money in the budget to do this with the board (48 members); also board has networked with other groups in, for ex. a barbecue with the "farmers for tomorrow" and had picnics.
- ▶ In the process of monthly meetings, workshops, retreats, social events and socializing after meetings a common understanding of the values and perceptions of the different board members has occurred.

12. (#8) Are participants accountable both to their constituencies and to the forum? How?

- ▶ Yes, have duties to perform for board; not a requirement to account to constituencies since board not sectorally based.
- ▶ Yes, a responsibility of being a participant in the process; representatives report to their constituencies at their discretion.
- ▶ Yes, members have responsibilities to fulfil to board but also must provide feedback to their constituencies and input from them.
- ▶ Yes, people wear their constituencies "hats" at board meetings.
- ▶ Board is accountable to Ontario.
- ▶ Yes, asked participants to wear 3 hats: (i) views of their constituency; (ii) views of their organization; (iii) their own personal views; sometimes participants were asked which hat they were wearing when they spoke which helped with openness of discussion.

13. Is a facilitator/mediator used in the process?

- ▶ have chairperson which is a Board member
- ▶ Yes, a chair
- ▶ Yes, a coordinator/facilitator
- ▶ a Chair
- ▶ Yes a facilitator was used at start of process, now occasionally if run into trouble on an issue; also BAIT uses co-chairs, one is the Director of Environment Canada while the other co-chair is the Director of the Ministry of Environment and Energy.

14. i) What is the role of the facilitator/mediator? (ii) By whom and how was this role determined? (iii) Are they third party, staff or other? (iv) Does the position rotate?

(i)

- ▶ To conduct meetings, ensure process and agenda followed.
- ▶ They had different roles at different times in the process. Unless the round table decides otherwise, it is proposed that the facilitator assume the role of meeting chair. Act independently and is neutral to the representatives or issues;
- is mutually acceptable to all representatives;
- focusses on process as much or more than substance;
- assist parties in achieving consensus;
- acts as a broker to uncover or represent the interests of the parties;
- acts as a facilitator, maintaining the agendas, process and focus;
- documents proceedings and follows up.
- ▶ to keep meeting process going; to make sure agenda is followed
- ▶ "parenting" role, sometimes "let's waves crash, sometimes doesn't"; sits at table off to one side, takes minutes, keeps meeting on agenda schedule, presents issues, challenges on issues, acts as treasurer, arranges auditing, all mailing/photocopying (at DNR office)
- ▶ Chair is neutral, impartial facilitator; runs board; ensures mandate completed; has staff to assist
- ▶ depends on the issue; i.e. identifying stakeholders, neutrally presenting facts, or helping to reach consensus.

(ii)▶ Role determined from start by board.

- ▶ The facilitators (two of them) were hired by Parks Canada to help initiate stakeholder involvement in the management plan planning process.
- ▶ by Minister
- ▶ Jointly agreed with Ontario and First Nation Tribal Councils.
- ▶ stakeholder decision

(iii)▶ is a Board member

- ▶ belong to board
- ▶ staff through DNR
- ▶ third party, staff
- ▶ hired neutral third party

(iv)▶ yes, rotates among jurisdictions

- ▶ position is not rotational but is elected by board at each AGM
- ▶ position is fixed
- ▶ fixed, same term as board members
- ▶ No, position is only occasional on an as-needed basis.

15. Does the forum provide strategic direction? How?

- ▶ Yes, have goals and methodologies set for Round Table and subgroups to follow, although none struck yet.
- ▶ Yes, are supposed to through Strategic Plan, yet much direction comes from the working groups.
- ▶ Yes, by formulating and coordinating the implementation of a basin management plan.
- ▶ Yes, via production of Land Use Plan:
 - detailed in Agreement Principle 5(1) "prepare a draft land use plan within 3 years".
- ▶ Yes, most definitely; the goal of the RAP is to restore the ecosystem while maintaining economic development; this goal provides strategic direction but also there is an action plan which goes beyond strategic direction to detailed actions - i.e. no more infilling in Harbour; getting to "zero-discharge" on persistent toxics eventually.
 - With respect to jurisdictional authority, don't see need for RAP to have authority to regulate but see need to have someone who sits on RAP to have authority to regulate; RAP is a plan and is not legally binding i.e. have regulations on phosphorous loading targets that are 10 times more stringent (albeit reachable) than the present regulations, yet Hamilton-Wentworth is striving for our target and would look bad if they didn't; in addition RAP would ask Environment Canada to regulate to our target if it wasn't complied with willingly.

16. (i) Are there formal rules concerning how decisions are reached? (ii) At what point in the development of the process was this done? (iii) Who determined how decisions are made? (iv) Are decisions made by consensus/ Roberts Rules of Order or other?

(i)

- ▶ Yes, by consensus as specified in the Guiding Principles of the Canadian Round Table; a non-formal iterative process.
- ▶ Yes, Robert's Rules of Order.
- ▶ Yes, consensus with a vote to see if unanimous.
- ▶ Yes, Principle 7(4) states "The Interim Planning Board shall Strive for consensus in decision making"; 7(5) Where there is no agreement by Board, the chairperson shall make non-binding recommendations for resolution of outstanding issues, or propose and alternate dispute resolution mechanism, such as 7(6) having the chairperson make a report which fairly and accurately sets out the differences of views held by the members for presentation to the Board.

(ii)

- ▶ At the outset of the process.
- ▶ in early stages
- ▶ set up in bylaws/constitution at outset of board
- ▶ Outset, as terms in the agreement Principle 7(4) "Planning Boards shall strive for consensus in decision-making".

(iii)

- ▶ Parks Canada decided, after consulting with stakeholders that process would use consensus to make decisions.
- ▶ The board determined this even though it was basically through the effort of a single Board member that Robert's Rules of Order was used.
- ▶ board
- ▶ signatories to agreement

(iv)

- ▶ Robert's Rules of Order; voting after consensus is reached to see if unanimous.
- ▶ Robert's Rules of Order
- ▶ follow Robert's Rules of Order
- ▶ consensus
- ▶ consensus is used and this was decided at outset

17. Was there any formal training or discussion provided to the participants on consensus building or conflict resolution?

- ▶ Yes, outside person came in from Conflict Resolution Centre during a workshop.
- ▶ Yes, at outset of process by the facilitators.
- ▶ No, nothing beyond the circulation of a paper on consensus-building by one of the Board member's.
- ▶ No formal workshop, but had discussion at outset by facilitator.
- ▶ No, unless board has done itself, even though chairpersons are experienced
- Windigo Planning Board did some content-oriented conflict resolution before Order in Council arrangements made.

18. (i) What happens if a decision cannot be reached by consensus? (ii) Is there a formal rule covering this? (iii) Is it put to a vote?

(i)

- ▶ Vote, but this only happened once during a decision to write George Bush over attending the Rio Summit.
- ▶ Agreed to defer decision to facilitator; this occurred once concerning whether a new road should go through the Park.
- ▶ vote
- ▶ vote - usually unanimous
- ▶ Not a problem yet; always come to agreement by consensus, but have not been put to test yet, if were, would probably invent a process, but won't vote.
- ▶ If the 2 forums cannot reach consensus on a decision then this becomes a BARC or a BAIT position and not a RAP position; for disagreements within the forums either agree to disagree or develop a process to reach consensus (i.e. some hybrid form of Roberts Rules of Order).

(ii)

- ▶ The decision to defer the decision to the facilitator was made up as the issue arose and was done in order to keep the process moving ("Basically the round table put their heads in the sand on this one").
- ▶ no, people work it out
- ▶ Yes, in Principle 7(4) of Agreement reads "Where there is no agreement by Planning Board, the chairperson shall make non-binding recommendations for resolution of outstanding issues by the Board concerned or propose an alternative dispute resolution mechanism.", but not in practice.

(iii)

- ▶ vote
- ▶ vote
- ▶ vote

19. Is there a formal conflict resolution process? (how does it work?)

- ▶ (No), conflict resolution occurs in course of consensus process; even though it could be said that the facilitator acts as a conflict resolution process.
- ▶ Yes, has not been utilized.

20. How are participants kept informed?

- ▶ Fax, mail, phone, meetings, minutes, newsletter.
- ▶ Through minutes, newsletter, faxes/phone calls from staff and to staff office.
- ▶ Minutes, pamphlets and correspondence of interest is sent out, presentations at board meetings; news media shows up at all meetings and they give good coverage, they are part of community and many of the issues at the board are of interest to the community.
- ▶ Staff coordinator on each board, minutes, announcements, agendas sent out.
- ▶ Initially, copies of a "Report to the Stakeholders" was mailed to all of the stakeholders contacted by the facilitators.
 - meeting minutes are mailed out to participants after meetings
- ▶ Combination of: annual status reports on progress and implementation (BARC, BAIT, RAP); Remedial Action Plans are updated annually; BARC has annual workshops and quarterly meetings which are open to public; presentations to community groups, frequent local media coverage.

**21. Were there any topics deemed "out of bounds" for discussion by the forum?
How was this done?**

- ▶ Non-advocacy, consensus-based approach was deemed non-negotiable.
- ▶ Yes, the facilitators asked whether or not each of the stakeholder groups believes that certain fundamental matters are non-negotiable at the round table. It is assumed that these are initial viewpoints that will be advanced by certain stakeholders and that the round table will need to work at clarifying these and assess their significance to the work of the round table.
- ▶ Yes, allocation of natural resources (licences for water, fish) because this is the Minister's decision, even though board has made recommendations on for example the number of fishing licences to allocate.
- ▶ Yes, topics outside mandate; this was done in original agreement; for instance don't want to get into First Nation politics.
- ▶ No, self-regulation of discussion to ensure has to do with restoration of Harbour.

22. How many staff are there and what are their positions?

- ▶ Two offices; Winnipeg Office: 1 full time Office Manager and term positions from grants
 - ▶ Moorhead Office (Minnesota): 3 full-time staff = Director, Chief Executive Officer, Director of Programs, Assistant Director of Programs;
 - ▶ 2 part-time staff: Administrative Assistant, Conference Coordinator
- ▶ Department of Canadian Heritage:
 - ▶ -Planner (full time); Superintendent (20% time); Support Staff position (25% time)
 - ▶ -2 Facilitators: are not present at public meetings; paid for by Canadian Heritage
- ▶ Four staff: General Manager, Assistant, Communications Coordinator, Data-Base Manager
- ▶ 1, Coordinator who represents the Minister; 1-2 summer people may be hired through the "On-Site" program to staff the education centre, and a summer student may also be hired
- ▶ Each Board has:
 - ▶ Co-ordinator
 - ▶ Secretary (part time)
 - ▶ Chairperson
 - ▶ (staff within First Nation (fieldworker/researcher) and advisory boards within communities)
- ▶ 3 staff (Coordinator, Administrator, Researcher) plus 8 people on technical team whose time is contributed to RAP.

23. How are meetings scheduled? How frequently?

- ▶ 5/year (quarterly); have one in Manitoba, 3 in the United States and 1 conference that rotates among jurisdictions.
- ▶ Seven public meetings in seven communities during initial phase of process); at these meetings the need for a Park management plan update was explained and the principles for a consensus planning approach were outlined by park representatives.
 - ▶ - other than the date of the first meeting, the meeting dates are tentative
 - ▶ -once every 1.5 months (7 in total)
- ▶ Monthly; date is set at end of each meeting.
- ▶ Scheduled around convenience of board members, late fall, early spring, AGM is always in April as per bylaws; 3 to 4 a year.
- ▶ Meetings occur every few months based on workload/budget.
- ▶ Initially monthly, but since structure split into 2 forums BAIT has quarterly meetings and attends the annual BARC workshop, BARC has monthly for its executive on the second Tuesday of each month and quarterly open meetings as well as the annual workshop.

24. How is the meeting agenda set?

- ▶ By staff
- ▶ By facilitator
- ▶ By general manager and assistant
- ▶ By Coordinator who talks with chairperson
- ▶ Next meeting's agenda set at end of each meeting by board; add what else occurs prior to meeting; Planner sends out draft and asks for any additions; agenda items can also be added at meeting.
- ▶ BAIT meeting agendas are set on an ad-hoc basis where RAP Coordinator writes up a draft list of agenda items which is shown to the co-chairs and the technical team before being finalized.

25. How well are meetings attended by participants - is attendance adequate for effective Decision Making?

- ▶ Varies among meetings, some only have half attendance, some less than half, but generally have quorum; attendance depends on time of year (farmers); slightly a problem for effective decision making due to lowered input.
- ▶ almost 100%
- ▶ Usually greater than 2/3 turnout, and with exception of First Nation representation is effective for decision making.
- ▶ 80% in first couple years, now 60 - 65%, still effective for decision making since minutes sent out and if a Board member doesn't like a decision they bring it up at next board meeting; "first few years were more glamorous and now its just work" is reason cited for decline in attendance, but this is not seen as a problem.
- ▶ Very well, approximately 90-100% attendance.

26. Has the forum been effective at partnering with outside interests? How?

- ▶ Yes, get a lot of agency participation, partnering with others who have a parallel interest.
- ▶ Has not been necessary to partner beyond the 25 interests represented at the round table.
- ▶ Slightly, has partnered with some agencies (Manitoba Hydro, other countries to set up International Model Forests).
- ▶ Yes, through stream rehabilitation project; awareness centre is partnered with PFRA; also have partnered with DNR, DFO, Green Plan - use signs to get partners name's up in publics view.
- ▶ Yes, have worked well with Placer-Dome (mining company) and have done two studies on fisheries with them; partnering helps by creating First Nation employment, builds a collegial relationship and lets First Nation's see seriousness of environmental monitoring; have joint meetings with Shibogama Board and support each others initiatives; have partnered with government (OMNR, etc.); held public meeting in community of Pickle Lake(which is not in co-management agreement area but close to it) in order to show Pickle Lake that First Nation's want their input - worked out well!
- ▶ Yes, very effective; have several projects, some of which are quite large (\$19 Million); i.e. "Project Paradise" by the Royal Botanical Gardens raised \$2 Million from the community and has 20 major partners.

27. Does the forum communicate effectively with the community? How?

- ▶ Yes, many Board member's are elected officials which are in good contact with the community; membership involves many citizens from all areas; newsletter sent out to members; annual conference.
- ▶ Public meetings; 500-person newsletter.
- ▶ No, although may change now that a Communications Coordinator is now staffed.
- ▶ Yes, through news media, education centre (trailer), presentations to all schools in basin; yet public is a fickle creature.
- ▶ Yes, i.e. Pickle Lake public meeting and in member communities, but is hard to tell how well communications are getting to regular folks;
- setting up "Community Participation Models" as specified in Agreement; have met with community and now need to set up process that involves leadership of communities and has broad-based representation.
- ▶ Yes, but BARC much more than BAIT by design.

28. Are there effective opportunities for consensus building and cooperative action in forum decision making? How?

- ▶ Yes, meeting is an open forum where can speak your mind as long as stay within parameters of organization.
- ▶ Yes, for the most part, even though some say that too many interests are represented (unwieldily); there is the challenge for consensus to address the influence of several over one in decision making .
- ▶ Yes, plenty of time to talk at board meetings.
- ▶ Yes, through discussion.
- ▶ Yes, whole point of exercise.
- ▶ Yes, cooperative action through discussion.

29. Is the decision-making process of the forum open and accessible to outside stakeholders/interests? How?

- ▶ Yes, open meetings (certain are in-camera); often have presentations; do tours for Board member's i.e. next board meeting is at Fort Whyte Centre and will include a tour.
- ▶ Yes, have opportunity to sit on round table; opportunity for delegations to present to round table, however, all 7 meetings are closed to the general public.
- ▶ Yes, but it depends on their initiative to come out; board listens to delegations, meetings are held in communities, even though they are not always advertized.
- ▶ Yes, meetings are open, anyone can speak if approach chair and ask permission
- ▶ Yes, Freedom of Information Act;
 - Yes, public meetings in communities (i.e. Pickle Lake) for exchange if information; copy correspondence for mining interests; other Board meetings are not open but would permit presentations if pre-arranged.
- ▶ Use to be more than now when all meetings were public, now that have 2 forums BARC has quarterly meetings and an annual workshop which is open to public; whereas BAIT has open meetings but they are not advertised (even though this will change to them being advertised).

30. (#9) Are realistic deadlines established for the various milestones in the process? How?

- ▶ -Parks Canada set the deadlines which was felt by the stakeholders and facilitators to be ambitious;
- ▶ -Yes, it is a Parks Canada directive that planning programs are to take one year.
- ▶ Yes, need deadlines and they are set by Coordinator, Chairperson and Executive and partners in projects.
- ▶ Yes, only deadline is evaluation at year three, and this hasn't been balked at by First Nation's re: time.
- ▶ No, this is an issue since RAP have 20-year deadline; however, are establishing milestones for year 2000, year 2010 etc.

31. How were procedural agreements reached between the forum and other coordinating agencies?

- ▶ All jurisdictions are included in round table; when have to operate outside jurisdictions it is at the discretion of the round table.
- ▶ Stewardship agreements signed for 10 years with private land owners; funding agreements; get appropriate licences from various government departments and this is done by John through his department.
- ▶ Agreement details these - Principle 4(g) "the interchange of timely comments and recommendations between boards and Ontario. Ministries."
- ▶ Through discussions, and coordinating agencies are part of RAP.

32. (#10) How was the monitoring and implementation of forum decisions determined?

- ▶ Progress reports from staff on projects; verbal communications meetings; minutes, newsletters.
- ▶ Round table members work at subgroups but ultimately a senior Parks Canada staff person is accountable for monitoring and implementation.
- ▶ Basically staff track project status and performance and report to board; results of projects are sometimes presented to board; working group reports are presented at board meetings; also many board members also are on working groups.
- ▶ Have monitoring to keep partners in projects involved and up to date.
- ▶ Write letters to local government or Minister if necessary.
- ▶ By stakeholders using consensus.

33. What factors/characteristics contributed to the success of your M-S D-M process and which did not?

- ▶ The contributing aspects are:
 - International aspect - involve people from whole Red River Valley
 - Watershed basis - have created a "watershed community"
 - consensus-based process - since everyone's concerns are addressed until unanimous vote
 - partnering - wide range of government and non-government participation;
 - balanced approach - re: economy/ environment/ social aspects (sustainable development)
- ▶
- ve
 - reliance on different and possibly incomplete sources of information, for instance the variation on the number of beaver dams, the amount of poaching, etc, was a cause for differences in position
 - an unclear sense of what a consensus process entailed. Some assumed that the round table would start to discuss substantive issues at the first meeting, while others felt that a number of meetings would be required to simply gain a sense of trust in the process and practise in making decisions in this new way
 - the definition of what constitutes a stakeholder. One group expressed the view that a stakeholder should be defined as an individual or group who have personal financial investment in the park. Others felt that all Canadians had a stake in the future management of the Park and should be represented
 - size of table a challenge for decision-making
 - wide diversity of interests a challenge for decision-making
 - number and complexity of issues to be dealt with in parks management a challenge for decision-making
- +ve
 - Inclusive process
 - Use of third-party neutral facilitator
 - Adequate resources available to run process (\$, time)
 - Commitment and motivation of round table participants to work in forum
- ▶ need to have issues; in Dauphin Lake Basin have 4 issues, these keep board together/motivated
 - participation on board is voluntary, no payments made
- ▶ not sure is success though, but it is fair (50/50 representation by Ontario/First Nation's, equitable, meets needs of First Nation's and was negotiated
 - make-up of board a challenge for decision-making; the Ontario people are generalists and were not briefed by Ontario as to Ontario's position; the First Nation's representatives on board see themselves as servants of the people
 - working with two different forms of government (Ontario/First Nation) a challenge
 - representation limits ability to pool everybody's best thinking; in order to alleviate this are setting up research so board can see broader picture than just communities perspective before meetings
- ▶ Contributing factors: (i) pre-existing network of concerned citizens and a large and unified community; (ii) the design of the process where technical team saw their role as technical people and not as leaders and recognized that M-S D-M group would make decisions; (iii) willingness of sponsoring and contributing agencies to put resources into facilitation of RAP process; (iv) persistence of stakeholders to work at RAP (v) location of Inland Waters Directorate in Harbour. Factors which did not contribute: (i) slowness of bureaucracy; (ii) scarce resources (time and \$); (iii) sticky issues where not clear who is responsible - although the RAP process is good at resolving these.

34. Do you envision any future changes in your forum's Decision-Making process/conflict resolution process?

- ▶ No, because working well now; have had certain procedural changes in past, at one time had co-chairs from each state and province and a main chair but found was too much division of labour and responsibility.
- ▶ Yes, round table will likely consider changes to the Decision-making process at the next meeting.
- ▶ Potentially following the recommendations of a recent report conducted on behalf of the board on how well the board was functioning as an organization.
- ▶ Yes, advisory board may become a management board, "have to grow up" and should be able to deliver programs; trying for a Conservation District formation in western part of watershed since already have Turtle River Conservation District for other part of basin - these two Districts would cover entire basin; the advisory board would still be kept in place but they probably wouldn't have to meet as much.
- ▶ Principle 6 of Agreement says that after 3 years an evaluation of the agreements effectiveness would take place with a view to establish more permanent arrangements.
 - No, Agreement has a 5-year term and is hard to say what will happen after this
 - There are not enough co-management agreements in place that have been running long enough to tell if they are a success, but overall have been a good experience, and most recommendations from them are pretty solid.

APPENDIX C

Shoal Lake Basin Stakeholder Survey

SHOAL LAKE BASIN STAKEHOLDER SURVEY

The Shoal Lake watershed straddles the Manitoba and Ontario borders. It includes a section of Whiteshell Provincial Park, seven First Nation territories and two communities, the water supply for the City of Winnipeg, a variety of renewable and non-renewable resources, and a multitude of cottages, resorts, camps and other recreational services. Consequently, there are a number of people, groups and organizations which have an interest in watershed activities (stakeholders) and a large potential for conflicts to arise. The research project that this survey is a part of is looking at ways to resolve conflicts and lead to better resource management decisions in the Shoal Lake basin.

The purpose of this survey is to determine what, if any, form of basin-wide multi-stakeholder decision-making would be appropriate for resources planning and management in the Shoal Lake basin. The survey will be conducted with over twenty different Shoal Lake stakeholder groups including government, first nations, public groups and others. The survey is being conducted as part of a Master's Practicum entitled "*A Multi-Stakeholder Decision-Making Model for Basin Planning, Shoal Lake (Manitoba & Ontario)*." Multi-stakeholder decision making is a process that can bring a variety of stakeholders together in a forum where decisions can be made using consensus.

The survey will take about 20 to 25 minutes to complete. You are not obligated to answer all of the questions during the interview. Your answers will be held in confidence and results will be in written and tabular form with no reference to specific interviewees. This research has been approved by the Ethics Committee of the Natural Resources Institute, University of Manitoba. If you have any questions or concerns in this regard please contact Dr. Fikret Berkes, NRI, (204) 474-8373.

Thank-you for providing your time and insight for this survey, copies of the Practicum will be distributed to the Natural Resources Institute (University of Manitoba, 430 Dysart Road, Winnipeg, R3T 2N2 / Ph. 204-474-8373, Fax 204-261-0038).

BACKGROUND DATA

Date and Time: _____

Respondents Name: _____

Position: _____

Address and Ph. #: _____

Stakeholder Group: _____

1. What is the mandate of your organization?
2. What is the geographic extent of its mandate?
3. Does your organization/group have a spokesperson or representative? Who are they?
4. Does your organization have experience working in a consensus process? If so, how/what?
5. What is your organization's/group's vision or ideal for the future of the Shoal Lake watershed?
6. What issues or problems are of most concern to you in the Shoal Lake watershed?
7. Multi-stakeholder decision-making (M-S D-M) forums are now fairly popular in basin planning e.g. Shuswap Nation Watershed Committee (British Columbia), the Dauphin Lake basin Advisory Board (Manitoba), The International Coalition for Land/Water Stewardship in the Red River basin (Manitoba, Minnesota, North Dakota) etc. The purpose of these forums is often to:
 - i) resolve conflict between watershed stakeholder groups;
 - ii) foster communication and understanding among these groups;
 - iii) develop planning and management directions for problem areas.

Do you think the development of a multi-stakeholder forum to address problems/issues and management in the Shoal Lake basin as described would be a viable decision-making forum? (If NO, go to question #8, if YES, go to question #12)

IF NO:

8. What other forums would be viable? Explain.
9. What might encourage you to participate in a multi-stakeholder decision-making forum?
10. This is my list of Shoal Lake watershed stakeholders/interests. Who else do you think I should contact?
11. Any other comments/suggestions (re: Shoal Lake basin management, planning, conflict resolution etc.)?

----- END SURVEY (for #7 "No" response) -----

IF YES:

12. Which individual or entity do you feel has the influence and respect to initiate such a M-S D-M process?
13. What form of legitimacy (jurisdiction/management powers) should such a M-S D-M forum have?
14. What should be the mandate/goal of such a M-S D-M process?
15. Are there any issues which should not be addressed by a M-S D-M forum (i.e. issues that should be considered "out of bounds" for discussion or non-negotiable)? What are they and why?
16. Which stakeholders or interests should be represented in such a M-S D-M forum?
17. Are you aware of any matters that need to be dealt with before these interests become involved in a M-S D-M process?
18. (i) How should members make decisions in such a forum (consensus, voting, other)? (ii) If consensus, how should disagreements that cannot be settled using consensus be settled?
19. Should there be a formal conflict resolution process?
20. Should a facilitator/mediator be used to run forum meetings? If yes: (i) what should their role be, and (ii) who should decide who it is?
21. How should the decision-making process of such a forum be open and accessible to the community at large?
22. Are there any other activities similar to, or which could interfere with such a M-S D-M forum that are occurring at present in the Shoal Lake basin?
23. Do you think a representative from your organization would be prepared to meet over the next year to further plan a M-S D-M forum?
24. What information sources are you aware of that could assist with this activity?
25. This is my list of Shoal Lake basin stakeholders/interests. Who else do you think I should contact?
26. Any other comments/suggestions (re: Shoal Lake basin management, planning, conflict resolution etc.)?

(Source: British Columbia Round Table, 1991; Canadian Round Table on Environment and Economy, 1993; Cressman and Niece, 1994)

APPENDIX D

*List of Respondents
and
Summary of Responses to Shoal Lake Basin Stakeholder Surveys*

List of Respondents to Shoal Lake Basin Stakeholders Survey		
Stakeholder Agency or Group	Respondents	Position
<u>Ontario Provincial Agencies:</u> -Ontario Ministry of Environment and Energy -Ontario Ministry of Natural Resources -Ontario Ministry of Northern Development and Mines -Ontario Native Affairs Secretariat - Member of Parliament (Kenora-Rainy River Riding)	Peter Fox Bill Straight Dick Beard Bill Taylor Bob Knowles	District Manager Manager, Native Liaison Unit Mineral Development Coordinator Negotiator Member of Parliament: Kenora-Rainy River Riding
<u>Manitoba Provincial Agencies:</u> -Manitoba Department of the Environment -Manitoba Department of Natural Resources	Max Morelli Blair McTavish	Director, Environmental Quality Branch Policy Analyst
<u>Federal Agencies:</u> -Indian and Northern Affairs Canada (Thunder Bay) -Environment Canada (Regina)	Jim Barry Dr. Derek Bjonback	Intergovernmental Advisor for Economic and Resource Development Staff Economist
<u>International Agencies:</u> - International Joint Commission	Rudy Koop	Advisor
<u>First Nations (FN):</u> -Shoal Lake FN No. 40 -Ontario Chiefs Advisory Services (Kenora)	Chief Herb Redsky Tom Campbell Alfred Sinclair	Chief Shoal Lake First Nation #40 Advisor and Resident Environmentalist for Chief and Council for Shoal Lake First Nation #40 Kenora Area Travel Chief
<u>Winnipeg Municipal Agencies:</u> -Waterworks Waste & Disposal Department -Mayor's Office	Tom Pearson Bill Carroll/ Len Strijack - On Behalf of Mayor	Manager, Local Water and Sewer Division (Waterworks Engineer prior) Commissioner of Works and Operations/ Barrister and Solicitor
<u>Public Groups/Others:</u> -Lake of the Woods Community Development Corp.	David Treusch	General Manager

All of the government departments with jurisdiction in the Shoal Lake basin were surveyed. The only key stakeholders (i.e. those with jurisdiction in the basin) not surveyed were four of the five Shoal Lake First Nation (Iskutewisakaygun #39 Independent First Nation, Northwest Angle #37 First Nation, Northwest Angle #33 First Nation and Big Island First Nation). Refer to Table 14 for an explanation.

COMMENTS RE: SHOAL LAKE STAKEHOLDER SURVEY

1. What is the mandate of your organization?

- Improve welfare and well-being of Status Indians in Canada.
- To ensure a high level of environmental quality for present and future generations in Manitoba.
- Advance service to work with 10 independent chief and councils in the area.
- To facilitate the community realize the vision of itself as per the Corporation's Strategic Development Plan.
- Providing leadership to achieve sustainable development in Canada.
- Everything for economic and social well-being of Shoal Lake First Nation #40.
- Four mandates: (i) mandate under traditional Indigenous Management Philosophy where First Nations are recognized as "keepers of mother earth", including watershed; (ii) mandate under "white man's law" is through Treaties, etc. to hold government accountable for proper use and sustainability of land/territory; (iii) responsible for environmental control of watershed included in territory; (iv) where have impact from past to do rehabilitation, where have on-going impact to do mitigation and monitoring.
- 1909 Boundary Waters Treaty is basis for mandate; - either carry out studies in response to reference by government's, or serve a quasi-judicial role in approving applications (i.e. for structures) on trans-boundary waters; there are 2 substructures of the IJC involved with Shoal Lake, the Canadian Lake of the Woods Board of Control which has federal/provincial membership and is the active body for regulation of water levels, while the International Lake of the Woods Board of Control has 1 United States. person and 1 Canadian person (pursuant to the Lake of the Woods Convention) who have responsibility when lake levels reach a set of extreme high or low levels.
- Protection, conservation, management of natural resources of province, including forestry, fisheries, parks, wildlife on crown lands.
- Represent peoples needs. Or more specifically as in the case of mining, to ensure economic development occurs but also to ensure environmental protection.
- Protect environment for use of residents of Ontario.
- For Mines and Minerals Division is to promote the orderly development of mineral resources in Ontario.
- For OMNR is the conservation and management of fish and wildlife stocks in Ontario; for Native Liaison Unit is : in recognition of native peoples special role with natural resources, to build relationships between governments and First Nations in resource management and to encourage economic benefits in the use of natural resources.
- Support Minister responsible for Native Affairs; leading Ontario with respect to land claims negotiations, developing and coordinating policy with respect to native affairs.

- To provide the best possible services in the following four areas: drinking water; fresh water treatment; land drainage; collection/disposal of solid wastes. To do this within cost constraints to go with municipality's vision of a clean environment, as well as providing environmental services and limited rural services.
- Provide all types of municipal services to public of Winnipeg.

2. What is the geographic extent of its mandate?

- Canada/ for District office is Manitoba border, east to Wawa and north to Sioux Lookout
- Manitoba.
- 55,000 square miles in Northwestern Ontario to Manitoba (Thunder Bay to Fort Alexander reserve in Manitoba to south).
- Tri-municipalities of Kenora, Jaffray Melick, and Keewatin, the adjacent population pockets and the adjoining First Nations and communities like Minaki and Sioux Lookout.
- Canada, under Department of Environment Act of 1971.
- Politically, Shoal Lake #40 reserve area, but should extend to entire Treaty Area (55,000 square miles).
- On micro-scale is Shoal Lake watershed, on macro-scale is treaty territory (traditional land use area).
- Transboundary waters along United States/Canada border; extent can be quite large if consider transport of airborne pollutants.
- Manitoba.
- Manitoba border to NWT to United States border to Ignace (Ontario). Approx 1/5 of Ontario land mass.
- Ontario.
- Ontario for OMNDM; for Mines and Minerals Division is Manitoba border to White River (other side of Marathon).
- For OMNR is Ontario; for Native Liaison Unit is East of Nipigon to Manitoba border to United States. border to coastal area of Hudson's Bay.
- Ontario.
- Winnipeg, including the aqueduct right-of-way to Shoal Lake and the intake area.
- Winnipeg.

3. Does your organization/group have a spokesperson or representative? Who are they?

- Yes, District Director Ron Greene
- Yes, the Minister, currently J. Glen Cummings; or his designate.
- Alfred Sinclair or one of area chiefs.
- David Treusch or Chairman.
- Yes, Richard Kellow from the Transboundary Waters Unit.

- Chief Herb Redsky and Council.
- 2 components: (i) Political spokesperson is Chief and Council; (ii) on behalf of band under mandate of Chief and Council is the Technical Resource person (Tom Campbell).
- One of 6 Commissioners for IJC (3 Canadian, 3 United States).
- Ultimately Minister (Albert Driedger), for regional perspective is Bob Enns (Director of Eastern Region, Beausejour), depends on issue.
- Bob Knowles for Kenora-Rainy River area.
- Peter Fox for District or Mark Gordon, Watershed Management Group of Environmental Technology Branch, Toronto.
- Dick Beard.
- Bill Straight.
- Bill Taylor for Shoal Lake area.
- Yes, Steve Yoshino, Director of the WWDD.
- City Council and Mayor, or depending on issue could be one of several standing committees and departments.

4. Does your organization have experience working in a consensus process? If so, how/what?

- Yes, through doing community services and working with First Nations.
- Yes, e.g. working with Gull Lake cottagers, municipality on how to manage lake; try as much as possible to reach consensus in departmental matters - e.g. Clean Environment Commission uses a form of consensus in their decision-making.
- Yes, through strategic planning itself and bringing together diverse community members to work for a common cause.
- Yes, under basin planning program (Canada Water Act) had extensive experience in consensus basin planning investigations e.g. Souris River Basin, Northern River Basins Study (on-going).
- Yes, at times (even though sometimes have to take an unpopular stance i.e. impose a decision).
- A minimum amount of past experience with consensus, only recent experience is with legal dispositions under INAC referendum, but prior to contact, there was the historical Ojibway philosophy of consensus decision-making.
- Yes, Commission itself internally makes decisions using consensus; also when do joint fact finding with agencies when responding to references.
- Yes, some - i.e. Riding Mountain National Park 5-Year Management Plan.
- Yes, due to experience working with various parties.
- Yes, use Waste Management Master Plan, watershed planning (Timmins area), Environmental Bill of Rights - even though these are more along lines of consultation rather than consensus.
- Yes, some people do; i.e. with respect to Shoal Lake Working Group and coordinating management committees with First Nations over mining resource agreements.

- Yes, consensus is involved in almost everything we do now; it is an operational mode for the Ministry (stress teamwork, interpersonal skills, etc.).
- Yes, Working Group at Shoal Lake; land claims; have developed a number of co-management/co-operative planning initiatives e.g. Shoal Lake Working Group, Windigo-Shibogama Planning Board etc.
- Yes, through a number of partnering initiatives on studies and capital programs.
- Yes, i.e. Shoal Lake Steering Committee and Working Group (Waterworks, Wastes and Disposal Department's representative, Urban Affairs representative, Shoal Lake #40 representative) set up under Tripartite Agreement.

<p>5. What is your organization's/group's vision or ideal for the future of the Shoal Lake watershed?</p>
--

- Don't have one as an organization, but are supportive of and advocate initiatives by First Nations or that provide benefits for First Nations; no pro-active stance concerning the watershed.
- Would like to have future certainty with respect to development, particularly with respect to the Ontario section of the watershed. And be able to input into development reviews which might impact water quality.
- Would like the lake protected and a high water quality maintained without interfering with the First Nations; are pro-environmentally benign development, only against developments that threaten water quality; also want limits on number of developments.
- Develop planning priorities, identify needs and process.
- Don't have one for watershed, but ties into mandate for adjoining First Nations and communities.
- Want to create a mechanism by which the interests that share resources get a chance to participate in developing a vision for future development of basin and an on-going means to protect and manage basin to meet this vision. consensus-building approach to protect and manage resources.
- To make a livelihood from this lake.
- Eventually want a Shoal Lake Watershed Secretariat - a First Nation secretariat based on First Nation lands; the operation and management of secretariat would be by co-management involving First Nations, governments and professional resource people.
- Since 1913 when IJC approved application to withdraw water (Order of Approval), have only had peripheral involvement with Shoal Lake, therefore don't really have a vision or ideal for it.
- Maintaining a quality water supply while also maintaining a variety of uses (cottages, fishing, economic development).
- Shoal Lake watershed, which has tremendous economic potential and is a beautiful place, should have local control over proper economic development and over proper environmental care.
- Where all stakeholders can influence decisions made on use of resources in watershed.

- To see benefits balanced in a sustainable way; balance in use between development and environmental protection.
- A resource management decision-making process that fully integrates the needs and participation of First Nations in resource management and sees economic benefits flowing into those communities, as well as the protection of the watershed.
- Intergovernmental management led by First Nations, and to improve quality of life for aboriginal community; and sustainable development.

6. What issues or problems are of most concern to you in the Shoal Lake watershed?

- Of most concern is that the First Nations get their fair share of benefits from the watershed to maintain/sustain their livelihood.
- Mining developments/ recreation pressures and their effects on water quality.
- First Nations impasse (with respect to Working Group process or First Nations protocol).
- Partnerships and alliances between First Nations and non-aboriginal peoples.
- Protection of water quality for drinking water supplies for a major urban centre. How quality of basin can be protected yet still have economic development in basin.
- Lack of enforcement of regulations in all resources (water, rice, fish, wildlife). Winnipeg water and Ontario Hydro - they get benefits and we get drawbacks; no one takes this into account.
- Fisheries management; water quality; economy of First Nations (ONAS has a policy for native economic development).
- Three issues: (i) funding for secretariat, i.e. where do revenues come from, and who is responsible for them - Ontario government or all governments (Federal/Provincial/First Nation); (ii) ability of First Nations to collectively cooperate in process (i.e. secretariat); (iii) jurisdiction - watershed needs legislation to enforce or carry-out watershed law for its parameters; the interprovincial boundary complicates this.
- Water level - i.e. if there was another application to withdraw water.
- Maintaining water quality for City of Winnipeg
- Biggest is influence/control of watershed from people outside watershed and outside Ontario - e.g. politicians from outside province scuttling initiatives by locals.
- There hasn't been enough use of resources available in watershed (that wouldn't adversely affect water quality); rather than basing decisions on science/technology, development has been influenced by emotional concerns (fishing, water quality, mining etc.); but whose technology do we use becomes question, therefore, must try to amalgamate different types of technology - i.e. indigenous and technical.
- Mining.
- Rebuilding of walleye stocks; getting the process working with respect to First Nation and Ontario government participation in decision-making (re: Watershed Agreement).
- Two categories: first, any initiatives that cause a constituent to accumulate in the water (i.e. heavy metals, etc.) such as from silviculture or mining activities; second, on the nutrient/pathogenic side, anything that causes degradation of water quality.
- Anything that impacts water quality.

7. Do you think the development of a multi-stakeholder forum to address problems/issues and management in the Shoal Lake basin as described would be a viable decision-making forum? (If NO, go to question #8, if YES, go to question #12)

- Yes, a firm believer in these processes.
- Yes, think this is the only way; have been pushing this M-S D-M for Shoal Lake since 1990; even had a meeting with Ontario and invited First Nations and cottagers association but had no success since Ontario first wanted a co-management agreement with the Shoal Lake First Nations; Ontario first wanted to establish trust/ rapport with First Nations, they signed an agreement for this in September, 1994, but Manitoba has not been invited yet; Manitoba feels were not well treated by Ontario concerning the 1994 agreement; secondary issue is whereas Ontario sees First Nations on a government to government basis, Manitoba doesn't as yet.
- Yes, thinks so, but up to First Nations in area to decide electively (i.e. by vote).
- Yes, if initiative comes from within (i.e. from stakeholders), No if comes from outside i.e. from government and parachuted in; e.g. of problem - in Minaki a forum of this type was started but the more sophisticated Winnipeg cottage owners and more powerful economic interests ran all over the First Nations, who had their own political dreams.
- Yes, if it leads to better communication among interests and a shared understanding of each others points of view; and creates trust and accountability for peoples actions.
- Yes, in long term, but in short term No - it will take a couple of generations for people to get to know each other; speak from personal experience in Kenora where racism exists on both sides (native and non-native); this racism stems from peoples experiences; e.g. in my generation people faced racism on a daily basis, but this has decreased today and will be eradicated eventually with time.
- Yes, IJC has had some success in similar efforts - i.e. St. Croix River on New Brunswick border with Maine; involves conflict between Georgia Paper Co. and recreation use; the IJC is reviewing its prior Order and is using a stakeholder group which has input to Steering Committee composed of IJC members; forum provides way for competing interests to understand one another.
- Yes, even though can sometimes increase conflict; one person's interests can hijack process.
- Yes, on one hand when dealing with non-native stakeholders; No with respect to First Nations who don't want to be only 1 of 15 stakeholders since they feel they should have more of a say over development in their area.
- Yes, a viable decision-making forum for allocation of resources, but government still has jurisdictional responsibilities.
- Yes, or wouldn't be in process of developing Working Group under Watershed Agreement initiative; however, obvious limitations to this at Shoal Lake; i.e. forum should not take over all decisions because it would be too much to handle.
- Yes, has potential, but whether has enough incentive or if people are ready for such a forum only time will tell; results to date are that the present Working Group initiative at Shoal Lake hasn't been too effective in getting off the ground.

- Yes, only concern is with respect to term "stakeholder", need to make a distinction between government/ residents/ user groups, i.e. there are a hierarchy of interests which isn't reflected in the term "stakeholder".
- Yes, could be depending on how it's structured. There are two issues: first, the reality that both provinces have legislative authority over water and it is not appropriate for provinces to delegate authority to sub-groups; second, that these sub-groups may bring non-watershed issues to the table as a means to leverage other agendas.
- Yes, as long as forum takes Tripartite Agreement into account; as long as decisions were not binding, otherwise doubt that anyone would agree to this forum

8. What other forums would be viable? Explain.

9. What might encourage you to participate in a multi-stakeholder decision-making forum?

10. This is my list of Shoal Lake watershed stakeholders/interests. Who else do you think I should contact?

11. Any other comments/suggestions (re: Shoal Lake basin management, planning, conflict resolution etc.)?

----- END SURVEY (for #7 "No" response) -----

12. Which individual or entity do you feel has the influence and respect to initiate such a M-S D-M process?

- Would not object to anyone taking initiative on such a process, but would prefer that it was one of the primary stakeholders who have jurisdiction in the area; primary stakeholders include the provinces (Manitoba and Ontario) which have crown land jurisdiction, and the First Nations that live in the watershed since they have treaty rights for the land there; the next category of stakeholder are secondary and include those with a vested interest in the watershed.
- Manitoba Environment tried unsuccessfully, now Ontario and 5 First Nations have tried, but it also appears unsuccessful; feel Federal Government should try, e.g. Prairie Provinces Water Board where Fed Government has 3 separate agreements with the 3 provinces and forum is working well; think Manitoba/Ontario and Fed government (could also include First Nations as government) should first come to an agreement and then other stakeholders could get involved.
- Shoal Lake First Nations themselves or as an equal partner with some other entity.
- Million \$ question! Perhaps a technically-driven organization such as the Canadian Water Resources Association which has been used before to get stakeholders together on the Cumberland Delta; or maybe even The International Coalition for Land/Water Stewardship in the Red River Basin.

- One of Shoal Lake chiefs - i.e. Chief Herb Redsky.
- People that demonstrate non-racist attitudes or ideas; firstly individuals and organizations (native and non-native) need a change in attitudes.
- Has to be First Nation-based in watershed.
- IJC would not take lead as are not familiar enough with Shoal Lake watershed.
- IJC, Environment Canada - someone with a multi-jurisdictional mandate.
- Federal Minister of the Environment; federal level since Shoal Lake is in aboriginal territory and the federal government has fiduciary responsibility which doesn't recognize provinces.
- Common undertaking with 8 bodies (5 First Nations, Ontario, Manitoba, Canada).
- God!; can't think of any one party due to mistrust of government/FIRST NATION agenda, that's why the Watershed Agreement initiative is taking so long; perhaps this Ministry (OMNDM) since it has played a facilitory role between government, First Nations and developers.
- Top decision-making's in government (senior levels in First Nations and Ontario).
- Government of Ontario (likely a corporate initiative (i.e. one voice on behalf of all) from OMNR, MOEE, ONAS) or First Nations.
- Federal government such as the Water Resources Branch. or another environmentally inclined Dept. - i.e. patterned after Lake of the Woods Control Board.
- Not sure anybody has respect and influence necessary to initiate; Federal or Provincial Environment Ministry usually takes lead in these types of areas.

13. What form of legitimacy (jurisdiction/management powers) should such a M-S D-M forum have?

- None, forum should have no jurisdictional or management authority, should still go through proper authorities with an advisory role; stakeholders should all be equal in forum and should seek consensus on decisions.
- Forum should be like Board with authority to manage resources and arbitrate disputes among stakeholders as they arise; similar to Prairie Provinces Water Board (with Manitoba/Ontario/Canada/ (First Nations).
- Treaty rights lay out what First Nations jurisdictional/management powers should be.
- To get to table may have to concede that First Nations have power/authority; can only likely hope for advisory role with Ministries having jurisdictions - but this depends on the issues the forum would be dealing with.
- Forum may work best without management powers, it can use levers already in place through governments, volunteer groups, etc.; only legitimacy is with respect to it being on its own (independent) in the eyes of the public; could potentially evolve into a forum with management powers, e.g. Meewasin Valley Authority.
- Has to be recognized federally, provincially, and by native people, and all have to be treated as equals; need a real sense of sharing resources; should have powers to enforce regulations and make management decisions.
- If have Shoal Lake Watershed Act, it should provide jurisdiction on both Manitoba and Ontario sides of the basin, the Act should provide all powers for Secretariat to:

govern renewable resources, particularly water (sales, rental, quality protection, quantity management); approve or reject all developments; to carry out environmental assessment; and provide enforcement capabilities (i.e. to charge watershed users and take them to court).

- Not sure, but our experience has been that it would take on an advisory role.
- Strictly Advisory; forum should not be able to impose decisions on interests.
- Legitimacy has to be formalized. If process is acceptable to all stakeholders, their decisions should be accepted by government; this could take the form of a Memorandum of Understanding where stakeholders sign off decisions made, or, where the Memorandum of Understanding takes the form of a new vision of the watershed and the stakeholders sign on acceptance of this process.
- Legislative mandates have to be adhered to unless self determination negotiated with provinces, Canada and First Nations (discussion of these negotiations are above this Ministry's jurisdiction).
- Advisory role.
- Strong advisory powers; haven't seen any situation in Ontario where governments willing or able to relinquish powers over jurisdictions; therefore government would use a Multi-stakeholder forum for advisory purposes; however with respect to First Nations and management of natural resources, decision-making powers may be re-confirmed to them as far as the allocation of resources through treaty rights, as long as first allocation is for conservation purposes.
- Mandated by participating governments, likely advisory to governments because unlikely governments would fetter authority of Ministers, at least initially but could evolve in time with experience to more than an advisory role.
- Legitimacy consistent with their legislative authority.
- Difficult to have jurisdiction in area given vast amount of agreements/jurisdictions already in place therefore, likely can only have an advisory role; Perhaps TIC could provide a model as a private organization which fosters discussion, but whether or not they have successfully tackled any issues I'm not sure.

14. What should be the mandate/goal of such a M-S D-M process?

- Mandate to identify collaborative approaches to resolve conflicts, then stakeholders can set up, through government (Manitoba, Ontario, First Nations), authorities to resolve issues. i.e. the Multi-stakeholder forum could set up a form of "management authority", possibly made up of the primary stakeholders (provinces and First Nations and any others with jurisdiction) which would have the mandate for jurisdictional authority; the Multi-stakeholder forum should be a sort of "brainstorming" forum to try out ideas on watershed management and planning and new collaborative approaches to resolve conflicts.
- First Nations to decide this, but Ontario Chief's Advisory Service support would be to First Nations; use Canadian Environmental Guidelines developed by First Nations (a set of criteria).
- Forum itself should develop its mandate which would likely be broad such as protecting the environment or promoting sustainable development; we would offer to make the "rallying cry" to get stakeholders together to talk about issues.

- To bring people together and create common ground/understanding and appreciation of different interests; create common strategies that will benefit everyone; communications oriented; process oriented; bringing/sharing info on environmental/economic prospects in basin.
- Mandate has to come from stakeholders and can not be imposed.
- Sustainable use and management of resources, primarily water, but including all other renewable and non-renewable resources.
- Maintaining water quality of region and governing future developments to ensure water quality maintained.
- To create a mechanism for change that is acceptable to stakeholders; this change is presently unknown, therefore, need process that people can tie into when change occurs - i.e. Shoal Lake #40 Cottage Lot Proposal process has not worked well in this regard; action oriented.
- Allocation of available resources.
- As in Shoal Lake Watershed Committee, to review and comment on development proposals in watershed; this mandate can be carried over to other areas (as long as within constraints of legislative framework).
- Similar to mandate of OMNR, OMNDM or OMEE.
- To review proposed developments; to prepare watershed plan; undertake public consultations; advise participating governments.
- Sustainable development should be mandate - i.e. that development takes place in a sustainable fashion.
- Raise awareness among stakeholders; i.e. vet issues (water, mining, forestry, recreation); way to avoid a partition of interests (i.e. avoid where everyone, such as Manitob and Ontario, does their own thing).

15. Are there any issues which should not be addressed by a M-S D-M forum (i.e. issues that should be considered "out of bounds" for discussion or non-negotiable)? What are they and why?

- No, all issues should come to table and M-S D-M forum should collaboratively decide which should be dealt with - i.e. non-restrictive at the start.
- No, with a good facilitator and handled properly, issues to be addressed should be left open; otherwise resentment and barriers are left in place.
- Yes, with respect to efficiency, issues that are purely bi-lateral and that don't affect other parties shouldn't be brought to table; question deserves a lot of study.
- Should be understood from native peoples perspective that land is not so much a resource but part of culture, way of life and has spiritual significance; can not regulate spirituality or someone's culture.
- Anything that is going to affect or erode the Treaties are non-negotiable (however, there is the concern that at some point in the future, may have to re-examine these non-negotiables, e.g. if at some point there are 5000 aboriginals living in the watershed, their boat traffic and resource use may have to be regulated, even if these are traditional pursuits).
- No, suppose could advise on anything, as long as forum not in a management role (i.e. assume advisory role).

- Any federal/provincial regulations, legislation, policies; water supply to Winnipeg; aboriginal rights.
- No, if Multi-stakeholder group has enough influence within it (from environmentalists to development promoters), should ensure a balanced approach. only problem with this if belief by stakeholders that they are only "window-dressing" and that Canada dictate decisions - "can't be half-pregnant, have to be in or out".
- Not taxation rights or revenue sharing (stumpage fees, water rights, land tax, mining royalties), which has to be a negotiated process on way to self-determination.
- Jurisdiction, this is the failure of Shoal Lake Watershed Committee initiative.
- Matters not relative to objective of forum.
- Yes, jurisdiction, placement of moratorium on development; Issues to be addressed would include setting terms and conditions on development approvals, making recommendations to governments, etc.
- No, as long as forum operates within legislative boundaries and adheres to law (water law, riparian rights, Fisheries Act).
- Not second guessing purpose of Tripartite Agreement "it's carved in stone" No challenges to City's authority to draw water from lake.

16. Which stakeholders or interests should be represented in such a M-S D-M forum?

- Provinces, First Nations living in watershed, IJC, stakeholder users of resources in watershed and landowners. Others should go through their government representatives (i.e. environmentalists etc. which do not have a vested interest in the watershed); focus should be on primary users and primary government (i.e. with jurisdiction)
- Environment Canada; Winnipeg/ Manitoba/ Ontario/ First Nations (Environment Canada has mandate under British North-America Act).
- Forum should only include the local stakeholders - as soon as bring in bigger interests (Winnipeg, government) process will overshadow local stakeholders; if the big guys could stay away long enough and trust locals, good decisions could be made and the water protected; First Nations, recreational property owners, tourism, industry (mining (Consolidated Professor), forestry), business, permanent and seasonal residents of area; likely moot with respect to having government there as participants or as resource people.
- Pretty well anyone with an interest in environmental quality of the basin, including economic development, mining, hunting, trapping, cities/communities, First Nations.
- Native government, provincial government, federal government; municipalities are creatures of provinces and should be represented through them - "if municipalities want a stake here, that's fine but then I want a stake in what goes on in Winnipeg, Kenora or Queens Bench."
- 5 First Nations, Federal government, Provincial governments (Manitoba/Ontario) form the political entity or the first layer of the forum; the other stakeholders or interest groups with a vested interest including proponents, cottagers, municipalities and developers form the second layer of the forum. The first layer (political entity) makes and enforces laws and policies, while the second layer interacts with the first on an advisory nature (gets info from and provides info to the first layer).

- First Nations and people directly affected.
- As many as possible, however the size may become cumbersome for decision-making; when we issue a decision, all interests are given an opportunity to have their say.
- Keep forum as small as possible (< 10 people), but have all stakeholders represented - i.e. 1 First Nation representative, 1 Ontario representative, 1 Manitoba representative, 1 federal representative, 1 Winnipeg representative, 1-2 environmental organization representatives, 1 business representative; can't allow people to join just because they feel they are not represented, otherwise forum gets too big.
- Anyone which believes they have an interest.
- 4 jurisdictions in watershed (Canada, Manitoba, Ontario, 5 First Nations), and other stakeholders that would be influenced by decisions.
- First Nations, Manitoba, Ontario, Canada; not beyond these; other stakeholders can go through their government representatives, otherwise would be too many people and the opportunity for chaos; have to draw the line on representation for practical purposes.
- Key stakeholders include all those with a vested interest or stake (First Nations, economic interests (logging, mining, tourism), communities that use resources, cottage groups, trappers, baitfish operators); stakeholders would have the opportunity to input into Multi-stakeholder forum but not necessarily all should have a seat on it. government as resource support and facilitators of process and not on Multi-stakeholder forum.
- All affected interests should be represented - possibly as a separate structure attached to the Shoal Lake Working Group or Committee.
- Using Lake of the Woods Control Board as a model: Manitoba; Ontario; and federal government as voting members of board; then the interest groups (Winnipeg, First Nations, proponents (mining, cottage groups, sport fishery, etc.).
- Has to be all (government and non-government); even though when consider how Ontario Watershed Agreement is not going well, attempts to add on more stakeholders would likely complicate matters further.

17. Are you aware of any matters that need to be dealt with before these interests become involved in a M-S D-M process?

- Once have group in forum, the history of the watershed (political, commercial, First Nations) should be researched, packaged and presented to the group. Look at existing agreements;
- Need to build trust between Manitoba/Winnipeg and First Nations. Clarification of legal differences concerning who water belongs to - First Nations feel they own water at bottom of lake, whereas Winnipeg feels they own bottom of Indian Bay up to Border - this needs to be sorted out!
- Up to First Nations to decide.
- Extent to which Winnipeg sees itself as a stakeholder since they draw water out of the lake; also, appropriateness of Winnipeg being in forum since it should be understood that water supply would be taken care of by local stakeholders; fear that if Winnipeg was involved they may overshadow whole process.

- Yes, would have to think about who should get the process going; also about accountability and reporting relationships; e.g. Bow River - used government resources, but report directly to Minister.
- Only outstanding matter is political will; aboriginal rights are in Constitution but they haven't defined what they are or even started dialogue on this.
- Yes, how and when to involve Manitoba government and federal government; these two matters may help to solve the funding issue for the Secretariat; next step once at table would be how to work jurisdictional problem.
- Jurisdictional issues as they relate to First Nations since likely they believe they are the only stakeholder; resolution needs to take place - i.e. could be done through Memorandum of Understanding where First Nations agree and accept legitimacy of other stakeholders, otherwise conflict will occur.
- Yes, getting Manitoba to table (with respect to present watershed agreement); need to know what an indigenous management plan for First Nations is (since already know what other Ministries portfolios are); getting cross-cultural understanding.
- Jurisdictional issue.
- Yes, satisfying the comfort levels of First Nations so they can participate with the "regular stakeholders", since Multi-stakeholder forum would not be on a government to government basis; time, from government perspective since putting these forums into place requires a lot of effort; also time with respect to getting forum members up to speed on technical knowledge.
- Yes, have to be clear concerning representation and accountability; e.g. in OMNR Wabikini Park Expansion had interests represented on advisory committee, however, it turned out that after plan developed that the mining representative was not actually a representative of the mining interests and they claimed that they had not been consulted; Protocol with respect to First Nations and ON commitment to consultations; i.e. do First Nations share Ontario's commitment to getting broader representation from interest groups.

18. (i) How should members make decisions in such a forum (consensus, voting, other)?

- Consensus.
- Consensus - not a majority basis.
- Consensus.
- Consensus.
- Consensus/negotiation route.
- A form of consensus - culturally appropriate; sit in circle, speak and understand each other, provide an ability to see someone's point of view and compromise if can't reach consensus; where decisions are not imposed on one another.
- Try consensus, if it works fine, but will likely need conflict resolution mechanism to keep decision-making process flowing;
- Consensus.
- Consensus as it forces people towards Decision making while voting separates people out.
- Consensus, with 2 co-chairs (First Nation and non-First Nation);

- Vote/Comment combination - Ontario, Manitoba and First Nations each have one vote while Canada, Winnipeg, private sector, cottage group representatives each have opportunity to comment prior to a vote; note that people at table must be accountable to and able to speak on behalf of their constituents.
- Consensus.
- Consensus, where everyone is in agreement; this makes agreement stand stronger in the eyes of the government.
- Consensus, however it should not mean that all parties agree, only that decisions are accepted without objections being raised to them.
- Consensus desirable (even though have 3 voting members (Manitoba/ON/Canada).
- Forum should not make decisions.

18. (ii) If consensus, how should disagreements that cannot be settled using consensus be settled?

- Difficult as there will likely be issues that cannot be settled using consensus; in this case a conflict resolution process should be used where the dissenting parties and why they disagree are clarified; also, "can skin a cat in many ways" and the M-S D-M forum should have more than one way to resolve disputes as long as all involve consensus.
- Through negotiations.
- Set aside disagreements to be dealt with later; or scanning exercise: distil out issues, and prioritise those which feel can reach consensus early on and those that would be particularly thorny; have a good professional facilitator tackle these thorny issues.
- Sometimes disagreements are a function of lack of appreciation of others; sometimes only need more time before deciding (conflict resolution process).
- Put disagreement aside and go on to next issue that feel can deal with; these issues are re-visited when more info is available or when feel are closer to consensus.
- Either deal is dead or step-wise conflict resolution mechanism comes into play (see #19).
- Not sure, but with our experience, if board cannot reach a decision it goes to the ultimate decision-making authority (IJC).
- Positions put forward to decision-making body (responsible agency).
- Create a 3 -member (or more) Arbitration Board , likely separate from Multi-stakeholder forum, and composed of well-respected members of community (judges, etc), and have them decide. problem is that there are not a lot of people who can negotiate their way through 2 cultures, even though this should occur over time with acceptance developed by all parties.
- 2 ways: (1) go into some complicated mediation process; or (2) have level of government with final authority on matter decide (this second method is favoured).
- Minority report through the chairperson outlining disagreements which is passed on to the ultimate decision-making authority.
- Perhaps the use of a facilitator, but the value of using one should first be evaluated with respect to effectiveness; or mediation which is more active than facilitation; or final option would be arbitration, e.g. NAN process where all parties put decision into hands of a mutually acceptable third party.

- Arbitrate by Government of Canada.
- Turn to Robert's Rules of Order or other parliamentary procedure or there could be a middle step such as a conflict resolution process.
- Mandate should not be to make decisions but to try to influence people (i.e. foster communication), and if this is the case it doesn't matter if consensus cannot be reached.

19. Should there be a formal conflict resolution process?

- Yes, the group identifies conflicts and goes through a process of different ways they can be resolved, then seeks consensus on which method they feel will work best and presents this method to a higher authority composed of the primary stakeholders (Chiefs, Premiers, Mayor) who were signatories to the agreement for the M-S D-M forum.
- Not necessarily, conflict resolution is only one methodology; should have a steering group of stakeholders to develop terms of reference for a facilitator, then in conjunction with the facilitator could develop a conflict resolution process if together they thought it was necessary.
- Forum itself should address this question, but a conflict resolution process would likely be a help.
- Yes, process would have to have a legal form in a step-wise process: at stalemate of a disagreement a mechanism would come into play for a period, perhaps 30 days, then the issue is revisited, if consensus still cannot be reached, the deal is either dead or it proceeds to another step, similar to arbitration with 3 arbitrators; 2 are independent, mutually-agreed upon arbitrators, one for each side of the dispute; these two choose a third neutral arbitrator; together the 3 arbitrators comprise the committee that makes the final decision on the matter.
- May be way to solve problems where can't reach consensus.
- Role of facilitator/mediator to do conflict resolution; perhaps use Issue Analysis Form (as in Riding Mountain National Park 5-Year Management Plan process) where disagreements written down and dissected.
- Yes, using Arbitration Board.
- Yes, there has to be a fixed set of guidelines for arriving at decisions within Multi-stakeholder forum, but conflict resolution process is for those outside forum who are affected by decisions; i.e. Clearwater Bay which has an Appeal Board to serve proponents wanting to appeal their allocation.
- Yes, as long as process doesn't lead to where decision is out of whoever has jurisdictional decision-making authority (whether that be FIRST NATION, provincial governments or federal government).
- Yes, for certain matters would be useful to strive to reach consensus, but if exhaust this route.
- Yes, supposed to be the role of the Shoal Lake Committee, but for a less formal conflict resolution process for Working Group, could use Nishinabe Aski Nation (NAN) process (a treaty negotiation).
- No (have 3 voting members: Manitoba/Ontario/Canada).

20. Should a facilitator/mediator be used to run forum meetings? If yes: (i) what should their role be, and (ii) who should decide who it is?

(i)

- To define process; keep process (dialogue, discussion) on track; mediate disputes
- Yes, to facilitate process; be impartial.
- Yes, would help to keep things going; to get parties to communicate; has no decision-making power; should facilitate and support.
- No, would only consider one if saw a mediator/facilitator that worked well; this is based on own experiences using mediator/facilitator where have not seen issues resolved well.
- Not a facilitator or mediator but a CEO or Executive Manager to format meeting and then forum takes it away from there.
- CEO/Executive Manager role: staffed position, formats meetings, chairs meetings while round table carries out meetings, implement decisions and resolutions of forum.
- Yes, neutral role.
- Yes, can be expensive though; as facilitator, not decision maker; keep process rolling.
- Chairs, not facilitators, since they often have pre-conceived notions of what issues are and how to run process; better off having an independent chair, and co-chairs. The independent chair is used solely for public meetings, while in closed meetings within the Multi-stakeholder forum should have 2 co-chairs (First Nation and non-First Nation); facilitate direction of Multi-stakeholder group to ensure they follow mandate, prioritize issues, put certain issues aside to be dealt with later to ensure process moves forward ("directs traffic").
- To bring parties together, keep process on track, help forum members to determine which methodology to use in arriving at resource allocation decisions.
- Yes, definitely need a neutral, independent facilitator; to run meetings in a fair manner (including consensus-building), ensure all parties have opportunity to express their views, to do secretarial functions.
- Yes, may require one. To make process work; independent person with good facilitation skills to bring closure and consensus in committee to achieve a smooth-running decision-making group.
- Yes, chair meetings; independent; facilitate discussions; be pro-active with respect to challenging/clarifying issues and proposing creative solutions.
- No, not necessary if board running effectively, unless use one as needed to solve ad-hoc issues. To solve particular issue.
- organizer, secretarial duties, facilitate, plan
- Yes, facilitator/chair to help in trying to determine the allocation of resources.

(ii)

- Consensually determined by group; a list should be drawn up of med/facilitator with experience and which are well-respected and presented to the Multi-stakeholder group; the facilitator should not be anyone with an axe to grind with anyone in the group; may use an interim mediator/coordinator to start process until group has time to choose a permanent one.

- All parties should choose and facilitator should be acceptable to all.
- A steering group of stakeholders to develop terms of reference for and choose facilitator.
- A committee, comprised of forum members would do selection of CEO/executive manager.
- Consensus by forum.
- Not sure, but lead initiator of process can decide on facilitator, then once process up and running, Multi-stakeholder forum can re-select facilitator if they want to.
- Chosen by group.
- Forum itself.
- Collective decision by consensus.
- Agreed to by all parties.
- Mutual agreement.
- Mutual decision by forum.
- The board using consensus or through a structured expedited mediated process.
- forum; it could be their first major decision.

21. How should the decision-making process of such a forum be open and accessible to the community at large?

- There should be stages (phases) in the process (i.e. during fact-finding phase) where information should be shared with the constituents; the representatives of the constituents on Multi-stakeholder forum would be responsible for providing feedback on this (i.e. City of Winnipeg responsible for providing feedback and input for their constituents); in order to have control over process, have closed meetings until forum decides how to get community involvement .
- Minutes made available; community at large and other stakeholders should go through their reps on board or they could have direct representation on board.
- Forum to decide how.
- Use Media to publicize; find out from stakeholders how to reach their constituents -proactive networking, letters, etc.; have to use caution to ensure have balanced approach to getting community involvement, i.e. that are not all from one sector.
- Should be open by definition; forum itself would have to figure out and agree on how would communicate in community.
- Through the people that are appointed, who have to be honourable in truest sense of word (i.e. no political posturing).
- Has to be a public forum; First Nations would have open, on-going workshops/hearings; while at regional level, on-going public hearings where info is provided to public and they have the opportunity to raise concerns to panel of the Secretariat.
- Should be understood that representatives will do their work with respect to providing feedback to constituents and input from them; advertise; public meetings.
- Role of representatives to get back to their constituents; facilitator can provide info for info requests; newsletter to update people.
- In public meetings, independent chair becomes spokesperson for Multi-stakeholder group; major decisions can go out in draft for public input in various meetings

- around community, or could build in a 30-day appeal process - but this may be a waste of time since Multi-stakeholder group results should stand on their own merit.
- Representatives at table should have consulted with their constituents; use Environmental Bill of Rights Electronic Registry; i.e. Shoal Lake #39 has this Registry at their library; it lets anyone comment on regulations, policy and guideline decisions over a 30 day window of opportunity.
 - News release at start to say how public can input into process and what it is; continuous advertising; Representatives should ensure are accessible to their constituents; representatives responsibilities for getting input from constituents and providing feedback to them should be clearly laid out; each representative should develop their own communications plan which should be monitored by Multi-stakeholder forum to ensure is followed.
 - Representatives of stakeholders should have direct access to community; deliberations should be made public (minutes), but confidentiality considered as well; some open meetings, but some closed due to confidentiality and efficiency of Decision making.
 - By having access to information through newsletter, draft plans, open houses and community meetings, having certain forum meetings open to the community.
 - Each stakeholder that represents constituents would have responsibility to bring their constituents' views to table; possibly through public meetings.
 - Advertisements in paper; each representative may have their own networks that could be used for community participation.

22. Are there any other activities similar to, or which could interfere with such a M-S D-M forum that are occurring at present in the Shoal Lake basin?

- Always politics! Problem if don't have full participation in forum; if all parties will participate this is a "green light" to go on to the next step (i.e. who should be involved, selection of facilitator, community involvement, etc.) M-S D-M forum needs to define the product of the process - i.e. to bring about consensus on management of resources (management plan) that would include conflict resolution within it; a "building block" process that way don't always have to go back to square one every time a conflict arises.
- Forest management agreements with local advisory group (who advises Minister on forestry management in area); perhaps First Nations and their land claims.
- Things going on with water which we have no control over such as acid rain; politics always interferes with things that they shouldn't get involved with - votes often override good sense; politicians have to be on-board for this thing to work.
- Yes, there continues to be a number of initiatives; e.g. Ontario Forestry Management Plan, regional fishing initiative, hearings on other matters; concern is to use existing Working Group forum but personal view is need a watershed-only process, i.e. watershed community including First Nations and stakeholders with a vested interest (federal and provincial governments excluded).
- Ontario co-management agreement which may conflict/clash with Multi-stakeholder forum; individual process of First Nations in territory which may not accept any other groups' jurisdiction in watershed except their own.

- Watershed Agreement.
- Environmental Assessment designation on Consolidated Professor Mine, Land Use Guidelines Restricted Area Order on development; OMNR moratorium on fishery.
- Media campaign by certain groups (i.e. Winnipeg Water Protection Group, especially if they sour the waters with misinformation); Ontario Environmental Assessment Act and CEAA; i.e. this happened in Sioux Lookout last week where after having consulted with all interests, the feds came in and said decision had to go through CEAA.
- Activities of Shoal Lake First Nation #40.
- No, there are other activities that are relevant to, but would not interfere with such a M-S D-M process.
- Yes, three parallel: (i) Lake of the Woods Control Board (even though it does not significantly tie into this M-S D-M forum; (ii) Ontario Co-management initiative; (iii) any on-going environmental impact assessments.
- Tripartite Agreement; Watershed Agreement

23. Do you think a representative from your organization would be prepared to meet over the next year to further plan a M-S D-M forum?

- Would respond to a request; are a support to first nations, but don't really have jurisdiction in the area; could lend support to get process under way or an advisory role at this point in time.
- Yes, Serge Scrafield is ready to meet today! He has been appointed by Minister to be Manitoba delegation representative to Co-Management Watershed agreement.
- Yes, part of our mandate (we have a community development officer).
- Yes, already have determined who would be lead on this (Richard Kellow) to help process along.
- Yes, if political will was there (i.e. politicians on-board with support and co-operation).
- Would depend on Commissioner's decision (1 of 6 Commissioners).
- Yes, would be willing to sit down and discuss further, but don't have any major concerns with how Shoal Lake is being managed now.
- Yes, if there was a need for it; in no way want to compromise the present Shoal Lake. Committee/Working Group process.
- No, unless current process (Watershed Agreement) doesn't work out, yet if this fundamental step doesn't work, then another one would not be worthwhile ("not worth it to put another process on a process"), therefore government would likely want to back out; need momentum on which to build, and that momentum hasn't mobilized in the case of Shoal Lake.

24. What information sources are you aware of that could assist with this activity?

- A First Nation in Alberta with a similar type of Indigenous Management Plan "Sisiska Confederacy".

- "Beyond Dispute" a 1993 paper by Johnson and Duinker; "Search Process" a time effective way to come to decisions in larger groups; group breaks into smaller primary focus groups who decide on issues and how they want to deal with them which they then present to larger group (contact Prof. Peter Hominick, University of Toronto or at his Environmental Research Institute consulting firm in Toronto).
- Key thing to do at start would be to do "info inventory", including databases on land cover; press reports.
- Sources are there, just a matter of picking up the telephone.
- St. Croix River (New Brunswick/Maine stakeholder group); Great Lakes Water Levels Reference Public Advisory Committee.
- David Cressman of Ecologistics out of Waterloo, Ontario, and his work on Riding Mountain National Park 5-Year Management Plan.
- Each Ministry has a large info base; Geological Survey of Canada did a lot of sediment work in basin.
- Various government publications on public participation; Ontario Ministries.
- Ministry data bases; Acts, regulations, policies, procedures; Indigenous Management Plan from Shoal Lake First Nation #39.
- ON Provincial government publication "Vision for the North"; Newsletter on NAN negotiation. Moose River Basin Initiative "Environmental Information Partnership" re: cumulative impacts assessment; NAN treaty negotiation - where ON negotiator has inter-Ministry support team and a consultation forum made up of affected interests, while the First Nations have a Treaty organization who consults with them and negotiates on their behalf. Use Shoal Lake Working Group and Shoal Lake Committee and have a Consultation forum made up of affected interests; either Ontario consults with this forum or preferably the Working Group does (even though First Nations may not want to consult on any other than a government to government basis). Wabishigan - Whitedog Area Resources Committee have one person representing all third party interests. NAN - Inter-measures Agreement, guidelines for mineral exploration where Ontario has 2 members of mining interest as part of their delegation - i.e. affected interests could be part of Ontario delegation to such a Multi-stakeholder forum.
- WWDD has extensive body of data related to water quality at Shoal Lake; First Nation #39 and #40 have anecdotal (Elder) info that could be put on paper; Winnipeg Water Protection Group; Provincial Dept's/Ministries also have data on Shoal Lake.

25. This is my list of Shoal Lake basin stakeholders/interests. Who else do you think I should contact?

- Target goal should be Winnipeg, Manitoba, Ontario, Shoal Lake First Nation #39 and #40. Contact Bill Goulet of the Ontario Indian Commission (Toronto) which has direct access to Minister. Should have fewer, more focussed membership on M-S D-M forum. Should only include First Nations that live on the lake
- Manitoba Dept. of Northern Affairs. Manitoba Dept. of Energy and Mines (since there is mining potential in Manitoba); Lake of the Woods Control Board (1909 Boundary Waters Treaty); KPM mining.

- Ministry of Culture, Tourism and Recreation; Minister of Urban Affairs; District Health Council; Human Resources Canada; Kenora Area Chiefs.
- Environmental Protection (Manitoba and Ontario (Burlington) branches); Water Issues Division of Environmental Services Branch (Environment Canada, Burlington); The International Coalition on Land/Water Stewardship in the Red River Basin; Association of Manitoba Chiefs; Sustainable Development Coordination Unit; International Institute for Sustainable Development; Natural Resources Institute (U of Manitoba); Red River College (Environmental Journalism Program); Brandon Community College and University (Rural Development Program).
- Are too many on list; don't include Winnipeg Municipal Agencies or Public Groups/Others categories; add External Affairs Canada (due to dealings with IJC); add DFO (including Coastguard).
- No, looks good.
- Whiteshell District Assoc. (cottagers, etc.); West Hawk, Falcon Lake Business Community (contact Alec Young of Falcon Lake); talk to South-East Quota Assoc. (foresters that do cutting in area), rather than individual forestry companies; don't include academic/research category, they can be used to acquire knowledge but don't have a stake in Shoal Lake watershed.
- KPM mining; Lake of the Woods Control Board; Ontario Ministry of Municipal Affairs.
- Manitoba mines people (since are good mining properties in Manitoba side of watershed); DFO (as they are usually co-ordinating agency under CEAA); Kenora Prospectors and Miners (KPM); Lake of the Woods Cottagers Assoc.; Northwestern Ontario Prospectors Assoc (Thunder Bay); Ontario Mining Agency (represents producing mines); Prospectors and Developers Assoc. (Toronto).
- For local municipalities, just use Winnipeg, Kenora, Falcon Lake;- Lake of the Woods Property Owners Assoc.;- Kenora Independent Loggers Association; Ontario Federation of Anglers and Hunters; tourism representation; * notes too much of a focus on Winnipeg agencies/groups.
- Lake of the Woods Cottagers/Campers/Outfitters/ Assoc.; Municipal Agencies: "Business Liaison and Aboriginal Affairs" a recently created Winnipeg organization.

26. Any other comments/suggestions (re: Shoal Lake basin management, planning, conflict resolution etc.)?

- Need ADM or Ministerial level participants, Mayor of Winnipeg and Chiefs in order to get this process rolling; unless everyone "buys-in" at start, will have problems down the road; these people must drive the process, while the facilitator must make sure these people stay in the driver's seat.
- If political will is really there (especially. with respect to Manitoba), they have to be straightforward and be willing to change their regulations to recognize the regulatory regime of this new management group similar to how Canada gave authority to provinces to make regulations over natural resources with the Natural Resources Transfer Act - then this forum has teeth! a humourless job!

- Shoal Lake #40 has filed a notice to the Ontario government and other Shoal Lake First Nations of their termination of the Watershed Initiative (Working Group) effective June 30, 1995, conditional on Ontario's coming through with Shoal Lake #40's 1995 funding under the initiative (\$140,000), however, this deadline has been extended until the new Ontario Minister can be briefed and a decision made. We have another proposal under the Green Plan to Sheila Copps/ Lloyd Axworthy for a Shoal Lake #40 Watershed Secretariat.
- Keep politics and technical stuff separate; where to hold meetings; central point or move party to party; funding and continuity of funding; matter of who pays has to be worked out early on; contentious issue especially with respect to First Nations who don't have adequate funding sources; lets get on with it!
- One step at a time.
- Book "After Native Claims - the Implications of Comprehensive Claims Settlements for British Columbia" by Cassidy and Dale, 1988 (Oolican Press).
- there should be a structured D-M framework patterned after priority in law over water - i.e. domestic use given first priority etc.
- Perhaps kick-off forum with a conference where all interests could attend and brainstorm ideas, present papers, etc., on how forum could proceed, be structured etc.

APPENDIX E

*Memorandum of Agreement. This Agreement Between: The Shoal Lake Indian Band No. 40
And: Her Majesty in Right of the Province of Manitoba And: The City of Winnipeg.*

MEMORANDUM OF AGREEMENT

THIS AGREEMENT made as of the 30th day of June, 1989.

BETWEEN:

THE SHOAL LAKE INDIAN BAND NO. 40

(hereinafter called the "Band")

AND:

HER MAJESTY IN RIGHT OF THE PROVINCE OF MANITOBA

(hereinafter called the "Province")

AND:

THE CITY OF WINNIPEG

(hereinafter called the "City")

Preamble

Whereas activities within the Shoal Lake watershed may impact on the water quality of Shoal Lake, and in particular the part of Shoal Lake referred to as Indian Bay, this water being the source of supply of drinking water both for the Band and for the City of Winnipeg;

Whereas certain benefits can accrue to the City of Winnipeg from the exercise of controls on activity in the watershed consistent with the preservation of water quality;

Whereas the Band has certain regulatory jurisdiction over Reserve lands including those lands draining into Shoal Lake and more particularly, lands surrounding the intake of the Winnipeg aqueduct on Indian Bay;

Whereas certain benefits can accrue to the Band from development activities on Reserve lands;

Whereas the parties to this agreement recognize the desirability of promoting economic growth for the Band;

Whereas the parties to this agreement recognize the desirability of promoting the preservation of water quality in Indian Bay;

Whereas the City of Winnipeg and the Province of Manitoba are desirous of entering into an agreement with the Band under which the Band would exercise its authority to regulate development on the Reserve in a manner consistent with the preservation of the quality of the natural water as it relates to the City of Winnipeg water supply;

Whereas the Band is willing, in return for certain consideration, to exercise its regulatory authority on Reserve lands in a manner consistent with the preservation of the quality of the Winnipeg water supply and consistent with the Band's need for economic growth;

Whereas it is in the interests of all to reach an agreement which will balance these considerations;

NOW, THEREFORE, in consideration of the promises and of the covenants herein contained, the sufficiency of all of which is hereby acknowledged, the parties mutually covenant and agree as follows:

Definitions

1. For the purpose of this Agreement and, unless otherwise expressly provided or indicated by the context, the following words and phrases shall mean:

Arbitration - Shall mean a Board of Arbitration appointed pursuant to the provisions of this Agreement;

Band - The Shoal Lake Indian Band Number 40;

Chief of the Band - Chief of the Shoal Lake Indian Band No. 40 as chosen pursuant to Section 74 of the Indian Act or its successor Acts;

City - The City of Winnipeg;

Cottage Lot Development - The cottage lot development on Indian Bay and Snowshoe Bay proposed to be developed by Snowshoe Bay Development Ltd.;

Environmental Management Plan - Shall mean the plan developed pursuant to the terms of this Agreement.

Province - The Queen in Right of the Province of Manitoba;

The Reserve - The Reserve of the Shoal Lake Indian Band Number 40 and the interest of Shoal Lake Band 40 in Reserve 34B2;

Reserve Lands - Shall have the same meaning as contained in the Indian Act, that is any tract of land, the legal title to which is vested in Her Majesty the Queen in Right of Canada, that has been set apart by Her Majesty for the use and benefit of a Band at the time of signing of this Agreement or at any time subsequent thereto; and more particularly for the purposes of this Agreement, means the Reserve commonly known as Shoal Lake 40 and the interest of Shoal Lake Band 40 in Reserve 34B2.

Shoal Lake Agreement Committee - Shall mean the committee appointed pursuant to this Agreement.

Snowshoe Bay Development Ltd. - A body corporate duly incorporated by the Shoal Lake Indian Band No. 40 under the laws of Canada with its head offices located at the Post Office at Kejick, in the province of Ontario.

Water Quality - Shall be as defined by the Shoal Lake Agreement Committee on the recommendation of the Working Group within fifteen months of the coming into force of this Agreement.

Working Group - Shall mean the Group appointed pursuant to this Agreement;

Terms & Conditions

2. Nothing in this Agreement shall be construed so as to affect in any way the Aboriginal, Treaty, Constitutional or other rights, privileges or other freedoms of the Band and its

members. The Band agrees that the exercise of their Aboriginal, Treaty, Constitutional, or other Rights, and privileges shall be consistent with this Agreement.

3. This Agreement and the instruments of ratification shall forthwith be registered in the Reserve Land Register as provided under the Indian Act. The parties agree that this Agreement runs with the land and is therefore binding on their respective heirs, successors and assigns. In the event that the Reserve Land Register is superceded during the course of this Agreement, it is agreed that this Agreement shall then be registered where appropriate to ensure that it runs with the land and is therefore binding on the parties' respective heirs, successors and assigns.

4. It is a condition of this Agreement that it shall continue in force and effect notwithstanding any changes in legal relationships between the Band and Canada, including any changes in the nature of ownership and administration of the Reserve land.

Monetary Consideration

5. In consideration for the regulation of activities on the Reserve by the Band as hereinafter set out, the City of Winnipeg and the Province of Manitoba shall each pay upon the execution of this Agreement the sum of three million dollars (\$3,000,000.00) to a Trustee named in the Trust Agreement hereinafter described.

6. The Trustee shall hold such money in accordance with a Trust Agreement to be completed by the parties hereto upon the signing of this Agreement. The said Trust Agreement shall provide, among other things, for:

- i) the investment of such money to maximize possible financial benefits to the Band subject to general investment guidelines to be agreed to by the Shoal Lake Agreement Committee;

- ii) the disbursement of income earned to the Band on an annual basis or as appropriate upon the request of the Band. Disbursement of income shall be authorized by the Shoal Lake Agreement Committee, which authorization shall not be unreasonably withheld;
 - iii) the first payment of income to the Band to be made upon the signing by the Federal government of a parallel agreement as set out in Section 61 of this Agreement;
 - iv) the principal sum of the Trust created under this Agreement shall be disbursed to the Band upon the expiry of the full term of sixty years, or upon termination of the Agreement prior to the full term, the sum calculated as the principal multiplied by the expired term divided by the full term (60) years with the balance returned equally to the City and the Province.
 - v) if an agreement between the Band and the Federal government as contemplated in Section 61 of this Agreement is not entered into within 12 months of the execution of this Agreement or such further time as agreed upon by the parties or if this Agreement is not registered in the Reserve Land Register as contemplated by Section 3 of this Agreement, all moneys including principal and income held by the Trustee shall be repaid to the City and the Province in equal shares without deduction or penalty.
7. If the Trust Agreement contemplated in Section 6 of this Agreement is not signed within fourteen days of the execution of this Agreement, the monies shall be deposited by the City and the Province in trust to be held in an interest bearing account until such time as a Trust Agreement is signed at which time the monies including principal and accrued interest shall be

paid to the Trustee to be held and dispersed according to section 6 of this Agreement and until paid to the Trustee, that principal and interest shall be owned by the Province and the City in equal shares.

Band Regulation of Reserve Activities

8. In recognition that various development activities on the Reserve may have a greater or lesser potential for impacting on water quality, the Band agrees to exercise its regulatory authority by by-law or as appropriate as hereinafter set out.
9. The Band shall maintain its traditional rights to hunt, fish, trap and to cultivate and harvest wild rice on the Reserve.
10. The Band agrees to maintain its regulatory authority over the Reserve and therefore it agrees that it shall not alienate, lease or otherwise dispose of Reserve lands to third parties by surrender to Her Majesty or by any other means except where such alienation, lease or other disposal is subject to the provisions of this Agreement.
11. The Band shall continue to regulate without restriction the construction of new dwelling units on the Reserve to be occupied as permanent residences by Band members or to construct new buildings on the Reserve for social, recreational or educational purposes for Band members subject only to meeting environmental standards in the Environmental Management Plan.
12. The Band shall continue to regulate without restriction normal domestic activity anywhere on the Reserve including commercial activities anywhere on the Reserve for the purpose of providing normal services to Band members subject only to meeting environmental standards in the Environmental Management Plan.

13. Notwithstanding Sections 11 and 12 and subject to the Environmental Management Plan, the Band agrees to give notice to the Working Group for the purpose of securing the necessary approval prior to constructing new dwelling units for Band members or new buildings for social, recreational or educational purposes for Band members on that part of the Reserve on the North Shore of Indian Bay draining directly into Indian Bay (as defined in the map in Attachment 1). The Working Group shall secure Shoal Lake Agreement Committee approval within 30 days of notice having been given. Such approval shall not be unreasonably withheld. The Working Group may recommend appropriate measures to the Shoal Lake Agreement Committee and where there is not consensus or where approval is not granted, arbitration shall apply.

Band to Prohibit Certain Uses

14. In recognition that certain types of development activity available to the Band are of particular concern as to their potential for impacting on the water quality, the Band shall prohibit mining, heavy industry, and the use of pesticides, herbicides, and other similar toxic chemicals on Reserve lands.

15. Subject to Section 21 of this Agreement, in recognition that certain development activities on land draining into Indian Bay (as defined in the map in Attachment 1) are of particular concerns as to their potential for impacting on the water quality, the Band shall prohibit commercial and industrial development for other than domestic purposes in the area defined. Commercial development includes logging.

Recreation

16. The Band agrees to abandon the cottage lot development. The Band undertakes that it will enter into a separate Agreement with Canada so that the Snowshoe Bay Development Ltd. Head

lease dated June 6, 1980 and entered into between the Snowshoe Bay Development Ltd. and Her Majesty the Queen in Right of Canada will be cancelled and that the appropriate steps be taken to terminate the surrender of the land subject to the Head Lease so as to restore the land to its full Reserve status free from the terms of the surrender.

17. The Band will prohibit commercial development to provide recreational activities, including but not limited to cottage development, on the Reserve for the benefit of non Band members on all of the Reserve except on the South Shore of Snowshoe Bay.

18. The Band agrees to give notice to the Working Group for the purpose of securing the necessary approval prior to entering into any new commercial development to provide recreational activities for non Band members on the South Shore of Snowshoe Bay. The Working Group shall secure Shoal Lake Agreement Committee approval within a reasonable time of notice having been given. The Working Group may recommend appropriate measures to the Shoal Lake Agreement Committee and where there is not consensus or where approval is not granted, arbitration shall apply.

19. The Band undertakes to dismantle and remove as soon as practicable upon the coming into force of this Agreement any existing buildings on the North Shore of Indian Bay (as defined in the map in Attachment 1) intended for the recreational use of non-Band members.

Band to Regulate Certain Uses

20. The Band shall regulate by by-law or as otherwise appropriate tree cutting and logging, light industrial activity and commercial activity on land which does not drain into Indian Bay.

All such activities must meet environmental standards as set out in the Environmental Management Plan.

21. On the part of the Reserve draining directly into Indian Bay in the "narrows", (as defined in the map in Attachment 1) the Band shall regulate by by-law or as otherwise appropriate limited commercial development to provide services for hunting and fishing, food, fuel, to serve non Band members. However, the Band agrees to give notice to the Working Group for the purpose of securing the necessary approval prior to entering into such limited commercial development. The Working Group shall secure Shoal Lake Agreement Committee approval within a reasonable time of notice having been given. The Working Group may recommend appropriate measures to the Shoal Lake Agreement Committee and where there is not consensus or where approval is not granted, arbitration shall apply.

Waste Management

22. In recognition that an adequate system of waste management is a necessary feature of sustainable development on the Reserve, the Band shall spend up to a total of two million dollars (\$2, 000, 000.00) on the design and construction of such a system within the first five years of this Agreement.

23. The adequacy of this system shall be submitted to and reviewed by the Working Group and is subject to the provisions for arbitration or mediation under this Agreement.

24. In the interest of cost effectiveness, the City and the Province may provide technical or other assistance to the Band to bring the project to completion.

25. The Working Group shall take into consideration that subject to the upper financial limit of \$2,000,000.00, it is intended that the Waste Management System shall include but not be limited to the following components:

- i. pipe collection system;
- ii. mechanical treatment plant;
- iii. polishing lagoon;
- iv. final discharge to lands South of Snowshoe Bay which do not drain into Shoal Lake.

26. The Band shall collect and transport for disposal all solid waste generated on the Reserve in a totally enclosed vehicle specifically designed for garbage collection to an approved site in Ontario outside of the drainage area of Shoal Lake.

27. The Band shall pass appropriate by-laws to ensure that required waste management standards are met. Where such by-laws have not been passed or where it is the view of one of the parties that provisions of this clause have not been satisfied, the issue may be taken to the Shoal Lake Agreement Committee. Any dispute at the Shoal Lake Agreement Committee may be taken to mediation or arbitration to make appropriate orders as to Waste Management control and payment of any and all costs, and penalties.

Road and Bridge Construction

28. The Band agrees to regulate by by-law or as otherwise appropriate road construction and maintenance on the Reserve in a manner consistent with the environmental standards set by the Environmental Management Plan.

29. The Band agrees that it shall not approve the construction of any bridge or causeway to the Reserve without the concurrence of the Shoal Lake Agreement Committee, or, failing such approval, without reference to the Federal Environmental Assessment Review Office process. In the absence of such process, arbitration or mediation under this Agreement shall apply.

Environmental Management Plan and Procedures

30. The parties agree that a system of environmental management is required on reserve lands to effectively anticipate, restrict, regulate, manage and monitor certain land uses, providing reasonable, effective control over the preservation and enhancement of the natural environment, especially as it relates to the preservation of the water quality of Indian Bay being the source of the Winnipeg water supply.

31. To achieve this objective, it is agreed that the Band shall, within eighteen months of concluding a parallel agreement with the Federal Government as contemplated in Section 61 of this Agreement, prepare an Environmental Management Plan based upon available data and submit it for review to the Working Group and approval by the Shoal Lake Agreement Committee.

32. Without limiting the generality of the foregoing, the Environmental Management Plan will provide:

- a) a description of land use activity on the Reserve taking into account restrictions on land use as set out in this Agreement;
- b) a mechanism for Band environmental assessment review of Band activities on the Reserve which may have impact on water quality;

- c) compliance mechanisms, and requirement of notification of the Working Group regarding regulated activities on regulated areas of the Reserve;
- d) application of arbitration or mediation to both the Environmental Management Plan and activities proposed under the plan; and
- e) A mechanism for the review and modification of the Plan.

In addition, the Environmental Management Plan will provide for the promotion of environmental awareness.

Interim Controls and Plan Approval

33. Until the Environmental Management Plan comes into effect, the Band shall, prior to commencement of any work, review all proposed capital works and development activities and prepare environmental impact statements as appropriate and shall give notice thereof to the Working Group which shall secure Shoal Lake Agreement Committee approval within thirty days of notice having been given. Such approval shall not be unreasonably withheld. The Working Group may recommend appropriate measures to the Shoal Lake Agreement Committee and where there is not consensus or where approval is not granted, arbitration shall apply.
34. If the Environmental Management Plan has not been approved by the Shoal Lake Agreement Committee within six months after its submission by the Band, then disputes respecting the plan including the adoption of the plan may be submitted to arbitration for decision within an additional twelve months. The arbitrator or Chairman of the Board of Arbitration shall have recognized expertise in environmental management.

Agreement Implementation

35. The parties agree to work together to implement this Agreement so as to avoid recourse as much as possible to third party dispute resolution. Therefore, each party agrees to appoint a senior representative to a political committee called the Shoal Lake Agreement Committee. It shall be composed of the Mayor of the City of Winnipeg, the Chief of the Shoal Lake Band #40, and a designated Minister of the Province of Manitoba.

36. In order to avoid recourse to third party dispute resolution as much as possible, the role of the committee is to seek to develop consensus in accordance with the intent of the partners as more particularly set out in the preamble to this Agreement. The decisions of the Shoal Lake Agreement Committee shall be made by agreement of all parties. Where there is no unanimity, any party may seek recourse to arbitration or mediation.

37. The Shoal Lake Agreement Committee shall appoint two representatives per party as members of a Working Group. The Working Group will meet as appropriate and not less than annually at Shoal Lake or such other place as agreed upon by the members.

38. The Mandate of the Working Group shall be to assist the Shoal Lake Agreement Committee in assuring the implementation of this Agreement. Without restricting the generality of the foregoing, the Working Group shall:

- i. receive and review the environmental management plan submitted by the Band and make recommendations to the Shoal Lake Agreement Committee;
- ii. receive and review the design and cost estimates for the Waste Management System and make recommendations to the Shoal Lake Agreement Committee;

- iii. Until the Environmental Management Plan is in effect, receive and review notice of proposed developments and make recommendations to the Shoal Lake Agreement Committee;
- iv. make such inspections and reports thereon as it may deem appropriate;
- v. prepare or cause to be prepared an annual report to the Shoal Lake Agreement Committee including an assessment regarding adherence to the terms and intent of the Agreement and the making of appropriate recommendations relating to water quality, economic development, and other appropriate matters.

39. In order to give practical effect to the desire of all parties to this Agreement to protect the water quality in Indian Bay, it is recognized that prompt measures may be required to remedy particular situations which may result in deterioration of the water quality in Indian Bay.

Therefore,

- i) the Working Group or any member of it may make recommendations as to how to remedy such situations; in cases of clear and present danger, it or a member acting on its behalf may on the instructions of a majority of the Shoal Lake Agreement Committee or their designates have access to the Reserve to remedy the danger itself;
- ii) the Working Group may make recommendations to the Shoal Lake Agreement Committee as to how to remedy the situation; in cases of clear and present danger, the majority of the Shoal Lake Agreement Committee may order actions taken to remedy the danger itself;

iii) the Working Group or any member of it may make recommendations to the Shoal Lake Agreement Committee as to who shall pay the costs of the remedy where appropriate.

iv) any dispute arising out of the exercise of authority in this Section may be subject to arbitration or mediation.

40. Where there is no consensus in the Working Group, any member may make its own recommendations to the Shoal Lake Agreement Committee.

41. The office of the Working Group shall be located on the Reserve and every effort shall be made to ensure that any staff employed will be residents of the Reserve.

42. The Shoal Lake Agreement Committee shall meet as appropriate and at least annually:

- i) to receive the annual report of the Working Group;
- ii) to review the recommendations of the Working Group;
- iii) to make appropriate decisions required by the Agreement;
- iv) to authorize payment to the Band as provided under this Agreement; where no authorization is made after any twelve month period, the Band may have recourse to arbitration or mediation.

43. The annual meeting of the Shoal Lake Agreement Committee shall take place at least 45 days prior to the date upon which the Trustee is expected to make the annual disbursement of income earned to the Band.

44. Any member of the Shoal Lake Agreement Committee who intends to object to a disbursement of income to the Band by the trustee shall give notice to parties where possible

prior to meetings of the Shoal Lake Agreement Committee. It is the intention of the parties that disputes with respect to the disbursement of income shall be resolved as expeditiously as possible.

Economic Development Considerations

45. In recognition of the need for quality economic growth for the Band, a thorough resource inventory/economic development study will be undertaken. This study will identify practical sustainable development opportunities for the Band and its members. The City and the Province will cooperate with the study.

46. The City and the Province shall make every effort to promote economic development beneficial to the Band in the Shoal Lake area. It is understood that this obligation is consistent with the preservation of water quality.

47. In recognition of the need of the development for an economic base for the Band, the City and the Province shall provide their best efforts to make available employment, contracts, and training to Band members within commuting distance of the Shoal Lake Band #40 community each year during the course of this Agreement.

Dispute Resolution

48. It is the intention of the parties that disputes regarding any matter under this Agreement shall be resolved where possible by mutual consent and at all times as expeditiously as possible.

Therefore where there is a dispute regarding any matter under this Agreement, it shall be reviewed by the Working Group. The Working Group when considering any matter shall consider the intent of the parties as more particularly set out in the preamble to this Agreement and:

- i) may recommend a resolution to the Shoal Lake Agreement Committee;
- ii) may refer the matter to a qualified mediator, mutually agreed upon; or

49. In the event of a dispute arising between any of the parties to this Agreement as to any matter arising out of this Agreement, and if the dispute has not been resolved by agreement between such parties, upon the request of any of them and subject to Section 56 hereof, the matter in dispute shall be referred to and settled by Arbitration alone and not by recourse to any Court by way of action of law.

In such event, the party requesting arbitration shall at once appoint an Arbitrator and the other two parties (where there is more than one) shall jointly appoint a second arbitrator and these two shall jointly select a third to be Chairman unless all parties agree to a single Arbitrator. When considering any matter an arbitrator or arbitrators as the case may be shall consider the intent of the parties as more particularly set out in the preamble to this Agreement.

50. If within a reasonable time the two Arbitrators respectively appointed do not agree upon a Chairman or if a party who has been notified of a dispute fails to appoint an Arbitrator, then the third Arbitrator or an Arbitrator to represent the party in default, or both such Arbitrators, upon simple Petition of the party not in default may be appointed by a judge of the Court of Queen's Bench for Manitoba or any other court of competent jurisdiction.

51. The powers and procedures set forth in the Arbitration Act of Manitoba, RSM 1970 Chapter A 120, shall govern in all references to arbitration except where the said powers and procedures are contrary to the provisions herein set forth in which case the powers and procedures herein set forth shall govern, or where a Board of Arbitration deems such procedures to be inappropriate or inconsistent with its duty to arrive at a just award or order and to do so expeditiously, in which case a Board of Arbitration shall give written reasons for deciding to vary the procedure in connection with any case before them.

52. A Board of Arbitration may establish its own rules of conduct and may rule upon the admissibility of evidence. It is agreed however that evidence may be presented by affidavit and the evidence of consultants or experts may be presented without the author being physically present and in all such cases it shall be for a Board of Arbitration to determine the weight to be placed upon such evidence.

53. The parties hereto may proceed to arbitration by way of a statement of agreed facts.

54. The parties to this Agreement shall make available to a Board of Arbitration upon request all relevant studies and reports which they possess.

55. Every award or order of a Board of Arbitration shall be in writing and shall set forth reasons.

56. An award made by a majority of the members of the Board of Arbitration shall be final and binding upon the parties. There shall be no appeal from the order or award of a Board of Arbitration, except as to an issue of law or jurisdiction, in which case the issue shall be presented as a stated case to the Manitoba Court of Appeal or any other Court of competent jurisdiction for determination, and there shall be no further appeal therefrom.

57. A Board of Arbitration may award costs in favour of any person as it deems may be fair and equitable in the circumstances.

58. Any award of costs may include legal fees or the cost of consultants or experts retained in order to deal with the dispute brought to arbitration to the extent such fees and costs are reasonable.

59. Any award of costs may include travelling allowance, and ancillary expenses for the parties to a dispute, their legal counsel, consultants or necessary witnesses.

60. The costs of arbitration, including the reasonable expenses incurred for secretarial assistance, cost of court reporters, travelling expenses and reasonable fees paid to consultants who have been specifically retained by a Board of Arbitration, shall be determined by the Board of Arbitration. A Board of Arbitration shall be paid a fee which fee shall be fixed by the parties on appointment or by the Court of Queen's Bench in case of disagreement by the parties.

Role of the Federal Government

61. This Agreement shall come into force upon the parties to this Agreement having signified in writing their satisfaction that an Agreement has been concluded between the Band and Canada which provides for a contribution to be made by Canada substantially equal to that made by either the City or the Province and that Canada shall take all necessary steps to allow the parties to fulfill their covenants under this Agreement. Without restricting the generality of the foregoing, it is the intention of the parties that the agreement contemplated to be concluded between Canada and the Band shall provide that there shall be no alienation of Reserve land to third parties unless such land is subject to the provisions of this Agreement.

62. The Agreement contemplated between Canada and the Band shall, upon execution, be deemed to be an Appendix to this Agreement and shall form an integral part of this Agreement and any amendment thereto by or through the Band and Canada shall require the written consent of the parties to this Agreement, which consent shall not be unreasonably withheld. Failure to secure such consent shall constitute a breach of this Agreement and in that event the City or the Province, at either party's sole discretion may terminate this Agreement forthwith.

Interpretation

63. The Preamble to this Agreement forms an integral part of this Agreement; the headings throughout the Agreement are for purposes of guidance only and are not to be utilized in the interpretation of this Agreement.

Duration of the Agreement

64. The term of this Agreement shall be 60 years.

65. This Agreement may be terminated by either the City or the Band with 5 years written notice to all parties. No such notice shall be given for ten years from the date of signing of this Agreement.

Notice

66. Any notices pursuant to this Agreement shall be made to the parties at the following addresses:

The Chief of Shoal Lake Band 40
Kejick Post Office
Ontario
POX 1E0

The Mayor
City of Winnipeg
510 Main Street
Winnipeg, Manitoba
R3B 1B9

The Minister of Urban Affairs
Legislative Building
Room 317
Winnipeg, Manitoba
R3C 0V8

DATED this 30th day of June, 1989.

Shoal Lake Band Number 40

Approved as to details:

~~Per: The Chief~~

~~R.J. McRae, Commissioner
of Works and Operations~~

Her Majesty in Right of
The Province of Manitoba

~~Certified as to form:~~

~~Per: The Minister of Urban Affairs~~

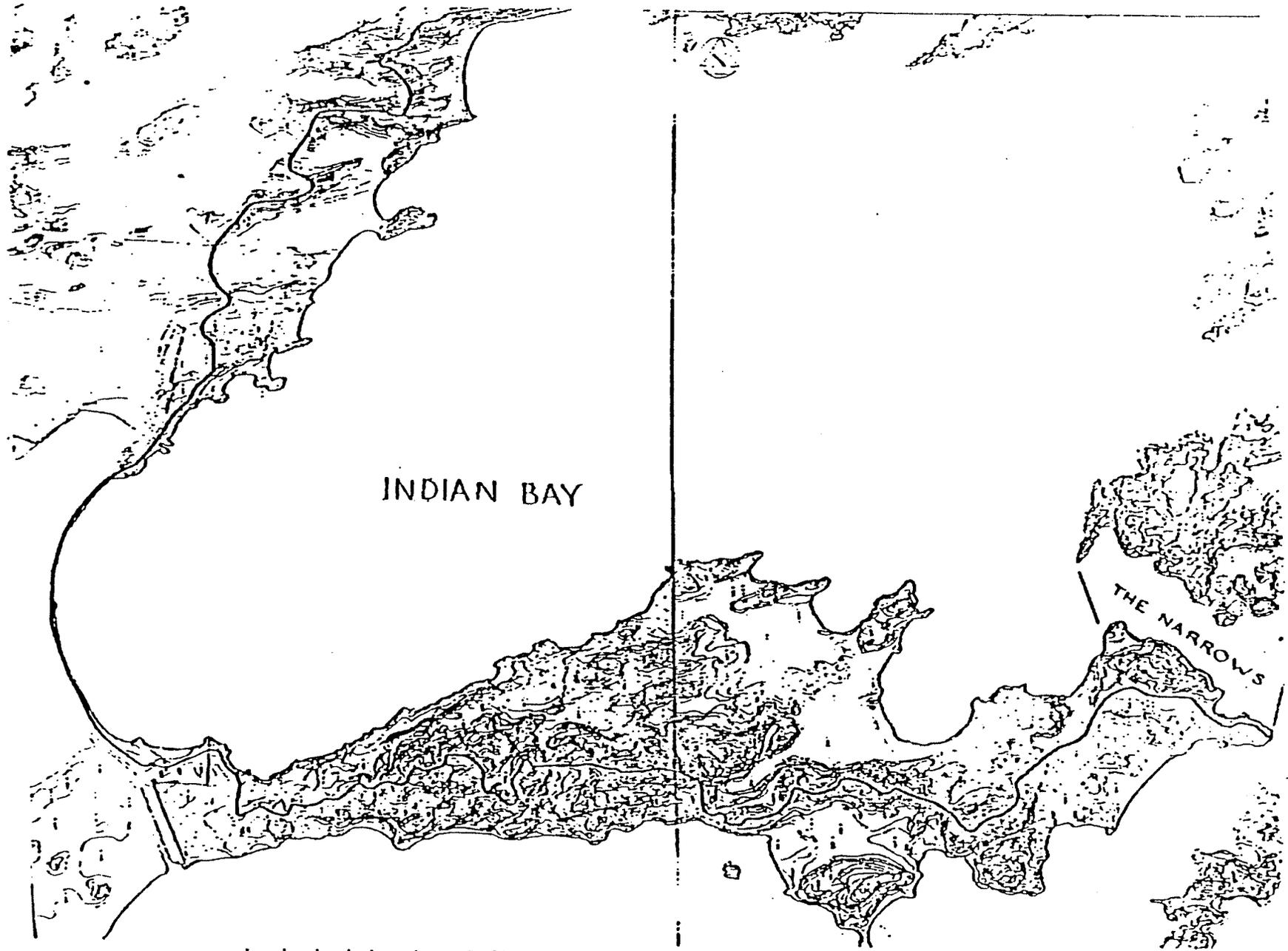
~~L. E. Strjack,
for the City Solicitor~~

The City of Winnipeg

~~Per: The Mayor~~

~~Per: The City Clerk
Deputy~~

ATTACHMENT 1



Lands draining into Indian Bay are the shaded areas.

APPENDIX F

*Shoal Lake #40/Canada Agreement. 1990. Respecting the Economy and the Environment, Between:
Shoal Lake #40 Band of Indians and Her Majesty the Queen in Right of Canada.*

SHOAL LAKE #40/CANADA AGREEMENT
RESPECTING THE ECONOMY AND THE ENVIRONMENT

BETWEEN:

*SHOAL LAKE #40 BAND OF INDIANS
as represented by the Chief and Council
(hereinafter referred to as "Shoal Lake #40"),*

OF THE FIRST PART

-and-

*HER MAJESTY THE QUEEN
in Right of CANADA,
as represented by the Minister of State
Indian Affairs and Northern Development
(hereinafter referred to as "Canada"),*

OF THE SECOND PART

PREAMBLE

Whereas Canada recognizes the need to assist the Band to address the present impasse between the City of Winnipeg and Shoal Lake #40 regarding development on Reserve lands;

Whereas Canada has exclusive legislative authority in relation to Indians and Lands reserved for Indians and Canada has a duty to hold Shoal Lake #40 interests in land for the use and benefit of Shoal Lake #40;

Whereas the parties to this Agreement are committed to the social, cultural and economic well-being of Shoal Lake #40 and its members and to improvement of the quality of community life on the Reserve in a manner which equitably balances and integrates economic and environmental considerations;

Whereas Canada recognizes and supports the desire of Shoal Lake #40 to be a full and productive participant in the Canadian economy;

Whereas Canada and Shoal Lake #40 recognize the need to promote economic growth employing environmentally sound planning and management practices on Shoal Lake #40 Reserve;

Whereas the parties to this Agreement wish to confirm and promote the ability of Shoal Lake #40 and its members to plan, develop and manage their lands judiciously, in keeping with the principles of self government and self determination;

Whereas Shoal Lake #40 is contemplating ratification of an agreement with the City of Winnipeg and the Province of Manitoba intended to equitably balance consideration of the economic well-being of Shoal Lake #40 Reserve and the protection of the natural environment on Shoal Lake #40 Reserve;

Whereas Canada recognizes the benefits accruing to Shoal Lake #40 pursuant to the intent of their agreement with the City of Winnipeg and the Province of Manitoba for a specific, cooperative, multipartite arrangement to achieve integration of the environment and the economy of Shoal Lake #40 as recommended in the report of the National Task Force on Environment and Economy, 1987;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH THAT the parties hereto, in consideration of the mutual covenants hereinafter set out, agree as follows:

DEFINITIONS

1. In this Agreement, the terms "Band", "Chief", "Council of the Band or Band Council", and "Reserve Land Register" have the same meaning as they have in the Indian Act, R.S.C. 1985, c. 1-5, as amended, and the Regulations made thereunder, and a reference to the Indian Act means the Indian Act R.S.C. 1985, c. 1-5, as amended, and

"Reserve" means any tract of land, the legal title to which is vested in Her Majesty the Queen in Right of Canada, that has been set apart by Her Majesty for the use and benefit of Shoal Lake #40 at the time of signing of this Agreement and more particularly for the purposes of this Agreement, means the Reserve commonly known as Shoal Lake #40 and the interest of Shoal Lake #40 in Reserve 34B2.

"Environmental Management Plan" means the Environmental Management Plan to be developed pursuant to this Agreement;

"Economic Development Strategy" means the Economic Development Strategy to be developed pursuant to this Agreement;

"Contribution" means a conditional transfer payment for a specified purpose which is subject to being accounted for or audited for the purpose of determining adhering to terms and conditions of payment;

"Vote 15 Project" means a capital project managed and administered by the Band and funded by the Department;

"Department" means that Government of Canada department established pursuant to s. 2(1) of the Department of Indian Affairs and Northern Development Act R.S.C. 1985, c. 1-6, as amended, or any successor legislation thereto;

"Minister" means the Minister of Indian Affairs and Northern Development;

"Shoal Lake #40 Tripartite Agreement" means an agreement between Shoal Lake #40, the City of Winnipeg and the Province of Manitoba dated June 30, 1989.

General Terms and Conditions

2. Nothing in this Agreement shall be construed so as to affect or in any way diminish the Aboriginal, Treaty, Constitutional or other rights, privileges or freedoms of Shoal Lake #40 and its members or any other person.

3. This Agreement shall be binding only upon the Department and the Minister of Indian Affairs and Northern Development or his representatives and successors and only to the extent that commitments made are within their jurisdiction and authority at the time this Agreement comes into force and to the extent that appropriations have been made by Parliament for such commitments. The Minister warrants that he has the present authority to make payments to the Band as contemplated herein.

4. Canada's obligations to Shoal Lake Band #40 and its members shall not be diminished in any manner by virtue of this Agreement. Without limiting the generality of the foregoing, Canada hereby acknowledges that Federal Programs and Services shall continue to apply to Shoal Lake #40 in accordance with the criteria established from time to time for the application of the entitlement to such programs and funding.

5. It is not the intention of this Agreement to alienate, surrender or disturb any rights or jurisdiction that Shoal Lake #40 may possess in its land.

6. It is not the intention of this Agreement to alienate, disturb or surrender any rights that Shoal Lake Band #39 may possess in Reserve No. 34B2.

7. This Agreement, the Shoal Lake #40 Tripartite Agreement and the instruments of ratification thereof shall be registered in the Reserve Land Register when both agreements come into full force and effect.

Canada's Obligations

8. Canada agrees to fund, through a negotiated contribution arrangement with Shoal Lake #40, to the limit of TWO MILLION FIVE HUNDRED THOUSAND (\$2,500,000.00) DOLLARS, the cost of a liquid waste management system and related capital infrastructure for Shoal Lake #40 within five (5) years of the execution of this Agreement.
9. Canada agrees to re-examine the funding limit established should projected costs escalate due to revised departmental service standards, inflation or the need to comply with environmental legislation or guidelines.
10. Canada agrees to advance the sum of FIVE HUNDRED THOUSAND (\$500,000) DOLLARS to Shoal Lake #40 or, on direction from Council of the Band, to its economic development corporation, for the purpose of promoting economic activities for the benefit of Shoal Lake #40 and its members. Further, Canada agrees to table a contribution arrangement to facilitate transfer of said amount within 30 days of the signing of this Agreement by Chief and Council.
11. Canada agrees that contributions in the amount of TWO HUNDRED AND THIRTY-FOUR THOUSAND (\$234,000) DOLLARS, made to Shoal Lake #40, subject to compliance with the terms and conditions established, for the purpose of conducting negotiations are not repayable.
12. Shoal Lake #40 shall be entitled to receive from Canada professional and technical expertise up to a value of ONE HUNDRED THOUSAND (\$100,000) DOLLARS to assist in the implementation of this Agreement.

Band's Obligations

13. The Band shall, within eighteen (18) months of the execution of this Agreement, develop and submit to Canada a copy of the Environmental Management Plan.
14. The Band shall develop, within twenty-four (24) months of the execution of this Agreement, a community Economic Development Strategy.
15. The Band agrees to instruct its legal counsel to discontinue Federal Court Suit #T-1264-85 without costs, to instruct the proper officers of the Snowshoe Bay Developments Ltd. to instruct their legal counsel to similarly discontinue the same action without costs, and agrees that neither Shoal Lake #40 nor Snowshoe Bay Developments Ltd. will reinstate this action.

Joint Obligations

16. The design and construction of the waste management system and related capital infrastructure shall be planned and executed so as to encourage and promote employment, training and entrepreneurial opportunities for Shoal Lake #40 and its members.
17. Canada and Shoal Lake #40 agree to undertake the steps necessary to complete design and construction of a liquid waste management system subject to the financial limitations contained in this Agreement.

Waste Management System - Implementation

18. The parties recognize that an adequate system of waste management is necessary to protect the environment, to encourage sustainable economic development and to improve the quality of life for Band members.

19. The design and construction of the waste management system will be a Vote 15 project, managed and administered by Shoal Lake #40.
20. Canada will attempt to advance the schedule for funding for the development of the waste management system, both parties recognizing the fiscal and time frames contained in this Agreement.
21. The design of the waste management system shall be submitted to and reviewed by the Chief, Band Council and the Department. In the event that agreement is not reached by these parties regarding the adequacy of the system, the parties shall refer the proposed system(s) design to mutually acceptable, independent technical experts for evaluation and recommendation. The final decision as to the approved system to be constructed shall nonetheless be reached by consensus.
22. The design of the waste management system shall, at a minimum:
- (a) consider policy and practice as applied in the Manitoba portion of the Shoal Lake drainage basin;
 - (b) be guided by the need to promote sustainable economic development for the benefit of the band;
 - (c) be consistent with good engineering practices;
 - (d) meet departmental service standards; and
 - (e) comply with federal environmental legislation.
23. Upon completion of the waste management system, Canada shall contribute to Shoal Lake #40 the Operation and Maintenance costs, on the basis of program guidelines and criteria for such funding support to all Bands in Ontario, such that Shoal Lake #40 will assume responsibility for the operation of the waste management system. Canada will provide the training necessary to enable Shoal Lake #40 to operate and maintain the system.

Waste Management System - Economic Benefits

24. Canada and Shoal Lake #40 agree that the design, construction and maintenance of the waste management system will be done in a manner that will encourage and promote employment, business, training and other benefits and opportunities for Shoal Lake #40 and its members.
25. The project planning and design of the waste management system shall identify potential training, employment and business opportunities for Shoal Lake #40 and its members.

Economic Development

26. Canada and Shoal Lake #40 wish to promote productive economic growth that is compatible with the preservation and enhancement of the natural environment on reserve lands of the Shoal Lake #40 Band.
27. Shoal Lake #40 may constitute a band-controlled economic development corporation to guide and promote economic initiatives for the benefit of Shoal Lake #40 and its members and to be the recipient of the federal contribution pursuant to Article 10 hereof.
28. Shoal Lake #40, or its economic development corporation, will be responsible for developing, within twenty-four (24) months of the commencement of this Agreement, an Economic Development Strategy which will serve to guide and promote economic growth for the benefit of Shoal Lake #40 and its members.

29. Without limiting the generality of the foregoing, the Economic Development Strategy will include:

- (a) inventory of resources accessible to the Shoal Lake #40 Band;
- (b) identified quality economic development opportunities;
- (c) an evaluation of the environmental impact of proposed economic development initiatives on reserve lands of the Shoal Lake #40 Band.

30. Canada's commitment to provide assistance pursuant to paragraph 12 hereof may be applied by Shoal Lake #40 to the development of its Economic Development Strategy.

Environmental Management Plan

31. The parties agree that an Environmental Management Plan is desirable to integrate economic and environmental planning and decision-making on the Reserve.

32. Without limiting the generality of the foregoing, the Environmental Management Plan will:

- (a) be in compliance with the Canadian Environmental Protection Act, S.C., 1988, c.22, as amended, and the Environmental Assessment and Review Process Guidelines Order and successor legislation;
- (b) provide a mechanism for band environmental assessment, review and management of activities on the reserve land of the Band which may have impact on the natural environment;
- (c) provide a mechanism for the review and modification of the plan;
- (d) describe a procedure to address significant violations of the provisions of the Environmental Management Plan.

33. Canada's commitment to provide assistance pursuant to paragraph 12 hereof may be applied by Shoal Lake #40 to the development of its Environmental Management Plan.

National/Provincial Round Table on Environment and the Economy

34. The Band may seek a beneficial association with the National or a Provincial Round Table on the Environment and the Economy.

35. The Minister agrees to provide a letter of support to Shoal Lake #40's initiative to seek a beneficial association with either the National or a Provincial Round Table.

Review Mechanisms

36. The parties agree that once each year, during the term of this Agreement, on a mutually agreed-upon date but in any event no later than the anniversary date hereof, the Minister or an appropriate designate and the Chief and Council of Shoal Lake #40 shall meet at Shoal Lake to review the implementation of this Agreement.

37. The annual meetings shall include, but not be restricted to, the following agenda items:

- (a) A review of the state of the natural environment of the reserve lands of the Band, and progress in the development of the Environmental Management Plan;
- (b) A review of the state of economy of Shoal Lake #40, and the progress in the development of the Economic Development Strategy;
- (c) A review of the progress being made to achieve a balancing of economic and environmental concerns;
- (d) A review of the progress and of the schedule for funding for the design and construction of the waste management system, including costs;
- (e) An evaluation of future economic prospects for Shoal Lake #40 and its members;
- (f) An evaluation of the fair and just operation of this Agreement and the Tripartite Agreement.

38. With respect to all such items as may be reviewed during each annual meeting, the parties undertake to take required remedial action as may be mutually agreed.

Desurrender

39. The minister agrees that a referendum shall be held to determine whether the parcel of land leased by Her Majesty to Snowshoe Bay Development Ltd. shall be returned to the status of reserve land as part of the Shoal Lake #40 Reserve.

When Agreement Effective

40. This Agreement comes into full force and effect on the day the second party has signed and the Shoal Lake #40 Tripartite Agreement becomes effective.

Duration of the Agreement

41. The term of this Agreement shall be five (5) years from the date this Agreement becomes effective. The principals agree to consider the appropriateness of a subsequent agreement to pursue the principles and intent of this Agreement relative to the social, cultural, and economic well-being of Shoal Lake #40 Reserve.

Succession

42. This Agreement enures to the benefit of and is binding upon Her Majesty, her heirs, successors and permitted assigns and on Shoal Lake #40, its successors and permitted assigns.

Construction and Interpretation

43. The headings are inserted only for convenience and shall not control or affect the meaning or construction of any part of this Agreement.

44. This Agreement shall be construed in accordance with the laws of Ontario.

Independent Legal Advice

45. Shoal Lake #40 acknowledges it has retained independent legal advice throughout the entirety of the negotiations and has had such advice regarding this transaction and matters associated with it.

of the agreement or any benefit to arise therefrom.

Notices

47. Any notices pursuant to this Agreement shall be made to the parties at the following addresses:

The Chief of Shoal Lake Band #40
Kejick Post Office
Kejick, Ontario
POX 1E0

The Minister of Indian Affairs and
Northern Development
Terrasses de la Chaudiere, North Tower
10 Wellington Street
Ottawa, Ontario
K1A 0H4

IN WITNESS WHEREOF the Honourable (Shirley Martin), Minister of State, Indian Affairs and Northern Development has hereunto set her hand on behalf of Canada on the 18th day of Sept, 1990, at DIAND and the undersigned Chief and Councillors of the Shoal Lake #40 Band have hereunto set their hands on behalf of the Band this 18th day of Sept, 1990.

Signed sealed and delivered)
By Canada at _____)
in the province of _____)
this 18th day of September,)
1990 in the presence of:)
_____)

Shirley Martin
Minister of State of Indian Affairs and Northern
Development on behalf of Her Majesty the Queen
in right of Canada

SHOAL LAKE #40 BKH
Signed, sealed and delivered BY)
By Chief at SHOAL LAKE)
in the province of ONTARIO)
this FOURTH day of SEPTEMBER)
1990 in the presence of:)

Judith Blackhead
Witness

Paul Blackhead
The Chief

G.P. Shy
Witness

Bobby Blackhead
Councillor

APPENDIX G

Shoal Lake Watershed Agreement - February 3, 1994 redraft

February 3, 1994 redraft

SHOAL LAKE WATERSHED AGREEMENT

B E T W E E N:

BIG ISLAND FIRST NATION as represented by Chief Wesley Big George

- and -

ISKUTEWISAKAYGUN #39 INDEPENDENT FIRST NATION as represented by Chief Eli Mandamin

- and -

NORTHWEST ANGLE #33 FIRST NATION as represented by Chief Colleen Sandy

- and -

NORTHWEST ANGLE #37 FIRST NATION as represented by Chief Joe Powassin

- and -

SHOAL LAKE #40 FIRST NATION as represented by Chief Herb Redsky

(The Five First Nation parties are collectively referred to hereinafter as the "**Anishinabe Nations of the Shoal Lake Watershed Ecosystem**" or the "**Anishinabe Nations**")

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Environment and Energy and Minister Responsible for Native Affairs, the Minister of Natural Resources, and the Minister of Northern Development and Mines ("**Ontario**")

PREAMBLE:

WHEREAS the Anishinabe Nations of the Shoal Lake Watershed Ecosystem affirm their continuing responsibility to live in a sustaining and protective manner with the Gifts of the Creator;

AND WHEREAS the Anishinabe Nations have lived in the Shoal Lake Watershed Ecosystem (the "Watershed") and have protected it since time immemorial;

AND WHEREAS from generation to generation the Watershed has been and continues to be a source of livelihood for the Anishinabe Nations;

AND WHEREAS the parties to this agreement (the "parties"), do have a shared responsibility to respect, protect, enhance, and manage development in a sustainable manner, the land, water, air and other natural resources of the Watershed for the benefit of future generations;

AND WHEREAS the First Nations within Ontario and the Government of Ontario entered into a Statement of Political Relationship that recognizes their government-to-government relationship, which Statement, for reference only, is attached as 'Appendix A' to this agreement;

AND WHEREAS the parties wish to develop their government-to-government relationship, and establish an enduring cooperative working relationship with respect to the co-management of land, water, air and other natural resources within the portion of the Watershed known in this agreement as the Eastern Watershed Area (the "E.W.A.");

AND WHEREAS the parties agree that the development of their relationship will be based upon principles of equality and upon striving to incorporate principles of shared decision-making;

AND WHEREAS the parties recognize that effective management of the E.W.A. requires a coordinated approach with respect to the whole of the Watershed;

AND WHEREAS the Watershed lies within the Treaty #3 territory and within the Provinces of Manitoba and Ontario, and within the Dominion of Canada, and is subject to many jurisdictions;

AND WHEREAS the parties recognize that coordination with the Governments of Manitoba ("Manitoba") and Canada ("Canada") is desirable for the most effective management of the Watershed;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 For the purposes of this agreement:

"**Shoal Lake Watershed Ecosystem**" (the "Watershed") is defined as the natural surface drainage basin of Shoal Lake, and is identified on the map attached as "Appendix B";

"**Eastern Watershed Area**" (the "E.W.A.") is identified on the map attached as "Appendix B" as that part of the Watershed which lies east of the Manitoba/Ontario provincial boundary;

"**Treaty #3 Territory**" is the territory described in Treaty #3 as signed at the Northwest Angle of Lake of the Woods in 1873.

"**Management Plan**" is a document which establishes goals and objectives, and a framework within which guidelines and practises or actions are developed to meet these goals and objectives.

"**Co-Management Arrangement**" is an agreement that establishes the roles and responsibilities in decision making and management plan implementation.

"**Significant Impact**" is a disruption that fundamentally alters the environment, habitat or quality of life including, but not limited to, the biological, ecological, social, cultural, economic and spiritual life in the Watershed.

"**Emergency**" is a human-made or natural diaster situation which threatens the environment, human life or health, or property, within the E.W.A., which requires immediate attention, and which includes, but is not limited to, chemical or toxic spills, mining disasters, fires, floods or tornadoes.

2. INTERPRETATION

2.1 Nothing in this agreement abrogates, derogates from, adds to, prejudices, affects, or defines any aboriginal, treaty, or any other rights, privileges, and freedoms which have accrued or may accrue to the Anishinabe Nations or any First Nation. For greater certainty, this agreement is not a treaty within the meaning of section 35(1) of the *Constitution Act, 1982*, and does not create

aboriginal or treaty rights.

- 2.2 Nothing in this agreement affects the rights, powers, or privileges of the parties and does not prejudice any right or position the parties have or may take in any litigation or court proceeding.
- 2.3 Nothing in this agreement shall be construed as a requirement of any party to make available information that is by law privileged or exempt from disclosure.
- 2.4 This agreement shall be interpreted in a manner consistent with Treaty #3.
- 2.5 This agreement shall be interpreted in a manner consistent with the limits on Ontario's constitutional and legal authority.

3. GENERAL PURPOSE

FURTHER NEGOTIATIONS:

- 3.1 The parties will negotiate a co-management arrangement that manages the E.W.A., or the Watershed with the involvement of Manitoba (the "co-management arrangement").
- 3.2 The parties will develop together a Watershed management plan which will assist in the future management of the E.W.A., or the Watershed with the involvement of Manitoba (the "management plan").
- 3.3 The parties will, for a reasonable period of time, seek the involvement of Manitoba, before developing their co-management arrangement and management plan.
- 3.4 Should Manitoba not become involved as sought in clause 3.3, the parties will proceed with the activities as contemplated in clauses 3.1 and 3.2 in regard to the E.W.A.
- 3.5 The parties recognize that Canada's involvement in the Committee and Working Group and in the development of the management plan and the co-management arrangement may be desirable.

FORUMS ESTABLISHED BY THIS AGREEMENT:

3.6 The parties will establish forums known as the Shoal Lake Watershed Committee (the "Committee") and the Shoal Lake Working Group (the "Working Group") through which the parties will provide timely notification to each other of ongoing and planned developments, dispositions, or activities (collectively "ongoing and planned developments"), of which they are aware, and which may have a significant impact upon the Watershed or the parties in relation to the Watershed.

3.7 The parties will review together, within the forums of the Committee and Working Group, ongoing and planned developments within the E.W.A. which may have a significant impact upon the Watershed or the parties in relation to the Watershed, and resolve issues relating to them.

4. PRINCIPLES

4.1 In negotiating to establish a co-management arrangement, the parties will view and treat each other as equals and strive to incorporate principles of shared decision making, equality of participation in the decision-making process and equal access to resources, information, technologies and techniques.

4.2 In developing the co-management arrangement and the management plan, the parties will ensure that it reflects the relationship between the Anishinabe Nations and the Watershed, and that it reflects the Anishinabe Nations' traditional land, water, air and other natural resource practices, knowledge, and philosophies.

4.3 The Committee and Working Group will conduct its affairs in a manner consistent with the government-to-government relationship between the parties.

4.4 In all matters, the Committee and Working Group will conduct its affairs in a consensual manner to the extent possible in order that an enduring, cooperative relationship will be fostered between the parties.

4.5 The principles of environmental, ecological, historical, cultural and sacred site protection, conservation and, where practicable, rehabilitation and restoration, as well as sustainable development will guide the Committee and Working Group in all its work.

- 4.6 The parties agree on the benefits to be gained from public consultation and agree to consult with the public and others when and where appropriate.
- 4.7 The parties will continue to fulfil any and all of their own government obligations, including those relating to environmental protection, and land, water, air and other natural resource management within the E.W.A., while striving to achieve cooperation and compatibility.

5. THE COMMITTEE AND WORKING GROUP STRUCTURE

- 5.1 Each of the Anishinabe Nations will appoint its Chief or a Council member as a representative to the Committee.
- 5.2 Ontario will appoint representatives of not less than Assistant Deputy Minister rank from the Ministry of Natural Resources, Ministry of Environment and Energy, Ministry of Northern Development and Mines, and the Ontario Native Affairs Secretariat to the Committee.
- 5.3 Each Committee representative will appoint a member whom he or she deems appropriate to the Working Group.
- 5.4 The Committee and Working Group may create forums and sub-committees which they deem appropriate to assist them in carrying out their work pursuant to this agreement.

6. THE COMMITTEE AND WORKING GROUP FUNCTIONS

- 6.1 The Committee will, in general, oversee and direct the work of the Working Group as either delegated by the Committee or as assigned pursuant to this agreement.
- 6.2 The Working Group will develop guidelines to assist in determining which ongoing and planned developments may have a significant impact upon the Watershed or the parties in relation to the Watershed.
- 6.3 The Working Group will receive notification from the parties of ongoing and planned developments which may have a significant impact upon the Watershed or the parties in relation to the Watershed.

- 6.4 The parties will incorporate sufficient available information in the notification to enable the Working Group to make a preliminary assessment as to whether the ongoing or planned development warrants review.
- 6.5 The Working Group will review ongoing and planned developments within the E.W.A. which may have a significant impact upon the Watershed or the parties in relation to the Watershed, with a view towards identifying and resolving issues through consensus.
- 6.6 The Working Group will report on a regular basis to the Committee regarding its work and deliberations including the results of its reviews and proposed resolutions of any issues.
- 6.7 The Committee may accept, reject, modify, substitute its views for, or refer back to the Working Group any proposals or recommendations for clarification or additional work.
- 6.8 The Committee and Working Group may consult members of the public and government officials, as they deem appropriate, to assist them in carrying out their work pursuant to this agreement.
- 6.9 The Committee, in deliberating upon the Working Group's proposals and recommendations, will strive to achieve consensus.
- 6.10 The Committee representatives will report the results of its deliberations to their respective governments and ministries.
- 6.11 The Committee, with the approval of the parties where required, may, after concluding its deliberations upon the Working Group's proposals and recommendations, take whatever action it deems appropriate and which is consistent with this agreement.

7. PROCEDURES

- 7.1 Ontario will notify the Working Group regarding any ongoing or planned developments of which it is aware, which may be undertaken or authorized by Ontario, and which may have a significant impact upon the Watershed or the parties in relation to the Watershed.
- 7.2 The Anishinabe Nations will notify the Working Group regarding any ongoing or planned developments of which they are aware within their respective

territories including traditional use areas and reserves which may have a significant impact upon the watershed or the parties in relation to the Watershed.

- 7.3 The parties shall not undertake, or grant a permit or authority for any development within the E.W.A., which may have a significant impact upon the Watershed or the parties in relation to the Watershed, before issuing notification to the Working Group and for a period of sixty (60) days following the notification unless the parties consent, or unless required by law or because of emergency.
- 7.4 The parties will provide sufficient available information to the Working Group to enable any review of any ongoing or planned development to be meaningful.
- 7.5 The Working Group will meet on a regular basis as agreed by its members but, in any event, not less than once every thirty (30) days.
- 7.6 The Working Group may appoint a facilitator when it has been unable to achieve consensus, or as otherwise agreed, to perform roles and duties as assigned.
- 7.7 The Working Group may utilize alternative dispute resolution methods when it is agreed that it is a practical necessity.
- 7.8 The Committee will meet as agreed by its representatives.
- 7.9 The Committee and Working Group may develop guidelines and procedures which they deem useful in carrying out their work and deliberations pursuant to this agreement.

8. FUNDING

- 8.1 Ontario will provide funding for the costs of the Committee and Working Group and costs associated with the participation of the Anishinabe Nations in developing the management plan and in negotiating the co-management arrangement for the duration of this agreement, subject to the Committee's recommendation regarding and Ontario's approval of work plans and budgets, execution of contribution agreements, and appropriations by the Legislature.
- 8.2 For greater certainty, and subject to clause 8.1, Ontario will provide funding

for the costs associated with the participation of the Anishinabe Nations pursuant to this agreement.

9. DURATION OF THIS AGREEMENT

9.1 This agreement takes effect upon the date of its execution and will remain in effect for a period of five (5) years unless, in the opinion of any of the parties, the results of any review conducted pursuant to clause 10.1 of this agreement warrants the termination of this agreement.

9.2 The parties may agree, where there is unanimity, to shorten or extend the duration of this agreement or replace it by further agreement.

10. REVIEW

10.1 The parties may cause to be carried out, when agreed upon and, in any event, within three (3) years of signing this agreement, a review of the Committee's and the Working Group's effectiveness, with a view toward recommending improvements.

11. FUTURE PARTICIPATION OF OTHERS

11.1 The extent and conditions of the future participation of other parties with respect to this agreement will be mutually agreed to by the parties.

12. GRIEVANCES

12.1 The Committee will receive information from the Anishinabe Nations related to past grievances pertaining to provincial regulations concerning the Watershed as well as specific activities in the Watershed that have been approved or carried out by Ontario, and it may suggest processes and mechanisms to resolve those grievances.

SIGNED AT _____, ONTARIO, this _____ of _____, 1994.

BIG ISLAND FIRST NATION represented by

Chief Wesley Big George

**ISKUTEWISAKAYGUN #39 INDEPENDENT
FIRST NATION** represented by

Chief Eli Mandamin

NORTHWEST ANGLE #33 FIRST NATION
represented by

Chief Colleen Sandy

NORTHWEST ANGLE #37 FIRST NATION
represented by

Chief Joe Powassin

SHOAL LAKE #40 FIRST NATION
represented by

Chief Herb Redsky

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO** represented by

The Honourable C.J. (Bud) Wildman, Minister of
the Environment and Energy and Minister
Responsible for Native Affairs

The Honourable Howard Hampton,
Minister of Natural Resources

The Honourable Shelley Martel,
Minister of Northern Development and Mines

APPENDIX H

***Manitoba/Ontario Memorandum of Understanding Concerning Present and Future Development
on High Lake and in the Immediate Vicinity of Shoal Lake***

May 26, 1981

**Manitoba/Ontario Memorandum of Understanding Concerning Present and Future
Development on High Lake and in the Immediate Vicinity of Shoal Lake**

May 26, 1981

- WHEREAS the Manitoba/Ontario boundary transect numerous watersheds shared by the two Provinces and water flow from one jurisdiction to another at innumerable locations along this boundary;
- WHEREAS both Manitoba and Ontario are committed to resource development based upon sound principles of environmental management;
- WHEREAS the City of Winnipeg's water supply is drawn from a body of water shared by both Provinces; and
- WHEREAS the Province of Manitoba has communicated its concerns about a proposed mining development on High Lake to the Province of Ontario, and Ontario has responded to those concerns;
- THEREFORE the Province of Ontario and the Province of Manitoba agree upon the following principles:
- * non-degradation of the water quality on High Lake;
 - * non-degradation of the water quality of Shoal Lake;
 - * immediate action by the appropriate Province to correct any situation which threatens to degrade the water quality of High Lake or any water body affecting the City of Winnipeg's water supply;
 - * as stated in the Province of Ontario's publication on "Water Management", November, 1978, it is the goal of the Ministry of the Environment "to ensure that the surface water of the Province are of a quality which is satisfactory for aquatic life and recreation".
 - * free exchange of data between the Manitoba Environmental Management Division and the Ontario Ministry of the Environment concerning the monitoring of operative developments in one Province affecting the other; the monitoring of mutually shared water bodies and waters flowing from one Province to another;
 - * The Ontario Ministry of the Environment will endeavour to provide Manitoba all information from the monitoring of effluent discharges and water quality of receiving streams related to the operation of Eco Explorations. Other information related to the operation of the mine will also be available unless it is considered to be of a proprietary nature;

- * development of an "early warning system" concerning future development plans in one jurisdiction which may affect the other;
- * cooperation concerning the monitoring and management of mutually shared water bodies.

FURTHER, the Province of Ontario and the Province of Manitoba agree to the following actions leading to the practical implementation of these principles:

- * Province of Manitoba agrees that its concern about the ECO EXPLORATIONS mining development on High Lake have been fully accounted for in the Ontario Ministry of the Environment's approval process and subsequent certification of approval for the development;
- * Province of Ontario agrees to provide a report to the Province of Manitoba concerning the operation of the ECO EXPLORATIONS mine on High Lake at mutually agreeable time intervals containing the following:
 - High Lake water quality
 - Effluent quality of the outlet of the waste treatment system polishing cell
 - Quality of the liquid retained in the polishing cell
 - Quality of the liquid in the precious metals recovery circuit effluent holding cell
 - Quality of the influent into the waste treatment system
 - Flow rates for the waste treatment system influent and effluent
 - Any changes in mine operation (milling rates, process, projected mine life, etc.)
- * both the Province of Manitoba and the Province of Ontario agree to cooperate on the development and execution of a water quality monitoring program for High Lake;
- * both the Province of Manitoba and the Province of Ontario agree to a bi-annual meeting of the Manitoba Assistant Deputy Minister for Environmental Management and the Ontario Ministry of the Environment Northwestern Regional Director and such others whose participation they shall solicit, hosted-alternately by each Province, to discuss transboundary environmental matters;
- * both the Province of Manitoba and the Province of Ontario agree to the expeditious notification of one another when development within their own Province with possible transboundary effects is being proposed;
- * both the Province of Manitoba and the Province of Ontario agree to solicit each others active contribution to the approval process for any development with possible transboundary effects.

THIS MEMORANDUM OF UNDERSTANDING shall come into effect June 1, 1981.

Gary Filmon
SIGNED ON BEHALF OF THE
PROVINCE OF MANITOBA

Keith Norton
SIGNED ON BEHALF OF THE
PROVINCE OF ONTARIO

DATED THIS 6th DAY
OF November 1981

DATED THIS 24th DAY
OF September 1981