

Expert Panel Indigenous Presentation Session
Review of Environmental Assessment Processes

November 29, 2016

Hotel 540, Kamloops, BC

Expert Panel:

Johanne Gélinas, Chair;

Doug Horswill;

Renée Pelletier.

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Johanne Gélinas: So if you want to have a seat, we will start. And I would like to invite Mr. Hank Gott for our opening prayer before we start the day.

(Opening Prayer)

Opening Remarks

Johanne Gélinas: Thank you very much.

So let's say a few words about today's session. So it's day two of our visit to Kamloops. We are initiating this morning our indigenous day event, so we will go through probably close to eight presentations today. And tonight we have what we call the open dialogue session. And today is open to whomever has an interest in the topics that we will discuss, which is basically focusing on modern-day environmental impact assessment process.

So let me say a few words about the mandate, but first I would like to introduce myself. My name is Johanne Gélinas. I have the pleasure to Chair that Expert Panel. And I'm accompanied today by Doug Horswill and also Renée

Pelletier. We have another colleague who, unfortunately, cannot make it to Kamloops. His name is Rod Northey.

Renée.

Renée Pelletier: Thank you.

So (indiscernible) as we say in my language to the Elder for the opening this morning. We'd also like to recognize that we are in — I apologize; I'm probably going to mispronounce this — Secwepemc and Tkemlups traditional territory.

I'd also like to acknowledge any other Elders who may be in the room, Chiefs and community members. Thank you.

Johanne Gélinas: Thank you very much.

So the mandate that was given to us by the Minister of Environment and Climate Change is to look at the goals and purpose of modern-day environmental assessment, is also to communicate and engage with a broad section of indigenous people, interested group, individuals and organization. You don't have to be an expert to join us in having a dialogue with us. You simply need to have an interest, views and, more importantly, solutions to offer so that we can build this new approach to environmental assessment.

And the third part of our mandate is, of course, to issue a report, which will happen some time early next year.

The processes that we are looking at are three different ones, but we have had the mandate to look at everything which is related to environmental impact assessment, so we'll look at the National Energy Board process. We also look at the Canadian Nuclear Safety Commission process and, of course, the Canadian Environmental Assessment Agency.

We are in our 10th week of travel across the country. We have started our journey in September on the east coast, and we are slowly moving to the west coast, as we will spend the next three weeks in beautiful British Columbia.

We have mentioned that for those of you who would like to present a written submission to us, you have until December 23rd to do so.

So without any further ado, I would like to invite our first presenter, who is Kelly Mortimer.

Good morning. Just press the button.

KELLY MORTIMER, SHUSHWAP NATION TRIBAL COUNCIL

Kelly Mortimer: Hi. Good morning. My name is Kelly Mortimer. I'm the Director of Aboriginal Rights and Title for Shushwap Nation Tribal Council, but today I'm speaking on behalf of Kukpi7 Wayne Christian, our Tribal Chief. And we just want to be clear from the beginning that SNTC is not the consulting body, so I'm here just sharing the words of Kukpi7 Wayne Christian.

And I'd also just like to start off as saying as a settler on these lands, I'd like to acknowledge the hospitality of the rightful title holders, the rightful territorial authority to these lands and water, the Secwepemc Nation.

So the notes that I'll be presenting today from Kupki7 Wayne Christian are speaking on behalf of Simpcw, Neskonlith, Splatsin and Shuswap Bands. SNTC has nine member Bands as part of our Tribal Council, but today the four have gotten together for this presentation, so these are the notes that I'll be sharing. The other communities will speak for themselves.

So Simpcw, Neskonlith, Splatsin and Shuswap are all members of the Shuswap Nation Tribal Council. The SNTC membership includes a number of the Secwepemc Nation communities, and was formed in 1980 to advance our common Aboriginal rights issues, including Aboriginal title, and the development of self-government.

Simpcw, Neskonlith, Splatsin and Shuswap and all the communities of Secwepemcul'ecw have never ceded or surrendered their rights or title to our traditional territory. Rather, our nations continue to exercise Aboriginal rights, title and jurisdiction within our territory today. We are committed to the protection and preservation of these rights.

Our concerns regarding the federal EA process and the Crown's duty to consult and accommodate. The Crown has a constitutional duty to consult and accommodate us about the potential effects of the proposed projects on our Aboriginal rights and title. Given that our communities have never ceded title to our territory, the Supreme Court of Canada's decision in *Tsilhqot'in* applies and encourages the Crown to obtain the consent of First Nations when seeking to undertake activities that have the potential to affect our rights and disrupt our lands and resources.

To meet its constitutional obligations, the Crown must engage in meaningful consultation with us on a nation-to-nation basis and guided by the principles that have been confirmed by Canadian Courts and that have been endorsed by Canada and the United Nations Declaration on the Rights of Indigenous Peoples, including the principle of free, prior and informed consent.

The environmental assessment process as it currently exists is inadequate to fulfil these obligations. Some of the limitations of the EA process as we see it.

One of the main limitations that we have encountered with existing environmental assessment processes is in their ability to assess the potential effects of a proposed project on our Aboriginal rights and, particularly, our Aboriginal title. In our view, environmental assessments as they currently exist are unable to adequately consider the intangible impacts of development on our title, our laws and our spiritual and cultural knowledge and practices. In particular, we note that current environmental assessment processes exclude Secwepemc law and land tenure, exclude oral histories and knowledge, exclude the participation of youth, Elders and families, exclude spiritual and ceremonial practices, don't acknowledge the legacy of wrongs, focus on western methodologies and are founded on the idea of the proponent as title and rights holders.

Our intention is to work with government to develop a new environmental assessment process that respects both Secwepemc and western knowledge.

So for our recommendations for reform of the federal EA process, we think the model project assessment process that has been developed by the Stk'emlupsemc Secwepemc Nation, or SSN, for the environmental assessment of the KGHA — KGHM Ajax Open Pit Mine Project provides an important starting point for our discussion about review — renewing the federal EA process.

The SSN project assessment process is based on the principle of walking on two legs and respecting both Secwepemc and western knowledge. The SSN process was developed to ensure that SSN cultural perspectives, knowledge and history were duly considered as part of the assessment of the Ajax Mine Project.

The SSN assessment process consisted of three main parts. Part 1, an SSN team was appointed to work with independent experts to gather information and evaluate the proposed project. This information was used to prepare a report for the SSN review panel.

An SSN review panel made up of Chief and Council members, family-appointed representatives, Elders, youth and knowledge keepers was appointed to conduct hearings, gather evidence and make recommendations about the proposed project based on its impacts on SSN and Secwepemc laws.

A Joint Council was appointed to review the recommendations of the review panel and to issue a decision about the proposed project, and Kukpi7 Wayne Christian, our Tribal Chief, was the Chair of that panel.

The SSN review panel held its hearings between May 2nd and 6th of 2016 in Tk'emlups, hearing evidence from more than 80 presenters, including experts in both western and indigenous Secwepemc knowledge.

Some recommendations flowing from the SSN EA model. We think that the SSN project assessment process represents important principles that should be incorporated into the environmental assessment of any project being considered for development within our territory. These principles include the following.

A First Nation-driven EA process will ensure that indigenous laws, knowledge, perspectives, culture and traditions are adequately incorporated into the review process. As with the SSN assessment process, a First Nation-driven process will enable the review to assess a project's tangible impacts and its intangible impacts on our title and rights. A First Nations-driven process will also ensure the full participation of our members, including Elders and knowledge keepers, in the review process.

The process itself may look different from one First Nation to the next, but the key principle is to ensure that our concerns are properly heard and understood and reflected in the review process. This will go a long way to adding credibility to the review.

Both the United Nations Declaration on the Rights of Indigenous Peoples and the Supreme Court of Canada's decision in *Tsilhqot'in* confirm the importance of engaging in consent-based decision-making with indigenous peoples in respect of matters that have the potential to affect our rights.

Our nations have never ceded our Aboriginal rights and title, nor have we surrendered our jurisdiction and authority to make decisions on matters that have the potential to affect our rights and our lands. We therefore maintain the right to participate in decision-making on matters that could affect our rights.

We also maintain the right to develop our own indigenous decision-making institutions and to determine whether and how our lands and resources should be developed.

Given the importance of our Aboriginal rights and title and the potential for these rights to be impacted by development proposed within our territory, environmental assessment processes must allow First Nations to be involved in decision making on these matters. This model of decision making provides an alternative to government's current policy of unilaterally imposing and seeking to fit First Nations into existing environmental assessment processes. This model of decision making also better reflects our nation-to-nation relationship with the Crown.

Kukwstsétsemc.

Johanne Gélinas: Thank you very much.

You referred to two models, the consultation model and the decision-making model; right?

Kelly Mortimer: Yes.

Johanne Gélinas: Do you have any document that you can share with us so that we can learn from it and see how we can expand that kind of model if it works so well?

Kelly Mortimer: I'll leave that to SSN to speak directly for themselves about the model. We just want to lend our support to it.

Johanne Gélinas: Okay. Renée.

Renée Pelletier: So we thank you, firstly.

So we heard yesterday a little bit about the nation-led environmental process, and I held back on questions yesterday to ask them today, so I'm very interested in hearing all about what you've been doing here.

The first thing I — I guess the first question I have is I wanted to confirm where you are in the process for the Ajax Mine.

Kelly Mortimer: So I guess just for clarity's sake, I just want to be clear on the fact that SNTC's really supporting the SSN process, but SSN can speak for themselves on where they're at with their process and the particulars of that.

Renée Pelletier: Okay. So I will hold off my many questions, then.

Kelly Mortimer: Please. Thank you.

Renée Pelletier: Just — well, then a question just for you.

I understand that the nation-led environmental process is obviously done within the current system, and you've mentioned that, in your view, it's a good starting point.

Is there something that you would add to the system? Is there a way to make it even better? Like if you could start from scratch, you had no limits, you weren't bound by existing legislation, what, in your view, would be the ideal way in which communities could participate or lead an environmental assessment process?

Kelly Mortimer: I think just with the acknowledgement or recognition as being the proper title and rights holders to the lands and starting from a place where indigenous law is recognized under the process, and then using the engagement model and consultation process that SSN has done.

Renée Pelletier: Okay. Thank you.

Johanne Gélinas: Thank you very much for your presentation. And I suppose that you will give us a copy of your presentation?

Kelly Mortimer: Yes.

Johanne Gélinas: Okay. Thank you very much.

So do we have somebody else scheduled for this morning or we have to wait until 11:00 to have SSN coming?

That's a yes, we wait until 11:00?

So we will adjourn until 11:00 to have a chance to hear from SSN. Thank you very much.

(BREAK)

PRESENTER #2

Presenter #2: ...it was never acted upon, neither from Trans Mountain or Natural Resources Canada. We've asked for — for studies to be done, and we know that it's going to impact. It doesn't matter where they put it above our Reserve, it's going to impact us because our — what we've been told is we have the best aquifer in Nicola Valley, and the water that comes down, it feeds our community, our entire community. And it goes into the Coldwater River.

Doug Horswill: And the aqua — the current pipeline, the existing pipeline where you've discovered this oil, and is that impacting your aquifer at the present time, or is that —

Presenter #2: No, it —

Doug Horswill: — surface water?

Presenter #2: No, it's — it's not close to the aquifer, but we've been told that there is an underground river underneath which we believe it could be impacting other homeowners because they have houses down along the bottom where there are wells.

There have been no tests or studies done to make sure that there is an contamination in the water. We've been doing testing ourselves, but we don't get no money from anybody else.

Doug Horswill: My last question. Do you have any sense that there's any direction for recourse for you at this point in the decision process, your community?

Presenter #2: My people are scared because of the pipeline being so close to our water where we pump the water from. If it ruptures and there's a leak, we're not going to have no more water for our entire community. And if it ruptures anywhere close to where we're getting our water and it goes into the creek, it'll go in to the Coldwater River, then the Nicola, then the Thompson, then the Fraser. That's how scared our people are, because of our water.

Johanne Gélinas: I understand why your people are scared. I need to understand a little better, though, you are a First Nation community. You already have a pipeline. You are known by those companies. They don't come to you and tell you what's going on on a yearly basis or they don't maintain communication with you regularly, even if it's once a year?

I mean, you have to go on your territory to discover what's going on without being informed of anything?

Presenter #2: Yes.

Johanne Gélinas: Is that what you're saying?

Presenter #2: Yes. The only time they communicate with us is when they want to go walk the pipeline with their probe and to see the pipe on — what the shape is when they walk along the pipeline with their — I forget what the name of it was, but it's — it detects if there's any holes in there. And that's how they detected their anomaly on the site two years ago.

They said it wasn't a leak, but if it wasn't a leak, then why did they have to weld big pieces of iron to the pipe? And then that's what they call an anomaly and not a leak? Especially when the water and the soil is contaminated.

Johanne Gélinas: The word probably sound less scary than talking about a leak.

The — have you asked directly to the pipeline company to have water testing in the aquifer?

Presenter #2: We're trying to meet with Ian to get some hydro geological study done. That's what our meeting was supposed to be for in October. At the last minute, Ian Anderson cancelled out on that meeting, and we haven't — we've finally

been emailing each other and trying to set up another meeting. And I've been waiting ever since October, but now I get a response saying, "Well, now we can't meet until after the new year now".

Johanne Gélinas: So please let us — send us the information that you think might be useful for us because, of course, this is part of public engagement and relationship between proponents and First Nation communities or indigenous communities is something that we want to look at.

So thank you for having taken the time to come and talk with us this morning.

Presenter #2: Kukwstsétsemc. Thank you.

Johanne Gélinas: Thank you.

(BREAK)

Johanne Gélinas: I will invite everybody to have a seat, and we will proceed with our next presenter.

So good morning. I would like to welcome Acting kúkpí7, Terry Deneault, and also Ms Raquel Khoy(ph).

So welcome. We have half an hour, and we are looking forward to hear your presentation. Thank you very much.

TERRY DENEALT, SKEETCHESTN INDIAN BAND

Terry Deneault: (Speaking in other language). On behalf of the Skeetchestn people, my people, I'd like to thank the Panel for listening to what I have to say. Everything I say to this morning, you will see why I'm saying these words to you today. You watch the pictures. And there's a lot of pictures of our children up there. And this is why it gives me strength to speak in the things that I have to say to you this morning.

I see this morning our beloved Elders that are here. I walk with them to be witness to the words that I speak. I see many other members from both Skeetchestn and Tk'emlups here to listen to what we have to say, and all the hard work we done to this point

And to the SNN technical people that are here, kukwstsétsemc for getting us to this moment.

So again, I ask you to really think about the words that I'm about to say. Try for a moment, for one moment, to put your shoes in mine, and go park yourselves up in our timcw and think about what you see. This is where I came

from. This is where I was born. Everything that in our timcw, our land, has given to me what I got today, my language, my culture, my traditions. And I will speak a lot of that in my presentation.

So again, I ask my Elders, I ask our representations from technical people, from both communities, please forgive me if I say something wrong. I ask already your forgiveness to my words I'm about to speak.

Once again, thank you for being here and listening to the words that we have to say as Secwepemc people.

The Canadian environmental assessment process delves directly into area lands and resources that directly affect First Nations' title and rights. This is why we must be at the decision-making table. We must be at that table.

Who am I representing today? The Skeetchestn and the Tk'emlups Secwepemc Nation. I sit here as a representative of nearby community Skeetchestn, who in partnership with Tk'emlups Secwepemc, we govern our historic shared interests of Tk'emlups and Secwepemc Nation.

Tk'emlups and Secwepemc Nation or, as we commonly refer to, as SNN, is situation on our traditional territory around Kamloops Lake and area. In accordance with Secwepemc law and traditions, members of the Secwepemc and Tk'emlups Nation are the caretakers and stewards of the land, of our territories. We've always been, including (indiscernible) area.

Revisions to the CEAA must respect the fact that First Nations have a constitutionally and protected right to decision-making that affect our rights. They must respect that.

SNN have a constitutionally-protected right to participate in decision-making and matters which affect our rights and to maintain and develop our own indigenous decision-making institutions whereby we may determine and develop priorities and strategies for the development or the use of our lands or territories or other resources.

First Nations must be at the environmental assessment decision-making table. We have called for a fair, independent, impartial, open and transparent process at this table due to recognition must be given our laws, traditions and customs and land tenure systems in order to obtain our free and informed consent. This is the way that the people sitting here are going to give you consent into what happen. We will give that consent.

This must be done prior to approval of any project affecting our lands, our territories or other resources, particularly in connection with the

development, utilization, exploration of minerals, water and other resources in our territory.

To obtain First Nations consent, First Nations values, laws must be reflected in environmental process. It must be reflected in this process. Our First Nations communities had laws and governing structures well before the establishment of the place that is now referred to as Canada. We had our own laws. We had our own customs. We had our own traditions that bring us to this point that must, in this process, be respected.

As Secwepemc, we refer to these laws as tlai(ph). They are embedded in our oral histories, in our land. They're embedded in it. Our laws connect the land as creatures, including us as kalmuk(ph), as humans, our past history and our spiritual well-being as kalmuk.

If we, as people, violate the relationship to reciprocity, respect, kinship and accountability with the living land, we will face consequences. We see that, the consequences that we talk about. We engage carefully and sustainably — sustainability as stewards to the land, understanding that we have responsibility to protect the land from harm and for future generations, and that's why if you take a look up there, that's our future. Those are our leaders, and yet to be unborn. We speak for them. We speak for these children today.

Our tlai(ph) is written — sorry.

Johanne Gélinas: Everything has to be on record, so that's why — yeah.

Terry Deneault: And that was a gathering we had up at Pipsell. We invited our children from both communities to come up. It was a wonderful day.

Our tlai(ph) is written on the land in physical markings. No matter where you go, these markings are there that tell the history of the footsteps of our ancestors that we follow. It's all over our territory. And places and living landscapes and place names, all of them interconnect us to our stories, to our songs. All that we see connects us to that. Our land, our timcw, its creatures, including us as talmuk(ph) and humans.

Our past history has spiritual meaning and consequences for us. Our spai(ph) that is thus written on our land expresses our soul, Secwepemc rights. It gives us that. Freedom to go out on our tamayuk(ph).

Our spai(ph) is written on our land and physical markings and places and the living landscapes and place names, all of them interconnected to our stories. And we have many, many stories about the land that we call our traditional territory as Kamloops and Skeetchestn. We have many stories, written.

Our spai(ph), that is us written on our land, expressed our Secwepemc rights. These are the things that give us rights to be out on our lands to practise freely our traditional ways and customs.

Traditional knowledge is invaluable resource in evaluating land and resources. Our teachings, the laws, dictate that if we are disrespectful, the land will turn on us. Not only as kalmuk(ph), but you can see what she's doing now in terms better known as non-indigenous people. Climate change is the consequences of humanity not respecting the natural laws of the earth. We see that. You watch the news. You see what's happening all across mother earth, what she's doing; floods, earthquakes. Many, many, many things that are happening.

As stewards of the land, we are knowledgeable about how the land transforms from season to season. We as kalmuk(ph), we as kalmuk, we go by four seasons. We've always, and we know exactly what to do in those four seasons, what to watch for and what significantly affects from climate change such as rising temperatures. And we see that. We see that change in our traditional territories. From the top of the mountains to the bottom, we see that change.

How to truly gain First Nations prior — how to truly gain First Nations' free and prior informed consent, engage the people most affected to have a voice, share their knowledge and assess the application from the proponent rather than talking theory. I prefer to share our lessons learned from our project review process of proposed KGHM project open pit mine.

SSN have been involved in both federal and provincial government since B.C. project section in February of 2011. Our two communities unified through SNN together, and we have pooled our resources, exercised our right to self-determination according to our laws and traditions of indigenous environmental review process.

We are empowering our membership to evaluate the proposed KGHM Ajax open pit mine. They are being provided the very best information from our Elders that you see. Some of them are here, some of them can't make it. Culture and knowledge keepers that are — some are here and some aren't such as our hunters, our medicine people, as well as western science experts. When I talk about the hunters, I talk about our men and women (indiscernible). When I talk about the medicine people, I talk about the melumin(ph).

So these things, they can't be replaced. Our rights to develop our own indigenous decision-making institutions, Secwepemc law, and our title dictates that we are the rightful decision-makers on the use of the lands and resources in our traditional area, in this area that we speak of. A historic first Stk'emlupsemc te Secwepemc Nation indigenous environmental assessment process that is valued

outside our First Nations as it reviews and assesses the project's tangible and intangible impacts on both culture and spiritual nature.

As Secwepemc, we cannot look at our world in separate parts. As Secwepemc, we look at our world as a whole. In addition, we must also look at the future. We must understand the impacts on our children, their children and generations to come. We're here forever, and forever is a long time.

What are we understanding? Facilitate informed decision-making by the SNN communities in a manner which is consistent with our laws, traditions and customs, assess project impacts in a way that respects our knowledge and perspectives.

Our environmental review process is inclusive, founded on our laws, traditions, governance structure that transcended from time, centred on our rich culture perspectives, collective knowledge and history that goes back 10,000 plus more years. This 10,000 more years, the stories, the mountains, everything tells us about the history of our people. It is built on principle of walking on two legs. Secwepemc and western support — information was provided in both oral and written format. We took the long view, and delved into long-term inter-generation impacts as well as pre-contact past to address the legacy of wrongs that our people have faced since Canada and British Columbia foundation.

We examined the aspects that are currently lost in the B.C. and Canadian environmental process. We sought out information regarding the intangible impacts to spirit culture and immeasurable impacts.

Representation and inclusive panel. We have worked with our community, choose representatives from each family to step forward and deliberate on the best decision for the long term and well-being of our people and land. We had many meetings. We had historic meetings. All our representatives were there as Elders, our young people. They were all there.

There were moments in this whole process that it was just breath-taking to see our people come together like they did in 1912 in the Sir Wilfred Laurier Memorial that was developed back then. We use that a lot today.

Our panel members have been involved throughout the process, and deliberation of final decision-making.

SNN developed innovative community engagement, as our health depends on the health of our communities and nation through our panel, our Elders, young people and many family members have formed. Our two communities each have representatives at the panel table.

The review panel is compromised — comprised of elected Chiefs, Councillors, as well as 26 individuals made up of our beloved Elders, youth and individuals who are appointed by their family to sit on this panel. Our process is based on responsibility of knowledge. Our panel members are sharing their individual and family histories. They are giving voice to knowledge held within our communities. In turn, they are learning more about the technical aspects of western science as presented in a proponent's application.

The process is truly based on responsibility of information exchange and giving voice to collective knowledge held within the families and communities. We have knowledge about the land that has been passed down from generation to generation, teachings, practices, knowledge of how to care for the land in a way that will continue to provide us forever.

Everyone you see sitting here today has that knowledge of how we care for our kamuk(ph). Everyone you see as kamuk that are sitting here, it was instilled in us. As an Elder, I have that right to pass this knowledge on to our young people, and I do a lot of work in that area to pass this.

We have inter-generational knowledge about our territory that has been passed on, teachings, practices and knowledge of how to care for the land in a way that it will continue to provide us forever. As part of this process, we are so fortunate that we have been able to sit our precious Elders to help us through this process.

Once again, when we speak about our (speaking in other language), there's sometimes not enough (other language) that go out to thank them for what they do for us, so to our (other language), kukwstsétsemc.

The knowledge that they have shared with us during the process is priceless. Priceless. It is our honour to share this invaluable knowledge with not only our Panel members, but with members of B.C. and Canada government, City of Kamloops Council, NGOs and neighbouring First Nations. We share this knowledge that we gain through this process, a better understanding about the land involved in environmental process.

As people who have occupied our territory for more than 100 — 10,000 years, we have deep connection to our territory. This tends to be missed or seemingly ignored in all environmental assessments.

I sit here and I tell you my story. I asked you during my opening remarks sit yourself in my timcw and think about the things that I'm saying and what it means, and what it means to my people — my people.

To best illustrate how deep our connection goes, I will return to the land in question that is part of the application for the proposed KGM — KGHM

Ajax open pit mine, Pipsell, Jacko Lake. The place that we call Pipsell or more commonly known as Jacko Lake is situated in the mid-elevation grass land is unequivocally situated within our Secwepemc homeland, Secwepemcul'ecw, the land of our people, to which we have never ceded title or we've never given up our rights to the — that area, Pipsell.

It is a sacred place requiring when we go to these mountains, we make offerings upon entering. Our ancestors have lived on this land that comprises our Secwepemcul'ecw, like I said, for more than 10,000 years.

Pipsell continues to support high diversity with red and blue listed endangered birds and animals despite 150 years of livestock grazing, homesteads, ranching, mining, recreation — recreational use and many more impacts in that area. We as the Stk'emlupsemc te Secwepemc have an irreplaceable historical cultural and spiritual connection to Pipsell that's derived from our oral histories, the story of Trout.

Please, I ask you to pick that story up and read it. Please give us our laws around how we look at our land, our territories. That's how children's oral history is inseparably connected to the places of the proposed Ajax mine, that story that comes right out of Pipsell. It encapsulates and expresses our human connection to Stk'emlupsemc te Secwepemc to Pipsell, Jacko Lake. It sustains our indigenous law about our conduct on the land and our reciprocal accountability to living beings on the land, our social conduct across generations and within generations.

I thank you as the kúkpí7 for Skeetchestnul'ecw listening to the words I have to say to you. The words and the things that are in this document, we live it. We live these day to day, month to month, year to year. We live these things in the four seasons, the teachings that's been handed down to us.

These things that I talk about weren't pulled out of the sky, weren't invented. It was passed down to us that gives us the strength to fight for what little bit we have left, the impacts that are happening in our territories. We have a language, we have customs. We have our own traditional laws that brought me to this moment that needs — and I beg, it needs respect so I could carry on with the pictures that you seen, our children.

Our childrens are the ones that are going to be the mostly affected on all this, and I don't want to see that because we live such a colourful and beautiful life as talmuk(ph).

So to the Panel, I thank you for listening to my words.

Renée Pelletier: So thank you, firstly, for your presentation. I wanted to ask you a bit more about the role of — or sorry, the right to develop your own decision-

making institutions and how that plays into the federal environmental assessment process.

Now, I understand for the Ajax mine there's — you are currently conducting your own environmental assessment process, and I wondered whether you could talk a little bit about that process and how it fits in to the larger sort of federal decision that will presumably come out at some point about the mine.

Terry Deneault: Thank you for that. I'm going to pass this on to my assistant. She'll answer that for you.

Racquel Khoy: If you're looking at the schedule, you'll see that we also have a presentation from Sunny LeBourdais, who is a project coordinator, who's going to talk very specifically on what we see as the opportunities and the issues around how our decision, our process fits within this traditional system and where does our — absolutely, you're at the heart of the issue of what we're raising right now.

Albeit this process is a first, it's not based on a first; it is based on time immemorial laws and governance structures that have been placed well before the existence of Canada or British Columbia, so when we look at that, we understand there's a conduct. And you heard Acting kúkpi7 speak about the conduct that we do to land. And so there is — we're not just reinventing this putting forward governance structures, and that will be further addressed by Sunny LeBourdais.

Renée Pelletier: Okay. So I'll reserve specific questions about the process for that later presentation.

Racquel Khoy: And we're — actually, in her presentation, she's getting into the nuts and bolts of the actual process.

Renée Pelletier: Perfect.

Maybe I'll ask another question around the — your comments — maybe I'll just put them up here. To obtain consent, First Nation laws must be reflected in the environmental assessment process. I'm wondering if, in your view or if, in your experience, there are other things that the communities here would require before giving consent. So in other — we've had other presentations in other areas where communities, you know, have said that an impact/benefit agreement is required before consent is obtained or something else. So I'm wondering if you could maybe speak a little bit about what are the elements — like what needs to happen before First Nation consent is obtained.

Racquel Khoy: You're again touching on something that goes to the heart of our process and where — not to say that — I'm not referring it to Sunny LeBourdais, but I'm basically saying we have done — undertaken a process. It is being accepted under the advisement — my understanding is under the advisement of both federal and

provincial governments, so the BCAO process as well as CEAA, but where it's understood and part of the reason why you have such a strong turnout from our panel members as well as our leadership is because of the deep commitment that each person has shown to the process to undertake to examine for the best use of that land and resources and putting toward recommendations to go forward as a decision.

So it's — when you're looking at that concept, when you don't have that place to roost yet, it's hard to say what else is missing. And what we're basically positioning for is the — is there is a very legitimate due process that has been undertaken through this SSN environmental assessment process.

Renée Pelletier: Okay. Thank you.

Johanne Gélinas: Is it the first time that you are going through such a process? You must have been exposed or impacted by other projects in the past.

Racquel Khoy: There are previous agreements that have been struck in different relationships. I'm not at liberty to speak to those myself because that's from specific agreements with individual communities.

This area that is in question is shared territory, and that's why Stk'emlupsemc te Secwepemc Nation exists. It is to address the shared rights and title of — there's seven historic regions in the Secwepemcu'lcw or the Secwepemc territory, and so that area in question, Pipsell, as we refer to, or Jacko Lake area, falls into that. So this is the first time that (indiscernible).

Certainly I'm sure there's other aspects that we could talk to, but I'm not at — that would go specifically to somebody from the Natural Resource area for either one of the communities. There has been past agreements done.

Johanne Gélinas: So as I understand, you are doing your review, environmental impact study. You are doing that through consultation. You will make recommendation. You will take a decision. What is the next step?

Racquel Khoy: Right now, our panel is in deliberation, and they will be making a decision. We — I don't know if you're aware, the clock has stopped on the BCAO process on day 107. That goes back to — we were actually in the middle of our panel hearings in May. It also happened to be timed around the time that the B.C. Auditor-General, Carol Bellringer, released her audit — or her statement around the issues around the B.C. environmental assessment process, so it's been — and the reason why KGHM stopped the clock was to address the many questions or comments that were coming from organizations such as ourself. It has not started — restarted.

We are still receiving information right now from the proponent, KGHM, and it is still under consideration. So when we get the fulsome

amount of information and — and have deliberated with our panel, then we'll be putting forward a decision.

We do have a time constraint that I'm sure Sunny will talk to specifically about when we have to get — I believe it's day 147 of the SS — day 147? Day 150 of the BCAO process that we have to have our decision submitted and to be considered.

Johanne Gélinas: So just so that I can understand, the decision that you will take will be a go, no-go or go with conditions. Am I right saying that?

Racquel Khoy: Yes.

Johanne Gélinas: Okay. Thank you.

Doug Horswill: First a comment. I wish our questions could convey one percent of the passion that you have just conveyed to us with your comments.

To help us better prepare for — or at least a couple of us on the Panel, to help us better prepare for the discussion this afternoon with Sunny, maybe you could talk a little bit more about your laws and how they work and where they're derived from. I can't help but think of law in a western kind of context. It's a document that passes through a Legislature somewhere. But maybe you could expand a little bit on your laws and how we should think about that in our deliberations on the integration of indigenous people's issues with western environmental assessment.

Terry Deneault: I guess when I — when I speak about how our laws are putting in place as we know today, I always refer to the land and everything on the land, whether it's our setetkwas(ph) or swou(ph) or si(ph) or teneya(ph), and many, many other things that are on the land.

As hunters and gatherers 100 plus percent in both communities, we gather at certain times of the year our medicines. We gather at certain times of the year our berries. We fish at certain times of the year, not only in Pipsell but also in various other lakes in our territory. There have been many, many ceremonies that have taken place all the way through Secwepemcu'lcw.

Every high peak you see here in our land, there's been ceremonies that happened on them, ceremonies that tell us of how we look after everything from the high mountains to the low mountains, whether it's our trees, our animals, all our flora and fauna that taught us since time of how to care for ourselves and how to care for the land. And these are the things that give us our laws and our customs and our traditions to what we know as — what we know as of today, and it will continue.

So no matter how you break this land and how you break it up, the land that Secwepemcu'lcw sits on was never to be cut in half, never to be dug up, never to be taken away for traditional use of my people. So these laws, like I said earlier, weren't just pulled out of the air. These were instilled upon us as talmuk(ph), and so to all the Elders that are sitting here and the Elders that are sitting home, we have a responsibility to carry these laws and teach our children about the mountains and everything that comes off these mountains in a way that centres us as talmuk, as Indian people.

I could sit here, reminisce with you about the history of our people all day, but I will leave it at that. And I hope I answered your question a little bit. But again, to understand us and respect us in our laws and how it become. Some of it's written; others aren't. We know it. We know it. Our Elders know these laws. A lot of it's not written. It's up to us to teach our young people. That's why you see them standing up there (indiscernible).

Doug Horswill: We've been quite a — quite a number of places around the country, and in a couple of them, we have heard of First Nations with assessment processes of one sort or another by which the expression of their laws comes into decisions on projects. Yours we will learn more about today, but it does seem to be relatively well developed and of very much interest to us.

Is there any way or time where you transmit the knowledge you've developed and the capabilities around this kind of process to other First Nations? Do you see it possible to be something that others could learn from?

Terry Deneault: Like was presented — like it was presented in my — in my spai(ph) here, yes. Yes. We have no problem sharing our knowledge that we gained through this whole process to anyone that would like to see it or would like to go forward with the process that we worked so hard on, so it'd be no problem there.

Racquel Khoy: I'm just going to add that, in fact, for the actual Panel hearing process — you'll hear a bit more about it again — but we did have our knowledge keepers, our hunters, our gatherers, western experts come and speak because we knew it was a very unique place. We worked very hard to invite government officials in attendance, our neighbouring First Nations, all the Secwepemcu'lcw, Chiefs from other places as well. We had National Chief come and witness part of it. We had UBCIC President, Grand Chief Stewart Fultz, come and witness it, so we did extend that.

And we have — our project coordinator has been presenting to other areas. She just most recently presented at the B.C. Energy and Mining Council as well as the BCAO process that just happened last week. And we continue to seek the opportunity for — to share the lessons learned and the best practices of what we've learned so far.

Doug Horswill: To the extent that there's any written record of that or written explanation, we would certainly welcome it, I think, just to be able to understand better ourselves and maybe be a vehicle through which that information and knowledge could be transmitted.

Racquel Khoy: It's absolutely within the plans of the leadership. Certainly it is the custom of the — of us, the Secwepemc, to be very generous with our knowledge sharing.

As we're in the middle of the deliberation process, we haven't reached the decision yet, our — all of our energies of our small team is dedicated to making sure that our panel members and our leadership are being supported in the deliberation process, but this most certainly, absolutely, is on our radar and our intent to share far and wide.

Johanne Gélinas: If I can just pursue on that a little bit.

We have heard so many times in our jury across Canada hearing especially indigenous people that, most of the time, they are an afterthought, they are ignored. I don't know how many times we heard that they have consultation protocols that were totally ignored, again.

You're kind of in a unique situation where we can certainly learn a lot in terms of proposing a model that may work for most indigenous communities, so in that sense, I heard this morning that you have a consultation protocol, you have a decision-making protocol. You probably have other things, and without knowing what you have, I will certainly ask whatever you have to share which might be a good practice or a way forward to be more inclusive in the environmental assessment, we will welcome that as a treasure because, to be honest, we haven't heard — the jury is still out. We don't know how will be the outcome of your process, but so far, it's probably the best story that we have heard since the last 10 weeks, and I really wish you that it will work in term of the decision-making and moving forward.

So we are here to receive whatever you have to share with us, and if you can give that to us sooner than later, then we can take that into account for our work.

Thank you very much for your presentation.

Racquel Khoy: I just want to address one thing that you brought up in your remarks. I know again my colleague will be presenting shortly, but nonetheless, I can't — it would be remiss if I did not underline the fact that how Tk'emlups te Secwepemc Nation was engaged, it was after the process began. It was not prior to the process. There's a lot of timing that was very wrong.

Some of the story of the issues that you heard from these past 10 weeks, we're going to bring up those very same issues, but you have very committed leadership and very committed community members and a committed technical team who made the most of what time was available. A huge amount of resources of time and energy went in in very constraining timelines; hence the reason why you're not looking at a package in front of you because of what it takes.

Again, I know my colleague will stress that, but I would be remiss if I did not immediately address that right now as far as timing was still not in our favour, but as Secwepemc people, we're — we can be crafty when we need to and pull out our skelep(ph) medicine and our coyote medicine to make do with what we have to make the best of the situation.

Johanne Gélinas: Are you going to be in the room this afternoon when Sunny will present?

Terry Deneault: Yes.

Johanne Gélinas: So feel free — we may have question. It's not clear to us what we can ask to whom, so if you are in the room as we will have a lot of question for Sunny, feel free to just join the table with that person so that we can continue our dialogue.

Racquel Khoy: The walking encyclopaedia of this process is, indeed, Sunny LeBourdais.

Johanne Gélinas: Good. So we will make good use of Sunny.

Thank you very much.

Have a good lunch. We'll break here and we will slide over at, let me see, 1:15. Thank you very much.

(BREAK)

Johanne Gélinas: So I would like to welcome Fred Seymour. Welcome. And the floor is yours, sir.

FRED SEYMOUR, TK'EMLUPS SECWPEMC

Fred Seymour: Thank you. Welcome all to the Secwepemc territory of the Tk'emlups Secwepemc. I'd like to thank everybody for coming out. I don't like the way I'm sitting. I'd rather be facing the crowd, but this is the way it is, so you've got my backs. Look after my back, take them arrows out.

Again, I'd like — at this time, I'd like to thank the Canadian Environmental Assessment Expert Panel for coming to listen, and thank you, Doug and Johanne and Renée for getting right into it.

So our shared history, when engaging First Nations, CEAA needs to take the long view to recognize past injustice that carries in the modern day. Currently, the Canadian and B.C. environment assessment process, timelines do not take in consideration long-standing issues that First Nations face regarding traditional territory, be it Aboriginal title or long history of injustice regarding traditional territories that go back to the colonization of Canada.

Recognition of a legacy of wrongs. There's a history of wrongdoings concerning the history of Secwepemc, dispossession and alienation for the area surrounding Jacko Lake, also known as Pipsell. There is a shameful legacy of Secwepemc being removed from the lands and the area with government policies, sanction and settlers' pre-emptions claims and subsequent Crown lands.

The Jacko family and Philip Jacko specifically, a Stk'emlups member, tried to exercise control over area of Jacko Lake to Peterson Creek throughout the 1860s to the 1880s. Despite his attempts to pre-empt and maintain control over the area, Jacko, along with other Stk'emlups, were excluded from area settlers established Crown grants which have continued to exist today. Jacko family continued to use the same area despite settlers establishing ranches and fencing off the land.

The compounding impacts of a history of wrongs, this legacy of wrongs has enabled the current policies of fee simple land tenure, mineral claims, Crown grants and land use policies, e.g. agricultural land reserve.

SSN exercising indigenous environmental governance by conducting our own assessment of the proposed mining development to protect indigenous peoples and environment, but also all others living in Secwepemcul'ecw, especially the City of Kamloops.

We are a respectful neighbour who are looking for equitable treatment that respects our rights and titles. SSN do not intend to harm or threaten our guests. We are honouring the vision of our ancestors who signed the Memorial to Wilfred Laurier in 1910, which was celebrated in 2010, 100 years. It is a historic document that demonstrates the moment that Stk'emlups Secwepemc Nation and asserting our title rights and sovereignty in early 12th century — 20th century. Sorry about that.

It reflects our continued and consistent traditional concepts around being the hosts in our lands and reciprocity that hosts relation entails. In our Memorial to Sir Wilfred Laurier 1910, our Chiefs clearly articulated when a person with us — when a person enters our house, he becomes our guest and we must treat him

hospitality as long as he shows no hostile intentions. At the same time, we expect him to return to us equal treatment for what he receives, and we continue that today.

Some Chiefs said these people wish to be partners with us in our country. We must, therefore, be the same as brothers to them and live as one family. We will share equally in everything, half and half in the land, water and timber, et cetera. What is ours will be theirs and what is theirs will be ours. We will help each other to be great and good.

Reality check. We are dealing with a current process that does not respect our needs. We found that the B.C. as well as the federal government environmental assessment process severely wanting. That is why we set up our own process.

EA process are inherently challenged when attempting to access the impacts to Aboriginal interests, and especially Aboriginal title. EA process are designed on the principle of compartmentalization whereby project impacts are segment and individually assessed.

While this approach is convenient in assessment of environmental tangible impacts, it is not well suited to consideration of intangible impacts, including those which relate to Aboriginal title.

Secwepemc law, spiritual and cultural knowledge and significance. I want to highlight the distinctiveness of what we as Secwepemc people are assessing and why I truly believe that everyone benefits from our process.

Our own assessment process is much more comprehensive than either the provincial or federal process demand. It is as much as a base on our laws and principles. Its comprehensive nature is such that everyone benefits from the depth which we study the benefits and impacts of the proposed mine.

Key distinctions about our unique assessment process. Health. For us, health is about emotional, physical, mental and spiritual health for each of us as individuals, our families, our communities and our nation. We see health as deeply root to the health of our territory. From that, you could see we define rich differently. For us, to be rich is to be rich in medicinal plants, fresh water, clean air and animals for sustenance, hunting.

Jacko Lake or, has been known to us, Pipsell, is a cultural capstone area of particular importance where we Secwepemc people can go and gather 90 different plant species of medicinal plants, 45 distinct food plants and 39 species of animals, just in that one area alone. You take a look at our Secwepemc land and going from north to the south, east and west, and this is a small fraction of what, again, all of us are — 17 Bands or nations that we thrive off and live off which had been handed

down from our forefathers and grandfathers, grandmothers, that we will pass on to our next seven generations that come.

As our health depends on the health of our community, the nation, through our panel we are given everyone voice. Elders, young people, the many families that form our community each have a place at the panel table. We want to further build a sense of belonging and ensure that family members have input, and we will continually do that as part of our Secwepemc law again being passed down from our future generations, bringing our Secwepemc law back into practise, which we've never given up and we still use today.

Indiginomics. We see the economics is more than money. We uphold traditional economic principles of Secwepemc of sharing the wealth, assessing if there is a net benefit to the state of our ancestors in the 1910 Sir Wilfred Laurier Memorial. For examples, our hunters have a very practical perspective on how the land provide for our people through the animals they harvest and the fish they catch for the immediate family and extended family that we still practise today.

Timcw, our land, and its living resources. When we look at environment, we see it is all things being interconnected through time and space. When we example — when we examine potential impacts, we require a study of cumulative assessments that goes beyond a single season and takes into account the seasonal round. That's the four seasonal round we talk about.

All my consultants, all my relations includes not only humans, but all living beings on the land and the sediment, landscape of interaction among humans, animals and places. Laws examine the legal aspects of the proposed mine. We're looking at a Canadian legal standpoint. Our Secwepemc laws as well as international laws and conventions such as the United Nations Declaration on the Rights of Indigenous People and the Convention of Biological Diversity, Article 8(g) that deal with traditional knowledge as a key tool for protection.

We have the right to participate in decision-making and matters which would affect our rights and maintain development of our own indigenous decision-making institutions whereby we may determine all parties, strategies for development of our use of lands, our traditional territories and other resources.

Secwepemc title. SSN's Aboriginal title and rights include the right access the lands and resources for traditional purposes, the right to economical benefit from our lands and the right to manage and decide to the use of which land we will put have been historically and are currently impacted by KGHM and the B.C. government in this area.

Collectively held title and rights. Title rights in Secwepemc territory are collectively held by the Secwepemc people. The Secwepemc and SSN have never ceded, surrendered or given up any of the lands or interests.

Our rights to self-determination. We are exercising our right to self-determination according to our laws, traditions and indigenous environmental review process. Our assessment process centred on our culture, the Trout children's story. In oral history, that is directly anchored in lands in question. Secwepemc law and our title dictates that we are the rightful decision-makers on the use of the lands and resources in this area.

Let's be clear, Stk'emlups Secwepemc Nation again has never ceded, surrendered or given up any of our lands of interest. We uphold our sacred responsibility to protect and assert jurisdiction over our territory. Our values and traditions are central to our business and community and this unique assessment process. We are open for business and look for the best benefits to long-term well-being of our communities.

Moving forward, environment assessment process and building bridges of understanding between indigenous and non-indigenous people. CEAA is in a position to effectuate changes regarding their environmental assessment that can help build bridges between indigenous and non-indigenous people. Environmental assessments are well posed to serve as an integral part of the reconciliation with indigenous Canadians. We can help eliminate this truth by showcasing our own historic North American first indigenous project review process that put our Secwepemc laws, history and culture front and centre to the process.

And about the process, it is our belief that much more common ground will be found between indigenous and non-indigenous people as more — as the more people learn about indigenous process, the more that they have the opportunity to learn about the many values that they, too, uphold.

The MacDonald Laurier Institute paper released a paper in July of this year, reconciliation through listening, making Aboriginal voices heard, environmental assessment explored how environmental assessment can become an integral part of reconciliation with Aboriginal Canadians. The paper states that the environmental assessment is now on the front lines of reconciliation between Aboriginal peoples, governments and resource developers.

Taking a page from our book moving past the status quo to invoke on Canadian environmental assessment process, SSN is seeking meaningful consultation, respectful nation-to-nation relationship and prior, free and informed consent as a decision-maker at the table, be it our current involvement with the KGHM Ajax project, project review process or future project reviews.

Working with the current system, we know that the status quo process of decision-making on natural resource development has not worked and will not work. We had to create and implement a new way of project review that's respectful on our values, laws and land use practices.

We are honoured in the past as we are precedent setting. And as much as we are innovating, we base our process on our time immemorial laws and governance that have stood the best (sic) of time. We are undertaking North American first indigenous project assessment process with the hope that will become the new way of evaluating — evaluating resource extraction projects in the future.

Johanne Gélinas: Thank you very much for your presentation, Kúkpi7 Seymour.

Fred Seymour: Oh, sorry. I got four more pages here.

(Laughter)

Johanne Gélinas: And I would like to take this opportunity also to thank you all for having shared your lunch with us today.

I have to ask that question. Yesterday, we had people from the community of Kamloops who came to us and express, I will say, their frustration is an understatement, of how they were involved, engaged in the assessment of the Ajax project.

Today, we have a totally different picture where you are innovating in a way to look at a project from an environmental impact standpoint. Can I ask you how this has been seen by others or how do you see yourself this approach, which is yours, moving forward having two kind of assessment not necessarily being at the same level?

Have you had discussion with the community of what you have gone through so far?

Fred Seymour: Oh, for sure. Again, that's why this panel group consists of Tk'emlups and Skeetchestn and the panel members. Going back to our Secwepemc laws, as I mentioned earlier, through my report here, these old teachings have been handed down and were — they're coming back to the surface.

Again, it's running parallel with — no matter who the assessment, be it CEAA, be it provincial, be it federal government, we're here to have our input and be at the table with you guys that we can share our knowledge and educate the non-indigenous that we're here to work collectively with all walks of life for the betterment of all of our future, our children to come.

Again, it's — as I see it, (indiscernible). I guess I should have said that when I first introduced myself. I'm the 13th elected Chief for Kamloops Indian Band here going back. And again, this knowledge has been passed on through me through my parents, my family. I guess we're all — we're all family when we sit at that table.

Again, you take a look behind me at the leadership. I think we take a look at the people in the crowd here, I bet you half them are past Chief or Council members from the Band, and they sit and represent.

So to bring — bring back showcasing what we've done, that's how we've lived, and we endured ever since — from the 1810 — 1910 Memorials that were signed and, hopefully, the non-indigenous will finally recognize what these Memorials were signed. And we're just trying to elevate that to process it. Hopefully it — somewhere, some government will take it seriously.

Again, we're — we're here to work together, collectively. Again — again, go back to the Laurier Memorial, a 50-50 basis, and hopefully we get there some day.

But again, going back to your original question, that's — that's what's going surface, what's in governance, Tk'emlups and SSN in future — into the future.

Johanne Gélina: We have to recommend an approach which will work for all Canadians and indigenous communities —

Fred Seymour: Well, this is the approach.

Johanne Gélina: The —

Fred Seymour: Thank you.

Johanne Gélina: Should we have two separate approaches to a project? That's your view?

Fred Seymour: Yes.

Johanne Gélina: Thank you.

Renée Pelletier: You had a slide, "Key distinctions about our unique assessment process". Maybe you could — if I could trouble you to go back to that.

There we go. The second point, that one of the unique distinctions is assessing if there is a net benefit to the territory, I wondered if you could

speaking a little bit about how, in accordance with your indigenous laws, you determine whether there is a net benefit.

Fred Seymour: Yeah, for sure.

Again, this is — again, if we — there was a slide in here that showed our traditional territory of the Secwepemc. Again, this is between us, Tk'emlups and Skeetchestn. And that's where we've taken the lead on this. And hopefully, another 17 Bands will come on board with us so that they might work with our current Council and work with another First Nation like back in the day we were one, and the government split us up. And now we're — you know, we got a blood line that runs about 80 percent from each Reserve. The Reserves are all connected that way.

But in — my belief is (indiscernible) we're in it here for all of the nation, for all of the 17 other Bands that will benefit within our Secwepemc territory.

To start, it's a new way. I'm glad the governments are finally recognizing us, that we will be helpful in this — any process. Ending here on my last slide here, extraction — not just extraction, but any natural resources that are reaped off our lands, we want to be part of it. We got a say. We've educated ourselves to get to where we're at today.

Again, they're not putting money down or — we — our young people have gone to school, got their degrees. They're helping us move this process along. But again, it's keeping it — that balance in between business and what our traditional culture and law is. Not to get ahead of ourselves and get more business than we should have, but again, looking after our lands for the next seven generations coming.

Renée Pelletier: Thank you.

Fred Seymour: Sorry, Doug, but my time is up. Sorry.

(Laughter)

Doug Horswill: We warned you about the tough questions that were coming; right?

I think about the link between what we have today, Canadian environmental assessment, British Columbia environmental assessment works on a central principle of environment and it's biophysical environment, primarily. It sounds to me, and I think we'll hear more later this afternoon, that your system, your assessment process, its binding principle is health, human health, individuals, communities, environmental health. Maybe economic health, too. I guess that's part of it.

So is the trick for us to try and to understand how these processes can mesh, to look at those two different principles and see how they fit together?

Fred Seymour: Oh, for sure. Not never mind it's just them two principles. It's two from — going from A to Z. There's 52 other areas plus that we have to work collectively on. I mentioned in my PowerPoint here that it's just two of man.

Doug Horswill: But they're relatively central.

Fred Seymour: Yes.

Doug Horswill: Would you agree with that?

In thinking about the decision framework and — that will come out of this SSN process and the decisions and the framework within which those decisions are occurring, what — one thought that occurred to me is, within the notion of government's obligation to consult and accommodate, the result of your process might provide a basic framework for accommodation. Is that — have you thought about that or does that strike you as a possibility?

Fred Seymour: I see that opening a door for us, I mean, it — as I mentioned, to get the governments and different proponents or industry or whatever to open that door for us to be at that table with you guys. Again, we got Secwepemc here to share our knowledge.

Again, that's why we went back to the both Councils and going back to the family members, and the family members being picked by their family to be the — to represent on the big — the big panel. That's where I'm going to take my guidance from. Me as being a Chief, that panel has been appointed. Until that is done (indiscernible) draft form comes to both Chief and Council at SSN, we will review, we will go over the process.

Doug Horswill: You said one of the differences in the EA process and in yours is compartmental approach versus — well, let me put a word in your mouth — a holistic approach.

Can you talk a little bit more about that, how those two can be reconciled and fit together?

Fred Seymour: Yeah, it's — it's a start. Like I said, going from whichever way you look at it or word it as, compartmentalization as our process is, again, meshing with the process you guys got, we're open. Like we don't be compartmentalization in different areas. We want a whole 360 in the approach by all compartments. As we sit, we want to listen to you guys, too.

Doug Horswill: So it's how they're integrated and work together. That's what you're —

Fred Seymour: Yes.

Doug Horswill: — getting at.

My last question is, tell us more about the Wilfred Laurier Memorial. I'm not sure I understand exactly what that is and what that was in 1910.

Fred Seymour: Yeah, that's — if you go back by — by going back to our — it's a huge document, but as I say it earlier, we can pull it up.

Again, that's — that has been written back in 1910. And what do we take out of it? Again, I think it's — my read on it, you know, I read that every day or once a week, anyway. And every time I read it, I come out a different summary comes up.

Again, it's going down the road with different levels of government to hopefully, as I mentioned earlier when I was going through it and I read it, and we will reach that common ground of 50-50. Again, it's — that's our natural resources that we continually move down the road with governments and different industries and proponents. We'll have more resources. And what the government — Canadian government handed back to us is raw, repillaged lands. And I see that as a wrongdoing, and that's injustice.

Johanne Gélinas: Thank you very much for having taken the time to come and present to us today.

Fred Seymour: Thank you. Thank you all for listening.

Johanne Gélinas: So we'll spend the rest of the afternoon with Sunny LeBourdais. That's how I understand it.

Sunny, you're more than welcome to join the table.

(PAUSE)

Johanne Gélinas: Sunny. Good afternoon. Thank you for joining us, and we will go through your presentation. We have a copy of it.

SUNNY LeBOURDAIS, TK'EMLUPS SECWEPENC

Sunny LeBourdais: (Speaking in other language) Thank you very much for having me here this afternoon. I'm going to just go through my presentation with you,

understanding that we've heard a substantial amount of information from leadership this morning.

So I just thought I'd start - it feels weird having my back to everyone. I thought I'd start with just a little bit about myself.

My name is Sunny LeBourdais. I'm Pelltiq't te Secwepemc who are from the Clinton Whispering Pines Band of the Secwepemc Nation. I was born and raised on the Whispering Pines Reserve just north of Kamloops, and with my family.

My father is Richard LeBourdais. My mother is Orla LeBourdais. My grandmother, Violet. And I'm a very proud member of our Secwepemc Nation.

I've spent over 15 years working on resource extraction, industry developments, whether it was on the Columbia with hydrological and hydroelectric dams or working with our Secwepemc Nation in terms of fisheries or the Okanagan and Tanaka Nation. I've also had the honour of working with them.

I have, over the course of my life and my career, had the honour and privilege of working with nations, communities, individuals and families across our Secwepemc Nation. I see Kúkpi7 Patrick here from Skwah Kumgwatam(ph). I had the honour of working with their community about two years ago.

In terms of my education, my formal western education, I have a Bachelor of Science with a major in animal biology, an education degree and a Master's in river ecology where I was looking at the impacts of hydroelectric dams on rivers, as well as a business management certificate from UBC's Sauder School of Business.

And two years ago — just about two years ago, I had the opportunity to come and work the Stk'emlups te Secwepemc Nation on this project. And it has been an absolute honour to be with them, and it really has been bringing together this knowledge and experiences that I've had working together with our nation that gave me the gumption to kind of come forward and start on this path of innovation because I knew that the leadership that we had here at the Stk'emlups te Secwepemc Nation, they are truly innovative communities. And it is that atmosphere and that environment of innovation that allows someone like myself to move forward on initiatives that are truly ground-breaking. And so that's what brought me to where I am today and into this process.

So in terms of going back through the KGHM Ajax project and what really prompted the development of the SSN's project assessment process in 2011, we know that we — the SSN received confirmation that there was a project

description that was submitted, and in 2011, there was a Notice of Determination that there was to be a comprehensive study on that project.

Since the beginning, and even before that Notice of Determination was done, we have documentation which talks about the SSN leadership clearly requesting a review panel process for the KGHM Ajax project. And in that documentation, what the SSN leadership was looking for was actually a panel that included both the B.C., CEEA and representation from the Stk'emlups te Secwepemc Nation to be a part of that review process.

Moving forward from 2011 and following in 2012, what we had was the strength of claim assessment that was completed by the B.C. government. And in 2012, when they completed that strength of claim assessment, they found that there was a high, high — or deep end of the high spectrum for rights, but that it was — they had found at that time a weak to moderate in terms of title.

At that point, the SSN was working on cultural heritage research and information that was brought forward in 2014, also in 2014, KGHM Ajax proposed a significant alteration to their project description and the footprint.

So in 2015, the B.C. government actually redid their assessment on their strength of claim to find high for both rights and title.

And up to this point, the SSN had been continually requesting an assessment to be done by a review panel, and there were a few reasons that — one of those also being the inclusion of oral information and oral histories, and also wanting, again, to have that seat at the table.

In — on June 21st of 2015, the SSN held a declaration — made Declaration of Title at Pipsell, and that was also when they first notified both the Canadian, B.C. and proponent of the intention to move forward with their own review process. And this was directly following one of the most recent requests for that review panel, which continued to be denied by the Canadian Environmental Assessment Agency.

So for the remainder of my presentation is really going to talk about the foundation of our process, which is about the question, "In recognition of the Declaration of Title to Pipsell", and this was in the notification letter itself, "a cultural keystone area with significant spiritual and historical importance to the SSN, does the SSN give their free, prior and informed consent to change the land use objective to allow for development of the lands and resources for the purposes of the Ajax Mine project in accordance with the SSN's laws, traditions, customs and land tenure systems supported by the project assessment process".

So the remainder of the presentation, I'm going to talk about what it takes to answer that question, the lessons from the land and what we've learned.

So one of the foundations of our process is that we use a walking on two legs principle, and we use that throughout our process. And it starts — started from the very beginning in the design of the entire process.

So in terms of both of those legs, on the western side we have things like the western approach from CEAA or from the B.C. EAO which includes a decision-making process that is very much directed by agency staff and written by staff. You have a number of western experts on that leg.

You have the value component system and their spatial and temporal scales. There's a very large focus on scientific and tangible impacts, what is easily measured is most easily understood. And a very big focus on written knowledge and the western laws, policies and principles.

And a lot of those processes and a lot of that leg is very separated from the land, whereas on the other leg, when you look at the indigenous and Secwepemc — the inclusion of that leg, it means that we have a process that includes our panel. For example, it's not just an organization or a staff. The staff is there to support them, but really, it is about that panel.

It also includes all of our indigenous and our Secwepemc knowledge keepers and experts, our spiritual and ceremonial people. And the entire process itself is founded on the Trout Children Sptékwle.

It also means that we take a lot of time and put a lot of resources into understanding those intangible impacts, which are much more challenging to describe and understand in a western way of knowing.

We also make very concerted efforts to include our oral knowledge, our *slekheim*(ph), and the inclusion of our laws and our customs. And also, throughout our process, we're very much not only within meeting spaces and separated from the land, but we take quite a few opportunities to connect to Pipsell and be on the land, whether it's through meetings or through events with our panel and with our communities.

So in terms of the SSN review panel, so you have representatives from each of the 13 families from Skeetchestn and Tk'emlups as well as youth, Elders and the Councils from each of the communities. But what does it take to go from this, which is a, you know, bright-coloured, it looks so nice and neat on paper, to the reality of this?

It takes a lot of resources. It takes time. It takes a team. It takes political support. It takes venues and the support of all of the families that we have within the communities. The amount of time and effort it takes to connect constant — keep in constant connection with our review panel is something that we deal with every day. And in our journeys together, it's become very apparent to us that that

is where we place a lot of our time, our effort, our resources because it is building this process and working together with all of our review panel that has given such strength to what we have done.

Another important part is that the review panel — while the review panel includes all of those representatives, it also is a very inclusive process. We have never turned away a single person at any of our meetings. When we opened our panel hearing, it was inclusive to the entire Secwepemc Nation.

We have never turned anyone away. We are always there to be a place that people can come and have their voices heard, including all of our panel members and any of our other community members.

I'm missing out on my notes.

What's also really important is that when it comes to our process, we include not only your typical in-the-room type of meetings, but there is a very important component when it comes to the inclusion of all of our spiritual and ceremonial traditional customs, practices. We have spiritual ceremonial coordinators that work with us on the team.

The very beginning of the panel process itself started with a swearing-in ceremony in both Skeetchestn and Tk'emlups which brought forward all of our panel members together so that they could start from a place of ceremony.

All of our meetings, for example, start with ceremony, they end with ceremony. And we're very supportive of all of our panel members when it comes to, for example, going and participating in the sweats up at Pipsell or going out and living those connections to the land. And we do a lot of planning and spend a lot of time supporting all of our panel members and our community members throughout this process to build that collective experience.

So when it comes to walking on two legs, at the panel hearing, for example — so that was held at the beginning of May. Walking on one leg, we had knowledge keepers from both Skeetchestn, Tk'emlups and our entire — and our Secwepemc Nation, and we exemplified moving forward in a way that walked on two legs. We had youth and Elders. We had youth panels. We had Elders panels. We had our keyahes(ph) panel. We had men and women. There was always a balance in all of the knowledge and information that was shared with our panel.

And then we also walked on the other leg, and all of our panel members also heard from the western experts in terms of if it was water experts or air experts. And again, always balancing, within many of our panels, they had two representatives from the proponent as well as two independent experts so that our panel was able to hear multiple perspectives in a very balanced way throughout the entirety of the week of the panel hearing.

You heard earlier we had over 80 presentations over the course of that week, and it was really about balancing and walking on two legs throughout the entirety of that week to give our panel the information that they needed in order to go away and deliberate. I think we've got about six — over 600 pages of transcripts from our panel hearing, which is pretty amazing.

So how our process is different. One of the key foundations of our process has been the Trout Children Sptékwle. And really, in this telling — I heard you ask earlier about the connection between and looking to our Secwepemc laws. And in the Trout Children Sptékwle, in the beginning of the story, there's a grandmother and she makes her daughter. She fashions daughters out of stick, out of clay, out of pitch. And eventually, she has — the grandfather — or her daughter goes down to the water world and she's carried down there by the trout and meets the Trout People.

And the Trout Children story itself is directly connected to Pipsell. That is the lake where the Trout People live. So the ancestors, the Secwepemc ancestors, connected and marked those deeds on the land. That lake itself is where the daughter went down and lived with Kelmuketkwa(ph), the water beings. And when she was down there, she had a family. She had a boy, a little boy and a little girl. And they actually come up to — I'm a horrible storyteller, so I just totally apologize for it.

So the children come up to the land because they were being taunted by all the other children that they were — that they didn't have a grandmother. And so they came up to the — and their mother talks to them and says, you know, "You do have a grandmother, and she lives up on the land and you can go and visit her. And when you go and visit her, you can eat, you can go to her house". And so they do.

And it's the grandmother who, she sees these tracks in her house and she goes out and actually makes medicine because she ants them to stay with her. And so when the brother and the sister come into the house, the brother comes in first, but the sister is quite suspicious. And the grandmother douses the medicine on the children and she gets all of it on the brother and he turns into a human, so he's transformed, and only gets part of it on the daughter, and she turns into a puppy.

And she teaches him not to be mean to his puppy, and eventually he is because he goes out hunting and he doesn't know that that's his sister. And his puppy — he's shooting birds and she keeps running ahead and gobbling up and eating the birds, and he gets angry and he hits her. And she flies away and she turns into a chickadee. And she flies away and she sings, "Oh my cha-cha" and flies away.

And then the grandmother talks to him and says, you know, “Why didn’t you listen to me? I told you not to be mean to your puppy, and now you’ve — you haven’t listened to me, and now you’ve lost your only sister”.

When the brother is taught another lesson from his grandmother and he’s not supposed to — if he ever shoots his arrow into a tree, he’s not supposed to follow it up the tree and try to go get it. And he does, and — as teenagers do, I suppose.

So he shoots an arrow into the tree and he follows it, and he follows it all the way up into the sky world. And when he gets to the sky world, he meets his grandfather. And when he’s in the sky world, he does ceremony and he actually puts on his grandfather’s skin while he’s in the sky world.

And when he’s in the sky world, there’s a contest. And the sky world Chief is having a contest, and the prize is to marry his daughter. And so the whole community, they have to shoot an arrow and they have to shoot this — a burrowing owl off the top of a pit house. And everybody tries, and they can’t do it. And then they go and they get the old man, which is actually the brother inside of his hepa’ah’s(ph) skin, and he successfully shoots the bird off the top of the pit house. And so he’s allowed to — he marries the daughter and then he’s allowed to access resources in there. He’s allowed to go hunting with their family and he has to take the brothers and the family of the sky world Chief’s daughter with him.

Eventually, he’s found out and they cut his skin up and it becomes the fog on the land.

And the reason that I’m telling this whole story is because if we look inside of that, what the ancestors tell us about being someone that comes to a new world, and when the brother goes to the sky world, he’s in a world that isn’t his. And he knows that he has to do ceremony, he has to put on the skin in order to stay there. And in order to stay there and access resources, to be able to go hunting, he had to partake in a contest. And in that contest, that contest was defined by the sky world Chief. And during that contest, when he was successful, then he was given the right to go out and access resources.

And that’s what our process is about. Our process is a contest. It’s about defining whether or not someone who comes into our world is worthy of becoming like brothers, of becoming like kin and being able to go out and access resources in a world when they are not from here.

So that’s kind of the foundation. And then we took that into a lot of different aspects within our process, the panel hearing itself. Throughout the panel hearing over the five days, we followed the worlds that were within the Trout Children Sptékwle.

When we wrote our reports, when it comes to describing impacts to the SSN, we talk about it within different chapters that reflect the telling of the Trout Children Sptékwle. Each of the chapters themselves talk about how it connects to those laws that are tied specifically to that area.

The prayer tree itself is located at Pipsell. In that area, the Water People live in the bottom. We have traditional knowledge from our ancestors that tell us about a cleft in the bottom of the lake where the Water People came out of.

These are different pieces of information that have all been integrated in a way that can only be told by the Stk'emlups people.

So that kind of leads to the next piece, which is about looking at impacts through someone else's eyes and trying to tell someone else's story. The things that we've talked about and that we've come to learn and that we attempt to reflect in a lot of our reports and our process are about looking through the eyes of Stk'emlups, those communities, the Secwepemc Nation. We have very different ways of looking at things in terms of scope.

For example, when we talk about that contest and taking a look at whether or not someone is worthy to be — to become like brothers. And in the Memorial to Sir Wilfred Laurier, Kúkpi7 Fred talked about how they came to be guests in our house and how they want to be like brothers.

So for example, within the scope of our process includes an assessment of the proponent themselves to find out whether or not they are worthy to be good neighbours, good partners and to be like brothers, if the SSN is willing to give them that consent for them to act and to access resources on the territory. That is something that is quite outside of the scope of both the Canadian and the B.C. environmental assessment processes, but that doesn't mean that it is any less important.

Also, in terms of knowledge, when it comes to methodology, and Kukbe Fred spoke quite a bit about the interconnectedness of everything, your process focuses very much so on value components that are divided, whether it is between the different pillars of the B.C. environmental assessment process or as they're defined, the current use of lands for traditional purposes, which is something that we've tackled throughout our process. But one thing is for sure is that we understand and are the ones who need to tell that story.

When it comes to describing impacts — and we give the example of temporal scope. What is meaningful is not only to look at the current use of an area, but also telling the story of the legacy of wrongs. When Kukbe Fred Seymour's talking about the story that needs to be told about Philip Jacko, who is a Stk'emlups te

Secwepemc Nation member in that area, that has to be understood. Those past infringements and that legacy has to be told.

Those cumulative impacts, a spatial scale that includes not only the project local study area and regional study area, but also includes spatial scales that are — that talk about what are the trends that we're seeing throughout the Secwepemc Nation right now. What are the trends that we are seeing in the SSN's traditional territory, and what are we seeing locally, in more localized areas?

When we sit at some of our panel meetings, for example, one of the biggest things that we've seen come forward this year is talking about declines in salmon population, the runs — the salmon runs. There are a number of our panel members, for example, who this is the first year in their entire life — and these are Elders saying this is the first year that they have not gotten any salmon in their whole life. That is a piece of information that is considered by our panel because that talks about the changes that are going on on the land.

When our panel members sit and they talk about and share the experience, share their knowledge about the challenges that are being experienced right now throughout the nation when it comes to being able to find a moose or what — you know, who's gotten what berries from what area, all of that comes at scales that are meaningful to them. And that is not reflected and that's not within the scope of your Canadian environmental assessment process.

What's also really important, I think, is this idea of a methodology when it comes to adverse effects. Adverse effects in your process are very — defined by a number of different factors, whether it's magnitude or spatial scope. When it comes to the idea of significance and adversity ratings, within our process, that very much is — it's a methodology that lives in the people and it lives within the process. It's not something that can easily be segmented or compartmentalized or characterized in terms of what makes something a significant adverse impact because it lives in the collective knowledge of all those people that are included in the process and the knowledge that they have when they sit together and they share. And that's something that we as a team attempt to capture in a way that we can communicate it with you.

So then it becomes how do we connect between our process and yours. How do our processes interact?

I know that it was mentioned earlier because our process started quite a bit after the Canadian and B.C. processes had started, one of the continual points that the SSN has made is that it is exceedingly difficult to work on the process while you're working within the process. There have been continued requests to have the B.C. and Canadian processes stopped so that we could better define how our processes were going to interact. That has not happened. What has happened is,

you know, there has been work done with the B.C. government in terms of how our process interacts with theirs, the development of a government-to-government framework agreement and a collaboration plan which identifies different areas for collaboration between the two processes.

However, I would say that because it was instigated so much into the process, it would likely look drastically different if it had been developed at the beginning together. One of the biggest challenges that we continually face have to do with timelines, and the legislation on the 365-day clock for CEAA and the 180-day clock for B.C. EAO. We — because there are not very clearly-defined points of interaction between our processes, especially when it comes to decision, we are continuously challenged when it comes to interacting with the other two processes.

So as an example, currently within our process, we are in a period where our process, our panel is in deliberation. They have a current mountain of information that has been provided to them through panel hearing which included over 300 documents, reports, the application itself, which is over 19 — yeah, 19,000 pages, as well as DVDs, you know, the transcripts themselves. They have all of that information in front of them, and during panel hearing, they had questions. And so a point of collaboration was to have those questions not only received by the proponent, but for them to generate responses so that our panel members, if they — the questions that they did bring forward would be responded to in a timely fashion.

What we've recently run into is there was an anticipation that the clock would begin again in the fall, in this fall. And because of that, the SSN developed a timeline and had, you know, budgetary planning done so that we would be — we anticipated being substantially complete our process by the end of 2016. The process remains suspended for both CEAA and for B.C., and right now, surrounding the final decision cycle, there are a number of questions about whether or not or to what level the SSN is going to be able to not only review the responses that were received as recently as November the 8th, in order to ensure that we can bring back both our indigenous and our western experts to review the responses that we have from KGHM during what they call like around to and any of the information requests that are outstanding from CEAA.

We are challenged with the fact that we want to engage with both the B.C. and Canadian process, but when we have capacity constraints which do not allow us to adequately review those responses, how are we supposed to move forward in a way that ensures that our panel members are going to have the fullest extent of information and that they are going to be able to make that decision in the most informed manner they can.

And right now, what we're faced with is uncertainty around both the proponent and the governments and including CEAA to provide any additional funding when it comes to remaining engaged throughout the remainder of the process.

So that's something that we're currently faced and is just an example of how, if we had planned this together at the beginning, about how that could look, how that schedule would look, how those phases throughout each of our respective processes would allow us to remain engaged and would allow us to define how additional capacity requests were brought forward and how they would be considered. All of those — many of those things, I think, could have been addressed if we would have taken that time at the beginning.

So within our current situation, then, there needs to be an acknowledgement of the fact that there is a tri-judicial system and that there are multiple jurisdictions within Secwepemc'lcw which includes the SSN, Canada and B.C. And it's not about — and I've heard recently at another meeting with B.C. EAO and first Nations Energy and Mining Council this concept of one process, one decision. And that is worrying to me because we have very different scopes in terms of what our responsibilities are. And we need to be able to respect and honour the decisions that come out of each of these processes.

The Stk'emlups te Secwepemc Nation, when they make their process, how is that going to be respected? How is it going to be honoured? How does that move and interact with the Canadian Environmental Assessment process to ensure that there is informed consent when it comes to any projects?

So in just summarizing and looking back at the differences between our processes, again talking about the differences in scope, ours is very much founded on our Secwepemc laws, on our principles, on our tenure, on the unceded territory. It includes both oral and written components, which are a very important part of our knowing and our way of being.

We walk on two legs between both the Secwepemc and western ways of knowing and understanding the world, and we take very seriously the description of those intangible impacts which are more difficult, sometimes, to characterize. And we also look not only to the past, but also far into the future, and looking at how things are interacted together.

So in moving forward and wanting to recognize these lessons from the land, we want to ensure that our decision is respected, and how is it going to be respected in this tri-judicial system. How do we support equitable, informed decision-making not only for the SSN, but for First Nations throughout Canada? What can be learnt from our process to better define that scope between the processes, and what are the costs of informed decision-making?

I think that the SSN has much to share in terms of the work that has been done. With the current EA for the KGHM Ajax project, I don't think that it is lost. I think that there is still opportunities for us to better define how our processes

interact to ensure that that decision-making and that decision that comes forward from the SSN can be truly honoured and respected.

We do want to work together and see this as an opportunity for us to share all of these lessons that have been learnt in terms of developing a model that can be flexible enough that it will allow different First Nations who have that innovation, who want to move forward from that place of sovereignty and interact with the environmental assessment in a way that is going to respect their decision-making authority on their territories.

So we certainly are willing to do that and would — and take that opportunity with you and, you know, would — you know, we would relish the opportunity to work forward with you in terms of not only additional written submissions, but also in terms of potential opportunities that could be identified where we can take the number of lessons, the best management practices and all of the experiences that we've had with the SSN project assessment process and work together in terms of moving forward this idea of a new model in the assessment of projects throughout Canada.

Kukwstsetsemc.

Johanne Gélinas: Thank you very much. This is probably the most comprehensive, innovative model that I have seen over the last couple years, not only through this Panel work. And I would like to have the opportunity to talk to you after we have gone through the question period because there might be an opportunity for us to help us — for you to help us; sorry.

Thank you.

Doug Horswill: I want to start at the end. And the last notion that you brought to my mind with what you were just describing is you closed off what — and this may be — and in fact, this may be more applicable to what Johanne might be speaking to about afterwards.

So — but the thinking is, what would the minimum — what would the minimum conditions be, in your mind, to facilitate and allow the integration of the system that SSN has put together and the system that comes out of the federal EA or the provincial EA — it doesn't matter — or both of those combined? It sounds like there's a lot of elements of scope, and scope issues can be discussed.

Another one that I think I heard you say was qualifying the proponent, in other words, is the guest worthy of being a brother in your land or in your house.

If you could give us a short reaction now, but that might be something that would fit in to the work afterwards.

Sunny LeBoudrais: In terms of minimum conditions, I know that one of the issues that the SSN leadership have brought up continuously is the need to develop a nation-to-nation table. And really, that nation-to-nation table would allow for the development of either plans, framework agreements that could really clearly outline how that relationship between our process and yours could look in the future as well as for the existing process because one of the things that is a challenge also had to do with the mandates within CEAA, for example.

The mandate within CEAA when it comes to consultation and accommodation, for example, is really within the scope of mitigation measures that can be prescribed through the environmental assessment process.

There are a number of impacts which are well above and beyond the capacity and the mandate of CEAA to look at, and for example, the SSN has been continuously requesting the appointment of a federal negotiator. Part of informed decision-making needs to include for the panel, for example, a clear understanding of what is being put on the table in terms of accommodation so that they can make an informed decision that is based very clearly in terms of what are the costs and benefits in order to determine the net benefit overall to not only the two communities, but also to the nation.

Doug Horswill: I asked the previous speaker, Chief Seymour, if the decision — the decision and the decision process coming out of your panel could serve in some fashion as a framework for discussion of accommodation. Do you have any reaction to that?

Sunny LeBoudrais: I think that in order for it to form as some of a framework, the way that the question has been framed for the panel, it includes the changes in terms of the land use objective in the area, which is founded on that decision-making authority. And if there is going to be any discussion of potential proposed negotiated accommodation agreements, et cetera, I think that one of our biggest challenges has been that the only way that those discussions are brought forward is after the fact. And really, there's no — when it comes to the assessment, for example, of KGHM Ajax, and we're looking at them and whether they can be brothers, we do the same assessment for both B.C. and Canada, have you been good partners, have you been brotherly.

The Memorial to Sir Wilfred Laurier talks about hostile intentions. Are there hostile intentions that are being shown? And so in order for the — in order for the panel to consider anything in terms of accommodation, they would need something to start from. They need to know what Canada is bringing forward because I think that it — an important part of that is still — still remains missing because of the design and the timelines within the Canadian *Environmental Assessment Act*.

Doug Horswill: I'll ask one more and then I'll give up the talking stick rather than ask 26 more.

Are you familiar at all with the processes in the north of Canada, Mackenzie Valley or Nunavut? Because they have, it seems, some of the elements of consultation and broad community inclusion that you have here. I just wondered if, in your professional work, you've any familiarity and if there's anything that you think connects what you're doing to what happens at —

Sunny LeBoudrais: I —

Doug Horswill: And if not, (indiscernible - cross talk).

Sunny LeBoudrais: I'm aware of them, but I don't have any intimate knowledge of them.

Renée Pelletier: Okay. So firstly, my mind is blown. I echo the Chair's comments of just how comprehensive this is. Like I'm really — I'm almost speechless.

So it sounds like, based on Madam Chair's comments, that we'll have an opportunity perhaps to engage with you afterwards with the more nitty-gritty questions, so I'll just ask a couple now, if that's okay.

Just one question of curiosity. You mention that the province had done two strength of claim analyses. Were you given those?

Sunny LeBoudrais: Was the SSN given those?

Renée Pelletier: Yeah.

Sunny LeBoudrais: Yes, they were.

Renée Pelletier: Oh, interesting.

Sunny LeBoudrais: Or they were given a letter summarizing the strength of claim assessment, yes.

Renée Pelletier: Okay.

Sunny LeBoudrais: And a summary which included, I believe, a list of the documents that they assessed when they made that strength of claim analysis.

Renée Pelletier: This may not surprise you. Actually, I think maybe B.C. is the only province that I know of that actually hands that over. First Nations in other parts of the country are still fighting with the provinces to get that analysis, so that's interesting that you are given that here.

You mentioned at the beginning that the first thing that you were trying to do was bump up the comprehensive study to a review process, and that,

ultimately, what you would have liked would have been like a tripartite review process with SNN as the province, the nation and then the feds. If that had happened, can you say a little bit about what it would have looked like? Would things have been different? Would it have been one process and you would have had a seat at that table, and that process would have been the typical CEAA process?

Would you have wanted to integrate part of your process?
Like how would that have worked?

Sunny LeBoudrais: I think I would leave that question for leadership to answer. I understand that that was the request that was brought forward. By the time that I came on, it had — while those requests continued to move forward, they continued to be denied. So I think that we moved forward in the best way that we could given that denial. I think that the — if it was given the opportunity to plan that process together and how that panel would have looked, possibilities are endless.

Renée Pelletier: Okay. And then the last question is just you seemed to really be able to, as a nation, very cohesively like all kind of agree on this. Maybe we're only seeing one side of this. But I know in a lot of other places where you have, you know, either a tribal Council or just an overall nation with many different Bands, you don't often get that kind of collaboration. And I'm wondering whether that's at all an issue here and, if it is, what you've done to resolve that. By that, I mean do you ever have or have you, in this process, had a situation where there's one community who doesn't want to work collectively?

Sunny LeBoudrais: I can only speak to what has been done within our process. And within our process, that were letters sent out to all of the other Secwepemc communities. We also opened the door if they wanted any presentations on our process or any of the information. Again, they were also invited to the panel hearing itself.

We had a number of leaders and members from throughout the Secwepemc Nation attend the panel hearing. And our intention would be to remain connected to them, and that was also one of the reasons that our panel Chair was also the tribal spokesperson for the SNTC.

Renée Pelletier: Okay. Thank you. I think that's probably it for now for me.

Johanne Gélinas: Did you get any commitments from the two level of government with respect to how your decision will be taken into account in the final decision?

Sunny LeBoudrais: I think that currently within the consultation approach for the Canadian *Environmental Assessment Act*, there is a commitment to submit the entire decision package to the Minister for her review. However, there's no discussion about how that decision package and how that decision will be considered and how it will

potentially impact or provide input to the significance of adverse effects assessment itself. That remains quite vague within CEAA.

And within the B.C. process, there also is a commitment to include the decision package in the — you know, in addition to the environmental assessment report that goes to the Minister for their decision. And what we've tried to do in integrating a lot of our information is share a lot of our knowledge throughout our process.

So for example, our Pipsell report, a number of the chapters which speak about the knowledge that was shared at panel hearing and from our perspective is shared with both CEAA and B.C. EAO in the hopes that we'll be able to work together to the extent possible, given our capacity restraints — just throwing that out there again — that that will be able to work together when it comes to the seriousness of impact to Aboriginal rights and title when it comes to that methodology and that report.

Johanne Gélinas: Do you get a feel that all the traditional knowledge that was included in your assessment will — is seen or will be seen as science-based knowledge?

Sunny LeBoudrais: I think that one of the — one of the concerning statements that we've seen come out of the federal government and from Prime Minister Justin Trudeau has to do with the science-based nature of where he is emphasizing the value on that nature — that type of information.

I would counter and say that traditional knowledge is another way of understanding the world, and just because it isn't defined in the same way as scientific knowledge makes it no less valuable. It is simply another way to understand our lands and our territories. So I would be concerned that the current process will attempt to shoehorn in our knowledge into a way of knowing that is most comfortable to western society.

Johanne Gélinas: What happened when you — at some point in your presentation, you mention that you, SSN, decided to go and do your own review, okay. So it's a decision that you have made among yourselves. Is it at that stage that the two level of government had entered in contact with you and said, okay, let's find a way to do that all together?

Sunny LeBoudrais: No.

Johanne Gélinas: Explain it to me. It's part of the equation that I don't get yet.

Sunny LeBoudrais: I think that leadership was very strategic in how they motivated both the Canadian and B.C. government to come to the table and be a part of the process. I think that the strength of claim and the government-to-government

discussions that leadership had started in May of 2015 provided a forum and a table for those discussions with the B.C. government.

The work that they also did at that point in time, there was also consultation going on in terms of the application informal requirements and the environment impact statement guidelines, and there were a number of outstanding issues when it came to the issuance and finalization of those information requirements that resulted in a couple of what they called addendums. And those addendums — there were two addendums that were identified by the B.C. environmental assessment process, and one, the Trout Children addendum, was identified by CEAA.

And together with the requirements that were attached to those addendums and I think the will and communication that came forward from leadership, I think it just became very apparent to both the proponent and B.C. and Canada that this was going to happen so that there was a number of different factors which came forward and then you began — we began and leadership began the work on, for example, the EA collaboration plan that talked about how our two processes were going to work collaboratively.

Johanne Gélina: Do you have a written document of what is this collaboration process among the three of you?

Sunny LeBoudrais: So the SSN has the collaboration plan which outlines —

Johanne Gélina: Your own, okay.

Sunny LeBoudrais: Yeah.

Johanne Gélina: Okay.

Sunny LeBoudrais: And then that is an agreement that was as part of that government-to-government table which outlined a number of different collaborative points between the two processes.

Johanne Gélina: Okay. Is it something that you can share?

Sunny LeBoudrais: I would defer to my leadership on whether or not — yeah.

Johanne Gélina: Okay. Thank you. Because I have asked Raquel(ph) a few things. I don't know if I'm asking the same thing here, but I'm sure you can talk to each other.

So would you say that, somehow, there was a kind of good timing also which favour the outcome?

Sunny LeBoudrais: I think you guys coming here is good timing, so.

Johanne Gélinas: Okay. Everything happen for a reason. That's what my mother was telling me.

Let's get a little bit more in the detail of this approach. You said, of course, that it's time consuming, resource consuming. You need also some money to be able — some funding to be able to do that. You mentioned twice that that is not enough, there is a need for flexibility.

So can you just give us an overview of how long this process has been so far, how much resources you have put in it and how much money you have needed o tog through and how much more you still need to complete and close the loop?

You may not have to answer that question right now. You may want to get back to us with a one-pager. But if you are able to give us an idea at this stage, I will appreciate very much.

Sunny LeBoudrais: We've been working on this process — the initial plan for the process was approved by SSN Joint Council on September 4th of 2015. Since then, it's probably been one of the longest years of my life. But when we started, we had a full team which included, I want to say, six members on our review team as well as a number of contractors. We also had a lot of resources — a lot of resource uncertainty at the beginning as well, which is one of the complications when it comes to negotiation of capacity funding, for example, and the SSN needing to really make commitments that put them in a position where because they want to support this process — there's always a lag, it seems between confirmation of funding versus when things need to happen and when things need to happen because of the timelines that are dictated through both the CEAA process — for example, a lot of that happened while we were in screening or — I can't remember what you guys call it. Screening.

Johanne Gélinas: (Indiscernible - cross talk)

Sunny LeBoudrais: Yeah. And so we were doing that at the same time as we were attempting to engage with you and while we're also beginning our own process.

Looking forward, absolutely, I'm sure that the SSN would be more than happy to provide a summary of what that could look like moving forward and the resources that would be necessary to ensure that this process is fully respected and that we can really also bring together all of the lessons that have been learned and look at what that potentially could look like for the rest of B.C. and Canada.

Johanne Gélinas: And I'll explain you the context so that you will know exactly what to provide.

Yesterday, I don't know if you were with us, but I have asked that — to the group of Ms Newmarsh, I think, to give us the portrait of what it meant for

them to go through this entire environmental assessment process for the Ajax project, how much resources, how much money. I've asked that also in other communities, so having your assessment would be a good way for us to see how much more or maybe how much less it costs to achieve a process that, so far, seems to work well or, so far, being the best that we have been presented in our journey. So that would be very interesting.

So nothing complicated. How much resources, how much money so far it has cost you. If you want to say a word about the funding, I mean, the public funding is public knowledge, but you may have received also some support from the proponent themselves. So this kind of information.

And I'm pretty sure that you can provide this information also because you seem to know very well the two processes, the federal one and the provincial one. If I was to ask you how much more time it add to the process, how much time you will say? You know, the normal process.

Sunny LeBoudrais: The normal process. So if we were — you know, I've heard of examples of other processes that work very independent of the other — of the Canadian MBC processes and sometimes I think, oh, geez, wouldn't that be nice. We could just carry on and not have to worry about anybody else. But there is a substantial amount of time.

So I'll give you an example. With CEAA, recently, one of the new opportunities that was presented to us through the consultation approach was the ability of us to review the responses that were provided by the proponent in response to the information requests. So that was an opportunity. It's new.

They said, "We've never done it before". We were like, oh, yay. We have a whole bunch of new information to review. Lucky us. That's fantastic.

When you're looking at how to bring these two processes together, it is a massive amount of time that you spend not only reviewing information that comes from both the agencies, whether it's B.C. or Canada, but I can look at examples of information that, as part of consultation, they provide an opportunity for us to review the day 120 report, so basically the proponent's First Nations consultation report.

We've reviewed a lot of that information in the past, and I can tell you that there certainly are a number of places where I think that we are ineffective and that our time is — can much better be spent if we pre-plan in a way that we don't waste resources reviewing information that we know isn't probably going to make the cut, you know.

So for example, with the Trout Children addendum, we've reviewed it. It's part of an information request from CEAA. The proponent has provided

additional information. The way that they scoped that information, we know that it's not going to reflect the impacts and it's not going to reflect that knowledge from the SSN's perspective and from telling our story. They reduced it down to root digging and the chickadee song and the prayer tree, I think was the Trout Children story addendum for them, whereas when we define how the Trout Children is integrated throughout our process and how it connects the whole processes itself, it's just — it's too much for them to understand.

And if it's too much for their consultants to really be able to portray, why are we wasting our resources having to review information when we know that it's not going to adequately tell that story?

Johanne Gélinas: Do you have another question?

Doug Horswill: It sounds like the strength of claim was — provided you the opportunity to introduce the process. Is that true, and was it sort of a necessary element?

And I guess I'll put a context around it. I'm thinking about the extent to which the experience we're learning of here with you would be replicatable in other places in the country and, therefore, trying to get at what are the conditions necessary so that — it sounded like from what you said earlier the strength of claim was sort of a key step that kind of brought you into the process in a full way like you are.

Is that true, or not true?

Sunny LeBoudrais: I think that the strength of claim, when it was reassessed to high on title and high on rights, definitely triggered a change within the B.C. government, for sure. Within the Canadian government, we didn't see the same shift. We still are waiting on a nation-to-nation table. We're still waiting on a federal negotiator.

Leadership has met with Minister McKenna at — in Niagara and brought forward a resolution which spoke to the need to have our process included as part of this comprehensive review.

And so the strength of claim itself, it was also reassessed as a result of the work that was done by the SSN through their — the completion of a cultural heritage study. And I think that in moving forward and clearly understanding the cultural heritage and history and the knowledge of the Secwepemc Nation or the nation that a project is in — understanding that first and foremost before formally entering into any sort of environmental assessment process and having a clear understanding of what you titled your strength of claim is a really important process, but it should have happened a lot sooner and it should have happened with a lot more information at the beginning because if it had, we would have many more years of being able to work together versus being forced into a position of having to move forward with our own

process under — you know, it's kind of like getting married down the barrel of a shotgun, right. It's — everything's always — there's always timelines. We're always running into timelines.

Doug Horswill: The SSN is two communities. Is that correct?

Sunny LeBoudrais: Yes.

Doug Horswill: And this process is within those two communities.

In your wildest dreams, how many communities might there have been in the process if everybody had signed on that would be in this project influence area?

Sunny LeBoudrais: So my understanding, so the Stk'emlups te Secwepemc Nation did actually used to have more than just the two communities historically, and it's about the connection between the families that are within those communities. And really, it was the creation of the Reserve system that tied them down to different areas.

Within our Secwepemc Nation, we have seven different regional governance units, if you want to call them, so I'm from a different unit. And while there is a responsibility to the entire nation, it really will be the SSN leadership who have that responsibility to work together with the rest of that nation as a result of and in the participation of this process.

Doug Horswill: Is it — I guess in order to understand it, at the end of the day when the decision's made, it's kind of a question that if I were on the other side I would be asking who does that — who is that decision really speaking for, and are there people that would be outside?

And obviously, the more that it encompasses, the broader and more effective and stronger the power that decision has. And I'm just — I guess just speculating in my own mind now, if we're looking at what you're doing here and asking ourselves how it could fit and where and so on, the broader that scope or the broader the tent in which it covered, the better, and what sort of incentives are there to broaden the tent.

And you probably can't answer that, but that may be something that is put in your mind to think about in relation to whatever work we might be asking you to do after, if you will help us.

Great. Thanks.

Johanne Gélinas: Thank you very much.

And if you don't mind to stay in the room until the break, I would like to talk to you after.

And we have one more presentation before the break to go.

(Pause)

Johanne Gélinas: Okay. So now I don't know now if I say kúkpí7 Patrick Harry or I say Chef Patrick Harry, Chief Patrick Harry. But anyway, Patrick Harry, I would like to have you at the table.

(Pause)

Johanne Gélinas: Good afternoon. So we are ready to listen to you.

PATRICK HARRY, STSWECEM'C XGAT'TEM FIRST NATION

Patrick Harry: Good afternoon, Panel. My name is Patrick Harry. I'm the Chief for Stswecem'c Xgat'tem First Nation. I want to say thank you to the Panel for attending the session here today, and also apologize for having our back to the crowd. We've — you know, we've been through these — as you'll see, we've been through the federal review panel before, and it's something that, in our community, it was taken as kind of offensive when we've had proponents sit with their back to the crowd. And so it's something that I took from my community and I don't know how you work around that. But nevertheless, thank you.

Johanne Gélinas: By the way, we are very flexible. If you want to stand up and have a mic to make your presentation, that's how the room is set up. But we don't have any problem.

Would you like that?

Patrick Harry: No.

Johanne Gélinas: No? Okay. But I offered.

Patrick Harry: Thank you, though. Just a note that I took.

Just we've gone through a couple of federal review panels, and so it just brings back some fond memories.

Johanne Gélinas: And it's well taken on our side when your colleague mentioned that earlier, the other Chief. It was obvious that it's not necessarily the ideal setup. Thank you.

Patrick Harry: That's not what we're here to talk about, actually.

So I'll provide a bit of background. Stswecem'c Xgat'tem First Nation, we're — we have approximately 745 members. We're located in a semi-remote area on the east side of the Fraser River, approximately 85 kilometres southwest of Williams Lake, so a couple hours west of Kamloops here.

Stswecem'c Xgat'tem First Nation is part of the Secwepemc Nation, and one of our politically-allied Bands forming the Northern Shuswap Tribal Council. Our traditional territory is dramatic, consisting of expansive plateaus, deep valleys and stretches of green and arid land. SXFN is committed to protecting this territory and its resources, and to promoting a healthy and safe community for our members.

So rather than saying Stswecem'c Xgat'tem First Nation, we use SXFN also.

So SXFN holds constitutionally-protected rights, including the right to hunt, fish, trap and gather plants within our territory, and Aboriginal title to our territory. SXFN has never ceded or surrendered its rights or its title, and these rights have never been extinguished. Rather, we are committed to protecting and advancing our Aboriginal rights and title.

Our members exercise these rights on a daily basis, whether by hunting, fishing and camping out on the land or by picking berries and gathering medicinal plants. Our members, especially our children, learn from the land. It's part of who we are and how to preserve and promote our culture and traditions.

We are currently participating in the B.C. treaty process. While the process has been slow and often frustrating, we are negotiating for early land transfers. As part of the process, SXFN is committed to ensuring that our negotiations with government are carried out in a manner that respects and protects our Aboriginal rights and title and inherent jurisdiction, and that incorporates consent-based decision-making.

We have some concerns regarding the federal environmental assessment process and the Crown's duty to consult and accommodate. The Crown has a constitutional duty to consult and accommodate SXFN about the potential effects of proposed projects on our Aboriginal rights and title. This constitutional duty is distinct and separate from the environmental assessment process. And given SXFN's strong claim for Aboriginal title, the Supreme Court of Canada's decision in *Tsilhqot'in* applies and provides guidance to the Crown in fulfilling its duty to consult with SXFN in connection with projects being proposed within our territory.

And also, as affirmed in *Tsilhqot'in* prior to the establishment of Aboriginal title, the Crown is required to consult in good faith with any Aboriginal group asserting title to the land about proposed uses of the land and, where

appropriate, accommodate its interests. The Crown can avoid allegations of failure to adequately consult by obtaining the consent of the interested Aboriginal group.

SXFN expects that the Crown will always do all that is necessary to fulfil its constitutional obligations to consult and accommodate SXFN in respect of any proposed projects that have potential to affect our Aboriginal rights and title.

So I think the reason that we state those things is that, in B.C., there's — you know, I recognize that the majority of the Panel or all of the Panel is from eastern Canada, and I think there needs to be some context provided as far as reconciliation process in B.C. and that the majority of the province isn't under treaties or hasn't had the land question resolved.

So you know, a part of the way projects are assessed in B.C. is that, you know, the significant adverse impacts or effects are weighed by benefits to public, but when you're dealing with Aboriginal rights and title, you know, and constitutionally-protected rights, you know, the standard needs to be set much higher.

So there's limitations with the EA process currently, particularly in its ability to fulfil the Crown's constitutional obligations. In particular, one of the biggest limitations that SXFN has noted given its experience with environmental assessment processes is their ability to properly address the potential infringement of Aboriginal rights and title. There are important differences between whether a project is likely to result in a significant adverse environmental effect and whether a project has the potential to infringe Aboriginal rights and title and the difference between perception and perceived and potential.

So the conclusion by an environmental assessment that a project is not likely to result in a significant adverse environmental effect does not mean that the project will not infringe our rights or that consultation and accommodation is not required. The potential infringement of our rights and title cannot be overlooked, and must be addressed as part of the environmental assessment process.

Recommendations for reforms to the environmental assessment process. While recognizing the limitations of existing federal environmental assessment processes, SXFN would also like to take this opportunity to highlight one of the more positive experiences that it has had with a federal environmental assessment and the important lessons it learned from this experience.

So Stswecem'c Xgat'tem had been a part of two federal environmental assessment processes to date, both on the same project, so we were part of the New Prosperity Mine and the Prosperity Mine environmental assessment which took place in 2010, 2014. So the New Prosperity Gold and Copper Mine project proposed by Taseko Mines Limited was to consist of the construction and operation of a

large open pit mine which would also include the construction of 125-kilometre power line. The proposed transmission line would cross Stswecem'c Xgat'tem traditional territory.

New Prosperity Mine was Taseko's second attempt to get federal environmental approval for the mine. The federal government rejected Taseko's original application for the Prosperity Mine project in November of 2010 after the federal review panel appointed to conduct the environmental assessment concluded that the mine would result in significant adverse environmental effects.

In particular, the 2010 federal review panel concluded that because the transmission line associated with the mine was to be located in areas under negotiation between SXFN and B.C., the transmission line would reduce the availability of land for selection during negotiations and would have a direct effect on SXFN's Aboriginal title claim. The transmission line would also adversely affect SXFN's right to hunt and harvest plants.

A second federal review panel was appointed to conduct the review of the New Prosperity Mine in 2012. In October of 2013, the second federal review panel issued its report concluding that the New Prosperity Mine would result in several significant adverse environmental effects, including effects on the current use of lands and resources by SXFN and on the asserted rights and title of SXFN.

In the meantime, in January of 2010 the government of B.C. issued an environmental assessment certificate for the original Prosperity Mine project. We learned a few very important lessons from our experience with the New Prosperity Mine, including the following.

Number 1, the importance of First Nation participation early in the EA process. When the 2010 federal review panel was appointed to review the Prosperity Mine, SXFN nominated one of the panel's three members. This was extremely important for SXFN because it allowed us to feel like we were directly involved in the planning process for the environmental assessment. As part of the environmental assessment review process, the panel also travelled to our community to hear directly from our people. Both of these factors went a long way to ensuring SXFN members of the independence and credibility of the federal review panel and that our concerns would be heard.

Number 2, the importance of ensuring that the federal and provincial environmental assessments work together and not against one another. There was quite a disconnect between the provincial environmental assessment process for the initial Prosperity Mine project and the two federal environmental assessments. SXFN found the provincial environmental assessment process extremely lacking. The political focus in B.C. on advancing mining projects made us feel as if the

whole review process favoured industry and did not provide us with a fair opportunity to have our concerns heard.

As a result of this disconnect between the two processes, we now have a project that has received provincial approval, but not federal approval, so better coordination between federal and provincial environmental assessments is necessary.

In addition to the above, we have the following additional recommendations for improving environmental assessment processes.

Number 1, the importance of consent-based decision-making. Both the United Nations Declaration on the Rights of Indigenous Peoples and the Supreme Court of Canada's decision in *Tsilhqot'in* confirm the importance of engaging in consent-based decision-making with indigenous peoples in respect of matters that have the potential to affect our rights. SXFN has never surrendered its jurisdiction and authority to make decisions on matters that have the potential to affect our rights. In fact, we are working with the Crown to give recognition to our jurisdiction.

Given the importance of our Aboriginal rights and title and the potential for these rights to be affected by development within our territory, environmental assessment processes must allow First Nations to be involved in decision-making about matters of mutual concern.

Number 2, the importance of encouraging nation-building between and among First Nations. SXFN is committed to achieving a nation-to-nation relationship with the Crown. To meet this commitment, we need to strengthen our own governments and nations, we need to implement and exercise our Aboriginal title and our own governance and decision-making structures. This type of nation-building is a huge task that requires the support of government. Both the federal and provincial governments must be committed to working with First Nations on nation-building issues.

Number 3, the importance of adequate funding to enable our full and meaningful participation in the environmental assessment process. Without adequate funding, we are simply unable to fully participate in environmental assessment reviews. If we are not able to participate in such reviews, important information about the effects of a potential project on our Aboriginal rights and title, including our traditional ecological knowledge, will be lacking and the environmental assessment will be incomplete.

So I have some notes on that. You know, while participating in the federal environmental assessment for the Taseko Mines Prosperity project and the New Prosperity project, we've always — we've always developed our work plans prior to develop — prior to submitting budgets and having approval or, you know, being given our amount allocated for participating. And at times, you know, I think that as an

average, we would probably receive 25 to 50 percent of what we asked for each time. And you know, each time, that leads us to consider, you know, whether we — whether we put those — whether we put — where we put those funds. And it — you know, it pushes SXFN to, you know, consider whether we allocate more funds towards the environmental issues that we have with the project or we put more time into the traditional knowledge, traditional use studies, that kind of thing.

So having to choose between the two is something that, you know, puts us in a difficult position when we don't — we don't have the necessary amounts, you know, that we submit in our budgets, the amount that we deem necessary to really take a good look at and assess the traditional use impacts and the environmental impacts. So some of those decisions that we had to make were difficult when we had to choose whether — where we allocate our own funds after — after our budget is reduced or cut by half or cut by 70 percent, 75 percent the majority of the time.

So yeah, that's — that's — basically concludes our presentation.

Johanne Gélinas: Thank you very much.

Generally speaking, how much money you will get from CEAA for the assessment of a project?

Patrick Harry: It's — generally speaking, it varies. Like so I would say as an example, we — it's been a while, but I think one of our budgets was for 150,000 — 147,000. So I think the amount that was allocated was about 80, 83,000 or something like that. And I think there was another around 125 and which we got 47 or something like that.

Johanne Gélinas: And is this an explanation when you get the funding from the agency why they are giving you a percentage less than what you were asking for?

Patrick Harry: Not quite. It's — there was — so in our area, there's — there was, you know, more than only us involved in the process. And you know, our neighbours would get the same amount as we got. It didn't — you know, whether we submitted a budget that was the same as theirs or ours was more than theirs, you know, we would get exactly the same amount they got, so I don't know how that pool works there where, you know, they only have a certain amount that's allocated for the whole project and the First Nations that are involved have to, you know, split that, I guess.

Johanne Gélinas: And have you received, in those two examples that you gave us, financial support from the proponents?

Patrick Harry: Yeah. Yeah. It's kind of a funny story, actually, because the proponent and — I don't know how well aware you are of Taseko Mines and they're

kind of — I would — they're dinosaurs, anyways. But so — so yeah, they provide us with 10,000 and they wrote us a letter saying, you know, "It's our hope that this money is not spent on legal expenses or, you know, that it's not eaten up by legal expenses or consultants".

So we wrote them a letter back and said, you know, this kind of reminds us of the 1940s when First Nations weren't allowed to hire lawyers. So you know, that's — that's the example that we have with that where, yeah, they provided us with some funds and they actually tried to sway us on how we use those funds, so it's 10,000, which didn't go very far.

Renée Pelletier: I'm just wondering with the Taseko two EA assessment, you said that those were your examples of a positive experience in a federal environmental assessment process. And I'm wondering, what do you think was different about those two processes? Like why was your voice heard with the Prosperity and the New Prosperity project, and not necessarily in other processes? What do you think made the difference?

Patrick Harry: Yeah, I think those projects, along with (indiscernible) North, you know, might have been some of the reason behind the change, some of the reasons behind the change in the environmental assessment. But the way it was conducted, I'm not saying it was perfect, but, you know, we — I mentioned the fact that we were able to nominate panel members, and we took the — you know, we took the government up on that and we did nominate a panel member who was First Nations who was a metallurgist from the Tahltan and, you know, I think that something like that really, as I mentioned earlier, show — you know, when I think about the B.C. environmental assessment, B.C. EAO, I think about rubber stamp process.

At one time, there was 85 — 86 environmental assessments going on, and 85 of those 86 were approved. And so I — you know, if you look at the number, it's not very often that B.C. EAO rejects a project. And you know, we — and I think it's what you make of it, too. You know, if we didn't step to the plate and become involved and push for these things such as holding panel hearings in our communities, having the panel allow us to drum prior to the — prior to the panel hearings, having the panel members, you know, allow our Elders, you know, priority seating, you know, having us allow — allowing us to do our prayers in our communities and doing site visits, you know, not just flying over the project, but getting the panel out there on the land and showing them.

At one time, I — during both assessments, we brought the panel out to the actual — one of the most important sites on that 125-kilometre transmission line was the site where it crossed the Fraser River. And you know, that site was important for many reasons, not only our traditional use and our culture and heritage reasons, but also, it was a sensitive area for, you know, technically to build a transmission line that crosses the Fraser, it's quite a task.

So we were able to bring the panel out and I was able to stand, you know, on the plateau of the Fraser. And in that location that we took them to, there was 200 recorded art sites within a five-kilometre radius and, you know, I was able to point those sites out to them and say this is — you know, in that area we have burial sites, in that area there's a village site, you know. And you know, one of our Reserves is down here. If you look down, you're standing on sensitive grasslands, you know, sensitive bunch grasses, you know. Badger homes are here and — to really give them a look at it from that perspective.

So things like that where it's not only writing on paper or, you know, sending them emails, but to get them out there and really show them — show them examples of how this project would affect us. I think it made a big difference.

Doug Horswill: In your points, one of them was that federal and provincial must work together, and there are various means of doing that. One's called substitution, which British Columbia, I guess, is the only province in the country that has that in place. Another concept that's used is the notion of harmonization in terms of agreements.

Have you got any feeling as to which way that coordination, cooperation should go in that? If you could amplify how, if you have a notion.

Patrick Harry: Yeah. It's been a while. I have — it's — I have to admit, it's been a couple years since I've even thought of that, so it's a good question.

And as an example, you know, what we seen was the province needs — you know, federally, First Nations participation was heavy. Provincially — provincially, the province granted its environmental certificate, its fish compensation plan without First Nation involvement, so I would like to see — you know, the federal environmental assessment, you know, the federal EA office, you know, if it was to harmonize with the province, say, okay, how can we use the same information as far as First Nation participation and First Nation studies because this — this is a bad example, you know, where, federally, our voices were heard. Provincially, a certificate was granted five months before we even had our first chance to speak to the federal environmental assessment panel. And so as far as trust and relationship building in that process, we — you know, we felt that our voices weren't even taken into account.

Doug Horswill: Amplify for us, explain to us what you meant in your comment about nation-building and the need for government support in relation to nation-building.

You mentioned that — on your three recommendations, the second one was nation-building between and within First Nations and it needs government support to achieve it. Can you just amplify on your thoughts there, on your objective?

Patrick Harry: So I think in regards to nation-building, it's — and I know this topic has come up across the country. We've had — we've had reports out of Ontario and Manitoba where it's come up as far as UNDRIP — as far as under UNDRIP where the right to self-government, the right to nationhood has come up. And you know, as far as being a full — realizing our full potential, being on par when we're at the table with government, you know, I'm not — I'm not afraid to admit that we're not there yet in some aspects.

When we have to go to the — when we have to go to the government and ask for money because, you know, our free, prior and informed consent is needed, you know, it shows that there's a need for capacity and, you know, when the government — when the Crown says, you know, we support self-government, you know, in a way they're supporting that capacity building that needs to take place.

And like I said earlier, if — you know, if the capacity isn't there, the environmental assessment, you know, won't be — you know, won't be complete in some sense that it was — because we were unable to sufficiently provide that.

Doug Horswill: The picture you paint in my mind with that comment is maybe connecting communities together into some, maybe, structure that comes out of history because we did hear about it in Manitoba and it was presented to us in that — in that kind of manner that various communities would be linked up under sort of one nation banner. And I was wondering if you were sort of talking about that same notion.

Patrick Harry: Yeah, we — as — you know, as Sunny said earlier, we were invited to the SSN panel, too, and unfortunately, we weren't able to attend. But during this process, we also had — we also had Chiefs, SNTC Chiefs and, you know, participation from the Secwepemc Nation as a whole, so I think it was — I think it was another effective means for our people to see that and see, you know, that they can take this process seriously, you know, that there is involvement.

You know, that's — that was the tough part, right. It was — our people seen one environmental assessment fail and, you know, we were happy about that. We were happy for a short term.

I think it was nine months before another — before we got another environmental assessment application, so you know, having our people take the — take the assessment serious the second time, you know, was a challenge to say, okay, we did our best the first time. You know, we had the communities come out and make submissions and, nine months to a year later, they're back again. And so we did it again, and we got the same result. And at this point, you know, maybe they're coming back for round 3 and we'll probably get the same result again there because it's ongoing.

And you know, the comment about taking infringement of title and rights seriously needs — you know, that needs to be — you know, that needs to be taken seriously in itself.

We've proven through this process that it's got potential to infringe, that it will infringe on our title and rights, and yet keep — tests come back. So it's — I almost forgot what your question was.

Doug Horswill: Well, it related to nation-building and the need for government support. And I think you've answered the question generally, capacity plus linkage of communities to increase the number of people or the political power or whatever it would be, I presume.

Patrick Harry: Yeah, I don't want to get off topic too much, but I know these environmental assessments are something that — these reviews are something that was — you know, the *Fisheries Act* review, the *Environmental Assessment Act* review, the Navigable Waters review, these are things that Prime Minister Trudeau promised in his election and, you know, he also promised — he also made statements around UNDRIP. And I think if those two are to go together, then, you know, you have to look at that. You have to look at how nation-building will be a part of environmental assessment review.

Doug Horswill: I think it links to the other comment you made about consent-based decision-making and whose consent, how far does it go. But anyway, we have to do some thinking about that, so thank you.

Johanne Gélinas: Thank you very much for our presentation.

It is 3:30, so we'll take a 15-minute break. Thank you very much.

(BREAK)

Johanne Gélinas: So we're ready to start.

I suspect you're Mr. Johnson and you're Ms Wilson. So the floor is yours.

ROSALIE YAZZIE, JAY JOHNSON, LISA WILSON, OKANAGAN NATION ALLIANCE

Rosalie Yazzie: So thank you for allowing us to present. First and foremost, we'd like to acknowledge the Secwepemc Nation whose traditional lands and territories that we're on today.

Today's Okanagan Nation Alliance team is comprised of Jay Johnson, who's the chief negotiator for the Chief's Executive Council, Lisa Wilson, who is the Natural Resource Manager for the Nation, and myself, Rosalie Yazzie, who's in-house counsel for ONA.

I just wanted to let you know that we have a Powerpoint. Essentially, you should have copies in front of you. Thank you. I believe we also have been — provided an electronic copy for your future reference.

So today's presentation is essentially going to be a brief overview of who the Okanagan are, the Syilx, Okanagan Nation Alliance, its experiences with environmental assessments, both provincial and federal, and also providing — identifying key criticisms as well as implications of the legal obligation and recommendations for the CEAA.

So I'm going to just quickly move through the slides. If you, obviously, have any questions, please let me know. I'll look up, and hopefully we can answer them to the best of the — our ability. As well, we will be moving back and forth, for different people will be speaking to each slide.

Johanne Gélinas: We'll let you do your presentation and, after that, we will enter into a dialogue. Okay?

Rosalie Yazzie: Perfect. Thank you.

Okay. First and foremost, there is a map here which is the traditional territory of the Syilx Okanagan Nation. "Tmxwulaxw" is the Nsyilxcen word for "the land". Tmxwulaxw is the word and Nsyilxcen is the language that the Syilx Okanagan speak.

So the territory of the Syilx people is a diverse and beautiful landscape of deserts, lakes, alpine forests and endangered grasslands as well as our territory extends approximately over 69,000 square kilometres and contains the highest concentration of rare and threatened species in British Columbia.

The Okanagan Nation Declaration serves as a foundational guide in terms of what the roles and responsibilities are of the Okanagan Syilx people. Since time immemorial, the Syilx Okanagan have occupied and used the lands, waters and resources of its territory and still exercise jurisdiction and ownership till this day. The Syilx people are a historic community of people sharing language, customs, traditions, historical experiences, territory and resources since before the time of first contact.

The Syilx people hold indigenous title and rights throughout its territory, having never been ceded, surrendered or released any portion. Syilx title includes ownership of lands and resources within its territory and the right to manage,

use and benefit for the use of those lands and resources. Our communities have always been governed by protocols between them and respecting lands and resources and, additionally, as you can see in front of you, the Okanagan Nation Declaration provides a shared vision for activities within Syilx territory.

This Declaration, additionally, is respected by all member Bands and the Okanagan Nation Alliance in carrying out their responsibilities under this protocol.

The Okanagan Nation Alliance's Chief Executive Council is — collectively represents the proper title and rights holder of the Syilx Okanagan Nation. The CEC is comprised of eight ONA member communities, including Okanagan Indian Band, Upper Nicola Band, Westbank First Nation, Penticton Indian Band, Upper Similkameen Band, Lower Similkameen Indian Band, Osoyoos Indian Band, and the Colville Confederated Tribes located in Washington State.

The protection of Syilx title and rights includes that the member Bands in the ONA affirm their commitment to the protection and preservation of Syilx title and rights, and all communities and leadership agree that Syilx title and rights to our territory will never be ceded, surrendered or any way relinquished. And for clarity, for purposes of the discussion, Syilx's rights include, but are not limited to, hunting, fishing, trapping, harvesting, gathering and engaging in cultural and spiritual practices that can be exercised by Syilx people throughout the entirety of the whole Syilx territory in a manner that respects the Band's local authority.

Moving on, the Okanagan Nation Alliance relies upon the Syilx decision-making protocol. This protocol is an agreement amongst the Okanagan Nation member Bands in terms of how it's going to collectively make decisions regarding its title and rights within the territory. The Syilx people have always had established protocols of cooperation, whether it be amongst our communities themselves or with neighbouring First Nations, and the protocols are implemented by the Chief's authority and reinforced through cultural traditions such as feasts, ceremonies, potlatches, dances, trading ceremonies and swanx pow-wows.

Additionally, the Four Food Chiefs, which is the chapteek(ph) or an oral history of the Okanagan Nation, is relied upon in terms of providing context in terms of the social and nation responsibilities expected from Okanagan Nation people. The Four Food Chiefs embodies these protocols, order and life lessons of the Syilx way of life and culture.

In the deliberations, the Chiefs Black Bear (Skimxist), Chief Bitterroot (Spitlem), Chief Spring Salmon (Ntixityx) and our Chief Saskatoon Berry (Siya) reflects how the Syilx trusts one another, share and act as stewards of our lands and resources and preserves the Syilx well-being for past, present and future generations.

And I'm going to hand it over to my colleague, Jay, here, to address the next few slides.

Jay Johnson: Thanks, Rosalie.

I'm just going to speak a little bit about the governance structures of the Okanagan Nation Alliance, a little bit about the standards and protocols, procedures that the nation has developed and relies upon in its governance activity and then begin to identify some of the critiques of the current environmental assessment processes.

On existing Reserves, member Bands have exclusive jurisdiction, authority, including the responsibility for community social and economic development and to receive benefits from revenue-generating activities. However, off Reserves, each of the Bands in the ONA have identified areas of responsibility for resource decision-making within a certain scale of projects.

Larger scales are the exclusive jurisdiction of the nation as a whole, and those decisions rely on the Executive Council, the Chief's Executive Council. The medium and smaller projects are within the jurisdiction of each of those communities. Those decisions, screening decisions, are made in association with the standards that have been developed collectively that are relied upon by indigenous laws and Syilx law.

They apply the Suxwtxtem principles for land resource decision-making throughout the territory. They promote sustainable economic development and the protection of Syilx values. They honour and acknowledge the special relationship of Syilx people to the land, the resources, the elements and the natural world.

The Chief's Executive Council is the decision-making body and has the authority for ensuring the protection and development and enhancement of Aboriginal title and rights matters, including all resource and land decisions, ultimately. We have developed a Natural Resource Council which is comprised of all the technical advisors and a Councillor from each of the communities to help advise on — specifically on land stewardship issues, including the further development of common territorial stewardship principles.

We have a specific Energy Executive Committee that is reflective of the density and breadth of energy activity that occurs in the territory. Fifty-three (53) percent of all energy developed by B.C. Hydro is produced on Okanagan Nation territory and, as a result, we've developed an enduring relationship with B.C. Hydro that mandates our involvement at an early stage in all the planning and decision-making process of B.C. Hydro. That process has been under way for about five years now, and it's escalating.

It's proved to be quite effective and is an important aspect to consider when revising an environmental assessment process in that early involvement must be seen as a principle for ensuring that the interests of indigenous communities is central to moving forward with any decision and, in particular, it also allows for the early screening of projects that may not be appropriate on the territory and/or the proposal for changes that would be necessary at an early stage to allow for projects to change and also potentially save proponents, you know, millions of dollars in planning for projects that would be unacceptable for indigenous communities, and thus avoiding conflict.

The CEC determines the Band's and ONA involvement with the Crown proponents on a project-by-project basis, ultimately, and those Syilx that determine the size and screening of the projects are being developed now and, for the moment, we're relying upon the threshold as twofold; one the size of the project, which is based upon the provincial EA standards while we're developing the Syilx standards, and secondly, a screening that includes, regardless of the size, whether a particular project would have an acute impact on indigenous resources or areas of particular interest or sacred areas.

The Okanagan Nation has been involved in EA processes for many years. While the Chief's Executive Council finds great frustration with the manner and the pace and the imposition of timelines on the nation for its decision-making process, we understand that it's incumbent on the nation to also engage in these processes in order to adequately attempt to defend and alter projects that may be deemed to be inappropriate at the time. And they reserve the right to oppose projects as well.

As just an example of a variety of projects that we've been involved with, the decommissioning of Coursier Dam outside of Revelstoke. There's a Cascade project that's — has gone through the provincial EA process. There's a Run of the River 50 megawatt proposal.

The Glacier-Hawser project in the Arrow Lakes area was a proposal by a Quebec company. In fact, that proposal was one of the few projects that we put a halt to given that the impacts to aquatic species could not be mitigated in any manageable way, and the proponent eventually withdrew the project at our urging.

Mount Kathleen Wind Farm was a project that went through both the EA and the CEAA, and it was withdrawn due to changes to the provincial policy and to the energy market.

The Columbia Power Corp in the Kootenays has developed three — it was mandated to develop three projects, the Brilliant Dam, the Arrow Lakes Generation Station and the Waneta Expansion Project. We got involved in all of those. And we've had considerable say over the outcome of and the final designs of each of those projects.

B.C. Hydro, of course, is one of the major corporate interests on the territory, and we've been involved in the Revelstoke power upgrades, Revelstoke 5 and 6, Mica Dam, dropping new generators into the — into Bay Number 5 and Bay Number 6, and, of course, the Kinder Morgan pipeline.

Canada's legal obligations. One of the biggest challenges I'm sure you've heard a lot about is that the current CEAA does not recognize its obligations and must be framed by those legal obligations. So we, of course, have the *Constitution* of 1982, and section 35. Of course, we feel that there's inconsistency with both domestic and international legal requirements and standards, including, but not limited to, Supreme Court of Canada decisions *R. v. Delgamuukw*, the *R. v. Haida* and *R. v. Tsilhqo'tin*, for example.

United Nations Declaration on the Rights of Indigenous People. And the modernization of any new CEAA and the legislation that it is required to modernize must consider the implications of these constitutionally-entrenched Aboriginal rights, including title, for all indigenous people, including the Syilx Okanagan Nation.

So the key criticisms. The view of the Okanagan Nation and its Chiefs is that the CEAA process as well as the provincial environmental assessment process is fundamentally flawed in that it neglects the proper placement of indigenous communities as required by law.

Numerous examples include the lack of a process for government-to-government decision, lack of early notification of project proposals, which, again, speaks to the importance of early engagement and planning processes, not in the back end of the planning development.

Conditional approvals,. The manner in which the approval process occurs is often condition, and those large number of conditions are passed in a way that requires First Nations and other interested parties to start to analyze the devil in the details, and so often it's — we'll approve these with the understanding that you will provide further details on the environmental impacts or in your environmental management plans, and there are those plans in particular that require engagement of First Nations and — to ensure that those interests and values are articulated appropriately. And that's often not monitored once the approval is provided. So it's approval in the wrong sequence.

There's a lack of an appropriate dispute resolution mechanism. It fails to adequately consider and assess environmental and Aboriginal impacts and infringements, lacks the independence and the expertise to actually consider indigenous interests and matters, and relies on inadequately and biased adversarial processes.

It relies too heavily on western world view, does not consider indigenous perspectives on the environment, on social matters, on the economy. It creates biased processes that focuses on impacts to socioeconomic values rather than environmental impacts.

Too often, we see the focus on human engagement with the environment, so does this project impact on fishing interests, does this project impact on recreational uses of the land, rather than what does this project do to the environment, what does this project do to the web and to the ecosystem needs of the environment for itself. And those things are often not considered fully.

It fails to take cumulative impacts into account into the review process and, often, these projects are looked at in isolation from one another.

There's a — fundamentally, a lack of appropriate indigenous capacity funding. The mandatory fixed reasonable timelines do not recognize indigenous governance structures. Often, the pace is quick and First Nations don't have an opportunity to slow it down when appropriate.

The perceived conflict of interest when the scientists and researchers are actually hired by the proponents themselves to do the analysis of what the impacts would be to their own project. Now, inherent in that is an understanding that there's a conflict when consultants and specialists are being hired by the proponent who is — actually has an investment in this project going forward. The neutrality is often lost, and that's wholly inappropriate. There should be outside review of those, and it should also — there should be the option for indigenous communities to analyze these projects from a neutral perspective.

It's difficult to challenge that credibility to science without those fundings being in place, particularly in regards to that second opinion. Government agencies do not challenge or question the scientific work often. The scrutiny is often weak and, generally, those reports are taken at face value.

The inadequate and limited scope of review, too focused on mitigating impacts. This is a — this is a criticism we've held for many, many years that, often, the project is just simply focused on identifying what areas can be mitigated while the project is allowed to continue, and that's problematic. It will actually — opportunity for indigenous communities to say no to development or no to the kind of development that is not sustainable and appropriate to the communities or appropriate to the lands and the needs of the territory, does not properly address title and rights, as you've heard, does not consider footprint impacts and ongoing infringements. And often, these projects look at an increment, particularly when there's a large adjustment to an existing project.

And when you haven't had the ability to look at the initial impacts, for example, in the case of dropping generators into existing dams, we're only allowed to look through these processes as what is this increment going to do to the ecosystem, not what is the cumulative impact of this and what is the impact to the dam per se on the interests of the nation and how can you have a generator without a dam. It's irrational. But of course, we're forced into the box to look at the increment in isolation of the actual infrastructure.

Too narrowly defined. The definition of environmental impacts is generally — ignores the indigenous values and the web of life. Species are taken and analyzed in isolation, what does this water flow regime do to a particular species, to a sturgeon, and the sturgeon are essentially removed from the environment and then analyzed in isolation of the web, in isolation of the relationship to all the other species in their environment.

That's inherently problematic, and it's an isolated and artificial approach to ecosystem management and to the values of indigenous communities.

Rosalie Yazzie: So there you go. Thank you, May, for that.

I just wanted to move our focus, really, to the legal aspects of things because that's really where my heart lies. In terms of the ONA recommendations, we would like to see that any legislative change really start to align with both domestic and international legal standards, both in *Tsilhqot'in*, the Supreme Court of Canada's decisions, as Jay earlier mentioned, as well with international legal standards such as the UN Declaration on the Rights of Indigenous People.

First and foremost, I think that the implementation of *Tsilhqot'in* has really been a game changer in terms of the way that the federal government has responsibilities to look at its flaws and make sure that it is aligning and discharging the honour of the Crown and, you know, discharging their legal obligations to indigenous peoples in a manner that has been described through the Supreme Court of Canada decisions.

From our perspective, Aboriginal title is real and meaningful and can exist over large tracts of land, and these are just some summary points from *Tsilhqot'in* to set the discussion.

Aboriginal title includes the vesting of full beneficial and economic interest in the land to the Aboriginal group. Where Aboriginal title exists, consent of the Aboriginal group is required for the Crown or industry to use that land and, failing that consent, the Crown has to meet the test of justifiable infringement.

If the Crown authorizes activities on the land which are demonstrated to be Aboriginal title lands, projects and permits may be cancelled and damages owed to the Aboriginal group.

From our perspective, the Crown's been consulting and accommodating wrong. Meaningful consultation and accommodation is now more risky, costly and onerous for the Crown. First nations have powerful new tools and opportunities to shape the economy and review and permitting processes.

The viability of the Crown's current negotiating agreement models is undetermined, and Chief Justice McLachlin wrote on behalf of the Supreme Court of Canada for the entire Court:

“Governments and individuals proposing to use or exploit land, whether before or after a declaration of Aboriginal title, can avoid a charge of infringement or failure to adequately consult by obtaining the consent of the interested Aboriginal group. Further, in *R. v. Sparrow*, the Supreme Court of Canada has confirmed that the Crown carries a fiduciary obligation towards Aboriginal peoples and such. When dealing with the rights and title of Aboriginal peoples, the honour of the Crown is engaged. In *Tsilhqot'in v. British Columbia*, the Supreme Court of Canada reaffirmed that Aboriginal title confers the right to decide how the land will be used, the right of enjoyment and occupancy of the land and the right to possess the land and the right to economic benefits of the land and right to proactively use and manage this land. In that decision, the SCC also clarified that Aboriginal consent for a proposed project is the means for legal operational — legal and operational certainty for a proposed project.”

So when we look at the current legislation and the purpose of modernizing it, we've heard the Minister of Justice say in December 2015 that wholesale adoption of the UN Declaration on the Rights of Indigenous People is going to be challenging given that it will need to either be a step-wise or incremental approach. And I think with reviews such as this that now is the time for the federal government to be considering how it intends to implement those legal standards.

So in terms of implementing *Tsilhqot'in*, First Nations in, I believe it's September 2014, at the First Nations and Cabinet gathering down in Vancouver, four principles were adopted and supported by B.C. First Nations and were presented for a valuable starting point between the provincial Crown and First Nations. And granted, I know that this is a federal review. I still believe that those four principles are as valid as points today as they were back then. So that's where these four points

come from, that all our relationships need to be based on recognition and implementation of the existence of indigenous people's inherent title and rights and pre-Confederation, historic and modern treaties, throughout B.C. And in order to do this, requirement of Free, Prior, and Informed Consent must be adhered to.

With our submissions, we'll also be providing the Expert Panel with what consent-based decision-making looks with respect to the environmental assessment, so I look forward to providing you with that information.

Indigenous systems of governance and law are essential to the regulation of lands and resources throughout this province.

Mutual responsibility of all of our government systems shall shift to relationships, negotiations and agreements based on recognition. And we immediately must move to consent-based decision-making and title-based fiscal relations, including revenue-sharing, in our relationships, negotiations and agreements.

Like I said, these principles were developed and supported as a meaningful way of moving forward in reconciliation, and I hope in terms of starting to realize what legal obligations are in consideration of what you will be reporting out, I hope that the modernization — those comments are reflected based upon reconciling, really, Canadian law with what the Supreme Court of Canada has said.

So I'm going to move on to, finally, the key recommendations now that we've had a lot to say in terms of the criticisms of the current CEAA. For years, we have had a Natural Resource Committee that provides valuable — well, really, invaluable guidance to our Chief's Executive Council, and some of the feedback, what you've just heard, are just a couple of the key identifiable criticisms for the CEAA as well as recommendations. Our written submissions will be much more fulsome than the Powerpoint presentation provided to you today.

So the key recommendations for CEAA from the Okanagan Nation's perspective is that we implement principles expressed in the UNDRIP in any modernization of Canadian legislation. And we'll be making those recommendations with the review of the *Fisheries Act* as well as the *Navigation Protection Act*.

And what this might look like is a nation-to-nation relationship based on recognition and implementation of Syilx Title and rights. Joint decision-making in every stage of the review, from early engagement to post-environmental assessment monitoring. Nation — that the nation be on equal footing to Canada with respect to its authority, program funding and accountability mechanisms as well as incorporating Syilx knowledge, principles, and practice, not just traditional ecological knowledge, but a broader definition of that, including the funding to develop comprehensive and legally binding Suxwtxtem policy or plans for the territory to inform development.

So Suxwtxtem plans is essentially land plans, how communities would see their lands in their areas of responsibility being used in accordance with Syilx laws, traditions and customs.

I would like to just provide the Expert Panel with a recent quote provided by the Grand Chief of our nation, Grand Chief Stewart Phillip, who is also the President of the Union of B.C. Indian Chiefs in B.C., and what he says in terms of the nation's perspective on the FPIC standard, which is Free, Prior and Informed Consent, is that First Nations Free, Prior and Informed Consent is an integral and fundamental element of the UN Declaration on the Rights of Indigenous People. Furthermore, the legal and practical needs to secure First Nations' consent is featured in *Delgamuukw*, *Haida* and *Tsilhqo'tin*, the *Tsilhqo'tin* Supreme Court decisions. Consent is part of Canadian law.

At this point, I'd like to turn it over to my colleague, Lisa, to conclude the comments made on behalf of ONA, and we look forward to any questions you may have.

Lisa Wilson: Thanks, Rosalie.

So the first set of recommendations from me related to the pre-planning stage, and Jay and Rosalie both mentioned the importance of early engagement with indigenous peoples, specifically, in our case, with the Okanagan Nation, and what does that look like.

So having a pre-screening process to determine if projects can go ahead. And this would include an option to say no at the beginning stages of the project or to alter the project or change it in any way, and this would avoid future conflicts and clashes as opposed to what Jay mentioned right now where First Nations come in later, after projects have been kind of already approved with some considerations.

The scope of the assessment and value components in the pre-planning stage need to be agreed to by the nation in advance, and the scope of the assessment and the value components need to be broader than the ones that are in place now. So the definition should be expanded to include projects that have impact to Aboriginal title and rights, interests, for example, water, forestry, sacred places.

There should also be thresholds for — monetary thresholds so if a project is having a certain amount of economic benefits to a proponent, they should automatically be part of the process so that the nation can also share in the benefits of the project.

The value components should consider things like ecosystem function, cumulative impact and past impacts such as footprints. And I can give you an example right now. One of the projects we're working with is involving a

water system, and it's — the project is limited to a small part of the river and has no consideration of upstream or downstream impacts. And I'm a biologist, and I'm not exactly sure how there could be no upstream or downstream impacts, so just broadening that scope.

Developing significance of impact standards that reflect indigenous perspectives. And so that's another area that — where the limitations of how significance of impact is defined right now really narrows indigenous perspectives in the process, and so if the nation's involved in those early conversations, that could be a more fulsome process.

Cooperative monitoring, training and employment framework. So early in the process, agree on what the ongoing monitoring, training and employment standards would be to ensure that conditions are met and to strengthen the network for compliance and enforcement from the construction phase throughout the life of the project.

In our submission, we'll have some more details on specific ideas from the Okanagan Nation perspective on how pre-planning can be improved based on some of our experiences in projects we're engaged in right now.

So just some high level recommendations on the EA process itself.

First Nations require their own parallel project review processes that recognize the legitimate authority on the land. And within those parallel project processes, First Nations' roles would be collecting and analyzing, reviewing data, establishing values and actual decision-making. Part of that will involve working together on a nation-to-nation basis on agreeing on what the process for consent is and how it will be achieved. And it will need to reflect the customs, values, traditions and science of the nation related to the particular project. It's a much broader view than the current system. As part of that, we'd also need to establish benchmarks and baselines on which to measure impacts again.

The next big recommendations is related to only parties at arm's length from the proponent should assess and audit projects, so the whole concept of making sure that the science is actually independent. It's not — it's not the proponent in isolation hiring scientists and being in control of the process, so making sure that there's that independence.

First Nations ability to stop the environment assessment clock during an environmental assessment. This is a concept that if, as you're doing the assessment, you discover new information that completely changes your original assumptions, that clock should stop. There's no reason why you would keep on going in a process. And I'll give you an example.

If you discover a cemetery, that's going to take years in order to actually have a good process in order to repatriate those remains. You can't do that in 180 days. It just doesn't — it doesn't recognize the Aboriginal rights and title.

Mandatory follow-up and monitoring and mandatory participation and fines. So it's — we're — I always think about the fox in the chicken house.

Proponents shouldn't be doing their monitoring and follow-up, and it needs to be mandatory and it should have some kind of oversight, ideally by nations in some process that's agreed to and funded in advance.

Decision-making and follow-ups, so just a couple high level recommendations there.

Explicit decision-making standards, and this goes to my earlier comments about having negotiations around what consent looks like, developed to ensure that decisions are based on traditional knowledge, science and evidence. And this also goes to the earlier — the pre-planning process so everybody knows what they're getting into, everybody knows together how they're going to move forward.

Indigenous communities have sharing meaningful — meaningfully in the financial benefits of the project. And that goes to some of the comments Rosalie made about UNDRIP and Suxwtxtem. Part of this could also be what I mentioned before, a new screening criteria that opts in projects based on profit margins.

An indigenous watchman program as part of the follow-up where the indigenous nations were able to hold the federal government accountable and work within compliance and enforcement branch. And again, that takes the responsibility away from the proponent to monitor and audit themselves.

And then a precautionary approach should be taken to decision-making. So in the case where we don't have enough information to make a good decision, taking a precautionary approach to decision-making.

And then, as I mentioned before, room to change a decision based on new information and incremental impacts.

And that's it for high level recommendations. There will be a lot more details in our written submission.

Over to you.

Rosalie Yazzie: So really, what you've heard is that we'd really like to see in any review reports coming out is that the modernization of Canadian legislation requires

the reconciliation of indigenous Aboriginal title and rights. That is the starting point for reconciliation from our nation's respectful submissions.

As well, the Crown needs to consider how it intends to discharge the legal obligations that the Supreme Court of Canada has told the federal government what, you know, the changing landscape of Aboriginal law looks like, especially with respect to Aboriginal title laid out in the 2014 *Tsilhqot'in* decision.

Finally, I'd like to see the — you know, when these reports go forward that the honour of the Crown is a real and meaningful thing. For a long time, First Nations have been constantly reminding the federal government that it has a duty and obligation to uphold the honour of the Crown and, therefore, we'd really like to see, in terms of a government that has a Prime Minister that has identified that the nation-to-nation relationship is one of first and primary concern to him, is that any modernization of legislation reflects those words and they're not just merely rhetoric to carry and ride on for another four years.

Canada needs to reform its legislation and process consistent — so it is consistent with its own case law and the UNDRIP, and that this places indigenous communities in their proper place of authority over their respective territories.

At that point, I'd like to conclude our presentation, the Powerpoint, and welcome questions from the Expert Panel.

Johanne Gélinas: Thank you very much.

Would you like to start?

Doug Horswill: Sure.

I'd like to start off with your notion about the early engagement, the pre — I think you called it pre-EA. You talked about your relationship with B.C. Hydro, and that has some — makes some sense because if the time — it's in the same place that you are and you work a lot together. But in the case of a single project, maybe that Glacier Hawser would be an example of a project that was brought in by a different proponent, in the pre-stage, my first question gets at the notion of information.

When you start going through the scanning and pre-screening and so on, what would you be seeking as the information necessary to do the steps that you've got on that chart? You can go all the way from an idea in somebody's head to a project description that's 300 pages long, so what are you thinking about?

Jay Johnson: Thanks for the question.

We've done this in other circumstances as well. We actually frame it as a red flag analysis.

Ideally, the nations of Canada — indigenous nations of Canada, we would be supported in their land use planning processes which would result in the identification of areas that are sacred sites, no-go zones, areas of acute attention, that require acute environmental attention, other areas that would be open for certain types of development on certain conditions and so on.

We're not at that stage yet. There are very few places in Canada that are in that stage. So in place of that, as a transitional approach, we look at a red flag analysis, which is — essentially is, where is the project being planned or where is it situated geographically. What is the terrain? What are the concerns that we know about already at the nation level that may be — for example, may be a sacred area? There may be cultural use areas. There may be other harvesting areas that a project could disrupt and fundamentally impact on the interests of the nation.

And so to know — to have that conversation mandated early enough not only respects the indigenous communities whose lands they're on, but it also allows the proponent the opportunity to understand that — how they can either improve or scrap the project, and so that's important.

Doug Horswill: I got it.

Regional assessment is something that we've talked about in a number of different locations and so on. We haven't talked about it here today. But have you done any or will you — do you intend at any point to have regional assessment done on your traditional lands? And in that, it might reveal some of the things you're talking about right there.

Jay Johnson: The answer's yes.

Doug Horswill: Have you had any? Have you done any?

Jay Johnson: What we're doing — what we're doing instead as an interim basis is looking at areas that we've been able to either get funding to do use and occupancy data mapping. We look at what areas of the territory are of acute need for the nation and for the community members. We look at areas that are highly sensitive.

We're involved in a GIS mapping process where we've identified areas that have — and there are very, very few of them on that large territory map you saw that are — remain intact, meaning that there hasn't been any resource extraction activity there, there haven't been — there hasn't been any road-building activity that the original old growth stands. And those areas automatically, through that mapping exercise, are identified as areas of acute interest to the decision-makers, to our Chiefs. And they look at what kind of protection measures can we have around

preserving these last remaining areas and also looking at areas that are — require rehabilitation.

If you're probably aware, the Okanagan Nation has been very active in fisheries and the aquatics. We've re-established the Okanagan salmon back into the Okanagan system. Fifteen (15) years ago, there were 3,000 salmon coming back into the Okanagan. A few years ago, we had almost 500,000 salmon coming back. So it's an unprecedented good news story, and it's one that would require a whole 'nother layer of new protection laws and policies to ensure that those salmon aren't threatened, particularly as they relate to flows and water management regimes and so on. So that work is happening.

Doug Horswill: Another question area. In the Glacier Hawser project, you said the proponent backed away based on your position.

Can you explain to us where — how that worked from point — I'll use the word sort of power or authority to cause that to happen. Was it — was the proponent simply respecting your wishes or were there — did you have backing from the provincial government or something that said if you weren't — if you didn't agree, then they better pack their bags, or how did that work?

Jay Johnson: In the case of Glacier Hawser, I believe it was bull trout, and there were also concerns to flow regimes to sturgeon. And sturgeon were on the edge of being — at the time, being a red-listed species.

We had identified that impact through our study work, so during the course of our discussions with the proponent parallel to the EA process, we said we require, for our own analysis, the space and time and resources to conduct our studies to ensure that the interests of the community are going to be articulated properly and then we can have a conversation about what we do with that information.

So the Crown didn't have that level of analysis, the proponent didn't have that level of analysis. So when we did it, we brought it forward and said, "Hey, wait a minute. This is a real impact. We don't see how this can be mitigated". And then the — after many discussions, the process — the EA process agreed with us and said, okay, well, they didn't — it's up to the proponent to try to do that, to go away and find out whether they can mitigate those impacts. And you know, they — it was clear that they couldn't, and so they eventually withdrew with our insistence.

Doug Horswill: One last question, if the Chair will allow me.

Matter of consent. What, in your view, is the appropriate expression of consent?

Rosalie Yazzie: So consent, early and meaningful engagement with First Nations, not, you know, at the 11th hour trying to figure out what the First Nations' perspective is.

I think the — you know, in terms of what consent looks like, it's going to be different every time. I — actually, I should have been better prepared for that question, and thank you, Jay.

But in terms of free, prior and informed consent, is that that is a discussion going on right now, and perhaps the regional Chief will have additional comments after us. He's more well versed in the provincial discussions amongst First Nations. But again, like I said, we'll be providing you written submissions in terms of what consent is. We just wanted to highlight consent is, obviously, you know, as an emerging legal issue, it's certainly important for us to address.

And Jay, do you have some comments on that?

Jay Johnson: Yeah. I would just add to that that we always operate on consent. Our Chiefs demand that we get to a level of consent on a project, and if — and generally, that means that are the interests and issues being addressed appropriately by the proponent on this project. And if they're not, then we're in a position where we have to oppose the project. And that's the gamut of what are the — how — what are the kinds of detrimental impacts that a project can have on the interests and on the ecosystem itself. Can we find a way to adjust those?

And also, there's an economic component to that. What is the benefit to the community for this infringement occurring and can we get to a place where the proponent continue to see benefits, we continue to see the risks and the impacts reduced or eliminated and the community start to witness the benefits financially to a partnership arrangement with the proponent in order to allow (indiscernible).

So consent's not something to be feared. In fact, particularly when we're talking about the economic benefits, that suddenly we start to see resources flowing into often rural indigenous communities, and those resources are often spent immediately on adjustments to infrastructure and social need, and they're spent in the community, they're circulated within the community.

That creates an additional economic input within the community. It also creates an economic input into the neighbouring, non-indigenous communities, and so you've got, suddenly, a rural development model unfolding just by this notion of consent right across Canada. So I think it's an important point.

Renée Pelletier: Okay. So firstly, thank you to all three of you.

So I could ask a million questions, but I think — I mean, I think you've very nicely sort of touched on, particularly in your recommendations, the things that the Panel wants to know about, and my questions would all be about, well, okay, what does that look like and how do we implement that, but it sounds like you're going to have a sort of more fleshed-out written submission, so maybe I'll just — I'll wait for that.

The only thing that I would maybe encourage you to do is I know a few instances you've talked about with respect to implementing *Tsilhqot'in* about, you know, where there is Aboriginal title. And you may be familiar with the Quebec Court of Appeal decision, the *Markovic* decision, which talks about the sort of tests coming out of *Tsilhqot'in* on the requirement of — the requirement for consent applies to treaty rights as well.

So please don't feel you have to limit yourself to just Aboriginal title areas. It sounds like, you know, you may be able to propose a model that could work in treaty territories as well.

Rosalie Yazzie: Treaties generally is something that we don't consider because most of British Columbia is not treaty lands, nor is the nation currently engaged under the B.C. treaty process.

From our perspective, Aboriginal title is real and meaningful, founded in *Tsilhqot'in*, and that moving on a collective proper title and rights basis is the appropriate avenue for our nation to engage with the Crown.

Renée Pelletier: All right. Great. Thanks.

Johanne Gélinas: Thank you very much for your presentation and having taken the time to come and visit us today. We look forward to have your submission.

So we are looking for the Regional Chief.

(Pause)

Johanne Gélinas: I will invite those of you who are talking to go outside the room so that we can start with the Regional Chief presentation.

So good afternoon.

SHANE GOTTFRIEDSON, BCAFN REGIONAL CHIEF

Shane Gottfriedson: First of all, I would like to, you know, welcome the Panel to my home territory. I've lived here my whole life, spent 14 years in leadership with the Kamloops Indian Band, and two years as a Council member and 12 years as a Chief

and served our nation as Tribal Chief as well. And I'm the Regional Chief for British Columbia here presenting on behalf of the Leadership Council of British Columbia.

I've been elected probably about a year and a half ago, and I represent 203 First Nations of this province and, you know, really sort of excited. I think it's the last presentation of the day, so I stand between supper and everybody else. But I think when we talk about our environment, I think we — you know, it doesn't matter what time of the day it is. It's always an important conversation to have, you know.

And I know our Leadership Council in British Columbia, we've been very active in, you know, looking at a number of processes throughout the province, and we also have a Memorandum of Understanding with the province on the environment as well.

It's not as engaging as I think we would like it to be. I think it needs a lot of room for improvement, but nonetheless, it's there and I think we've met in my time as Regional Chief — it's scheduled in the protocol that we meet a couple times annually. We haven't met this year. I think the last time we met was on the eve of right before Christmas, so I just wanted to let you know that.

You know, it's good to see a lot of our people that are here today that I know, a lot of familiar faces. I'm not home very much, so it's really good to see some of my old scrapping buddies and, you know, here today.

But anyway, on the serious side of things, you know, when we talk about some of the criticisms of the EA process, you know, has been mounting for many years, so we really welcome the opportunity to speak to you today on this important and contemporary issue that affects, you know, all of Canadians and First Nations across this country.

We are calling for a complete revision of the CEAA legislation. In 2016 in this province, you know, how is it possible that First Nations can be significantly and directly and negatively impacted on resource projects that will unjustifiably infringe on our Aboriginal title and rights, and yet the project moves forward?

Meanwhile, a non-indigenous group can call themselves a municipality and become entitled to a seat and vote at regional district tables, allowing them to have direct influence on projects.

This is one example — this is one of many examples that highlights the persistent attitude of the colonial governments in this country to run roughshod over our Aboriginal title and rights, and continues to exploit the land and resources for profit while leaving our nations with contaminated and barren lands, depleted fish stocks, a natural environment devoid of everything — of anything that could make our Aboriginal rights to our lands and territories meaningful.

The current EA process in this country has been a complete failure. It is conducive to the continued minimization and exclusion of First Nations in the process despite the federal government having a fiduciary duty to act in the best interests of Indians and lands and Reserve for Indians under section 91(24) of the *Constitution*.

How does the Crown protect the First Nations? Well, I'm here to tell you today they haven't. First Nations have had to protect themselves from the Crown by entering into EAs with the proponent exclusively and leave the Crown out of the negotiations altogether.

A new strategy that First Nations have had to employ is to require proponents to sign confidentiality agreements barring them from disclosing information such as First Nations Aboriginal rights and information and environmental concerns to the Crown. This has been done to ensure that the information could not be used by the Crown at a later date as consultation or allow time for the Crown to tailor their accommodations to gloss over and minimize the concerns outlined in sensitive information.

There is a significant flaw in the current EA process if a First Nation must, through contract — contract law, forbid information-sharing between proponents and the Crown to avoid a well-founded assertion (sic) that the information will later be used to override First Nations concern. This in itself speaks to the fact that the Crown is not fulfilling its fiduciary duty and is not acting in the best interests of First Nations.

First Nations involvement in title rights and consent.
 Acknowledgement that all of our relationships are based on recognition and implementation of the existence of indigenous people's inherent title and rights and historic and modern-day treaties throughout the province of British Columbia.
 Acknowledge that indigenous systems of governments and laws are essentially to regulations of the lands and resources throughout British Columbia.

Consent-based decision-making and title based on fiscal relations including revenue sharing must become a reality. Aboriginal rights and title are largely excluded from consideration in the current EA legislation and are included only indirectly when assessing the strength of title analysis. This has resulted in wholly insignificant consideration of indigenous legal orders, First Nations cultural values, including environmental protection.

This analysis is done by the Crown and the proponents, who historically have shown indifferences to First Nations' assertion of title and rights. Flying in the face of administrative fairness, First Nations are not privy to the methodology and the information on which the Crown makes its determination on how the project will impact First Nations rights.

It is critical that the Expert Panel understand what free, prior and informed consent is and how consent has been discussed within the Courts of British Columbia. Impacted First Nations must have the power to say no. To deny consent completes the essential of Aboriginal rights and are entitled to their inherent and constitutional rights under section 35.

The major issue in the EA process is that First Nations are not recognized as decision-makers. Both domestic and international laws are pointing towards indigenous consent for projects that have the potential to impact on their interests. To avoid a costly and prolonged litigation, it is in the interests of all parties to negotiate and reach consensus on projects.

Some individuals suggested that, in 2013, B.C.-Canada bilateral harmonization agreement was born out of embarrassment after provincial and federal assessments on the same project yield significantly different results. This agreement needs to be dissolved and rewritten as a tripartite with First Nations at the table to ensure that consent is written into the approval process of EA decisions and to reframe the relationship as the one that is what Premier (sic) Justin Trudeau has been talking about, nation to nation.

The second point I want to talk about is process. At the outset before the EA process begins, First Nations must be supported to develop land and marine use plans before EAs go ahead so that they are informed on the potential impacts before the process begins. Without this foundational knowledge to draw from, First Nations cannot know the potential impacts coupled with land and marine use plans should be assessed — should be an assessment of cumulative effects measured by the whole region of the First Nations.

Before the three — before the 365-day EA clock begins to tick, there should be a pre-environmental assessment process to identify key issues that require further study or reporting. This pre-assessment should also identify and develop a budget for capacity funding for First Nations to ensure that they can take part in the process from the beginning to the end, including a post-environmental assessment, a certificate possesses.

Early notice given by progressive proponents is the exception, and not the rule. First Nations are routinely notified late in the EA process, which leaves them without capacity funding and technical resources to meaningfully inform and assist them in the process.

There is an ongoing concern that consultants who are hired to do the work on EA projects are politically, financially or otherwise connected to the proponent, are skewing results in favour of the project moving forward on their own financial gain, either directly or indirectly.

The bottom line is that First Nations view the credibility of professionals hired by proponents and the Crown as completely non-existent.

As an independent of an assessment continues to be the issue, it is proposed that there be an independent agency developed so that there is a qualified pool of independent consultants ready and available to be retained for the assessments. Verifiable data is critical to having an EA process marked with integrity, time, effort and resources. Peer review results will foster confidence in the process.

The EA should act on the best available evidence from multiple disciplines without the influence from those who stand to gain or lose from the conclusions. Projects should be assessed with methods, results, interpretations, rigorously peer reviewed by parties with arm's length relationships from the proponents.

Where the gaps in knowledge exist regardless of assessing risk or the effects, information should be generated so solid decision-making can be made with concrete evidence that is not widely disputed. Cumulative effects are minimized even though it is widely accepted that the environmental effects and processes are all interconnected and cannot be compartmentalized. To date, cumulative effects have not been addressed in any meaningful way.

Many First Nations have stated during the EA process there has been very poor communications around jurisdiction of B.C. EA office and the CEAA office — or CEAA agency in terms of the roles they are playing. Many First Nations cannot reconcile how a project can receive an EA approval from one government while the other government denies the approval.

First Nations want to be involved in the monitoring in the project and ensure the proponent's compliances. There is a long history of distrust between the parties. And having First Nations participate in the monitoring and the compliance would instil transparency, resulting in trust, and would also create employment opportunities for First Nations.

A framework for a cooperative monitoring and training and employment should be developed to ensure that the conditions are met and bolster compliance and enforcement.

It is critical that once a decision statement is issued by the federal government it is not the end of the project. Conditions of the approval must be monitored and enforced. The proponent should be required to monitor environmental effects to verify the predictions made in the environmental assessment.

My third point is around funding and capacity.

Compared to the amounts that governments and proponents spend to do comprehensive EA funding, amounts for First Nations to participate are

wholly inadequate. Proponents spend 10 million or more — you know, funding to participate is frequently allotted along unrealistic timelines, on short notices, and without consideration to time or cost required to be fully engaged in that process alongside a government and proponents.

First needed to be involved in a proactive solution in protecting the environment. First Nations must have the resources to develop capacity and the tools to respond when a catastrophic event does occur.

First Nations should have access to established fund to not only support immediate clean-up and remediation service, but also make every impacted First Nation and every member of each such nation 100 percent whole. This is what should be in place in the position they should have been and, if so, that catastrophic event may have not occurred. That's a big word.

In conclusion, you know, since 1973, First Nations have been forced to litigate against projects that infringe on their Aboriginal rights and title and to seek clarity on the authority of nations in the use and development of their traditional territories. Across Canada, First Nations accumulate over 200 judicial decisions in our favour; however, successive governments have refused to fully implement these decisions and have, instead, appealed many of them and ignored the rest.

AFN has previously stated in its 2011 submission that, in too many circumstances, First Nations are forced to resort to litigation because of environmental assessment processes do not adequately consider Aboriginal treaty rights. First Nations issues dominate litigation in environmental assessments, yet First Nations are not meaningful — meaningfully involved in legislative or policy development.

First Nations continue to find themselves unwillingly married to a process that disrespects and undermines our rights in the name of progress and development. We are forced into a critical determinative process unprepared, with parties that — who have deep pockets and who do not acknowledge their cultural values.

Parties who use information about a nation's Aboriginal right against them to minimize their rights as opposed to using this information to, in a positive way, to inform the process to reach consensus on the best possible information. First Nations have turned to litigation because there is no meaningful dispute resolution in the current corrupt EA process and with all other efforts to sit at the table in the decision-making and capacity have been shut down.

Relationship between First Nations and the Crown and the proponents need to be founded on respect, transparency and collaboration, decision-

making. The current EA proceed needs to be completely restructured to reflect all — reflect Aboriginal rights and title and to position First nations as decision-makers, not merely stakeholders.

There is much at stake if the EA continues to be delivered as they have been in the past. Irreversible environmental destruction, prolonged hostility towards Aboriginal rights and a continued decline of the honour of the Crown. It is in the national interest to honour and respect their Aboriginal rights and give effect to strong environmental standards. It is in the national interest to protect our sacred resources for future generations to come.

Under the current system, the future, it is not possible.

Support and inclusion of First Nations in the EA process ensures integrity, transparency, fairness and gives meaning and respect to Aboriginal rights and title that have been recognized and affirmed in section 35 of the *Constitution Act*.

Thank you very much.

Johanne Gélinas: Thank you very much.

You mentioned in your presentation there should be a mechanism for dispute resolution. Do you have a model in mind?

Shane Gottfriedson: I think when we talk about dispute resolution, I go back to my days as a Chief, you know, when we sit down and, you know, get our community involved, get our Elders involved and really look at, you know, a process around the decision-making.

I think it definitely has to have an Aboriginal component. I think right now, the dispute process, you know, doesn't have any values towards an Aboriginal content, so I think engaging, you know, an independent panel that we talked about in the early stages about, you know, setting a tone around the process around, you know, looking at engaging our shared decision-making with the proponent and Crown is really essential.

Johanne Gélinas: And the other question I have for you, I mean, there's two parts to it, I guess.

You probably heard about this initiative here from SSN which has to have its own assessment of a project. I would like to hear what you think about that. And the other question I have for you — you're probably the last Regional Chief that I will talk to in the near future, and I haven't asked the question to the others. What is the role of the Regional Assembly in trying to build capacity within its own communities?

Shane Gottfriedson: Thanks you for your questions.

You know, when you look at the SSN presentation and the assessment, you know, I think it's a very unique model. I think it's a model that, you know, can be looked at in how they have community panel that assessed, you know, how the projects in the cultural heritage impacts of — and the cumulative effects of what a major project does have within the territories.

I think you can travel all across the country and you'll never see a panel that is engaged with so many different family members within the community, so that's one that, you know, I'm very proud to say that, you know, our SSN two communities are doing, and I think it's something that is innovative. I think it's something that is thinking outside of the box, but also really looking at sort of engaging our community as well to, you know, look at the impacts of the project, so I'm very supportive of the work that the division is doing on that.

As part as the role of the Assembly and how we look at engaging, I think for the last 10 years, the AFN and just like every other Indian organization in this country, our programs and services have been cut. So when you look at 10 years of a Conservative government and cutting and slashing programs, and now we've got a new government in place looking at, you know, a new nation-to-nation relationship, part of my role as the Regional Chief is advocating on behalf of many of the First Nations in this province.

I think we've been — with the new budget 2017, we will see, you know, what that relationship will look like as we move forward with Canada, you know, on a nation-to-nation and making sure that the adequate resources are there.

I think when you look at the presentation, I talk about — I talked about funding and capacity, the struggles that we do face as communities, making sure that we have the adequate resources to be able to make informed decisions, you know, for the communities. And I don't think Canada adequately funds, you know, not only communities, nations or provincial governments to be able to do the work adequately, but yet when you look at the impacts and the benefits that major projects do have and the benefits that Canada does receive, you know, from taxation from many of the resources that are being extracted from our territories, First Nations are not receiving those benefits, but yet Canada receives those benefits and — you know, and — so there definitely has to be, in my opinion, you know, the capacity needs to be able to be adequately resourced so we can, you know, make sure that we're part of that process instead of, you know, at the last minute — as you can see, with me, I don't have an entourage with me.

You know, most of the time when you look at Chiefs all across this country, you know, they're tasked with, you know, taking their backpack just like myself or their briefcase and coming to these events and participating. You know,

we're supposed to be the experts at everything, but I can tell you, I'm not an expert at everything. As my Elder here always say, I'm a jack of all trades, but an expert at nothing.

And — you know, and — but at the end of the day, you know, we, as the Assembly of First Nations, the Leadership Council of British Columbia, we want the — you know, want to be in a position to, you know, look at making sure that our interests over our resources and consultation and consent is considered in any decision and being able to make sure that we have the resources to be able to do what we do.

The long and the short of it, my role as the Regional Chief is to advocate on behalf of the Chiefs of British Columbia, to support the Chiefs when called upon and — you know, and it's definitely a big responsibility here in British Columbia because we have 203 First Nations. We are the biggest province in Canada. We hold a third of the number of First Nations in British Columbia, so I'm travelling quite a bit and got a little bit of greyness this last year, and there's a lot at stake in British Columbia, you know, that that's happening.

Right now, you know, the three major projects recently announced, Site C, the LNG, now Kinder Morgan. So all the activities happening in British Columbia right here in our territories, and we need to be a part of that decision-making process, not after the fact.

Johanne Gélinas: Do you think that the SSN approach can be replicated in the province or elsewhere?

Shane Gottfriedson: Well, I think, you know, the uniqueness that we have as Aboriginal people, the diversity in this province is not one pair of moccasins fits everybody, to put it very gently. There's different governance structures, there's different levels. But I think what we need to do is looking at — we definitely need to look at creating standards within legislation.

We need to look at creating policies that have a cultural component that look after the interests of First Nations from a cultural perspective because, right now, when we talk about our cultural heritage law, it is just as damn good as any environmental law when you look at the Four Seasons Study.

And I don't think that's taken in consideration when you look at, you know, the *Environmental Assessment Act* that currently undertakes because I think we, as Aboriginal people, we have our Four Seasons. We know there are solstices around. We know when we're going to hunt. We know when we're going to go collect berries. We know when we're going to gather medicines. We know when our fish are going to run. We know what — when the ceremony.

So when we look at the cultural component and the cumulative effects around our traditional territories, it's essential that that be a component around what we're doing.

So in the long and the short of what you're saying around SSN model that that's put in place, you know, I was a part of creating SSN, you know, during my time as the Chief, you know. And we've taken some measures over — the current leadership has taken some measures in this last little while creating that panel that I think works because what it does, it engages the community and the grassroots people, and that's what it's all about.

Johanne Gélinas: Thank you very much for your presentation.

It was the last presentation of the day, so I hope for those of you who stayed with us, especially that table, you have enjoyed. And at 6:30, we will start the open dialogue session so it's again an opportunity for you and those who will be present to share views and go a little bit more into detail with aspects of the questions that we are asking to get a better understanding of what are your concerns and how we can address them.

Thank you very much.

