

Expert Panel Indigenous Presentation Session

Review of Environmental Assessment Processes

December 13, 2016

**Simon Fraser University (Wosk Centre for Dialogue)
Vancouver, BC**

Expert Panel:

Johanne Gélinas, Chair;

Doug Horswill;

Rod Northey;

Renée Pelletier.

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Opening Remarks

Johanne Gélinas: Good morning, everyone. Still have a minute. Good morning, everyone. We are ready to start. Today we have a full day dedicated to Aboriginal groups.

So let me introduce myself, my name is Johanne Gélinas and I have the pleasure to Chair this Expert Panel on Environmental Assessment, Impact Assessment. I'm accompanied with three other panel members; Renée Pelletier on my right and Doug Horswill; and on my left Rod Northey.

A few words about this process, first of all, the mandate was given to us at the end of August by the Minister of Environment Catherine McKenna. Our mandate focuses on three things: first of all, to consider the goals and purpose of modern-day environmental assessment; communicate and engage with a broad section of indigenous groups, interested groups, industry, individual organization; and, finally, to present recommendations to the minister which will be part of our report that we plan to table on March 31st.

In our mandate we were also asked to cover all the environmental processes. It means that we look at the CEEA process at a Canadian Environmental Agency, the NEB process, so the National Energy Board Environmental Process, and also the CNSC, the Canadian Nuclear Safety Commission Environmental Process. We cover them all.

A few words about our journey: we started last September on the east coast. I don't remember how many locations we have visited. It's probably around 15 to 20. This is our 12th week and we end the consultation this week. Tomorrow we are going to Nanaimo for two days and then we will be heading back home where we will start reading all the submissions that will have been given to us. You have, in fact, until December 23rd to forward your written submission to the Panel.

On our website, just as a reminder, you can have access to all the summaries of all the locations where we went. You also have access to the submissions that were already given to us. You will have all of them available on the web probably early January, the first week of January. You also have two summaries of two meetings we had in Ottawa; one, with all the federal representatives who are involved in the EA process; and, the second one, with all the provincial EA persons who are involved in the environmental assessment.

I think with that I will turn to my colleague Renée who would like to say a few words before we start. I will invite Dominique Nouvet to join us.

Renée Pelletier: Before we begin we'd like to acknowledge that we are gathered here today on the unceded territories of the Musqueam, Squamish and

Tsleil-Waututh Nations, and also recognize and chiefs, elders or community members who may be in the room. Thank you.

Johanne Gélinas: With respect to the presentations, the rule is very simple and it's the following: for indigenous groups we have 20 minutes. I will suggest that you focus on a 10 minute presentation so that we can have 10 minutes to exchange with you. That's the most important part for us. So focus on your key messages in your presentation and then we can enter into a dialogue. So, Ms Nouvet, please?

DOMINIQUE NOUVET, T'SOU-KE NATION

Dominique Nouvet: Thank you. I've worked with the T'Sou-ke Nation for about 12 years now and their council asked me to present these comments on their behalf. They are a Coast Salish Nation on the south coast of Vancouver Island, just west of Victoria on the Salish Sea. And they are a leader in sustainable development. They have a major solar project that thousands of people have come to visit over the past few years, a large greenhouse and shellfish aquaculture licenses. They hold Douglas Treaty fishing and hunting rights. They also hold aboriginal title and other Aboriginal rights.

The council and I developed these comments largely based on our experience in the recent Kinder Morgan Project Environmental Assessment. The themes that T'Sou-ke wants to urge upon this Panel to strengthen Canada's EA process — because there is no doubt that from the aboriginal perspective it needs a lot of strengthening — the four key themes would be: more scientifically rigorous project reviews; making sustainability a key decision-making principal which means that cabinet EA decisions would be based on explicit criteria that reflect or go to the sustainability or lack thereof of a project; meaningful inclusion of Aboriginal Peoples in environmental assessments from the ground up and respect for aboriginal rights in decisions; and federal decision-making that is more transparent and accountable, both to Aboriginal Peoples and the public at large.

I do not have a PowerPoint and the written submissions that we provided by December 23rd will elaborate on all of these themes and will, of course, comment on additional matters.

T'Sou-ke was not impressed by the Kinder Morgan Review that was conducted by the National Energy Board. As a Coastal First Nation their primary concern was, of course, the marine shipping component of the project. And as I imagine you have heard, or will hear in Nanaimo, the Kinder Morgan Project scope, the EA scope, did not fully include marine shipping the way it did for the Northern Gateway Project. So from the get-go it was bound to be an incomplete environmental assessment and the NEB report released in May confirmed that fact. Concerns were only partially addressed.

The study — for example, the NEB report acknowledged that there was uncertainty about how petroleum products would behave in the water if released by a spill. Canada, in its recent ocean protection plan, announced at the end of November, states that Canada must and will do additional research on the behavior of petroleum products in the ocean. That's the kind of research that should have informed the risk assessment that was conducted for that project.

Another good example of a shortcoming of the Kinder Morgan environmental assessment was its treatment of the southern resident killer whale population. The NEB acknowledged that there was going to be adverse impacts on this threatened species, that the marine component of the project would be in their critical habitat, and yet, there are no mitigation — there are essentially no mitigation measures in the NEB report. There is a marine mammal protection plan to be developed and which will certainly not address the larger problems of contamination in the water and the overall excessive noise levels that already exist in this Salish Sea; two of the key threats to this species which is a sacred species for the T'Sou-ke Nation. So, that report comes out recommending in favour of a project without due consideration to Canada's legal obligations, under the Species at Risk Act for a listed species.

A third example of a shortcoming with the NEB report on the Kinder Morgan Project is that it assumes that project measures once mitigated — once implemented will effectively mitigate. In many cases, those mitigation measures are not yet developed. It is not logical to assume that undeveloped mitigation measures will be effective and yet, that is a common problem with environmental assessments, federally and provincially.

One of the main problems that T'Sou-ke sees with environmental assessments is they're just too proponent driven. The crown and Aboriginal Peoples need to be involved from the ground up, even pre-application. Proponents need to take guidance from the crown and the most affected aboriginal groups about what baseline data needs to be gathered, about what are the impacts that need to be closely studied. Proponents need to share all of the information they develop about a project. I don't think they should be allowed, and T'Sou-ke doesn't either, should be allowed to withhold the bad science that maybe militates against their projects, or that sends out alerts of some potentially high impacts. Right now proponents just have too much discretion about what they prepare in their application and what they share.

And, although in theory the clock can be stopped for more information to be gathered, in practice if there's been a multiyear baseline data gathering project, the crown doesn't require that whole process to be repeated once an application is submitted. Deficiencies that can be corrected relatively quickly get corrected, but often baseline data gathering is relegated to the post-approval stage, when really a lot of that data could and should have been gathered earlier on. So the

crown and Aboriginal Peoples, who stand to be really affected by the project, have to be involved in shaping the project application. That's critical.

Panels, when there is a panel review of a project, as there was with the Kinder Morgan Project, they need to be objective and independent and they need to hold as much of the expertise as possible to assess all of the impacts of a project.

T'Sou-ke strongly believes that the NEB should not be leading any environmental assessments. They have expertise to contribute to environmental assessments — that may be as a participant, just like DFO or Environment Canada. It's not even clear that they should be sitting on the panel, but they certainly should not be leading the panel.

The Kinder Morgan Panel was lacking expertise on terrestrial wildlife, vegetation, marine wildlife and ecosystems, and aboriginal/traditional practices.

Again, the Kinder Morgan review is an example of where we do not have enough rigor currently, in general, on impacts to threatened and endangered species, cumulative impacts, impacts to Section 35 rights and aboriginal practices, and the likely effectiveness of proposed mitigation measures. And we are not getting an explicit assessment about whether a project is actually sustainable, which in T'Sou-ke's view needs to be the focus of the technical review.

Sustainability, that's something I want to elaborate more on. It is T'Sou-ke's recommendation that this become the focus of the technical review, and that sustainability really inform the decision-making. So, you know, we see an environmental assessment as having two components: a technical review, and then for anything, but maybe a minor project, there's quite a political decision about whether that project is in our collective interest or not.

The problem with the political decision-making that happens now, in T'Sou-ke's view, is that cabinet has too much discretion. Yes the decision is political, but that discretion needs to be constrained. And the decision needs to be more transparent. As in, there need to be explicit factors that cabinet will consider on each decision. We need to know the information that's going to cabinet. There might be some confidential cabinet advice that goes up there, too, but we need to have an overall strong picture of what actually goes before cabinet for their decision-making. And we need a decision that considers factors relevant to sustainability and provides reasons for the decision for Aboriginal Peoples, and for the public at large, about why a project is approved or rejected.

T'Sou-ke considers itself a steward for its territory and in the development that they've been pursuing, they've made sustainability key to all of their

decisions and they expect Canada to do the same thing. We really need to judge each project based on whether it meets the needs of present generations without compromising the ability of future generations to meet their needs. That needs to be the test. And we can develop explicit criteria for determining this. T'Sou-ke is not going to propose a detailed list of criteria. That's an exercise that needs to happen with public and aboriginal engagement over a longer period of time.

But to give some examples, the impacts of a project on species at risk under Canada's legislation on the species themselves and their habitat, impacts on water quality, long term impacts on the economy of local communities, aboriginal and non-aboriginal. These are all the types of considerations that would feed into a sustainability analysis.

In T'Sou-ke's view, some factors might be deal breakers. If a project can't conform to one of these requirements, it's just bound to be rejected. And that should be clear, of course, in the legislation so that proponents know in advance.

In other cases, there will be discretion leftover at the end of the day on whether to approve a project or not. But that discretion would be far more constrained if we have sustainability principles that cabinet must review and account for in their decision.

The last broad theme that T'Sou-ke wanted me to discuss is the need for meaningful inclusion of Aboriginal Peoples in the EA process and in the ultimate decision-making. No one has a higher stake in environmental assessments than the peoples whose culture and way of life depends on maintaining a healthy environment. That's certainly the case for T'Sou-ke. But consultation is an afterthought in the EA process.

And I participated in Northern Gateway and Kinder Morgan; Kinder Morgan was only marginally better than Northern Gateway despite the promises of a better process. We were at the table with a list of accommodation proposals as of the spring, and by November we still did not have answers on most of our accommodation proposals.

One example was that we were looking for a fund, an insurance fund, so that if there's ever an accident or malfunction in the Salish Sea and resources of T'Sou-ke's — if their territory were to be contaminated — there would at least be a guarantee of compensation, including for non-pecuniary, non-monetary harms, harms to the psychological wellbeing of people, harms to culture. What we got were these very interested and polite nods from the team going, oh, that's so interesting and no follow-up. No follow-up. Just that's a big idea. We can't deal with that now.

So people are still on the crown side coming to the table with no mandate and no time to actually engage on concrete proposals. And that is very

frustrating. Even if some funding is provided for the engagement, it's a waste of time if we don't get a response to concrete accommodation proposals.

In any case, you know, T'Sou-ke believes that we need to — and I believe as an aboriginal rights lawyer — we need to move beyond the consultation model, the Haida Model. I mean it's a band aid. It doesn't protect rights in the long term. It doesn't respect aboriginal rights and title. It certainly falls far short of the UN Declaration on the Rights of Indigenous People. It ultimately excludes Aboriginal People from decision-making. They are on the outside from a secret cabinet process that affects them often more than anybody else. So the only way forward is going to be partnership.

The proposal that T'Sou-ke has is that the most affected aboriginal groups are involved from the ground up in advising the proponent, you know, where they're willing to participate in this way, they are part of the team that works with the proponent to ensure a fulsome project application, and they are part of the team when there's an in-house EA as opposed to an independent panel. They sit on the team that reviews the project. They're not just a stakeholder plus. They actually collaborate with government where they're interested in doing so on the technical review.

When it comes to decision-making, the decision-making of aboriginal governments needs to be recognized and honoured. T'Sou-ke is proposing some criteria for where aboriginal consent to a project, or at least non-objection should be required.

So where the aboriginal — and it's three parts — where the aboriginal right is established or where the claim is reasonably strong, reasonable or strong, where the impacts of the project on the rights would be significant, and where the aboriginal group has participated in good faith in the environmental assessment, a project should not be allowed to proceed where the aboriginal group objects. So when those conditions are met.

And if aboriginal consent in those circumstances becomes a principle, a legislated principle for EA decision-making, you'll see a lot more effort made by proponents to engage with aboriginal groups from the get-go in making them comfortable with a project and ensuring that their rights are protected or that there is adequate compensation where there will be unavoidable adverse impacts. I think there will still be many projects that ultimately have support if this respect is built right into the system from the ground up.

I should note that this proposal for when aboriginal groups effectively have the power to say no to a project and that this proposal that they collaborate with the federal government on environmental assessments does have some carve outs or some exceptions. So, for example, where aboriginal title is

established to land, the aboriginal group will obviously be leading the environmental assessment. They won't be collaborating with federal government on treaty settlement land. T'Sou-ke Nation is in treaty talks in a fairly advanced stage. Again, presumably they will be determining how environmental assessments take place, should they enter into a treaty.

And our legislation should also leave space for other unique legislated arrangements between particular aboriginal groups. It's important to not have a one size fits all. It's important to leave room in the reconciliation process for creative approaches that governments may be willing to try with Aboriginal Peoples, that I would say they should be willing to try to break out of the mould. So we want to leave room for those.

There might be situations where the aboriginal group is leading the environmental assessment even though they don't have a modern treaty yet, they don't have a title declaration from the courts yet. If that kind of arrangement can be worked out in certain cases, you know, that's great. And T'Sou-ke would urge this panel to recommend that we leave space for that under Canada's EA legislation.

So those are, I think, the key submissions. I'm happy to take questions.

Johanne Gélinas: Thank you. Renée?

Renée Pelletier: Sure. Thank you. First, just a clarification question, your recipe for consent, is that an and or an or? You had three points.

Dominique Nouvet: It's an and. So looking for rights, yeah, to be established or reasonably asserted at a minimum. Impacts that are serious and that will always be judged, you know, in relation to cumulative impacts. So projects that may — you know if it were the first project happening in an area it might have minor impacts, suddenly look very different for the Aboriginal People when you're talking about one of their last remaining productive harvesting areas. There's parts of BC that already over developed and every project is a serious blow. And good faith participation in the EA; now, that's assuming, of course, that we have an EA process that meaningfully includes Aboriginal Peoples from the ground up, which is not always the case right now.

Renée Pelletier: So, on that note and maybe this will be homework — I don't know if the Chair mentioned she gives homework to people. You mentioned you'd be putting in a written submission. We'd be very interested in knowing on your point of meaningful participation and also having an EA process that respects the internal decision-making processes of indigenous communities, how can respect kind of Article 18 of UNDRIP, the right to participate in decision-making within the environmental assessment process, and if you have any thoughts on how we — if there's any way to do that in sticking with this one project, one assessment model. So integrating

indigenous processes within the larger process and giving indigenous people a seat at the decision-making table.

Dominique Nouvet: I think our submissions are essentially geared to that.

Renée Pelletier: That's awesome.

Dominique Nouvet: But I'll make sure we reference that article of UNDRIP specifically.

Renée Pelletier: Perfect. Thank you.

Johanne Gélinas: Doug?

Doug Horswill: Following along the same line, one of the situations that's complicated, and I'm not sure what we do with it or how we handle it, is a situation where there are multiple First Nations in an area. We've been in Prince Rupert, we've been in Fort St. John, we've been in Fort McMurray, and you see quite an array of First Nations, quite an array of perspectives. Have you any thoughts or will T'Sou-ke have any thoughts on how that matter is dealt with when you have multiple entities together?

Dominique Nouvet: Well, I think that's why we have proposed some threshold for the need for aboriginal consent or at least non-objection; that you do have to establish that you have reasonable rights claims. You do have to take the time and effort to participate in the environmental assessment process. You do need to show that there will be some serious impacts. So it's not a mere assertion that your rights will be affected or that the impacts will be serious that allows an aboriginal group to be one of the groups that can stand in the way of a project. And I think that will reduce the number of groups that, you know, need to be onboard with a project. But there will be cases where, especially for a pipeline, where you're unavoidable going to have a large number of aboriginal groups.

You know, I'll think about it more for the written submissions, but I don't see a way around that challenge. I mean, I think, if the whole — I mean, the promise of Section 35 in the Constitution Act is that aboriginal rights are respected and honoured, and we can't be — we cannot deliver on that constitutional promise if we force every aboriginal group to negotiate a modern treaty or prove their rights in court through a multi-million dollar, multi-year lawsuit before they're getting that kind of respect. It's not achievable.

So, I do think it will be challenging for some projects to get approval and I don't see an easy — a way around that.

Rodney Northey: Yeah, just actually following on my colleagues. Can you just describe, summary way, just how T'Sou-ke fits into this reserve, traditional territory, the shipping part. I just would like to have a better sense of what we're dealing with exactly

and coming down to Kinder Morgan and the shipping part of it, what was asserted? What are the rights that are affected? I'm not disputing. I'm just trying to get a sense of —

Dominique Nouvet: Yeah. Like, what was at stake for them?

Rodney Northey: Yes, exactly.

Dominique Nouvet: Yeah. So T'Sou-ke Nation, they have two reserves right on the coast.

Rodney Northey: Yes.

Dominique Nouvet: So they have two reserves that if there were an oil spill could be dealing with petroleum products coming ashore. Their territory extends out into the ocean. They are very much a marine people. I mean fishing is absolutely central to their way of life; fish, shellfish, and also hunting inland. So they're territory has a marine and a terrestrial component. They entered into a Douglas Treaty in the 1850s.

Rodney Northey: Yeah.

Dominique Nouvet: That Douglas Treaty guarantees hunting and fishing rights as formerly. It purports to have taken their lands. Well, if you look at the history on a black letter law legal argument, it would be an unconscionable treaty if it had actually suffered their lands. No common language. They were communicating in Chinook language of — it's trade language, very limited vocabulary. T'Sou-ke had no conception of the idea of ownership of land, as land being something you could sell. The treaty did not exist. It came from New Zealand. They signed X's on a blank piece of paper which has these words about surrender and sail, and they were given blankets that were actually torn up because there weren't enough to go around for each family.

So, you know, on my application of contract law principles — that is not an enforceable contract if the crown wants to say that it's a surrender. So the understanding of T'Sou-ke and, you know, all the Douglas Treaty signatories on Vancouver Island, is that it was a peace and friendship treaty. So their aboriginal title is implicated by this project but it's not a title yet proven in court. It's an asserted title right to the land and marine waters.

Rodney Northey: Just following up on the shipping lanes, just based on your point about the spill, is that to say then the ships shipping lanes, as you expect them to be, are within the very territory —

Dominique Nouvet: Yes.

Rodney Northey: — for fishing that are used?

Dominique Nouvet: Absolutely. Because the shipping lanes include — they go through the Strait of Juan de Fuca, the international shipping lanes. So T'Sou-ke's shoreline is only a few kilometres from the shipping lanes. Yes.

Rodney Northey: Okay. Thank you.

Dominique Nouvet: And that's where they do most of their fishing, is in the vicinity of their communities.

Johanne Gélinas: Thank you very much for your presentation. We'll have to be very disciplined because we have a lot of people today and we have 20 minute slots per person. So I will invite — thank you very much. Is our first presenter here yet? No, okay. Okay.

Welcome. So James Hobart will be next. Good morning, Sir.

James Hobart: Good morning. Thank you.

Johanne Gélinas: Welcome. So, Mr. Hobart, welcome.

James Hobart: Thank you.

Johanne Gélinas: So you know the rule, 20 minutes.

James Hobart: Yes.

Johanne Gélinas: Ten for your presentation and 10 for questions. You have had a taste of the questions we ask so we would very much appreciate to be able to ask you some questions. So the floor is yours.

JAMES HOBART, SPUZZUM FIRST NATION

James Hobart: Okay. Thank you very much. James Hobart from the Spuzzum First Nation. My apologies to our leadership, they couldn't make it so in the last minute I'm a stand-in, although I'm very passionate about this. But I'd like to first thank the Musqueam First Nation for allowing us to do this important work in their land.

So, first of all, Spuzzum First Nation sits in the largest transportation corridor in the province. We also have large mine, a large mine — countless small mining explorations and numerous IPP projects, major infrastructure zigzagging across our nation. And the most recent proposals have been the pipeline. Before that though there was the Interior to Lower Mainland Hydroelectric Project.

Some of the issues we see with each project, they come with their own right of ways and access roads throughout our nation. Our nation, being in

the Fraser Canyon, there is not a lot of land that's flat so anytime an access road gets punched in it's hard for us to manage it, hard for us to monitor it.

Now where am I going to go with that? When we get called to boards for consultation, the word consultation is thrown around like it has only one clear definition. And this myth can be dispelled by simply overlapping the provincial and the federal consultation protocols that are given to us. So, in my opinion, there has to be a lot more time spent to ensure that we share the same understanding of this process right from the start, before taking that first step. So definitions need to be clear.

What I see often is First Nations are grouped together. And I know that some of the questions, already, I've heard about — when there's multiple First Nations and they have different opinions — one of the things, when we're invited to a forum or a roundtable environment, there's an assumption that because we're in the same nation often, or even because we have the same position on an infringement or resource extraction or a right of way, that we have the same reasons to dispel or to support that proposal, when they may be miles apart.

So, there needs to be some major ground work done, well in advance, in my opinion, by well informed liaisons to drill down to get to the core of the positions that we take so that we're not put in the same spots as our neighbours who may, like I say, have the same position, but they may have come to that position from a totally different perspective.

We each have our own reasons to resist or support a project and we need to feel respected first. Yeah, to be corralled into one room sometimes to air our issues in front of others is not — for my nation and it's never been our way to sit here and talk to — we want to see the people, look in the face and understand that they know where we're coming from. A lot of this could be worked through by proper liaison consultation in advance so there are no surprises to anybody.

With proper liaison work each nation would be able to discuss their concerns, and by the time the project arrived at the referral stage, there would be a way less knee jerk reaction for either side.

I believe to move efficiently forward in this process, which is, believe it or not that's what the First Nations that I've talked to want, to move forward efficiently, but they need to part of it and it needs to be from the start. And it also needs to be funded for us to further the thought that we can take time out of the leaderships that I know — for them to take their time out when they're already busy to come and to present or to discuss this, without some sort of an accommodation, it just can't work. There is no way that that can happen because there's too much already on their plates.

So, if it's true that the government wants to show respect for the First Nations and include them in the discussions regarding projects in their

respected territories, I think the very first flaw is when you look at the self-assessment, the online self-assessment. When a proponent or a crown wants to go into our nation, or any nation for that matter, and they click on a map of where they are proposing to do resource extraction or even exploration, there needs to be a link to the nation in that area.

So right now if a proponent wants to come into our nation they can click, they can talk to the government back and forth about the project and we may not have any knowledge that this is happening. All it would take is a link to the First Nation in the area, just to make us aware. Because like I said, we have a vast backyard and we've discovered stuff after the fact, and, had we known, we might have been able to help, you know, protect some of our traditional medicinal lands, some of our hunting areas.

So I think it's key that if really — if the government wants to show respect and to have us engaged early on, that there could be — there's the flaw, I think, is — one of them, is from the start there needs to be some sort of link for somebody to go in and instead of getting — doing all of the process work and then the government saying you now need to have this consultation with the First Nation. Then they have to seek out who that is, when a simple click on the map — with the technology we have today I've heard it only takes a few minutes to link something in the back for that.

So, I say all that to say this, the accommodation piece has always been a struggle for us. And when I talk to our neighbouring First Nations in the Fraser Canyon, I know as the politic liaison for the NNTC that we had mirroring image, mirroring impacts and concerns throughout our nation, one of the problems that seems to be overlooked is how impacts negatively affect our nation and our existence long after the project has passed through our nation. New access roads to different right of ways are exactly that, they give access to a lot of people.

With each new project we face an influx of new hunters, new ground disturbers, you know, in our traditional gathering areas. And there's adverse risk to our communities, to their safety, security, and their lifestyle. And we need to feel safe in our own lands and that's not happening. We find campers abandoned in behind our — in our hunting areas. We see signs of kill. We don't even have the ability to do our own patrolling with jurisdiction. This is a — it will take capacity and it would take costs, and, in my opinion, this needs to be addressed upfront when we're doing the accommodation piece, for us to know that we've been listened to and that our nation is going to be somewhat whole after the project has either passed through or the resource has been extracted. We need to be able to feel as whole as we can if we are at all to come to some sort of an agreement that it's going to happen in the first place.

Now, just I'll say, first of all, at our discussions, never start with no, or they haven't. We want to know what is happening and how we can better

accommodate it through our nation and that could all happen through the first ground work with the liaison sitting face to face with each nation, or at least with ours, and understanding where we are coming from before that conversation starts. So thank you.

Johanne Gélinas: Thank you very much, Mr. Hobart. Renée?

Renée Pelletier: Yes, thank you. Just to pick up on your comments about government treating all nations in an area as the same and kind of lumping you all into one group, you made a comment that it's not within your tradition to be put into the same room to discuss matters and that you would prefer kind of one on one discussions.

James Hobart: Initially.

Renée Pelletier: Is there a way to — if you nation was given a seat at the decision-making table, can you be at one table with other nations?

James Hobart: Of course.

Renée Pelletier: Okay. Okay. I just wanted to clarify that point.

James Hobart: Yes.

Renée Pelletier: Thank you.

Johanne Gélinas: Doug?

Doug Horswill: The project liaison notion, is that a function you'd assign to a proponent, or is that a function that's assigned to either federal or provincial government?

James Hobart: Good question. I think that that would have to be the discussion with the First Nation. Sometimes they've offered up a budget to the First Nation and they've selected the liaison, or they've screened the liaisons and spoke with them, you know, sought their clearance level; what, who are we talking to, what clearance level do you have. Can you talk to the decision-makers? And after that screening process that the First — and it's rigorous, but it's on purpose because we're thinking about our future and our kids future, who is this person and are they neutral.

I think that either could work, but I think that each First Nation would have to have some say on that. I don't want to speak for others.

Rodney Northey: I just want to follow up on your click, you know, click on the website kind of idea. We've heard in other places where the clicking is done that people are then inundated with notices and there is still no follow up to the fact — there's

electronic notes filing sitting in somebody's email inbox and there may be — we've heard thousands of them as opposed to — so, what would be, if an electronic notice were to come to the First Nation, would it go to the right place? Is it an easy way on your end if you are receiving it to know what to do with it? And would that be sufficient to get something started? I'm just trying to understand a little bit better what would happen if the clicking point idea actually occurred.

James Hobart: Right. Right. Well that's a great question and it's one that we've discussed in our nation with our tribal council and with other neighbouring nations. I think right now we're inundated anyway with referrals through mail, through other means, through emails. And with that, it's still hard to sort. For us, we do have a referral board that goes through and reviews all of them. It wasn't until we were able to create this referral board that we were able to see some of the gaps. So that's where this was born out of. For moving forward, we saw that this would be a lot more suitable for us.

Now, yeah there could be issues. I think that if we knew that it was going to be there we could work on our end to make sure that there was somebody monitoring that at all times and more than one set of eyes and presenting to the community and presenting to leadership so that — you know, every system has flaws at first, but I'd like to hear why that didn't work, whether the inundation of these communities — they didn't have the capacity. Now that may — whose fault is that? That may not be — they may not have the capacity. So that also needs to be addressed. If that's what's holding them up, then that has to be acknowledged and somehow supported.

Rodney Northey: Thank you.

Johanne Gélinas: Thank you very much for your presentation this morning.

James Hobart: Thank you. Thank you very much.

Johanne Gélinas: Thank you. I would now like to invite Chief Joe Alphonse. Good morning, Chief.

CHIEF JOE ALPHONSE, TSILHQOT'IN FIRST NATION

Joe Alphonse: (Speaking Native Language). Chief Joe Alphonse, Tsilhqot'in and Tl'etinqox Chief. Tsilhqot'in Tribal Chair.

Anytime we've done this, anytime we've had talks with Canada environmental review or anything we always start with a prayer and a drum song. I think it's appropriate. I'm not a singer but I have a friend here, Chief Bob Chamberlin. If I — come forward and share a song with us to honour doing business in Coast Salish Territory.

Bob Chamberlin: I'm going to use my chiefly powers and turn this Starbucks cup into a drum.

(Laughter)

(Speaking Native Language). Vice-President of BC Indian Chiefs. I really want to thank my dear friend, Joe, for asking me to share a song and I want to acknowledge the territories we're on, important for me given that I share a piece of our cultural and I'll share a prayer song that I know. I always think it's very appropriate because it talks about having spiritual health, about having a life of greater purpose so we see a better future for our children. That's the translation of the song.

(Playing drums and singing in Native Language)

Johanne Gélinas: Thank you.

Joe Alphonse: (Speaking Native language). It's important for us Tsilhqot'in — Tsilhqot'in we're the river people. Before contact we had a drum song and a prayer for everything we did before we moved forward. And that's something that we have to and we bring wherever we go.

Challenges we have as First Nation People are huge. My nation, we've gone through the federal environmental assessment process twice. Company Taseko Mine and the Prosperity Project and the New Prosperity Project; one of the largest copper and gold mines if it was ever approved. We are very well rehearsed in that.

You know, when they first came into our territory — first off, just as Chief of my community — I'm also from the hereditary family and I'm not the hereditary chief but I am a fifth generation chief in my community. I'm elected.

My history working with the nation, I started in the fishery department. I've worked for Tsilhqot'in National Government for 18 years. Nine years of those was as executive director before I got elected chief in my community.

And, all of my career, I've always — I took of the tribal council as ED when tribal council was completely out of funding. So I've had big challenges to work, financial, and bringing the tribal council back onto its feet, and, now, as one of the strong financial organizations in and around Williams Lake.

I've gone back into my community, same situation, a community that shouldn't even been operating. My goal is to make that community a role model community for any First Nation.

We strongly believe our history as Tsilhqot'in. We had the Tsilhqot'in War, 1864; road builders wanting to come through our territory to the gold

fields north of our territory. They want access through. But you're going to have to have — you're coming through our territory, you're going to have to do things our way. And you're going to have to pay a fee. Road builders refused to do that and when they took our women, our people declared war on them. That's our history. We've — gold — fighting people and wanting access to gold is not new to us. It's in our DNA.

When they executed the war party, Klatsassin and his war party, the colony of British Columbia wanted to squash the Tsilhqot'in. Get it right out. What they did was they gave us an identity, an identity to resist.

You know, we spent my career on the journey to the Supreme Court of Canada to win aboriginal title, title and rights. We were told we could never win.

On the eve of court, you know, we were in Ottawa, pressure from all aboriginal lawyers across Canada not to ask for title. Our chiefs got cold feet the night before. They just about pulled the plug to enter that room. I said bullshit. I don't give a shit if we lose, as long as we lose fighting. And if we lose we will come back with a new strategy, and we will come back over and over and over again, until we get what we want.

You know most people they get really offended that we went to the Supreme Court of Canada to get title. We didn't do that because we were trying to separate from Canada. We did that to become meaningful partners within Canada, to get recognized as that third layer of government.

I'm glad you guys have First Nation person on this panel. I was going to roast you guys if you didn't. You know, that you have to recognize First Nation. You have to recognize us.

Taseko Mines, you know, they should just quit mining. They should write a book how not to consult with First Nation People. They'd be far better off. They'd make millions. They ain't going to make any trying to mine in the Tsilhqot'in. I'll tell you right now.

When they walked into our territory they had a plan and they told us — we looked at the plan, myself and Chief Roger William were the only two members. That first stay, that fight, that roadblock at Henry's Crossing to the Supreme Court decision — we're the original members to see that through.

You know, we looked at Taseko's plan and they had seven different options. You know when their CEO walked in and said, you know, pull those seven options. That this is the only option you guys are going to look at. That's the cheapest option. That's the one you guys are going to accept. Well that doesn't work in our territory. So out, and that relationship went south after that.

Taseko all along used to tell us, you know, mockingly, you're — we own Canada. We own the federal government. We own provincial government. They're pro industry. There's no way you guys — you can resist all you want but you're not going to win. You're not going to win, you're not going to win title or you're not going to win. You know, we're going to get our mine. Just as when we were told we couldn't win title.

Our chiefs, you know, boy, pressure. All top lawyers across Canada telling us you guys aren't going to win. Said, you know, we have to ask because we have to give Canada a chance.

One of the options we have is going to the international court, and the first thing they're going to tell us in international court is have you exhausted every avenue you have within Canada to resolve these issues. We don't ask for title then we can't say we have. Same thing with the environmental process. We were told there is no way you guys are ever going to win. But we're going to go through this and we're going to stick to our values, our customs, our way of doing business. And if any resources come out of our territory, you know, a big portion of those resources are going to have to come back to us.

First Nation people, we're not billionaires. We don't, you know, we don't own big mansions. If you were to do a — come through my community, majority of the homes are probably not even valued at \$50,000 in my community. A lot of our members live under \$1,000 a month. We want something better. We used to depend on the all the resources around us to allow us, as a people, to be independent.

Now a company like Taseko says you're just going to do this and that and they're going to get all the resources and walk out of our territory. That area they proposed to turn in to a tailings pond is where my people would go to obtain their powers, to obtain their gifts, if you want to call it that. It was a spiritual place. In our culture, that was our church. I would often tell people it would be like us going overseas and trying to turn the Vatican into a bingo hall. Why would you want — why wouldn't you guys want us to do that? We're going to create jobs, opportunity. Going to bring happiness. You can come play bingo. That's our Vatican out there. We have to respect that.

You know, so in some ways in order to win a lot of people will analyze title case, you need this argument, that argument. But one of the things we've always done is we've always analyzed, you know, what are the laws, what are the practices, what have other people have tried. We realized one thing as individual bands — that band process, that's not our process, that's INAC. That was imposed on us.

We view ourselves and look at ourselves from a nation point of view. And we know that if we stand together that we can take on a lot of challenges.

And we haven't been afraid to ask for help when we know we're up against a bigger opponent, and we've done that often.

We've done that with the Taseko fight, we did that to get to the Supreme Court of Canada; reached out to all First Nations across BC and across Canada. In every case we got that support and we're ever thankful. But to win title, you know, you have to have the right environment. You know, most people don't take that into consideration.

We have Stephen Harper and his conservative party, his anti-First Nation government. And in the Tsilhqot'in we had Taseko Mine, anti-First Nation company. I thank Taseko for allowing us to win, without their antics, without their arrogance, we might not have won aboriginal title. That's not the type of companies we want. We welcome business. We welcome opportunity. But we don't welcome that attitude.

When we went up against EA process, we were told there's no way you guys are going to win. And, you know, I thank the late Jim Prentice, you know, somebody that showed some leadership, some strength. And for that, the day after he was run out of Ottawa. They gutted out the EA process.

Taseko came back and even wider grin on their face. Everybody told us again there now you guys have absolutely — they've gutted everything out — you guys got no hope in hell now. Often I would — when they would tell me that I would often tell them well, still not going down Hallbauer Highway, Russ Hallbauer being CEO of Taseko. Poke a little fun. We went and we fought again. We stuck to the same stuff, the same principles. They changed absolutely nothing, none of their game plan and they come forward again.

You know, so — I hope you guys are serious. I hope you guys have some weight to you, because what was rolled out to us was — you know, but — sometimes you have to, even if you don't believe in the process, you have to come forward and you have to give your best effort and hope that people being humans will do the honourable thing. And that, at the end of the day, was the only thing that saved us.

You know, now we have title. Now we have aboriginal rights. You got to go above and beyond what's established across Canada. When you come into our territory you have to prove we are that third layer of government.

You know, there's such thing as people then focus on aboriginal title actual — we're the only Indians in Canada that have title lands. Anywhere — actually, anywhere in the world. So that little piece of land on that map back there, that's off limits to you guys. We have rights area but we also have our traditional area. When we look at that, we look at it from a different lens. We look at

that as our whole territory, is our process. And if there's going to be any development, this time around we're going to create our own environmental review process.

Johanne Gélinas: And I'm sure, Chief, my colleagues would like to ask you questions, if we may?

Joe Alphonse: By all means. I sit here all day and talk about the Tsilhqot'in — start talking Tsilhqot'in and my blood starts flowing. So, I'm good to go.

Johanne Gélinas: I think we share the same passion and desire as you are. So let's give it a try. Doug, you want to go first?

Doug Horswill: I would like to know where Fish Lake is relative to — on that map?

Joe Alphonse: You see the little yellow —

Doug Horswill: Is it in the title territory?

Joe Alphonse: What's that?

Doug Horswill: Is it in the title territory?

Joe Alphonse: It's outside the title territory. It's in the claim area. If you see the star, just south of the star, in the lighter pink colour —

Doug Horswill: Okay. I got it.

Joe Alphonse: — is the proven rights area.

Doug Horswill: Okay. All right. Also, I can't read the scale on the map. Is it — maybe — but at the top, how long is that bar? Sixty kilometres? Is that what —

Johanne Gélinas: Twenty.

Doug Horswill: Twenty.

Rodney Northey: Across the top.

Doug Horswill: Twenty. Okay. Thank you.

Joe Alphonse: I guess when you look just down of that you've got Taseko, Taseko Lake, high mountain area lake. We have Chinook. We have sockeye. We got steelhead. We've got sturgeon in that lake. We've got Chilko Lake. The largest sockeye run in British Columbia on the Fraser River. On average, in last five years, excluding this year, we probably average 1.5 million sockeye. We have some of the

largest Chinook that come there and the farthest travelling steelhead to that spawning area.

Renée Pelletier: Thank you, Chief. Wela'lin for your presentation. I'm wondering if you can tell us a little bit about — you mention now that you have a declaration of title that going forward you'll have your own environmental assessment process. Have you started thinking about what that's going to look like? Maybe you've started to put that in place. I'm wondering if you could tell us a bit about that.

Joe Alphonse: I don't know if I would say I've started thinking about that. I think that's just your being, that's who you are, that's Tsilhqot'in. This is how we live. This is how — if we're going to move forward on an environmental process you want to give yourself the best chance and the developing you do should reflect your culture, your values and that's what we're after. We're not opposed to development.

Like I said, before contact our — we tapped into every resource and we managed it so well that when the non-aboriginal person came they looked at that area and they said that was untouched. That's how well we managed that area. That's our standard.

Renée Pelletier: Thank you.

Rodney Northey: We've often heard about government involvement and government science and aboriginal or indigenous involvement, indigenous knowledge, for this process; how well do you think your knowledge got conveyed to government? Is that what you think got you the result? Do you think it was a coordinated effort where you felt you were heard? I just want to have a better sense of how, within an EA, your community with, in this case the federal government, with two panel reviews, what your conclusions — what your thoughts are about that?

Joe Alphonse: Well, you know when we went through — we didn't even go the PC process. That rubber stamp is not even worth time and energy and resources, and resources that we have very limited. With the federal process we went through a lot. There was a lot of media. The media played a huge role in that decision. And at the very end, it came down to relying on people being people and questioning their values and holding them to task.

You know, I would like to see more science-based stuff. Because, to be honest with you, that was really irrelevant in the two panel hearings we went through. Taseko sitting at the other tables splashing their money around. This is what counts. This is what's going to happen. This is what's going to get this, so you guys better get on board. So bring science to the table. That's what we're asking you; because there hasn't been.

You know, under a Liberal — old Liberal Government they used to have a policy no net loss to fish habitat. If that policy was still in effect, Taseko wouldn't have had two go rounds with us. So bring science back. We welcome that.

Rodney Northey: Can I just ask one —

Johanne Gélinas: Yeah.

Rodney Northey: Did you — I mean, you've alluded to it, but I just want to ask also, did you notice a difference on science between the first and the second panel reviews? Have you any — yeah, I think you've said it, I'm just hoping perhaps you could say it —

Joe Alphonse: The first go round there was some science. The second go round, after they gutted everything out, there was very little.

Rodney Northey: Okay. Thank you very much.

Johanne Gélinas: Thank you very much, Chief Alphonse, to have taken the time to present to us this morning.

Joe Alphonse: (Speaking Native Language). Thank you.

Johanne Gélinas: And thank you for the prayer. Our next presenter is Kelly Davison. After that presentation we'll take a short pause.

Kelly Davison: Test. Test. Does it work if I stand up just for a moment?

Johanne Gélinas: I'm not sure.

Kelly Davison: No?

Johanne Gélinas: I think you better sit because we record all our sessions. So good morning and welcome.

KELLY DAVISON, BC MÉTIS FEDERATION

Kelly Davison: Thank you very much. It's working?

The first thing I'd like to do is acknowledge the traditional territory of Musqueam Nation and thank them for allowing us to do business here. I also want to thank the gentlemen who provided the prayer. I feel so much better now that that's been done. And I wanted to thank everybody who's travelled here today to be part of this as well as the Panel Members. I can only imagine there's a significant amount of travel that you've been doing lately.

Johanne Gélinas: I will invite you to speak closer to the mic because I'm not sure that everybody can hear you well in the back.

Kelly Davison: Okay. I'm soft spoken.

So I have some speaking notes. I'll just — mostly I'll stick to those. There are a couple of points I would like to make after that, and that's following up some questions that I've heard from the Panel.

My name is Kelly Davison. I represent the BC Métis Federation. The title I've been given is consultation director.

The BC Métis Federation is a non-profit association that works with Métis communities across British Columbia. Founded in 2011, the mission of the BC Métis Federation is to ensure the wellbeing of our members. We currently have 7,500 members across the province.

A large part of our work is building and maintaining relationships with governments, industry partners, and service delivery organizations throughout British Columbia. Now we work with these organizations to advocate to meet the needs of our members, advance their concerns and ensure that their voice is present in processes such as this.

With regards to Métis rights, Métis rights are constitutionally enshrined and protected. Our members have important knowledge about social and economic landscape of the regions they live in as well as about the land and the natural environment. Our members value the integrity and beauty of the natural environment and are committed to defending, protecting, and advancing our rights. The BC Métis Federation is continually engaged in research with our members to ensure the protection and advancement of and advocacy for their rights.

With regards to consultation activities, the crown has a constitutional obligation to consult with the Métis People of British Columbia with regards to proposed developments. This duty arises whenever a project has the potential to infringe on our asserted or existing rights. There is great variety in the approach that institutions, agencies, and proponents take with regard to consultation with our members, and that's something that I've noticed personally.

Generally speaking, consultation activities with the BC Métis Federation have been inadequate and superficial resulting in no real value for governments or proponents and providing little meaningful voice for our members.

The voice of our members in provincial regulatory processes is deliberately constrained. That's the provincial side.

The BC Métis Federation established a consultation office in 2015 to collaborate with the crown on issues and activities affecting our members, including proposed developments.

The BC Métis Federation is here to work with the crown to ensure that the duty to consult and accommodate our members, in respect of any project that has the potential to affect the rights of our members, is fulfilled and that consultation activities are meaningful and have lasting value for all parties; the proponent, the government, the process, and, of course, our members.

Early involvement of the BC Métis Federation in consultation planning can maximize the value of dollars invested in consultation activities.

Now, with regard to reform of the environmental assessment process, the federal EA process, the environmental assessment process presents a key opportunity to engage in meaningful and valuable consultation activities with the BC Métis Federation and our members. Each and every provincial environmental assessment that fails to include the voice and views of our members is a forgone opportunity to engage in productive dialogue.

The scope of indigenous knowledge most often garnered through EA studies, so studies related to the environmental assessment — TK studies they're called or indigenous knowledge studies depending on where you are — are powerful and efficient vehicles for engaging in knowledge sharing and a dialogue as part of a transparent public and well documented regulatory process.

So we are not against responsible development that is inclusive of our unique voice and perspective. Our members favour a balanced, responsible, and inclusive approach to development.

We cannot support the practice of regulatory agencies nor the enactment of regulatory processes and procedures that constrain our voice, that do not incorporate our views, that put our rights and our livelihoods at risk. We wish to play an active role in the assessment of developments that have the potential to affect our rights and ensure that our participation in these processes is valuable. Involving our communities in the EA process is a necessary step in the reconciliation of our views, respecting environmental issues, and in the mutual obligation of ensuring that our Métis rights are protected.

With these considerations in mind, we have suggested reforms for the current federal process. So first recommendation: please ensure that the direct participation of the BC Métis Federation occurs early on in the environmental assessment process. So project managers, consultants, aboriginal engagement and relations professionals, community coordinators, engineers seem to struggle to

advocate effectively for the inclusion of Métis voice. And they struggle to meaningfully engage with our members in knowledge sharing which is what consultation is all about.

The Government of BC and the EAO, the environmental assessment office in particular, has found it challenging to engage meaningfully with the BC Métis Federation and many opportunities for dialogue on developments in BC have been lost.

Now this is a matter of grave concern for our members, these decisions have potential to significantly to affect the land and our rights. Our members cannot possibly help to ensure that their rights are protected in the course of resource development if our voice is excluded or if it's constrained.

The BC Métis Federation wishes to be directing involved in the assessment of projects that have the potential to affect the rights of our members. Our members have a unique perspective to offer, one which must be considered if there is any potential to affect their rights.

Recommendation number 2: please ensure the involvement of BC Métis Federation members in environmental monitoring and management.

Environmental monitoring management present opportunities for BC Métis Federation members to be directly involved in adding value to development decisions through active observation, documentation and reporting activities with regards to their rights and it is a natural and logical outcome of meaningful involvement in the environmental assessment process.

Recommendation number three: please support meaningful participation in the environmental assessment process with adequate funding. Meaningful consultation requires investment, but large amounts of money spent do not necessarily equate to value added for communities, for members, for the crown, for the shareholders, nor for society.

The BC Métis Federation Consultation Office is here to provide support to maximize the value and the impact of dollars invested in consultation.

The BC Métis Federation is a non-profit organization. We do not have the resources enough to volunteer our time and our resources. So if the crown, the province, and proponents can meet their duty to consult with our members, and often we're asked without funding to participate in these processes, an initial face to face meeting can set the tone for the whole consultation relationship.

Now, the scope, the scale and the nature of consultation and participation in the environmental assessment process can be determined based on an initial meeting and also on mutual recognition and respect.

That's the end of my speaking notes. But as I was sitting there in the back one thing came to my mind, and it's one thing that I think has really struck me about changes that have happened to the federal legislation, particularly as a result of the omnibus bill and this is change that I've seen happen, which is why I can speak to it, I think. So, before 2012, the EA presented a nice opportunity for communities to engage with their elders, to engage in discussion, to engage in proponents and share knowledge, knowledge about the environment, knowledge about the economy, all that stuff.

Post-2012, what I noticed was that these summaries of all the indigenous knowledge that had been collected would come across my desk. This knowledge wasn't collected for the purpose of specific projects. It was summarized by the government and then published to the stakeholders as though, you know, the impacts and the knowledge shared were some foregone conclusion.

Now, what it did — what I noticed that it did is that it shut down dialogue. It shut down the important opportunities to engage in dialogue and conversation about these issues. And it shut down the opportunity for community members to voice their issues to proponents, for instance. And I feel that's one of the big things that may need to change or maybe it's already changing.

Johanne Gélinas: Thank you very much.

Kelly Davison: Thank you.

Johanne Gélinas: If I understand right your last comment is about the fact that those summaries were produced by the government. It was a wrap up of traditional knowledge, kind of.

Kelly Davison: Yeah.

Johanne Gélinas: And because of that they are looked at fait accompli or information base that can be used without even entering into a dialogue with you to know more and understand better, right?

Kelly Davison: Yeah. Right.

Johanne Gélinas: Okay. Thank you. Can you just tell us how many projects that your organization has gone through and how many resources, human resources you have and you ran with a budget of approximately what annually?

Kelly Davison: Okay. I'm sorry, the first part of your question is?

Johanne Gélinas: How many projects that you have gone through in terms of impact assessment over the last few years?

Kelly Davison: So the number of projects we've been involved in when it comes to the environmental assessment process — the Consultation has been involved in no projects. Some of our members have been involved sporadically in projects without the Consultation Office or the BC Métis Federation overseeing that, which means there was no control of the information collected or how it's been distributed and I can't speak to consent or any of those practices regarding that information. So the short answer is none.

And to your second question?

Johanne Gélinas: Are you the only one running the Consultation Office?

Kelly Davison: I am the consultation director.

Johanne Gélinas: Okay. I thought that.

Kelly Davison: Yeah. And as to the business relationship between me and the BC Métis Federation, so I'm a consultation that they've hired to do this. I've also been working with them and their members for a number of years now. I work in direct collaboration and I take direction from Keith Henry, who's our president, as well as the elected board of directors for the BC Métis Federation.

Johanne Gélinas: And can you share with us your annual budget?

Kelly Davison: My annual budget?

Johanne Gélinas: It's your salary, I guess?

(Laughter)

Kelly Davison: My salary.

Johanne Gélinas: Okay. Thank you.

Kelly Davison: It is a meek salary. Yeah.

Johanne Gélinas: Thank you.

Kelly Davison: And it depends on the month. So there is no core funding.

Johanne Gélinas: Thank you for your answer. Doug?

Doug Horswill: In relation to our reporting regulation and so on as we think forward and considering Métis interests, how — is it sort of to every project that would go through an assessment that you would suggest we invite or is there a geographic element to this? Exactly how would that work?

Kelly Davison: Yeah. So it depends on the project. But my invitation is for every project to at least engage in some form of dialogue with the central office. So if there's a primary consultant that's doing the TK work with one of our member communities. For instance, you know, I'm happy to take sort of more a backseat role, but just know sort of how the information is being collected, what it's being used for and make sure that it contributes to some sort of central legacy so that it's meaningful to our members and so that it's meaningful to the process. So the scope of our involvement would be a on a project by project basis. But I would hope that for every project we could have an initial discussion.

Doug Horswill: And if you could give us an indication of where your communities are in the a subsequent follow up that would be —

Kelly Davison: Yeah. Our communities are sort of scattered across the province; Fort St. John, Prince George, Prince Rupert, Kamloops, Kelowna, The Lower Mainland here. Yeah.

Rodney Northey: Yes, I guess you alluded to some earlier, hearing the questions, so would the idea of providing electronic notice to you in a broad way — is that getting this conversation started the right way or is that still not what you're looking for?

Kelly Davison: Electronic notice is, as I see it, is fine for organizations, agencies and people with a high level of capacity and literacy.

Rodney Northey: Right.

Kelly Davison: I can't say that electronic notification would be appropriate for many of our member communities or many of our members, which means that support for the dissemination of that information, for that notification would be helpful in coordinating that messaging to our members.

Rodney Northey: Right. And I did mean — I didn't mean to be ambiguous. I was thinking more to your office, directed to your office, whatever else, is there a minimum getting — creating some kind of standard that way? Was that the appropriate thing to hear from you? In other words, is that what you're — you're not getting that now, I assume?

Kelly Davison: No we're not. We get letters.

Rodney Northey: Right.

Kelly Davison: And then there are some proponents who engage directly.

Rodney Northey: All right. Then you made the further point, just to clarify, that you would also need, broader than yourself, but some level of capacity, some level of resources for both members and your organization.

Kelly Davison: Yeah. So the capacity is there. The capacity is there. But right now the expectation seems to be that we volunteer our time, which is unacceptable, because everybody else gets paid to do it.

Rodney Northey: Thank you.

Kelly Davison: Yeah.

Johanne Gélinas: Thank you very much, Mr. Davison, for your presentation.

Kelly Davison: Thank you.

Johanne Gélinas: Thank you. We'll take a short break. So quarter to 11 we'll be back in the room. Thank you very much.

(BREAK)

Johanne Gélinas: Okay, so we'll start. Thank you. Take a seat. Are we ready to start? I would like to welcome Mr. Caleb Behn. Good morning.

CALEB BEHN, KEEPERS OF THE WATER SOCIETY

Caleb Behn: Good morning. Oh, let's not mess this up, shall we.

My name is Caleb Behn. I am actually Dene and Dunne-Za. I acknowledge my presence on unceded Coast Salish and give thanks to the Musqueam People as others have for allowing us to do business in their territory. (Speaking Native Language) Chief Chamberlin for starting us off somewhat in a good way.

In keeping with protocol, this is where I'm from. I'm from Treaty #8. My father is from Fort Nelson First Nation. My mother is Dunne-Za and Cree from West Moberly First Nation. I believe you spoke with both my chiefs here in the north. The picture in the top is looking south down into my territory, my father's lands. The picture on the bottom is my grandmother's front porch at Moberly Lake.

I'm a Treaty Indian. That informs my perspective. I use the term Indian advisedly. I don't like that term, but as a former lawyer, I recognize its utility.

The territory I come from, Treaty #8, in my view, has amongst the highest levels of development and the highest impacts and consequences

from the current practice of EA in this country. Contemporary application illustrates the seriousness.

As of yesterday, BC had 55 active environmental assessment processes and Alberta had 31. Between the two jurisdictions that overlay Treaty #8, there are more active environmental assessment processes currently than, I think, the rest of the country put together. And that informs my perspective and my experience.

Before giving the totality of my outline, before I went to law school I was active in 27 pre-application or application phase, EAs or NEB processes. My record is 3,000 oil and gas for those processed in one year as well as 3,000 BC Government specific referrals for consultation to the nations I used to work for.

My history as of now, I was active in 12 environmental assessment processes last year until I quit my nation in disgust at the ease with which my people, and my lands, and the very process you are reviewing, was manipulated by lawyers and consultants. I quit. I quit the law and I quit working for my nations as a result of what I experienced under CEAA 2012.

The reason I share that with you is because one thing I haven't heard yet, both, and I was at the Winnipeg hearing briefly, the public hearings — and Doug and Renée and Rodney, you guys weren't there, but I meant Johanne — there is a personal aspect to this work, both the review, but the participation in EA.

Chief Alphonse referred to his lifetime going to the Supreme Court. My family and other family's in my territory and others have spent their lifetimes fighting in EA and there have been tangible consequences, personal, and, I think, spiritual as a consequence of how manipulative and challenging those processes can be for participants.

I have witnessed multiple bureaucrats fired. I've witnessed people quit. I've witnessed people break down. I've witnessed relationships develop and fall apart in EA.

And I make a note, you know, we're in this room speaking English. This very environment within which you conduct this review intrinsically favours a colonial and western mentality and perspective and ontological and epistemological reality derived from a western world view. The fact that I don't speak my language, the fact that we are not speaking the indigenous language that's appropriate for this environment reflects a dynamic that pervades environmental assessment in this country. And my point is that there is a personal tangible consequence to participating in EA as currently constructed.

There is no child care here. There are no children here. There are very few natural physical things, like trees or water in this room and in this space. I made that point to the Chair in Winnipeg and I make that point again here today to start. I think that we see in the practice of what we are doing now some of the dynamics that you have the privilege and challenge of engaging with.

I will illustrate and show — I've done the introduction and the protocol. I'll introduce some key terms and theory. I'll talk about the societal implications of EA, my experience. In my view, environmental assessment, in particular, has failed on an ecological perspective and I think that has to be addressed.

I'm interested now — one of the reasons I quit my territory and quit participating and banging my head against the wall in these EA processes, is because I saw massive knowledge and data gaps being systemically undermined or ignored, either through the pre-scoping and scoping phase or subsequently through the regulation phase.

What I've done now is moved over into studying paediatric neurotoxicology and indigenous women's reproductive health in oil and gas regions, and trying to develop datasets and standings that will pierce the knowledge gaps that are ignored by the veil of legitimacy accomplished by contemporary environmental assessment practice.

In my view, EA, in particular CEEA 2012, has functioned as a mechanism to dispossess Indigenous Peoples of their lands. There has been core proofing dynamics. There has been utilizing the weapon of poverty as a mechanism to manufacture indigenous consent for major resource projects. I don't say those terms to be inflammatory nor disrespectful but that is my honest opinion having been through almost 50 of these things at various levels.

I was on the Site C Review Panel before it was a review panel. I helped negotiate, at a small level — I was young, I wasn't in law school yet — but I helped negotiate on behalf of the nation that's engaging with BC Hydro and the BC Government on Site C and I was there when the commitments were made to develop a unique process. And I was there last year and we were judicially reviewing the process five years later.

So my work now has been to step away from the narrow practice of law and the narrow engagement in EA, whether NEB, OGC, CEEA, AER, I mean there's numerous acronyms you could throw around, but I'm done participating in these processes. And I am now the executive director of a grassroots indigenous organization dedicated to water protection.

I'll do my best to get through 45 slides in about the seven minutes I have remaining as well as a two minute video. And I'm open to questions.

Key terms which I will develop in my written submissions: cumulative impacts which I'm sure you're familiar with; solid pandemic which I'll explain; epigenetic transgenerational inheritance of disease which is important, I think, when we understand cumulative impacts and regulatory capture.

The essence of my thesis here and the work I'm doing now is that environmental assessment and the consultation game, the consultation war, is an ossified legal and practiced structure that no longer functions to do anything other than dispossess indigenous people.

I know the terms are laudable. I know the terms reconciliation is bandied about. In my view, EA is nothing more than risk management. This is not reconciliation. Money and dialogue and opportunities to discourse is a poor, pathetic, weak substitute for jurisdiction to assess on your own terms. Process, especially imposed process, will never ever legitimately fulfill the obligation of UNDRIP and FPIC, free prior and informed consent in particular. So my thesis to you is that because EA has been a mechanism to legitimate the dispossession of Indigenous Peoples, if you were to move towards a malleable adaptive process that allowed for genuine jurisdiction of Indigenous People.

So, for example, the Squamish EA right now on wood fibre, interesting example, is kosher within contract law, I recognize there's some very, very challenging complexities there. We have the jurisdictional problem, 91, 92 of the Constitution and others, but there are mechanisms that allow for the empowering of indigenous laws on the land to heal both the legal ecosystem and the physical ecosystem that that legal ecosystem stewards over. And that's the essence of my submissions.

This is the map of current EAs as of yesterday. Again, the point here is just that the majority are in the west.

This is a picture I took 375 days ago. This is one small wall of my office. I had four staff, operational budget of about \$170,000 a year. I brought in for my nation between \$2.8 and \$5 million, a year, year and half process. But the majority of those monies came in to do TK or TEK work. So all of those resources, they're laudable and committed in good faith go directly out of the nation to non-indigenous researchers typically or lawyers.

And one of the reasons I quit my nation is because I saw this pathological ecosystem of lawyers, consultants, environmental specialists and fixers, on both sides of the table, who are just essentially leeches, who take over pieces of the EA process. And I don't mean to be disrespectful to people in this room or others, but that's my frank and honest truth.

The writing that went into these documents is not worth the paper it's printed on. You can get an expert to say anything. And we, in my nations, we had to go out and hire other experts to do the same thing and they just in an expert fight. And what happens is the money that we invested in the environmental assessment process with this fait accompli, finished, you know, the approval is almost guaranteed. I think there's what — the approval rate right now for an EA that's gone through scoping is like 98 percent, right. These processes — I mean aside from like market issues or Taseko Mines messing it up and then developing indigenous title as a consequence.

What we see in the indigenous community is this reality — where I would have judicially reviewed every EA I was a part of, but my nations were too poor to allow that. I was spending too much money on the few judicial reviews and the few processes that I saw some leverage in to actually meaningfully engage with EA as practiced. Had I the resources, me and my people, would have sued the pants off of everybody including the federal government, repeatedly, for continued violations as manifested in these documents. And that's the truth. This is an access to justice problem as much as it is a dialogue problem. And any practitioner worth their salt on the indigenous side of law will tell you that it is poverty alone that stops us from bringing really good cases. And that's a sad reflection upon the jurisprudential evolution of indigenous law in this country and I think it's a systemic issue because it ties over to health impacts and other issues.

This is my typology of indigenous state relations. This is my view of how we've evolved together. The point I want to make here in this, at points three and four, there's been continued erosion of land and water resources, the process oriented mechanisms of consultation, accommodation, negotiation, again, laudable language, crap and practice. And the proof is in the pudding because there's continued development and deployment of new extractive technology that have massive data and knowledge gaps.

I draw your attention to three specifically. Hydraulic fracturing, which is actually high volume slick water hydraulic fracturing combined with horizontal drilling technology. That suite of extractive technology is, as you well know, has radically altered the energy mix in this country. That's what's behind the pipeline push. That's what's behind the tar sands, because they need the diluents from my territory, you know, the condensate to dilute the bitumen. Then you've got Line 3, Line 9; you've got all those issues. SAGD and CSS, again, extractive technologies for oil and gas development.

And, my view is that environmental assessment is function to legitimate the propagation of these technologies. And I think that was an error. I think that the speed with which hydraulic fracturing technology evolved and moved through the EA process, 2006 till now, has created a massive, a massive problem. That's not

the economic problem. There's domestic overproduction of oil and gas in this country and in North America wide. That's why we're pushing to tidewater.

Had the federal government recognized the nation interest doctrine under constitutional law and recognized the hydraulic fracturing and extractive technologies are not that much different than nuclear technology and embryonic stem cell technology in so far as there's a national interest dimension that the deployment of these technologies, I think we would be living in a very different time. And, I think, the changes to EA that you guys have to deal with should think about that fact. The national interest doctrine may be applied to the deployment of extractive technology. And that's something that we brought up in EAs in the past. Didn't go anywhere.

I think there are continued and major societal impacts. The reason I added these slides is because Stephen Harper created Idle No More, and just wait till you see what Trudeau is going to do. Your view has to be cognizant of an evolving social framework within which cleavages between Indian Act Bands and the grassroots are getting wider. It's not just a simple issue of the credibility of EA itself. The actual institutions of indigenous government are becoming discredited as a consequence of the buyoff tactics typically involved in environmental assessment.

The money that comes into my community to do a TEK study, for example, half of that would go over to my chiefs for travel budget or for whatever, for health. It doesn't matter. That's their prerogative. But the problem is that at the grassroots level, when we get another coal mine and a whole bunch of women got to face combat boots and dogs because they don't — they think water is life, there is a — there's a credibility gap developing in indigenous communities as well as in government. And I think the fact that you've been put forward here to go and do this review, illustrates just one facet of that systemic credibility gap.

Again, in Treaty #8, one of the big issues is that we overlay the Western Canadian Sedimentary Basin. This is the third largest hydrocarbon deposit on the planet. This is what's behind a continental problem of oil and gas development. And my thinking is that if you look at this territory and the interconnection between the different types of development that typically engage EA — this is Kinder Morgan, TMK, Enbridge — this was made in 2008 so this is a bit dated — come on big guy. There we go. No it's not working.

My point is that from a cumulative impact perspective, what we find in practice in EA is the siloization and the scoping down to the bare minimum of — bare minimum possible for analysis and assessment. And if you look at the intrinsically interconnected nature of resource development in the 21st century you see that that does not work. You use the condensate from fracturing Northeast BC to dilute bitumen. That's a necessity, right. You need to find frack sand mines. You need the roads as alluded to, right. The interconnected nature of resource development stands in stark contrast to siloized approach outlined under CEAA 2012 and other regulatory

processes, notably the NEB. Fifty-two or 58s, it doesn't matter. They're similar in that sense.

I wish this would not be broken because there's a bunch more stuff I wanted to say. Can I ask for some tech support, please? Is this just a freeze? Has this happened before?

So one of the things I want to show you is a time lapse from 1955 to 2012 in my territory. In that time lapse what you'll see is the steadily increasing development in Northeastern British Columbia. And I offer that for two reasons, one Northeast BC has been through more EAs and I think those EA processes have systemically failed us and the proof again is — oh, thank you — the proof is in just the tangible result, right. The proof is the fact that you have some many roads. That you have 95 percent incursion using a 500 metre buffer for the majority of our territory, because you have oil, gas, coal, farming, hydroelectric, again, and various other types of development.

What that does is it means that when we're practitioners on the indigenous side, or when we're working at the grassroots side, or even the advocacy side and the environmental movement, what you have is a place where EA is recognized as a discredited institution. And I don't mean to be rude to you because I understand that you and others in this room are committed to improving this process. Thank you. (Speaking Native Language).

But we would be doing a disservice to this work if we weren't frank in acknowledging where we're at. And I hope, and I strongly suggest to you that before you even think about how to recommend improvements, you have to be honest about what this process has done. And I'll show you.

Oh my goodness. Come on. There we go. I'll try my best to do this quickly. Come on. Here we go. Let's go to here.

This is the creeping hand of colonization disrespecting treaty. That's about 60,000 square kilometres. This is where I'm from. You imagine what it's like participating in another siloed process and you can't talk about the coal mine just one valley over. When you talk about the massive oil spill I cleaned up in 2001 where they poisoned my lungs. I can't talk about that because it's 15 miles upstream from where the current oil and gas drilling mechanism for the next gas pipeline comes from.

And, thus, the frustration becomes manifest and thus the challenge of even practitioners, well intentioned though they may be, to engage in these processes, because this is the lived reality of indigenous people in high extractive resource zones.

I know you guys were in Fort Nelson. You've been to Fort McMurray. You understand those contexts. My point here is that the practice has to be accountable now for what was done.

Again, I strongly suggest that you be honest about the dispossession result, perhaps not the intention. I know — understand liability obligations. No one is going to say like, yeah, we engaged in a systemic and discredited process to dispossess you of our lands. Like, no one will ever admit that. But that is the frank and honest truth. That's what happened.

CEAA and EA generally functions as a mechanism to core proof decisions for expropriation and dispossession. That is an honest to god truth. The only question is are the nations rich enough and sophisticated enough and lucky enough to have the resources to counter that in a meaningful way. Tsilhqot'in they were. My territory they're not, because the consultation obligation is so emaciated thanks to 70 years of inappropriate development, right. That's how Site C moved forward in its process, and, thus, if you guys want a resilient and robust outcome in the future, you need to be accountable to what was done before even thinking about how to move forward.

Another major issue, you're dealing with people like myself. Every time I kill a moose I put a cut into my arm. The reason I do that is because I want — as I am gifted that — as that animal gifts itself to me I am willing to suffer a small amount of pain and offer a small offering of blood to that animal as a mechanism of reciprocity. It's a stewardship obligation.

I was taught since four years old to take moose apart and look for these: lesions, warts, tumours, whatever. I cut these out of the meat that I hunt before I feed it to my family. I'm one of the few hunters in my age group left in my community.

The reason I share this with you is because — I'll tell you a story. When we were negotiating Site C and the custom consultation process — I come from a dreaming family. Dreaming is critical to the Dunne-Za People. Dreaming is how we go to the other world and do business there that then impacts this world. That's how an appropriate hunter conducts themselves. They actually make a contract with a moose on the other side and then in the future, in the physical world we meet that moose and we both live up to our obligation and that moose gives itself in keeping with the contract and I do my protocol to respect that contract.

After we negotiated the Site C custom consultation process, and then there's just a litany of sort of systemic manipulation on the part of the crown colluding with BC Hydro and the proponent, I think there's a politicization issue deep in CEAA. I started having these dreams. I've had three of them now. In my dreams, Moberly Lake, which is upstream from the flood zone — in my dreams Moberly Lake —

it was clear but in my dream the water is the colour of chocolate milk and there's change all around. All these dreams are really dark. These are the kinds of dreams — I'm not sure if you guys have them — but the dreams that you know are important. The dreams that touch something.

And I ask you — and this is the question I put to you in Winnipeg and I'll put it to you again, what space is there for a dream in a CEAA review? You know, are we going to hide this under the TK report? You know, where is the space for that dream to be compelling as evidence, because we privilege the western perspective. We're do so right now. You guys are physically above me. I'm aware of like a raised dais, like the implications, right. My suggestion in this — I'll outline this further in my written submissions — but I think that if CEAA is modified to create process whereby something like those dreams could be incorporated, I suspect it's land-based.

I was successful in getting the NEB to approve a land-based hearing last year for the North Montney Mainline Project. I know it can be done. If there is space and scope for jurisdiction and opportunity on the land, what you do on the land is you invert the privilege model that permeates this process, because all of a sudden you have to rely upon me and my elders to protect you from bears. So you're like automatically humbled right. And then in that humbled space there's more space to hear.

The EAs that I've participated in are almost consistently in board rooms. Consistent. You get the per diem belly. You got to fly across the country. You get all that stuff. That's not where real discourse and dialogue is going to occur. It's not.

So whatever you recommend to this government has to make space for something like that. And for people like me, who live this, because I can present to you like scientific evidence such as fracking and birth defects. I can show you my own face and the fact that my body has been scarred by the consequences of resource development in my territory. Understand that, like the 27 screws in my face, they influence how I make submissions in environmental assessment because I am keenly aware, for example, environmental contamination.

This is a piece of research being done that speaks to how in utero hydrocarbon exposure can lead to epigenetic transgenerational inheritance of disease multiple generations beyond the original exposure.

I suspect that environmental assessment in this country has legitimated intergenerational slow onset poisoning by facilitating hydrocarbon development without considering the long term health impacts. And the reason that wasn't done, twofold: one, the nations didn't have the research of sophistication, and

two, this research wasn't done yet. This is 2014. The work I'm doing now is pushing this and others further.

What we're trying to do is engage in the implications of emergent science not being recognized or engaged in the regulatory process. And what you see — these are a couple of references. I'll provide this, that you guys can take your own research. But Indigenous People are looking at this. This is media coverage from 2015 on this kind of research.

A critical point — just try and get through this — on the top left hand side what you see is — this is worked out under Mount Sinai, but I have a suspicion that what's happened, is my people and people in resource intense zones, have been slowly poisoned, what the scholarship calls a silent pandemic, because of subclinical effects of resource development.

So, for example, no one really knows what two to three parts per million ambient hydrogen sulphide contamination does in utero. Research has never been done. The best research that's been done is on calf mortality in cow farms in Alberta. This is stuff that hasn't been done. The implications of those compounds on the right B Techs, totally misunderstood.

I just finished the first research and data collection initiative studying pregnant indigenous women in Northeast BC. We will have results by January. Small cohort but already we're seeing some fairly scary implications.

My point here is that for your purposes environmental assessment has to start paying attention to two things, the fact that you're making major decisions in absence of knowledge. There are huge data gaps and knowledge gaps. Those data gaps and knowledge gaps have been exploited by industry. They have been manipulated the whole discourse on climate change, for example, is one example. I think human health is a bit different but it's also there.

Then, secondly, there is a resource gap because most indigenous communities do not have the ability to engage on these kinds of issues. Now, is that the obligation of the crown? Is that the obligation of the proponent? I don't know. But I do think you have to make space in your review to allow for these kinds of emergent understanding to manifest in the process.

Major issue is the knowledge to action gap. So this is research from 2010 that shows how long it takes for the actual problems associated with a given substance to have an effect. This research was done globally. One really important example is in the far north with the aerosol, the deposition of persistent organic pollutants in Inuit women's breast milk illustrated this. We're seeing a decline now in some of those compounds but you see that you've got in the 20 or 30 year lag time — why did we approve massive hydraulic fracturing. Why did we approve LNG

terminals when we don't fully understand the implications of the hydraulic fracturing processes and the fluids used to fill those terminals. And, thus, I advocate for the precautionary principle. I think you need to engage the precautionary principle, empower it in a major way, because if you don't, there is no control mechanism to deal with this knowledge to action data gap.

Environmental injustice is a major issue. The only thing I want to point out here, if you look at Doig River Indian Reserve in the top left you see that they have 351 to 400 operating wells in the 15 kilometres of their community. At one point they had buses outside of their elementary school running 24/7 to evacuate the kids because there was an upstream, upwind SAR gas well being drilled. And if they had a blow out, literally a death cloud, like Bhopal, Indian. Like, literally clouds of death. H₂S. Very dangerous. Why is that allowed on indigenous communities?

I think that CEAA has to start thinking about environmental injustice at a systemic level. And the proof, the necessity, is the very fact that this even exists. This is prepared in 2007 by the northern health officer. Northern Health got axed in a way and the BC Government, because of pro LNG, put forward a detailed human health risk assessment of oil and gas activities in Northeastern BC; did not collect a single piece of original data. It was entirely desktop.

So they go out and say that the LNG industry pose a low risk to human health. Now, can you understand that in this low credibility environment, environmental assessment becomes highly politicized, right. Do you see how the human health risk and the data gaps is creating an asymmetric and atypical credibility problem for EA. Because I get news stories like this.

And these guys did not — like the reason I'm out collecting data with a research team out of Montreal, interestingly, is because they didn't collect the data in the first place. I didn't get money in an EA to do this. There is no way TransCanada was going to fund me because they had an LNG terminal. Spectra Energy wasn't going to give any money in an environmental assessment for us to do the original baseline data work necessary. So I left and I do it myself. And you know what, that was a loss to the EA process. So you have to think about these larger issues being wrapped into particularized and siloed processes.

Another major issue, and this just speaks to the human health problem, the Canadian Association of Physicians for the Environment is making very interesting submissions after EA. This is submission following the Lelu Island approval. All it illustrates is that contemporary environmental assessment, because of the cost of engaging expertise, does not allow for indigenous people, in particular, to bring in emergent science and I think that we're seeing physicians and others and new constituencies of actors engaging on EA, either actively during process or afterwards. I think it'd better to have people like this as well as people like me from the grassroots funded at the pre-scoping level. And there are two reasons why. One is a real politic

analysis and one is an ethical analysis. From an ethical perspective, dialogue and resilient robust decisions necessitate deep inclusion. Money is a weak substitute, as I said, for jurisdiction.

So if you incorporate entities like — entities like the Keepers of the Water, grassroots entities that are not the typical Indian Act Band Councils who are on all the consultation lists developed by the federal government or the provincial government or the territorial government, if you expand the scope in review and resource those entities appropriately, you're going to include them early on enough in the process that they will believe you when the approval comes down with the appropriate conditions.

The other reason that you might want to advocate for early funding for grassroots groups and indigenous groups is because then you bring them into a process and you're probably going to core proof it for the corporations, because you can say you consulted with the keepers of the water from pre-scoping all the way to decision-making. There's a financial tangible benefit to being inclusive. The problem is where do you find the funding. This hits a whole other series of issues.

Johanne Gélinas: I will invite you to conclude if we want to ask questions.

Caleb Behn: Yeah, I will. Well, this is the last point. In this — this is going to get personal and I'm sorry for that, what's happening in indigenous communities is a deep and creeping divide between the Indian Act Band Councils and the grassroots. Standing Rock is just the beginning. (Speaking Native Language). That's just the beginning. Because of Harper and Idle No More and how the omnibus bills catalyzed a generation, what you have now is a time where inside indigenous nations and across multiple indigenous nations, there's big cleavages developing.

You see an example of this — this is in the context of an oil development up in Prince Rupert but it's happening everywhere — Indigenous communities are no longer homogeneous and there is a very sophisticated resistance community dedicated to engaging at a deep level on climate justice and the movement towards keeping it in the ground. So your review has to be sensitive to the fact that it's no longer sufficient just to consult with Indian Act Band Councils.

My family brought a core case in 2011 to the Supreme Court to engage on that issue and we lost. We changed the trajectory of jurisprudence on representation of indigenous communities, but the decision at the SCC was an obiter. So we'll see where those terms get subsequently treated. But my point is, that in your review, please be cognizant that there is a significant and creeping divide in indigenous communities and it's going to get worse. I promise you.

I had more to say but I'll end. This is just my context. I think this is what we're looking at. And I think, just a final point, I wonder if there is a new

cause of action for systemic regulatory failure impacting indigenous communities, and I think it's that cause of action will be found on the two key issues for the Western Canadian Sedimentary Basin which it showed neurotoxins and reproductive harm to indigenous and rural women. Those are both areas of research that myself and my research teams are engaged in. And I promise you, if our data comes out the way I think it's going to come out, I will go after everybody, including my own chiefs, for allowing such an egregious violation to occur. And I think that you guys need to think about how to proactively address that kind of dynamic in future because EAs legitimating new and emerging technologies.

Johanne G  linas: Thank you very much, Mr. Behn.

(Applause)

Caleb Behn: Yes. Apologies to everybody else. I didn't mean to go long but there a lot there. So questions, you guys? I had a lot more to say but I'll leave it for the written submissions.

Johanne G  linas: And I understand that you will provide us with a written submission. Thank you. Rod?

Rodney Northey: Yes. That was very intense. I stopped taking any notes at the beginning.

Caleb Behn: Sorry.

Rodney Northey: And I appreciate what you're trying to bring to the table. A couple of things; it is absolutely fair to say that EA has changed and that there has been a progression or regression and the trends are out there for many to comment on and it still awaits us to comment. But one part of the issue, and I don't want to minimize anything you've said, is to try and work out where the gaps are and what is truly an EA issue and what isn't. I don't mean, again, to minimize what you've said. But much of what you put on that very incredible map exercise of 60 years or so is probably all below the EA radar and it's probably below the federal EA radar. One of the challenges that we have and to face continually is where is the federal EA radar in problems that are more complex than that jurisdictional divide would allow?

Caleb Behn: And my thinking is that one of the problems is that EA is oriented towards process and EA takes a false baseline.

Rodney Northey: Yes.

Caleb Behn: The federal baseline for EA should be contact and it should be the productive capacity of the ecosystems that underpin the appropriate exercise of indigenous rights. And that's the analytical framework within which the triggers get understood. If the trigger is 80 kilometres of 42 inch pipe, that's — that intrinsically

favours the colonial mentality and perspective. I think if you were to reorient and strongly suggest to this government that the appropriate is not some prospective understanding of what might come from a given project, but, rather, a retrospective analysis of where we're at within that context. And the science is there. I mean radar mapping. You can do real-time analysis using Google technology on the day to day. Like, air mapping, which is how we mapped out the impacts. You know, you can do an analysis of the foliage change in a given jurisdiction relatively easily and cheaply. I think that those mechanisms of understanding where we are at now are the more appropriate focus for the trigger.

But I also have issues with the whole notion of triggers for EA, because the triggering process intrinsically means you're going to get into an adversarial fight about what the appropriate trigger is. I've seen so much project splitting. So much. NEB in particular and EA. So you guys have to think of a system — and I'll put submissions forward — I think there's a system that allows you to get through the scoping down problem. And I know business needs certainty, but I think there's a mechanism to do it that's at least transparent. And I think it's going to take emerging technologies looking at the current productive capacity of ecosystems and then looking at incoming proposals.

For example, a frack sand mine in Northeastern BC, on paper not very major, but if you look at the derivative impact of that frack sand mine lowering the costs of fracking operations regionally and then the subsequent, consequent, inevitable expansion of fracking in that territory, maybe that creates a trigger, right. I just think that that's my issue, that you have to think about the cascade effect of interconnected resource development. That's intrinsic to this process.

Rodney Northey: I don't want to minimize at all one, two things here.

Caleb Behn: Okay.

Rodney Northey: One the problem you've described. We've heard something quite similar from a land use perspective just recently. I think you're the first to draw it into a regional health perspective. So, again, I'll just say welcome that.

Caleb Behn: (Speaking Native Language).

Rodney Northey: But we welcome — we are invited — the tapestry is not there now. We are invited to rethink the tapestry. And if you have creative ideas on what the triggering mechanism should be — and, again, I don't want to get too far ahead of where we are, but we have project questions, we have regional assessment questions, we have strategic policy questions all as areas for potential trigger, to use that term.

Caleb Behn: To extend them out?

Rodney Northey: If you have some creative ideas — and I don't mean creative as in out there — I mean creative as serious and innovative.

Caleb Behn: Operational.

Rodney Northey: Yeah. Innovative approaches to the problems that you have set forth to us today, we are going to look very carefully at what you say.

Caleb Behn: And the tapestry — okay, the simple answer is the tapestry requires the golden thread of indigenous law and legal orders. You want to consider the tapestry, what has the tapestry excluded. It's excluded indigenous laws. The laws embodied in like all of my body modification. And the thing is those laws can be incorporated. That's the recent research being done out of UVic, U of T, U of O on indigenous law and legal orders. The University of Saskatchewan is doing a bunch of stuff on this. There are mechanisms to incorporate indigenous laws that intrinsically embed and transcend the kind of anthropocentric colonial mentality. And that's where I think we're going to find the richest source of solutions.

You know, the definition of ignorance is to do the same thing over and over, you know, and I think that indigenous legal orders and laws — so, for example, the fact that I bleed every time I kill, there is a reciprocity and balance there that could be useful for understanding the appropriate relationship between Spectra Energy and 60 years of natural gas transmission across British Columbia.

I cleaned up an oil spill on my family's trapline at 19 years old because of their bull shit. And I can account for that. But, can they, under contemporary corporate and environmental law, they cannot. But indigenous laws and legal orders have a mechanism to engage that reciprocity and non-adversarial rehabilitative structure. I think that's where you're going to find the richest thread for this supposed tapestry.

Rodney Northey: Thank you. I will let my colleagues (indiscernible).

Caleb Behn: Sorry.

Rodney Northey: No, thank you very much.

Caleb Behn: (Speaking Native Language). Thank you for your questions.

Renée Pelletier: Wela'lin, Mr. Behn, for your thought provoking presentation. I wanted to pick up on your comments around the problems in indigenous communities with Indian Act elected leadership. I think you provided some solutions when it comes to consultation involving grassroots groups from the get-go. When we get into ideas around nation to nation relationships and involving indigenous communities as decision-makers, do you have thoughts on how we as a panel can make

recommendations to the government that aren't going to lead to paternalistic — some paternalistic approach of the crown insisting that chief comes with a BCR or you know?

Caleb Behn: Yeah, standard approach.

Renée Pelletier: Yeah.

Caleb Behn: I think the first point is that you have to strongly tell the government that money and capacity is not a substitute for jurisdiction. The crown is a serial abuser of indigenous people and indigenous people — I know this is a trigger — are developing battered women syndrome where we are now standing up. After a hundred years of egregious violation of treaty and rights and obligations, people are done rolling over. And that means that the mechanisms of response are punctuated, right. It's not just like there's like writ large opposition to development. Things are changing. The communities are divided.

And what I think is going to happen and what I think has to be recommended to government is that they need to be willing to not delegate jurisdiction, although that's a necessity in treaty territory, but, in particular, for BC, because it's unceded land, a recognition of jurisdiction is critical.

I think you're seeing that with the Squamish EA on wood fibre right now. I know that the Tsilhqot'in are developing their process. If you look to the Yukon and some of the processes that Kaska have done for mining, you're seeing some of those intersectional linkages in procedure being hashed out. But there's a massive obligation here on First Nations, right.

That's one of the reasons why I quit and moved into the science side of things. Because I could spend my life working on kind of negotiating a better IBA but you didn't get a light bulb from making better candles, right. You need to sort of level up and go around the process and so that's when you start looking at things. Like, for example, the climate change policies, the imposition of the federal nation interest doctrine and the mechanisms by which you hang a jurisdictional transfer to indigenous communities to develop a process.

Then, the other trick is going to be holding the indigenous communities accountable to the business community, which is a whole other issue. But if you look in the context of colonization, it's not like indigenous people haven't given their fair share to the crown. I mean how many billion dollars of money came out of the map I showed you. How many trillion dollars of money, you know, has my territory given to this nation state, to this polity called Canada.

So, I mean, I think there's an education obligation on you and the government to recognize that we don't see the jurisdiction. We never had jurisdiction on unceded land. In treaty territory, we violated the treaties continually and

perpetually so we are going to leap untethered into the jurisdictional void as an attempt to change things.

Now, is that politically expedient and viable? I don't know. Is it on First Nations to make that politically expedient and viable, probably, but it's going to look a lot like Standing Rock. And you know what that means, right, because militarization of energy infrastructure is happening. You know that.

I guarantee you guys are going to hear from CSIS if you haven't already. The critical infrastructure investigation teams that spied on me and my friends over the last three years, Project SITKA, you know, wide spread deep surveillance of indigenous resistance. That speaks to the danger of indigenous resistance catalyzing in militarized response. And that's what it looks like in the US.

And that's another issue that I think to make this kind of jurisdictional delegation or recognition politically and legally viable, the alternative has to be understood. And that is the alternative.

You can build pipelines here the same way you build them in Afghanistan or Africa. It can be done but you know what that looks like. And that's not financially viable. It's not efficient. It's suboptimal from every perspective and it's probably not going to work long term because we survived genocide. We're not going anywhere, right. So what do you do with this intractable problem, you know.

I'll do my best to think about unique linkages but I think there are already some jurisdictions that are doing it. The NWBT on water, their water strategy has some really good techniques as well.

Johanne Gélinas: Thank you very much, Mr. Behn —

Caleb Behn: Yes, of course (Speaking Native Language).

Johanne Gélinas: — for having taken the time to come and talk to us today. Thank you. Good luck.

(Applause).

Johanne Gélinas: Our next presenter is Elvis and, to be honest, I don't even want to take the chance to pronounce your last name. You will tell me how to do that. It sounds so easy when you say it. Thank you. Good morning.

ELVIS FJELLNER, DEASE RIVER FIRST NATION

Elvis Fjellner: My name is Elvis Fjellner manager of Dease River Development Corporation (indiscernible). Thank you very much. I just wanted to say thank you very much on behalf of the Kaska Nation and the Dease River First Nations

which is who I represent here today. I manage the Dease River Development Corporation and I've been asked to do a presentation here today on behalf of the Kaska People.

This really is not my mandate, it's actually Kaska Dena Councils so I've been asked to present on behalf of the Kaska so this is what I will do today. So easy on the questions once I'm completed. I won't profess to know everything about — that is needed to be known here today but I will do my best to present on behalf of the Kasha. So thank you very much.

Dease River First Nations is one of the members of the Kaska Nation. The Kaska traditional territory composes more than 240,000 square kilometres of land extending from the present day southern Northwest Territories through the south eastern boundaries of the present day Yukon into present day northern British Columbia.

Three of the Kaska Dena Nations are located in British Columbia and two are located in the Yukon. Dease River is located in Good Hope Lake approximately 115 kilometres north of Dease Lake in northern British Columbia. We have 186 members.

Dease River provides direction to the Dease River Development Corporation. The Development Corporation develops contracts with local mining companies and provides jobs for community members.

The Kaska Dena asserts aboriginal rights and titles to the lands, waters and resources within the Kaska Dena traditional territory and we see our use and stewardship of the lands, water and resource within our traditional territories as integral to our identity, governance and economy.

Dease River is a member of the Kaska Dena Council which was formed in 1981 to represent the interests of all Kaska Dena, particularly in negotiations and settlements of Kaska Dena land claims and the promotion and protection of the land and cultural heritage of the Kaska Dena People.

The Kaska Dena Council has entered into an incremental treaty agreement with the Province of British Columbia on behalf of the three British Columbia Kaska Dena Nations including Dease River. The ITA is a pre-treaty agreement meant to advance our treaty related benefits. Under the ITA, the province has agreed to transfer 607 hectares of land to the Kaska Dena Nation for economic development purposes.

Dease River has been involved in a number of resource development initiatives within our traditional territory. While Dease River is committed to pursuing economic development initiatives for its community members, we are also

committed to protecting our lands, waters and resources and preserving our aboriginal rights and titles.

The Kaska Dena have developed a Kaska Dena land use framework that includes community-based natural resource development policies, management practices and land use zoning. The framework is meant to support the collaborative management by Kaska Dena Government and industry of Kaska lands, water and resources in our traditional territory.

The Kaska Dena have developed policies that set out our expectations about the way in which government and industry proponents will consult and accommodate us and that explains how we will jointly manage our lands, waters and resources. Our intention is to provide detailed management practices and recommendations as proponents of the government engage us on resource development or planning initiatives.

Through our land use zoning we have identified Kaska protected areas, special management areas, and site specific features and developed particular management approaches for each of these areas.

As a member of the Kaska Dena, we are also committed to full participation and monitoring throughout the full lifecycle of development projects. Our goal is to manage our lands, waters and resources while establishing long term relationships with proponents and governments.

Kaska Dena has also entered into a strategic engagement agreement with British Columbia, the purpose of which is to provide Kaska Dena with a stable funding and capacity for three years to engage more efficiently on resources development application.

The agreement provides for the establishment of natural resources councils that will provide opportunities for Kaska Dena to have a voice at a common table with the province and participate in shared decision-making about matters affecting the lands, waters and resources within our traditional territory.

Dease River Development Corporation has been in operation for 10 years. We are involved in various forestry development management initiatives. We also operate a saw mill in Good Hope Lake that provides lumber and materials for local and commercial mining use.

Some of the projects we are currently involved with include the following: the development of a small hydro project that would sell renewable energy to BC Hydro to service Good Hope Lake and Jade City, working with JDS Mine at the Silvertip Mine Site to implement the socio-economic participation agreement, a major BC Hydro remote electrification program to service Jade City and Dease River First Nations, through a joint venture partnership with Arctic Construction the development

and transmission line that would connect generators to Jade City and Good Hope Lake, negotiations with BC to obtain forest, 10 years to harvest the timber lands within our traditional territory, the various policies and practices that we have put in place to ensure that our lands, waters and resources will be protected as we pursue these economic development initiatives with government and industry.

Given our important role as stewards of our land and resources, it is imperative that Dease River maintains an active role in any resources development proposed within our territory. Unfortunately, current environmental assessment practices fail to adequately address our interest and provide the protections that we need.

Much of the work of the Kaska Dena has done to date has addressed deficiencies with current environmental processes. These deficiencies include the following: environmental assessment processes do not adequately address the potential infringement of aboriginal rights and titles, the potential effects of a project on aboriginal rights and titles are distinct from the project potential environmental effects. Just because an environmental assessment concludes that a project will not have significant adverse environmental effects, does not mean that the project will not infringe on our rights.

Environmental assessment processes must be able to properly assess the existence, scope and nature of our aboriginal rights and titles and a project's potential effects on these rights — a project's potential effects on these rights. This assessment must incorporate the aboriginal perspective. The protection of our aboriginal rights and titles will always be the most important factor to determine whether a project can proceed within our traditional territory. The Canadian Environmental Assessment Act is limited in its ability to be able to consider the cumulative effects of projects.

As we have described, Dease River is involved in a number of development initiatives within our territory. The environmental assessment of each of these projects must take into consideration the cumulative effects of all of the projects potentially operating with our territory.

The timelines set out in current environmental assessment legislations are extremely short and the environmental assessment processes are often rushed. This means that we often — this means that we often aren't given the time we need to fully consider the potential effects of proposed projects in our rights and titles. As well, when the crown decided to consult with us about a proposed project, the government representatives that approach us often lack the mandate to properly address and accommodate our concerns.

The Kaska Dena Nation has a nation to nation relationship with the crown and we have entered into a number of agreements with the crown on this

basis. We expect that the relationship will be respected throughout the assessment of projects that have the potential to affect our rights and us.

So, one of the projects specific that I can speak to a little bit is, I guess, kind of somewhat concerning for us is that the Silvertip Project, which is up in northern British Columbia, as one of the examples that has been a little bit of a concern for us. Although the Silvertip Project is one of the few projects up in the north that is running. It's a very small project in the scope of things, but it's a project that is actually bringing some life to the north, which we really appreciate, but it's a silver mine owned by JDS and Dease River happens to be the lead community on the project.

So one of the challenges that we're faced with right now is that originally the project was planned for a 10 — the life of the mine was gauged for about 10 years. We signed the CEPA agreement with the company based on a 10 year life of the mine. What's happened now is that the company themselves have come back and decided — because the silver prices and come up to a pretty good level where they can make some money, and so they decided that they want to speed that whole process up. Rather than operate in six months a year, they want to now operate 12 months a year. So they have applied for a permit, which they have been now awarded, to go ahead and change it to 12 months a year operations.

The whole process in terms of — the permitting process around the environmental impacts of the project within itself was somewhat challenging for us to deal with because of the lack of capacity within our communities and the Kaska Nation in general. It's been tough for us to set up ourselves in such a way so that we can really monitor the environmental impacts of the project.

So we have — when it was operating six months a year it was already a challenge as it was for us to put in the people to be able to manage the environmental impacts of that. So under the CEPA, what we did is we made sure that there was a Kaska member that was hired by JDS to be the environmental monitor of the project. So that's really — pretty much a token position by the company that has a Kaska member. So hindsight tells us that — that was under the CEPA — that was probably not the way to go. What's happened now is that because they've moved — they've shortened the life of it, now we're really scrambling in terms of the environmental impacts that that can potentially have. Now we have now before 10 years to address some of the environmental impacts throughout the life of the project, now it's down to five years.

You know, in the spirit of moving the project forward, we were doing everything we could to make sure that the project went ahead. It's just the whole process around the environmental monitoring and the lack of capacity within the communities, not just Dease River but the Kaska Dena Council and all the other four bands within the Kaska Nation, we really lack the ability to be able to properly respond to that.

So that's some of the challenges we're facing in terms — although we do trust JDS is going to do the best they can in terms of — you know, we have signed agreement that we can kind of hold them to.

Johanne Gélinas: Thank you very much. Renée?

Renée Pelletier: Yes, thank you. I wanted to pick up on your comments that currently EAs lack the ability to access impacts to aboriginal and treaty rights and title. I'm wondering your views on the following, we're had — this has come up, as I'm sure you're not surprised sort of across the country in our consultations and one of the suggestions to address that issue has been that it should be a study, like any other study in an environmental assessment, the way you'd study impacts on salmon or caribou or whatever, and that the community, the First Nation should be the one conducting that study. I'm just wondering your reaction to that. Is that something you think that might assist? Do you have a different sort of suggestion on how environmental assessments can sort of appropriately look at impacts on rights?

Elvis Fjellner: Yeah. One of the things that the Kaska Dena Council has set up, they have an organization called Dena Kayeh Institute. They're really the body of environmental studies and monitoring that is supposed to be done on behalf of the Kaska. I think that the involvement of the Kaska People absolutely, by all means, be completely involved in all these studies and making recommendations that, you know, are considered. I think that's really the big part of it. The Kaska People, the aboriginal people, in general, really want to be a part of that process. I think the previous speaker there spoke very well to that. You know, to the need for aboriginals to be a part of that is really key to that. Then you guys buy in, right.

Renée Pelletier: Right. Okay. Thank you.

Doug Horswill: The land use plan you spoke of and the consultation guidance is that a Kaska Dena Council issue or is that a Dease River?

Elvis Fjellner: No, that's a Kaska Dena.

Doug Horswill: So the various First Nations within Kaska Dena have come up with a mechanism that allows them to look across the whole nation?

Elvis Fjellner: Absolutely. Yeah. We have a Kaska collaboration agreement that is kind of a governing document that all of the Kaska use that is throughout the whole nation, right. So everybody really collectively works together in terms of all those.

Doug Horswill: Okay. Thank you.

Johanne Gélinas: Rod?

Rodney Northey: Yes. I'm extremely interested just to follow up on that. So what is the status of the plan? Is it something that is available on web? Just to get an idea of what you've achieved, because we have been covering the country and hearing of the need to do exactly the very thing you're talking about as you have done. So is there a way for us to share that knowledge and understand better how far along you've got, was my first question. And related to that, what's the next step for you for that?

Elvis Fjellner: I'm not exactly sure what the next steps are. Like, really the people to speak to would be the Kaska Dena Council because those are the ones that are driving that whole process. And it is — I'm pretty that the document is available on the KDC website now.

Rodney Northey: Okay. How long did it take, if you know, for that process to —

Elvis Fjellner: Probably three years now.

Rodney Northey: Okay.

Elvis Fjellner: At least three years they've been working on it.

Rodney Northey: And it covers a whole region of — what would be the scope of the region? Is it traditional territory? Is that — what's the boundary?

Elvis Fjellner: Yeah. Unfortunately we have the BC, Yukon border that divides the Kaska Nation in half, but the thing is, the challenge that the Kaska Dena Council has is being able to work within the Yukon region, which is — but really, right now they're on mandated to deal with the BC bands which is Dease River, Kwadacha and Daylu Dena which is Lower Post, right. So that's pretty much — their mandate is BC side. They are engaging with the newly formed company which is Council of Kaska Chiefs which takes care of the Yukon side. So they are engaged with them and working with them.

Kaska Dena Council has taken a real proactive leadership role in terms of dealing with the whole Kaska Nation and involving everybody. It's actually open to all of the Kaska Nation, but unfortunately that border between the two is somewhat —

Rodney Northey: Have you been successful in being able to say to others that bring an EA forward you've got to look at our plan? Are you able to — so far has that happened? Is it too early to see what that integration is?

Elvis Fjellner: As far as the rest — within the Kaska Nation?

Rodney Northey: Well you've got some criticisms and I'm not minimizing the criticisms of EA.

Elvis Fjellner: Yeah.

Rodney Northey: I'm wondering if the plan — strikes me as a way to better address what you want in EA by using the plan. Am I right? Is that what one of the ideas is, is to take a project and say hey, you've got to fit it into our plan and make it work and not —

Elvis Fjellner: Absolutely.

Rodney Northey: Have you had an example yet of being able to do that?

Elvis Fjellner: No not really. The only example that we're really trying to work, like I said, Dena Kayeh Institute and the environment and the whole EA processes, like with the Silvertip Project. We have our challenges with that.

Rodney Northey: Right.

Elvis Fjellner: I mean there's — you know, it's obviously something that's — the other difficulty is obviously bringing the whole Kaska Nation together. Because here we are, Dease River is the lead on the Silvertip Project, which is in BC, and then the co-lead under the collaboration agreement is identified as the next closest community to the project which happens to be LFN, Liard First Nations which is in Yukon, right.

Rodney Northey: Right.

Elvis Fjellner: You know, so you've got the whole — what is it YESAB, up in Yukon that is dealing with the environmental side for the Yukon, and then you've got the BC environmental side, right. So you get the overlap. You get the two different organizations that the Kaska within themselves have to deal with them both, right.

Rodney Northey: Yeah.

Elvis Fjellner: Some real challenges there.

Rodney Northey: Thank you.

Johanne Gélinas: Thank you very much for your presentation.

Elvis Fjellner: Thank you.

Johanne Gélinas: Our last presenter before lunch is Carleen Thomas. Good morning.

Carleen Thomas: Good morning.

Johanne Gélinas: Welcome.

CARLEEN THOMAS, TSLEIL-WAUTUTH NATION

Carleen Thomas: (Speaking Native Language).

My dear relatives and friends, the feelings I have inside are really good to be with you here today and in Coast Salish way and Coast Salish protocol I shared my ancestral name. I shared my parents' names. I shared my late-grandparents' names. And I also welcomed you here. I thanked you for coming. And I welcomed you here to the homelands and waters of the Squamish and the Musqueam, the Tsleil-Waututh.

I appreciate the time the Panel is giving me to present here. I didn't want to start out with a slam to the midsection or anything, but the set up is really — has set me off. And I also don't appreciate that indigenous folks only get five to 10 minutes to present a history, a lifetime experience of what legislation, what laws, what these assessments have on our people.

I'm going to acknowledge Caleb and thank you for sharing so much information in that such short time. But in our way of being with each other, and governing with each other, in coming together to talk about important issues, there would not be that time limit.

And that's something that I think the government needs to really get a handle on, because I know the Liberal Government has said we want to do this nation to nation. We want to do all these kinds of things nation to nation, and so far, you know, the words are out there, the intent is out there but there's never any dialogue or come up to Tsleil-Waututh and say, hey, Tsleil-Waututh, how do we do this? It's already prescribed and it's prescribed to get to an outcome that our voices still will not be heard.

It's almost like a placate — that you're placating me by sitting here listening. These things have to be open. We have to have open-ended timeframes. And sure, I understand we live in a world that has to have timelines and goal setting and stuff, but the amount of damage indigenous folks have suffered in this country can't be squished into those timelines.

I'm relationships and protocol coordinator for my nation. We're a small people. We're called the Tsleil-Waututh's. Tsleil-Waututh means people of the inlet referring directly to the Burrard Inlet and the outer harbour toward the Salish Sea. The impact on my people is huge.

My people come from the land and they come from the water. Our first grandfather is from the land and the forest. It was a wolf that was transformed into a man. Our first grandmother was created from the sediment from the bottom of the inlet that the man brought up to the beach.

We have been steeped in (Speaking Native Language). (Speaking Native Language) means our laws, our traditional teachings. The population of my people, were in the tens of thousands pre-contact. After contact, it went crashing down to less than a hundred I've been told, even less than 50 in other stories. But we have survived. We have survived every kind of piece of legislation, the Indian Act, any other kind of act you can think of.

So I stand here today as a grandmother. We have five beautiful grandchildren and all the work that we do at Tsleil-Waututh is for those generations to come. Just like I know my parents, my grandparents, my great grandparents also did the best they could with what they had at the time. So when we're talking about reviewing an environmental assessment act that's siloed into one specific area, that doesn't work for the Tsleil-Waututh.

I heard you talking about a tapestry and a golden thread and it just made me think of what our ancestor did. They wove cedar. They wove wool. So somehow we have to use our hands and our minds to weave a situation together where we all benefit.

The impacts on my people, my grandparents, in their time they lost the herring. Herring was bountiful in this inlet. In my parents' time they lost the sea urchin. The sea urchin became extinct here, although I hear it's coming back. In my lifetime we lost the ability to harvest shellfish, clams. We can't harvest clams in our inlet. And it's not because of one project that we fought hard against, are fighting hard against. It's a cumulative impact of many, many things that are happening here. And this year was the first time that we could not get fresh sockeye. I'm 56 years old and the first time ever we couldn't get a fresh sockeye.

So when we start talking about these big ideas and how we can fix things and these processes and procedures, we can come up with lots of them but we have to figure out what the foundation is that we're going to look at this stuff. And the foundation of looking at environmental assessment can't be how much pressure, how much damage can these resources take before we break them. It doesn't work.

I understand government has to deal with industries and businesses and corporations and stuff, but the Tsleil-Waututh People have nowhere to go. We are here and we're not going anywhere. My people have shown that. We could have been extinct. But we are here. We survived.

So when we talk about revising or reviewing an act there has to be — there has to be that nation to nation dialogue. We can't have junior clerks or junior staff, come and talk to our people. If government want to do business then they have to send people who can do something, who carry some weight. And then we have to talk about how are you going to weigh those things.

I mean the Kinder Morgan decision is a perfect example of that. The Tsleil-Waututh did our own environmental assessment on that. And it was inclusive. We worked on oil spill trajectories. We worked with the couple of municipalities. We worked with the Squamish Nation. We worked with the Musqueam People. And, still, that science wasn't good enough for that cabinet. And we're talking about people that are going to be impacted most. So when we come to gathering like this, it's always, for me — I'm always sceptical. And I am not a — I'm the biggest optimist out there.

If you want to take a look we have submitted our letter to you dated November 15th and I have to say a number of our concerns are listed on there. I just want to highlight the things that I'm really passionate about. I'm a former elected leader for my people and I'm here today because, well, my brother's my boss and he said you better go.

(Laughter)

I want to pick up on what Caleb was talking about, the impact of health. Again, you heard our traditional foods are no longer accessible to us. However, during that time a lot of our people still — well one family in particular still harvested the clams. Out of the family of five, one is left. It could be a whole cumulative effect of different things that happened in their life but they never stopped being connected to the land or to the inlet. And that's what's going to happen. Our health survey we did, that was rolled into our assessment, had included that.

Another thing that Tsleil-Waututh is concerned about is, sure, we have the environmental assessment here but then it stops. You either allow a project to go through or you don't. Where is the follow up or where is the responsibility land for the regulatory, the implementation of compliance and enforcement of those types of things. It's all well and good to have all these laws and regulations, but it's nothing if somebody is not there making sure they're taking — they're following it to the T. Because, again, Tsleil-Waututh has nowhere to go.

We've done a lot of in bringing life back to the inlet. We've reintroduce Roosevelt Elk into our Indian River Valley and about five or six years ago we had our first hunt is over a hundred years. And my grandparents weren't here to witness that.

This year we were able to seek out a place in the inlet where we could possible harvest some clams and possibly grow them again. That would be incredible.

We've had some good years of runs of the pink and the chum that go up to the Indian River and we're looking at ways to get ourselves back

onto that land and get harvesting the way that we used to, and being connected to our lands and waters the way we used to be.

So when we talk about this, assessing the environment, it can't just stop there. It has to also include who's going to be responsible for what and who is going to be responsible for making sure those people are complying with rules and regulations.

I've heard a lot this morning about capacity, lack of capacity. I don't know — to other people it might mean something different but to me it kind of hurts because it's not that I don't have capacity in my community. I have many smart, intelligent folks that can do this kind of work. What we lack is the, and Caleb was referring to, is the funding. Processes like this, you know, only the cream can float to the top. By cream I mean those who are willing to put the money there.

Our Trans Mountain experience has cost us millions of dollars. It took away from programming from our elders, from our youth, from our health, from our education. But those were sacrifices our people were willing to take in order for us to ensure that we carried out our (Speaking Native Language). (Speaking Native Language) means sacred obligation to protect. I think every other indigenous community has those teaching.

So when we come before you like this, this isn't a game. This isn't a box you can pick. This is real. What you guys can do, you have the ability to impact how we can move forward, not just as First Nations or Indigenous Peoples, but even as a country.

Caleb had talked about those third world countries where huge industry goes on and they don't give a crap about the environment or the Indigenous Peoples there. Canada is coming to that point. North America is coming to that point.

You can look at South America and see that one of their leaders — I apologize to her — she was shot and killed for standing up for her community against pipelines.

The United States and Canada need to understand that the indigenous folks here have endured a lot. We do have laws on our side and we've got to stop the fight between the lawyers and the consultants about who can nitpick the most to make sure that this argument can't go through or this group of indigenous folks can't stand up and protect their lands and waters.

I'm pretty sure there's probably a lot more technical things, concerns that we could talk to about this, but, like I said, I'm here to be the passionate voice for my people, and, hopefully, that you can read this with an open heart and an

open mind. You can even see — we talk about what our issues are and we explain clearly the problems with that.

Then there's a part there, and I really appreciate the language that was used, it's not called a recommendation or it's not called a solution, we simply titled it for consideration. Consideration, to me, makes it that you can look at this with an open heart, an open mind, and see how we can move forward together, not just for the Tsleil-Waututh People, but for all of those that live, work and play here and for those generations to come.

Like my cousin Rubin would say all during our fight with Kinder Morgan, we're not doing it for my grandchildren, we're doing it for your grandchildren, too.

So we're asking you to consider when you're doing these kinds of reviews, to reach out to the First Nations and say how should we go about this, what are your ideas. Tsleil-Waututh is all about being inclusive. We know we're not — we can't do things along. And we respect and honour all of those other folks that have come here and laid roots and brought up generations of families. That's not what we're about. What we're about is what can we do to make sure there's going to be sockeye salmon for my grandchildren to catch when they come of age.

We're about making sure — my grandmother took me out onto the mudflats and taught me how to clam. I refuse to clean how to crab. I was a real princess. I didn't want to want to get my toes pinched. But those things have been robbed from my children and my grandchildren because they're not accessible. But the inlet is showing itself that she can come back to life.

And I remember that as a young kid, we used to swim in the inlet all summer. But there was like a week in there when there was red tide. So as a kid I asked my dad well what's red tide. He simply said it's a way for the inlet to cleanse herself. And that was good enough for me. We know that our ecosystems have a tipping point and they know how to take care of it. Humans just got to get out of the way and let Mother Nature do her work.

How we put that into assessment, it takes many hearts and minds to figure that out. Tsleil-Waututh is ready, willing and able to help.

I'm going to ask my colleagues here if I — did I leave out anything? Is there anything else we should — and I asked them to come in case you had technical questions. Thank you.

Johanne Gélinas: Thank you.

(Applause)

Thank you very much. We understand that our process is not the best in town but we have tried to do our best. This evening we have what we call an open dialogue session. There's no limit. It starts at 6:30 and it ends when it's over. So you will have more time to express yourself and we also had one day, Sunday, so that was to make sure that people were having more than 10 minutes to do their presentation. Do you have any questions?

Renée Pelletier: I do. Firstly, thank you. Wela'lin for the presentation. I'm wondering if — you mentioned that your community did your own EA assessment for the Kinder Morgan Project. I'm wondering if you could say a little bit about that. I'd be particularly interested in hearing about how you may or may not have incorporated your own traditional indigenous laws into that process.

Carleen Thomas: I forgot to mention that the Tsleil-Waututh — we got into the treaty process, well, when it started way back in the 90s. The first thing we did was we created our own JIS system, way maps tell a story, and we wanted to make sure our maps told our story. We did our traditional use studies and all that kind of stuff. From that came our stewardship policy, because part of our teachings, part of our (Speaking Native Language) is that we know we are stewards of our lands and waters. So yeah, it was that stewardship policy, that's how we access the Kinder Morgan Project.

Renée Pelletier: Is that policy public? Would the panel be able to take a look at that?

Carleen Thomas: Yes.

Renée Pelletier: That would be wonderful.

Carleen Thomas: Yeah.

Renée Pelletier: Thank you.

Carleen Thomas: I'm pretty sure it's online. Yeah.

Renée Pelletier: Great. Thank you.

Doug Horswill: With your assessment, were any of the other major First Nations in the, around, involved in that? Did they do things separately, the Squamish and the Musqueam?

Carleen Thomas: I think what we did — because of the lack of funding, which is another issue that we have, it's almost like you throw out this big pot of money and if you don't dive in first, you know, you just get what you get kind of thing. I think that's not fair, because it pits people against people.

We did speak with the Squamish and the Musqueam and we told them this is what we're going to do and asked how comfortable they were with that. A lot of our focus was mostly on the eastern Burrard Inlet. We ensured them and we ensured each other as we entered into the NEB process that title — we would take care of title. If any questions came up or work came around that, title would be separate.

Rodney Northey: Yes, just to follow up on that. The environmental assessment which you completed, you would have provided, I'm guessing, to the NEB and to the crown and I'm wondering, you said earlier that it wasn't taken into account. I just wondered — did you ever receive any response from any government to the assessment and any review of it?

Carleen Thomas: Thank you, Rod. That's an excellent question because that's also in our letter, that we did not receive any response. That's a suggestion that Tsleil-Waututh has too. When we submit things and panels or entities, such as the NEB, are doing to write a report we would like to see a draft. We would like to be able to say yes this is — you captured our words and our intent honourably or not. Not saying that the NEB wasn't honourable, but, you know, they started out on a weak foot.

Rodney Northey: Thank you.

Johanne Gélinas: Thank you very much for your presentation.

Carleen Thomas: Thanks.

Johanne Gélinas: Thank you.

Carleen Thomas: Thanks.

Johanne Gélinas: So we'll take a break for lunch. And as it is 12:15, I suggest that we start over at 1:15. Thank you.

(BREAK)

Johanne Gélinas: So we're ready to start. So Chief Marilyn Slett and Jess Housty will be next. Good afternoon and thank you for joining us.

Good afternoon and welcome. Just to remind you of the rule, we have 20 minutes altogether to listen to your presentation and also have time for an exchange and dialogue. If you need the full 20 minutes then we may not be able to ask questions and we would like to. So thank you very much. And the mic is yours.

JESSIE HOUSTY AND CHIEF MARILYN SLETT, HEILTSUK NATION

Jessie Housty: Thank you. My name is Jessie Housty. I am a Heiltsuk Nation citizen. I am an elected member of Heiltsuk Tribal Council and I Chair the Lands

Portfolio of behalf on Heiltsuk Nation. I would like to acknowledge Chief Marilyn Slett my chief councilor who's here with my today as well as Andrew Callicum our executive director for our nation.

So in the time that I have to speak to you I will give my nation's views on the funding of environmental assessments, specifically Heiltsuk Nation proposes that legislation provide for a proponent pays approach to aboriginal participation.

If the information to be gathered by an EA process is intended to be used for consultation purposes then it has to be collected in a manner where a First Nation can meaningfully provide and receive information on their aboriginal — on impacts to their aboriginal rights and title.

As an illustrative example, Heiltsuk Nation engaged in parts of the Enbridge, Northern Gateway Joint Review Panel Process. Heiltsuk wished to engage in the whole process which took about eight years and spanned four phases from provided input on the terms of the review panel process to submissions of written evidence, community hearings, oral hearings, closing submissions. Unfortunately, Heiltsuk was not able to engage in the whole process due to the limits on its financial capacity.

Heiltsuk did apply for and receive some funding from the participant funding program, however, it was so little, compared to the magnitude of what had to be done to meaningfully participate, that the funding was fundamentally inadequate.

Legislative amendments to CEAA and to the suite of acts of being considered, the Fisheries Act, the Navigation Protection Act, the Nation Energy Board Act, should, in our opinion, be made in accordance with at least two principles. The first principle is that First Nations are governments. As with all levels of government, First Nations are entitled to know about the impacts of projects on their communities and their resources, and more specifically on their aboriginal rights and title.

The second principle is that a proponent wishing to profit from projects should pay for assessments of impacts on First Nations. In other words, CEAA should be based on a proponent pays model where First Nations do not bear the brunt of costs of participating in an assessment.

The need for CEAA to recognize these principles is illustrated by some important flaws in the Northern Gateway process that I think would be helpful to draw on.

Heiltsuk and other First Nations were advised that this review process was our opportunity to provide information on the impacts to our rights and title arising from the proposed project.

We were further advised that if we failed to participate a decision on the pipeline project could be made without consideration of impacts on our rights and title. Because consultation would rely on information obtained during the review process, a failure to participate would negatively impact consultation. Therefore, for Heiltsuk, and I'm sure for other First Nations, it became critically important to have the capacity to obtain both legal and expert assistance to review the application, to prepare responding expert reports, to participate in the community in the oral hearings, to provide written evidence, to make written submissions, you know, that is to fully participate in the process. However, the sheer magnitude of the capacity that Heiltsuk needed to fully participate was impossible to achieve. Neither the CEAA nor the NEB process required that the proponent or Canada fund Heiltsuk so that it could fully participate.

As I stated before, Heiltsuk did receive some funding from the participant funding programming, but measured against the enormity of our financial burden on this matter, the funding was in no way a solution.

Without proper funding, Heiltsuk could not retain experts to properly examine Northern Gateway's scientific evidence or to obtain its own scientific evidence to assess impacts on aboriginal rights.

This was especially concerning given the voluminous amount of scientific evidence presented by the proponent and given the science heavy focus of the joint review panel and of all CEAA panels.

Further, the PFP limited the uses to which Heiltsuk could apply the marginal PFP funding that it did receive. You know, for example, most of the funding could not be used for legal expenses despite legal representation being Heiltsuk most significant expense during phase 3 of the hearings, which involved cross-examination of Northern Gateway's expert panels and of Canada's environmental and consultation experts.

More generally, participation in any environmental assessment requires that Heiltsuk allocate personnel, time and money to that assessment, all scarce resources in our communities. And, when the costs of participating in environmental assessments are placed on First Nations like Heiltsuk, rather than on the proponents, this prejudice is multiplied by the fact that Heiltsuk must face many projects and many assessments often simultaneously. We find that we simply cannot be in a position where the stakes for our people are so high and the barriers to fully participate are so immense.

Heiltsuk's inability to fully participate in the review process resulted in severe prejudice to Heiltsuk's aboriginal rights and title. Throughout the review process Heiltsuk had sought information about the impact of a potential oil spill on, among of resources, it's established aboriginal right to a commercial herring spawn on Kelp Fishery. Heiltsuk continually advised the proponent and Canada that Heiltsuk had the duty to provide this missing information and that the Heiltsuk did not have the capacity to obtain the missing information on its own.

In phase 4 of the Northern Gateway Review Process, a Department of Fisheries and Oceans representative justified the absence of the missing information on the basis that Canada could not afford to obtain the information and that taxpayers would reject the notion of Canada expending funds to obtain the missing information.

This representative further proposed that by requiring the missing information be obtained as a condition post-project certification that the financial burden would therefore shift to Northern Gateway to pay for obtaining the information in order to meet the conditions of the project. Respectfully, the Department of Fisheries and Oceans justification defies the very purpose of an environmental assessment, in our minds, which is to determine if a project certification should be issued. Moreover, the better solution, in our mind, is that proponents be required to pay for obtaining information concerning impacts on aboriginal rights and title.

Unfortunately, at the end of the phase 4 review process, the information that Heiltsuk sought on this piece was still missing information. Neither the proponent nor Canada provided it. Decisions were made on the project without this critical information being provided and considered.

And on a frustrating note, during the later judicial review of the National Energy Board's decision to grant Northern Gateways certificate to build the pipeline, both the company and Canada's response to Heiltsuk's position on the missing information was the Heiltsuk had every opportunity to obtain that missing information on its own.

What's clear to us is that proponents of energy projects are substantial business enterprises often carrying on international business with considerable resources. These proponents are in the business of building and maintaining energy projects in order to make profits. They understand the cost of doing business and the financial risks and rewards of doing business. It is undeniable that Northern Gateway, for example, stood to make a great deal more money for many decades that it would spend it making its application to build its pipeline through the joint review process.

It is our position, that in these circumstances, proponents should pay for the environmental assessments and related assessments, such as aboriginal impact assessments, as part of their application expenses.

To say it another way, First Nations should not be bearing expenses related to environmental assessments. When engaging in consultation about projects, the law is clear that the crown has a duty to procure and provide First Nations with information about how the project may impact their aboriginal rights and title. Assessments should allow for requirements that proponents create funds as a precondition for assessments to finance aboriginal participation and associated expenses relating to assessing project impacts on aboriginal rights and title.

Thank you for listening to me today. That's all I have to share.

Johanne G  linas: Thank you very much. Chief, would you like to add something?

Marilyn Slett: No.

Johanne G  linas: Thank you.

Doug Horswill: I guess the question your comments take us to, or me to at least, is the notion of how one determines the amount of funding necessary to support a First Nations involvement? Have you got any thoughts about the process that would be gone through or the criteria that would be looked at to come to that and when in the process that would occur?

Jessie Housty: I think that a case like Northern Gateway probably presents a really important learning opportunity on points like this. It's a great case study to look at, you know, how it was determined, what nations were directly impacts by the project and who felt they needed to have a say in the assessment process. I think that there's a pretty clear picture of the expenses that different nations incurred in participating in the process and I think that that could potentially be a great mechanism for setting a benchmark for some kind of fund.

Doug Horswill: Okay.

Ren  e Pelletier: Yes. On those lines, one of the things that we've been hearing sort of across the country is — so communities lack the financial capacity to deal with projects as they come. But in terms of the sort of in-house capacity that communities have already that seems to vary across the country. We've heard a lot from those who do not have that much internal capacity, that what they could really use is just some core funding or a consultation office even, so that every time a project comes along they're not sort of relearning — you're not having to hire new staff and there's some continuity.

In your community, what is the situation? Do you have a consultation office? Like, do you have that kind of core funding or staff that are always the same people reviewing projects? Could you say a little bit about that?

Jessie Housty: Yeah absolutely. So we're incredibly fortunate in our nation that we have fairly strong capacity to respond to stewardship issues. We have our Heiltsuk integrated resource management department which has a staff of about 30 people, I believe, who provide technical expertise to the nation to support strong decision-making at a political level.

Part of my work in sharing the lands portfolio on behalf of council is supporting land stewardship work through that office. And the capacity that that group of people made available for us, for example, during the Northern Gateway review, that was critical to us being able to participate as fully as we did.

But I will say that for that staff, they are tasked every day with managing everything related to land and marine development in our territory. Whether it's tourism tenures, forestry tenures, LNG proposals, fisheries issues, you know, the scope of work that's required of them every day just as part of their normal work is staggering. And to ask more of them in situations like this where we're having to react to proposals coming from outside that have impacts on our homelands, it does create great strain.

I really feel deeply for communities that have less capacity than we do. We still struggle even with the capacity we do have to adequately respond to everything that we face in our work. But I think that it will be really important to find a way to level the playing field and to be able to meet nations where they are in terms of their capacity so that people are being appropriately resourced to participate in the ways that they need to do. There is no cookie cutter approach to it that I think will work. It's going to be a long hard process to figure out how to do that fairly.

As Chief has just reminded me, you know, when situations like the Northern Gateway proposal come in front of us, you know, one of the other realities for us is that everyone else's day to day work gets shelved to be able to respond to the burden of whatever particular project puts in front of us. We don't have staff dedicated to responding to external proposals necessarily. So when we see situations like Northern Gateway or like the recent diesel spill in Heiltsuk Territory, you know, we have to hit the pause button on all of the really important stewardship and governance work that's ongoing day to day in our communities to be able to respond to the new thing that's come in front of us. And that creates great challenges.

Johanne Gélinas: During your presentation you make a comment and a clear link between not participating to the process and if you were not participating that may have a direct impact on your rights. How was that presented to you? Was it in writing? Was it just a verbal comment?

Jessie Housty: So that information was imparted to us in writing through the crown, that that was how that needed to happen. One of the challenges for us was that we didn't necessarily buy into the joint review process as a legitimate process that we thought was going to get us where we needed to go. But it was made very clear to us that if we wanted our position to be heard and if we wanted to impart the information that should be considered related to potential impacts on our community and our rights and title, that that was the process in which we had to do it. So that was relayed to us in writing and that was what motivated us to participate, because we wanted to make sure we were exercising every possible opportunity to put our position forward.

Johanne Gélinas: I would certainly like to have a copy of that correspondence to you. Thank you.

Rodney Northey: Just hoping, it may be not possible to give us a bit more of the detail of what is needed or even the — we aren't looking for — I don't think we need the total detail but just a scale of what, you know, are we 100,000, 400,000. It would be interesting to hear just what you managed to figure out by your own efforts and your own capacity and what you think should have been available to you.

I guess the only other question is it strikes me from what you have already — you have the capacity to be audited and all that. I assumed that's — there's no objection to being reviewed for how you've spent it but you need capacity and money early and having a phased process where — so all of that could go on but nevertheless there would be a number. I don't know what the number is. I don't need in precise detail, but it would be helpful for us to have some idea what a hearing process of that magnitude costs.

The second question is to take, if you don't mind me asking, taking any other process, because you would be subject to many, just sort of the range, because I'll put that at one level, at a top end range — what's needed to give us some idea what we should be talking about?

And I'm not look for it right now. If you want to get back to us? I don't think that's an immediate answer. It's more —

Jessie Housty: Okay, so we would be happy to address that more in our written submissions if that makes sense.

Rodney Northey: Absolutely.

Jessie Housty: But I think there is really clear and important follow up work that could happen using some of the nations who did participate as a case study. I mean, I know there were nations neighbouring who felt like they weren't able to participate at all even though they knew it was important. There were nations, like us, who participated to the greatest extent we possibly could with the funding and capacity we had available.

Rodney Northey: Mm'hmm.

Jessie Housty: Which was less than we felt like what we needed. And there were nations who participated to a greater extent than we did because, for whatever reason, they were able to do that.

Rodney Northey: Yes.

Jessie Housty: And I think that examining the range of participation levels would perhaps give you a sense of the range of —

Rodney Northey: That'd be very valuable. Especially if you could say what the participation was you initially sought and what you got and then what — a sense — I think you've got the point. But thank you very much.

Jessie Housty: The other point the Chief has asked me to raise is just that some of the hearings did take place in Bella Bella, but, particularly, in the cross-examination and the final argument phases, those took place in — they were regionalized. It required a great deal of travel, sometimes for long periods of time because there wasn't always a clear picture of when in the schedule we would be going before the panel. The difficulty in logistical terms presented by that also created additional burdens for the community and additional costs. I'm not sure of the best way to address that but that was a great difficulty for us.

Johanne Gélinas: Thank you very much for your presentation.

Rodney Northey: Please consider that as part for — again, we're asking your assistance. If you could give us that element of the problem, that would be helpful. Thank you.

Jessie Housty: (Speaking Native Language).

Johanne Gélinas: Thank you very much to both of you.

Andrew Bak will be our next presenter. Good afternoon, Mr. Bak.

ANDREW BAK, TSAWWASSEN FIRST NATION

Andrew Bak: Hello, and thank you for the opportunity to address you. I just want to set up my timer because I am notorious for running over.

Good afternoon, I'm Andrew Bak. I am a member of the Tsawwassen First Nation. I am Tsawwassen First Nations Territory Manager Officer. That means I am largely responsible for dealing with inter-agency referrals between our government and other order of government. I also generally lead the participation of

Tsawwassen First Nation inside of environmental assessment processes including CEAA reviews, the National Energy Board reviews and so forth.

I wanted to take a moment to acknowledge the Musqueam and Squamish and Tsleil-Waututh communities upon whose traditional territory we gather today. So I thank them and their elders for defending this part of the world.

I wanted to talk to you a little bit about our experience in the environmental assessment process so far and provide you with an overview of what some of our written comments will be. This presentation, which we're leaving a copy behind, but there will also be a more comprehensive written submission that we'll be making in the weeks to come.

I wanted to talk to you a little bit about some procedural concerns that we have with the — not only the existing process, but maybe, perhaps, some lessons learned from the change from CEAA 2009 to 2012 and then what we — some of the mistakes that we hope to avoid in a future amendment to CEAA that's a function of this process.

We'll talk a little bit about the use of traditional knowledge, some observations around the costs of participating in this process and other similar processes and kind of how it might intersect with the review of some projects that are undergoing right now. And talk a little bit about how consultation happens under the environmental assessment process and how it rolls out a little bit differently for treaty First Nations such as Tsawwassen versus other First Nation groups. Then, if time permits of course, we'll get into questions.

So to provide a little bit of background to you, I wanted to give you some detail about Tsawwassen and let you know that we are British Columbia's first urban treaty community in that we have negotiated our final agreement over a 15 year period along with the Government of British Columbia and Canada. That agreement was made effective on April 3rd of 2009. We're in our seventh year of implementation.

Our final agreement, our treaty, provides to Tsawwassen ownership and control of 724 hectares of land near our traditional winter village which is on the Salish Sea adjacent to the mouth of the Fraser River.

The treaty provides Tsawwassen, not only with ownership and control of lands, but also significant law making authority and hunting, fishing and gathering rights across our territory which extends from the Pitt Lake watershed south along the Fraser River, including portions of Burnaby, New Westminster, Surrey, Richmond and Delta, then onto the Salish Sea and then out to the Southern Gulf Islands.

This, of course, one of the most heavily developed areas of the province and the rights of participation inside of the EA process that is secured to us by the final agreement, means that we keep pretty busy commenting on the review of major projects.

Currently, we're involved in the reviews of Terminal 2, although I understand that's an NEB process but the structure of the review is similar to a CEAA style environmental assessment. But there are also reviews for the Robert Banks Terminal 2 Project, George Massey Tunnel Replacement, Vancouver Airport Fuel Facility Corporation Project and also the Pattullo Bridge Replacement.

Our friend's from Heiltsuk mentioned workload and in and amongst many other areas that I'm responsible for — I could very easily make a full time job of any one of these particular files but we're participating in all of them and there are more coming down the pipe.

At a recent meeting talking about the George Massey Project, some of our friend's from the corporate — from City of Richmond I should say, were mentioning that their staff is overwhelmed with work related to these projects. And this is a government that has access to millions of dollars of taxpayer support on a yearly basis and they are drowning under workload.

Tsawwassen First Nation has all of 45 employees who are responsible for operating a government, enforcing 23 different laws and providing programming for health, education, cultural practices along with all the regular administrative duties that a modern, contemporary government is expected to do and replaces or augments portions of the federal, provincial, regional and sometimes even municipal governments.

So, we fully recognize and appreciated that we were taking on a lot of work when we decided to become self-governing, but I don't think it's been clearly demonstrated to the federal government just how much we have to do outside of being involved in the EA process. So there are times where we'll do, as some of our other communities do, like Heiltsuk, where we actually put work aside to participate in some of these reviews because it's a necessary function to make sure that we defend our treaty rights but also to make sure that we'll live up to our commitments under the final agreement.

With respect to potential changes in CEAA and other similar processes, we need to make sure that the federal government understands that treaty First Nations are different than Indian Act Bands. And each of these two groups — and at my time in Tsawwassen I've worked in both capacities. I've worked for the Indian Act based government and also the self government.

In that time, we've seen two major changes to the EA process; the most recent which was with the omnibus bill and CEAA 2012 where the triggers for federal assessment were changed. We note that some of the changes that were proposed by that legislation actually interfere with the proper working of commitments between Canada and Tsawwassen First Nation in respect to the final agreement.

So the order in which some activities happen in the EA process was — the wording of Chapter 15 of the final agreement was based on how CEAA functioned at 2009. Now that CEAA functions differently under 2012 it's difficult for us to actually live up to our treaty commitment in terms of responding to the scope of projects. We're not actually aware of the scope of projects that are being proposed until we receive a copy of the project description. So, by the time that we become aware of a project, our opportunity to comment on the scope of the project and the scope of the review has already passed. So, one aspect of the federal government wasn't necessarily aware of its commitments to another, order of government, in making changes to legislation. We wanted to make sure that we raised the point of we can't necessarily do changes to the legislation in isolation of all of our commitments to each other as governments.

In terms of valued component selection, one of the early aspects of an environmental assessment process, especially one that is science-based, is to identify valued components that are to be measured as a way of gauging the severity of impacts of projects. It often happens that proponents will retain technical consultants to select or design valued components to measure. Now, most industry proponents or their professional consultants don't have a working relationship with First Nation communities or treaty signatories. Sometimes not even with government. They operate purely in the private sector. So, it's difficult to agree on which aspects of the environment should be measured and how.

One of the positions that Tsawwassen takes, and I don't want to put words in the mouths of other communities but I'm sure modern treaty signatories would agree, that any natural resource that is identified in a treaty document or a treaty related document, like a harvest plan, should be referenced in a review of a project as a valued component.

Canada or British Columbia and their First Nation partners will often agree that there is a legal basis upon which a First Nation can harvest or process or use, sell, export or what have you, a particular natural resource. But if the health of that resource can be impacted by the private sector there needs to be some check and balance to make sure that one aspect of government isn't negotiating away access to a naturally occurring species that is the subject of a treaty right.

I'm sorry I'm tripping over my words. I'm a little bit nervous.

We've also noted that the environmental assessment process is used occasionally, either by First Nation representatives or by government itself, as a way of weighing the validity of territorial claims especially in British Columbia where there are significant outstanding questions around rights and title. So there are some groups that use Canada's participation in the process as a way of increasing the validity of unsubstantiated territorial claims.

Now, First Nations, of course, are free to make any statement about their territory that they chose to, but the environmental assessment process sometimes ends up becoming a little bit abused and becomes a forum to weigh competing claims.

It's our view that a simple acknowledgement should be made of which stakeholder should be a part of the process and which shouldn't and there shouldn't be a weighing of evidence. And sometimes that happens through the use of competing studies, like traditional use studies.

Finally, we have to consider how — I alluded to this earlier — we have to consider how changes to this legislation may ripple out and affect other processes. We note that British Columbia is often called upon to lead a harmonized process on some major projects and they're not planning to revisit any of their legislation currently. So, how changes in CEAA might affect the BCEAO process is a bit of an open question for us.

With respect to traditional ecological knowledge, or any other acronym it might be known by, we're certainly happy to see that the federal government is giving indications that it's more open to accepting and utilizing traditional knowledge. But we see often that proponents or their technical consultants or sometimes even government themselves are not necessarily ready to use the knowledge that they provided with. It often happens that the nature of traditional knowledge is vastly different than scientific data as it is set out in the western sense. So there is a question of different and sometimes competing worldviews. This has a real world application.

As an example, in the Robert Banks Terminal 2 Review, one of the components of the study of the project on aquatic life, in this case shellfish, part of that process involved a food web. It's a pretty simple scientific tool that a lot of western scientists use. They would set out a number of trophic levels and say that organisms at lower levels are generally prey for high order species and it goes up to the apex predators and we measure the effects of a project on these kind of — we focus more on the apex predators and less on the underlying species and on and on and on. But, human beings actually aren't considered a part of that process. There isn't a trophic level for human beings inside of that process.

The effect of that is that for areas, like Tsawwassen, where people have been living for more than 4,000 year, at least that's what the physical

anthropology and the archaeologists tell us — people have been living in that environment for that length of time and modifying themselves to adapt to their environment to make sure that they survive. So they have integrated themselves into the environment. There actually is no separation between them and other living organisms but they're excluded from scientific view because western science doesn't think that human beings are part of that natural system; that somehow they float above it. It all of a sudden creates an open ended system. Nutrients enter and exit that system unchecked. And, we say, that human beings should be involved in those kinds of assessments because they are a part of the natural environment.

So we'll present information that is based on that underlying assumption, that human beings are a part of that closed ended system. So we'll have two pieces of information — or one piece of information that is interpreted two different ways. And that creates a level of uncertainty for decision-makers. If people are — if human beings are an aspect of the environment, the decision will mean one thing. If they are considered as something else, the decision will mean something else.

For a science-based project, there has to be an acknowledgement that the view that aboriginal people have of knowledge of what it is, how it's collected, who collects it, who is responsible for it, what are the ownership issues, what are the interpretation issues; all of those things needs to be addressed at some point.

It's a huge question and I don't know that we're going to tackle is all inside of this one exercise around this one particular law, but it's one of these underlying things that we have to tackle at some point if we're really actually going to use this information that we're purporting to collect.

Another aspect or another example that is around the study cumulative impacts, and as it stands right now, projects often occur in more than one phase or some areas might be developed and then redeveloped at a later point in time. As it stands right now, studies are based on a view of the current baseline conditions of an ecosystem and all of its components and then there is an estimation of damage or compromise or even improvement in some cases. Then the net result is the expected amount of change. So, knowing that projects get or areas get redeveloped, that baseline is always constantly moving. We try to — we try our best to include as much information about other projects in space and time as might influence the project we're looking at at that particular moment, but the baseline keeps moving.

In the case of Robert Banks, for instance, at one point it was an unimproved landscape and then there was the Delta Port — the original Delta Port Facility. Now a review of the Robert Banks Project, that's going on right now, measures the effect of the project on the already improved environment. So it's not necessarily a cumulative impact. It's an incremental impact. It's not necessarily a cumulative impact.

It's my view and my communities view, that projects should be measured against what we know about the unimproved environment for — and the reason that is true is that any ecosystem and any of its components will have a certain carrying capacity for change. And right now we actually don't know where we are within that continuum. We keep approving projects because we suggest that there is only a small impact from what we know of the existing baseline, but without knowing what the overall capacity is, we may be, you know, far away from the tipping point at which a part of the ecosystem will fail or we may be right against it. We actually don't know until the ecosystem fails and then we try to mitigate against it.

I would be interested in doing work that assess not only what the actual baseline conditions are — almost like greenfield conditions — and then what the overall carrying capacity for anthropogenetic changes and then trying to measure where we are in that continuum before approving a project.

I'm hoping that the First Nation communities and proponents and government would be able to share that knowledge before developing and receiving a project description, because some projects may be — there may not be a compelling case for some of these projects is there is a very, very limited amount of carrying capacity left in the environment.

Johanne Gélinas: We have five more minutes.

Andrew Bak: Thank you.

With respect to the costs of participation — and I'll just expand a little bit on what our friend's from Heiltsuk said before — it's been our experience through the participant funding program that we generally get about 50 percent of what we need. Now, it varies from project to project of course. Sometimes we're closer than others. But it's been our experience, just averaged over time that we generally get about half of what we need. We understand that we have to dig into our own pocket to defend treaty rights, because Tsawwassen benefits from those treaty rights, but at the same time, we need to set up for government that it happens that we end up effectively subsidizing the review of some of these projects for proponents. Proponents get the benefit of some of the technical work that we do. And it's not always clear whether or not government is actually going to use the information that we provide.

Another comment that we want to make, and this is peculiar to treaty signatories, is that some communities will enter into accommodation agreements or IBAs with proponents. They'll use some of those funds generally to participate in a review. Some of those funds might be considered as own-source revenue by the federal government, and there is a clawback provision in most modern agreements, where a portion of operating funds are withheld after a community receives a certain amount of funds. So if communities are generating wealth, they may receive

less federal funding in their transfers. It's our view, that funds from accommodation agreements or funding from the new oceans protection plan, for instance, shouldn't be counted as own-source revenue, because often these funds come with responsibilities that aren't contemplated by self-governance agreements.

Lastly, I want to touch a little bit on consultation. The current plan often delegates some procedural aspects of consultation onto proponents inside of the EA process. We find that this is often problematic because industry proponents don't have the same relationship that Canada or British Columbia does with First Nations. So we have found that industry proponents are often not well versed in our final agreement, although it forms part of the legal landscape of Canada and is no more or less important than other federal or provincial legislation. So we have to spend some pretty critical time and resources explaining ourselves to proponents meanwhile the clock on review processes is ticking.

Further to what some of our friend's at Heiltsuk had noted, is that the process, the environmental assessment process is usually time limited. For major projects there's the 24 month period at which — after which government is expected to turn around a decision. Whether or not First Nations have completed their work by then or not, in the interest of fairness to the proponent, government has to provide a decision. So if we haven't had time to find technical assistance or legal assistance or consult with our elders or communities or other stakeholders, whether or not we're ready to provide Canada with our reactions by the 24 month deadline or not, Canada is responsible for turning around a decision. So, sometimes it's not even necessarily about funding, it's about time.

With that, for the 30 seconds or so we have remaining; I'll throw it open to questions and thank you.

Johanne Gélinas: Knowing my colleagues we'll take a little bit more than a few seconds, so. I would maybe start with the first question, when you mention in your last bullet of your last slide, some communities have been studied to death.

Andrew Bak: Yes.

Johanne Gélinas: I think I know what you mean but would you mind to explain a little bit?

Andrew Bak: Every proponent that enters the process engages most First Nations the same way and paints them all with the same brush saying we are going to try to understand your interests in the project by doing a traditional use study. So there are some people in our community that have — that could spend their days just doing nothing but traditional use studies over and over and over, answering the same questions over and over and over again. It's not necessarily that these folks don't, you know, they don't mind sharing the information, but it's difficult to recruit people to

participate in that — participating keeps them away from doing things like hunting and gathering and exercising their treaty rights and carrying on with whatever else they're doing with their day.

As I mentioned, we're currently reviewing five or six major projects and several more are on the way. We spend a lot of time engaged with proponents and with the federal and provincial governments. No matter how many times we answer the question about where we hunt and where we crab and where we gather plants, that information doesn't ever seem to be shared amongst any of the federal family. So we'll provide something on one particular project and we're hoping that the government actually is actually taking the time to read and peruse all the information that we give them and maybe can actually provide some of that to proponents kind of at the initial stages of the engagement so we can maybe try to short circuit some of this process and save a little more time on the ground doing like monitoring work.

Johanne Gélinas: Yeah.

Andrew Bak: And talking about mitigation instead of trying to reinforce what our interests in a project might be.

Johanne Gélinas: Thank you. Rod?

Rodney Northey: I just would like to follow up on that because that also gets into the question that's come up fairly frequently, just the confidentiality. So it's a bit of a dynamic. If you were to ask government to share I supposed that would assist, but the other issue is, as we heard earlier even today, government taking a whole bunch of information from, I think it was the Métis community speaking, and just unwittingly distributing it far and wide with no consent.

So, do you make your — I'm just trying to understand the context for how you —

Andrew Bak: Yeah. Sure.

Rodney Northey: — just explained that. So why would you like government — is it a very restricted way you'd like it shared? What do you mean?

Andrew Bak: Government has privacy legislation where they can redact documents in the interest of protecting various people and organizations and activities. So I think that there is likely a way that traditional knowledge could be summarized and shared amongst aspects of a department like Fisheries and Oceans or NRCan or CEAA or any of the agencies, and then maybe even boil down a little bit further for proponents.

The way that some of the processes are set up right now, some of the quasi judicial processes, like the NEB, require that all the stuff go into a

public registry. So sometimes we have to spend a little bit of time at our end collecting that information and reformatting in a way where we can publish it in a way that satisfies —

Rodney Northey: Okay. So you are still —

Andrew Bak: — community interests.

Rodney Northey: So you are still protecting it.

Andrew Bak: Yes.

Rodney Northey: Some aspects of that. Okay.

Andrew Bak: Yeah.

Rodney Northey: Yeah. All right. Thank you.

Renée Pelletier: I'm going to stick on the TK topic. I think you raised a very good point that, you know, on the one hand we've been hearing across the country this call for EA has to incorporate traditional knowledge. It's got to be on par with western science, but then you raised the very good point there's these different worldviews, right. If you have this traditional knowledge that means something to a community but then it's received and proponents or government just don't know what to do with it. What do we do with that? I don't know if you have a solution.

We've been hearing ideas like if communities or indigenous groups were involved in the collection of those studies and the interpretation in preparing the EA report, like is that — does that solve that problem? I don't know if you have —

Andrew Bak: Sure.

Renée Pelletier: — additional thoughts but I'd love to hear your views.

Andrew Bak: Sure. I have a few different ideas. I recognize that what might work at Tsawwassen might not work for any other group. But I think there's a timing issue that could help out regulators and industry where, at the project definition stage, if proponents could engage First Nations — what I mean — like, at that point of the process where proponents are building a business case, right, even before a project description has been fully developed, talk to and engage First Nations about what the implications of the proposed business idea might be and ask them to actually partner and lend their time and their traditional knowledge in exchange for an ownership stake in the project.

So, First Nations would come to the table as a part of or an aspect of the proponent and they could be responsible for presenting information about the project as it — and how it affects their interest, at least with regard to environmental knowledge.

Some communities aren't able to do sophisticated financial analysis. There are some parts of the project where — like at the mitigation stage, it's difficult for some communities to really propose what an adequate compensation or mitigation package might be, but they can certainly share, in their own way, what their own priorities are. And if they are doing that in a way where they are actually kind of fully invested along with the proponent, I think it would create a project description that is more fulsome and more useful and already has some aboriginal knowledge built into it.

Doug Horswill: You've spoken of your involvement in the CEAA process and I guess in provincial. How would you describe the process that Tsawwassen applies in its treaty lands? And do you have separate processes for traditional territory or do you apply the same kind of internal process in both cases?

Andrew Bak: Sure. Our final agreement sets out that Tsawwassen has powers to do environmental assessment for projects on its lands, but outside of the treaty lands but inside of our traditional territory we would continue to rely on Canada's and BC's processes and the way that those processes are harmonized.

There is also an ability for some aspects of Canada to do a process that is slightly different than or — I don't want to say that it's less rigorous but there are some groups like Port Metro Vancouver, for instance, that's a subset of Transport Canada, who have their own environmental assessment process not only for projects that they do but for projects that their tenants do. So we would also participate in those kinds of processes.

For processes where another government is the lead, whether it's Canada or one of its aspects or British Columbia, we participate in the same manner as any other First Nation or any other municipality. That's one of those things that is secured to us through the operation of the final agreement. But inside of Tsawwassen lands, Tsawwassen First Nation would be the lead.

Johanne Gélina: Thank you very much for your presentation.

Andrew Bak: Thank you.

Johanne Gélina: Thank you. Our next presenters I should say is Patrick Kelly, Martin Glassman and Rosanne Kyle. Good afternoon. Good afternoon. The floor is yours.

PATRICK KELLY, MARTIN GLASSMAN AND ROSANNE KYLE, COASTAL FIRST NATION - GREAT BEAR INITIATIVE SOCIETY

Patrick Kelly: Thank you so much.

... acknowledging the Squamish, Tsleil-Waututh and Musqueam First Nations on whose ancestral territory we are doing this work on today. I'd like to thank you for inviting us to make a presentation to you. You have the PowerPoint presentation that we provided. We'll also be providing a more detailed written submission by the December 23rd date that you've asked for that kind of information.

Martin Glassman is an advisor to the Coastal First Nations, and Rosanne Kyle is our legal counsel. I just want to give you a sense of who we are here. And I'm the Chair of the Coastal First Nations Board.

The Coastal First Nations is recommending some overarching changes on how the federal government can achieve its goal of reconciliation with First Nations. CFN believes that such measures would lead towards support the federal government's goal of reconciliation.

The Coastal First Nation also believes that a new environmental assessment process would help restore First Nation confidence in a good process and be more predictable for all parties. Collaborative decision-making on a nation to nation basis would be a critical part of a new relationship.

The Coastal First Nation believes that a new process well designed with First Nations participation at all stages, would enable achieving First Nations consent to a greater degree of positive result and would provide incentive for proponents to join a robust process.

In order to restore public confidence in an environmental assessment process, the agency needs to be given an enhanced status of independence and report directly to the minister of the environment. The appointment of board members should be impartial and free of any executive branch influences and made through an open and transparent process. Board members need to be free to make recommendations without concern of losing their jobs.

Collaboration is key. The current environmental assessment processes are not achieving predictability of result for anyone, including proponents. Collaboration needs to happen at every stage of the EA process, from the identification of a project location to the ultimate recommendations to be provided to government. Things such as: the strategic and regional assessments, the pre-application for project specific environmental assessments, scoping of projects, the types of EA process, and the types of studies and recommendations that are involved.

First Nations need to be involved at all stages of the EA process. It's also critical that EA processes facilitate the proper and comprehensive assessment of the project's effects on aboriginal rights using appropriate criteria and thresholds for assessing those impacts.

Aboriginal impacts assessments need to be mandated as part of a proponent's application. Collaboration between the proponent and First Nations needs to happen on other relevant assessment studies as well as the identification of the types of studies that are required.

A new act also needs to contain provisions permitting the coordination of federal EAs with the First Nations own EA process. The goal should always be to reach consensus, whether it is in relation to the location of the project, the scope of the review, or the required studies.

Mechanisms can be created through the new legislation to create incentives for collaboration to take place with the goal being to reach consensus by the board, the proponents and the impacted First Nations on the path forward.

In cases where consensus cannot be reached, the act should mandate dispute resolution processes that need to be undertaken before government makes any decisions.

There are several practical measures that proponents can consider to achieve First Nations consent; agreements with First Nations, collaborative studies, joint impact assessments, and measures that demonstrate how adverse impacts can be prevented, or mitigated, if some level adverse impact is unavoidable.

The Coastal First Nations hope that the Review Panel is able to recommend EA process improvements that support a nation to nation objectives of the crown-First Nations reconciliation process.

So we'd now be available to answer any questions that you may have.

Johanne Gélina: Thank you very much for your presentation. Renée, would you like to go first?

Renée Pelletier: Sure. I'm just going to stay on this last slide. You have a few different models. Do you have kind of an ideal in your view? You know if you could rewrite the new legislation, what would the new system look like?

Patrick Kelly: Initially it would have to be an integrated process where there is a government to government relationship. First Nations have been in the territories that they occupy for thousands of years. Literally four to five hundred generations. So for the governments of the territories, where they have been and they

still are today and they will be for many, many generations to come, they are governments, they do take care of their people, their territories, you know, the air, the water, the wellbeing of all of it together. You know, and that's what governments do. That's what the crown does under its responsibilities. So there would have to be a nation to nation, government to government recognition of each other's responsibilities and jurisdictions in that regard. And we think that an integrated approach where the rights and the responsibilities of the First Nations and the crown and of other interests are accommodated and respected.

Doug Horswill: I'd like you to elaborate a bit on your thoughts on an independent agency. You talked about the board and its appointments, I'd like to you expand, if you could, now or in your written submission, on all aspects of that, but whatever you'd like to say now would be great?

Patrick Kelly: Maybe I'll ask Martin to mention some views that we've talked about.

Martin Glassman: Well, obviously, probably like most people you've heard from — making comments about the EA structures as a result of their recent, past experiences with some of the — they've been subjected to and we're no different than that. In our case, our experience with the Northern Gateway Project, even though it was an NEB Project, led us to reach a conclusion that environmental assessment had to have greater independence from some of the agencies that are currently doing it.

So not only are we talking about having the current CEAA Agency upgraded in its status, but we also will be talking about having it responsible for all EAs currently done both other federal agencies as well. As we just heard from the person representing the Tsawwassen, that's a similar kind of an approach.

Patrick Kelly: If I may also ask Rosanne to comment on — especially in the context of strategic and regional sector-based areas.

Rosanne Kyle: Yes, just to comment further on the earlier question about kind of the ideal process. One of the things that we're going to set out in the paper is this critical need to have strategic or regional environmental assessments undertaken at the get-go, before projects are proposed. We have been involved in litigation on Northern Gateway Process. I don't think anybody would say that that was a satisfactory process. I was involved in Site C environmental assessment process. Same comment. Litigation ensued.

I think some of the keys problems and issues, in what had become these litigious environmental assessments, has been the cumulative effects problem. And First Nations are literally facing death by a thousand cuts in many, many places, perhaps everywhere in the country. And project specific EAs just are not designed to deal with that huge problem.

It requires a government participation. It requires provincial or territorial as well as federal government participation as well as First Nation participation. So by having these strategic or regional environmental assessments that are dealing with cumulative effects in a much — hopefully more holistic and effective way, the ground will be set. We'll know going in if project proponent X comes along and wants to put a pipeline somewhere and it is in an area that has been okayed for pipelines under that strategic or regional environmental assessment. The path would be much smoother for that project conversely if it's not in an area that's been approved for that kind of project. At least the proponent knows what it is in for. So we would say that's a key part of a new approach.

We recognise the jurisdictional challenges of the federal government with respect to these types of strategic or regional environmental assessments. But if it's an incentive-based approach — and what I mean by that is if more streamlined project specific environmental assessments can be conducted where there has been a strategic or regional environmental assessment, it may be more likely that provinces and territories would agree to undertake these. So we see that as definitely as a key key component.

With respect to the independence issue, we're going to flush this our more in the paper as well, but, in addition to the factors that Martin mentioned, another key part is making sure that there is very clear criteria in the legislation for the factors that are to be considered so that the panel members, in the event of a panel review, for example, know exactly what they are supposed to be considering. And, in cases where significant environmental effects are found, that they know what they are supposed to do, and that, ultimate cabinet or ministerial decision-makers also have clear criteria for justifying any adverse effects that are found following an environmental assessment. So really have transparency and clarity around these key pieces.

Martin Glassman: Just to follow up on what Rosanne said, our experience with the Northern Gateway was there actually was a regional assessment underway at the time of marine use planning. When we approached the panel to not embark on the process — because it was fairly advanced at that time — they refused. So there was an opportunity there to actually have that kind of overarching assessment inform a project specific assessment, which didn't occur.

The second thing I mentioned, Rosanne alluded to it, and I think you were asking questions as well, Rosanne mentioned that review panel. What we're looking — what we're proposing is incentives that lead proponents and governments to navigate this water, this path of reaching consent and acceptance of projects. One of the ways — one of the incentives that we talk about is bringing back the old levels of assessment from the pre-CEAA 2012, so screenings, comprehensive studies as well as panels, and so there's an incentive for proponents to deal with First Nations a different way and arrive at a level of assessment which is maybe less onerous

than currently occurs when people end up getting into conflict and ending up in panel reviews.

Rodney Northey: Yes, I just want to follow up on the idea that — I think I might be over gauging here. Was the suggestion that you add to the factors of assessment the consideration for indigenous rights, I think I was hearing. The question I have is some people may think that works or some First Nations, but others may think that the EA is not well suited as a forum to lock down what exactly the rights are and make definitive pronouncements. Can you give some thought, and maybe this is part of a submission — how do you deal with the balance of EA being kind of time sensitive process in one level and you're going to try and state definitively rights that are — really represent a much longer term vision. How do you put those together?

Patrick Kelly: If I can begin, I think one of the key parts of that whole process is recognizing that the rights of the people in the community, the governments, they're not necessarily time limited and a process that comes into contact with First Nation rights needs to consider some of the existing things that the knowledge that the people have about the waterways, you know, the fish habitat, you know, all the things that go on because, you know, these people have been there for many, many years.

I'll give you an example in the context of Ms Pelletier's question earlier and even in relation to — oh there's ducks in the room —

(Laughter)

— and even in relation to a question asked of Mr. Bak on science and traditional knowledge for example. I know a case and point that we encountered early on where there was a scientist from the University of British Columbia doing some work up in Haida Gwaii and he was examining this particular issue. Coincidental to his reason for being in this space — he just happened to be one night there late and all of a sudden he sees a whole change in the pattern of activity around this particular waterway he was on.

All of a sudden the sun goes down, starts getting dark and there's lots of bears coming out and, you know, they're fishing and all this kind of stuff. He was so curious, he was there all day long, didn't see a bear the whole day. Night comes and all of a sudden they're fishing and there is lots of fish in the waterway. And so he went on to this — it triggered a real interesting curiosity for him. He says what is going on here.

There was an interesting link back to an elder who had told him in relation to the Riparian zones that he was examining. He said you need to consider the relationship between the bears and the trees. And the scientist is going — you know, he's a specialist. What did he mean the bears and the trees? He started to

think about and then he says — well, okay I'm going to start — he did some core sampling of some of these trees right along the Riparian zone that he interested in.

It turns out the core samples of the trees within 50 metres of that particular area where the bears were doing all what they did and evening, the rings of the trees in that area were 50 percent bigger in the volume of growth of the trees — right along that Riparian zone were 50 percent larger than trees outside that 50 metre zone. Why is that, you know.

He did some further examination. He went and tested some of the components of these trees, the tree rings, and turns out he's actually discovering Carbon 18 in the trees, not Carbon 16. And so what is a marine-based carbon doing in the rings of trees.

Finally, he goes back to an elder, he says what were you telling me earlier. He said you need to consider the relationship between the bears and the trees, because the bears were taking all this material and it was fertilizing the trees to such an extent that they were growing at twice the rate of the trees outside of this area that were affected by the bears. The eagles would come, the crows would come, the ravens, the martens; they would take all these carcasses.

The forest company in that area were spending thousands and thousands of dollars a hectare on fertilizing the trees in their tree farm license area and the elders had been telling them all along, you need to protect the Riparian zones from incursion to interfere with the natural bioactivities in that zone. And it'll actually save you money and you don't have to go through all this ridiculous examination of impact this and — he says just listen to the knowledge.

So my answer to the question on science and traditional knowledge is it's dangerous to actually compartmentalize them and separate them, because it's science. It's science. I don't care how you call it, it's science. And this ridiculous notion that we put it in this compartment and give this one more credit than that one. I mean, that's what I mean by integration. The knowledge is there. The traditional have been there for thousands of years.

Rodney Northey: Thank you.

Johanne Gélinas: Thank you very much. In your final — you were going to add something?

Roseanne Kyle: If I may? I just wanted to clarify one point, if I may? So we're not suggesting that the board would adjudicate aboriginal rights issues. So we wouldn't be coming to the board to say we claim aboriginal title in this area and we want that adjudicated as part of the environmental assessment process.

What we are saying is nations with either proven rights, whether they are asserted — sorry, aboriginal rights or treaty rights as well as asserted rights, that they are explicitly listed as things that need to be assessed in the environmental assessment. So right now there's this gap and there is lack of clarity which creates confusion and disagreement, and sometimes litigation, over whether or not more than just current uses have to be considered. And we say it needs to be explicit in that regard.

Rodney Northey: Okay. Thank you.

Johanne Gélinas: So thank you very much for your presentation. And, if I may ask, in your final submissions if you can also elaborate a little bit about where you see and how you see dispute resolution being part of the process. Thank you very much.

Patrick Kelly: You bet. It will be there.

Johanne Gélinas: Thank you.

Patrick Kelly: Absolutely. Thank you.

Johanne Gélinas: Chief Darrell Bob will be our next presenter. Good morning, Chief. Uh, good afternoon.

CHIEF DARRELL BOB, XAXLI'P COMMUNITY

Darrell Bob: I was just going to say good morning, so I passed it on to her. That's nice, huh.

Anyways, just like to acknowledge the territories we're on and appreciate the fact that they give us this opportunity to sit on their land and have some discussions.

I guess, first and foremost I'm not an expert, not even close. So I've got a mandate here from our elders and it's very clear for us. I just wanted to talk about — more or less, I think, we'll get Lynn to talk about it but I just wanted to lead in by talking a little bit about Xaxli'p. Our community is probably the smallest land-based community in Canada so we're very protective of it. Anything that comes through our territory — it's so small that we, you know. We sit on top of the mountain and we see the car coming, so to speak.

So anyway, we just wanted to put forward from our elders that it's critical that our people stated that we have to acknowledge Mount Polley. It's without a question there's violations on the lands. And, for us, it's cumulative effects.

Our elders wanted to make one statement and remind people that we do have our own traditional use study, which we were in treaty at one

point and we left based on circumstances. That traditional use study was paid out of pocket. We're a very small community and we're not really that rich. You probably heard every community say that.

So, we want to mention that Mount Polley is going to impact the whole Fraser River, all of the people along the river, and our title to the lands — like the last presenter was talking about, our elders have the same stories of how the fish come from the river to the mountains. And our traditional use study as told by our elders, have mentioned that the bears have a big role to play in our territory.

So our survival territory is tied to the Shuswap Nation as well as the Nlaka'pamux. The Northern Shuswap is in treaty — Northern Shuswap is in treaty which leads me to consultation that goes — the consultation process of anything that could possibly happen in this situation would never hit our table based on how treaty discussions are going according to territorial maps. So that's an impact. That ripple effect just continues going down into our territories, over into other territories. We just wanted to bring that forward.

Basically our elders said, quite simply, just go and send a message about Mount Polley. Now we look at Kinder Morgan, is another cumulative impact, you know. It will eventually impact us.

I just wanted to, in listening here briefly, remind that it's no longer just indigenous people it's what I call and what a lot of spiritual leaders call a human family. A human family is going to be impacted. Our number one protection has to be water and any decision made the water has to be number one. Water is not a resource. Water has a spirit and — it's such a strong spirit I kind of don't like looking this way. It's such a strong spirit that water has life. And, in that life, it creates our energies to move forward. People don't really understand that because they call it a resource and it's not. It's a living being that we need to protect. It is without question our community, through our traditional use study, our land use planning, are looking after the number one in our territory, and that's water.

So our elders gave us that direction. We have a lot of issues in so far as the provincial and federal governments should be working together to protect water. I see it's not working.

The wisdom and the knowledge of our elders and the long term visions that they had looking into the future, seeing this coming, it's been stated long before you were born and it's here today. I've always been taught by our elders, spiritual elders, that we're living in the times of prophecy, where people will have to make a choice. I know the human family that's starting to move forward, the number one protection is water. I think that the provincial and federal governments need to understand that. Based on a declaration of the Lulua Tribe, you know, we have to follow that.

So I'll leave that for myself. Really, like I said, I'm not an expert. I'm not going to pretend to be. But I know our elders walked the land long before I did. And I just know the stories. And the stories tell me — and our elders tell us what to say. But in so far as the technical, that's why we brought Lynn along. I'm just a political — I'm just a Chief, you know.

I would like to just hopefully encourage that you can make the right decisions. I should be asking you questions, not you asking me. Because that's backwards. The question I would have is what are you going to do for our people? What are you going to do for the water? That's my question. If you can't answer that I'm at the wrong table, because water is more important than you or I.

Oil you can't drink. Water you can. And you can't live without it. People forget that because it's too convenient to go to the corner store and buy a bottle of water. I still drink out of my tap. I still drink out of the creek that flows by my house. There's not much people down here that can say that.

You know the impacts to water — just thinking about that — the Fraser River is a prime example of abuse. Even with — I believe it — and I wasn't a leader at the time so I was getting the real quick up speed here, but I heard even the Fraser River was one of the protected areas. What an impact. Any decision made in granting permits that impact the Fraser River — because it was — even at Harper's level it was one of the things that needs — one of the water streams that needed to be protected. Yet, there are a lot of permits being granted that impact the Fraser River, which comes through every one of our communities and then flow — and the fish flow up the coast. So it's a big impact.

In our elders view, we should be consulted even though that we're not directly impacted, but indirectly it's a huge impact. So our elders have directed me to say, hopefully you will listen.

And I'll let Lynn complete. Thank you.

Unidentified Female: Thank you. Just a few points following up, you know, expanding a little bit on what Chief Bob has said. In terms of the current EA process, the way — you know, you have an approach to determine who is an interested party, in terms of who is directly affected. That really seems to be a huge problem.

So, following from this discussion about Fraser River and projects that are going on — you know, Kinder Morgan has been approved. You know, what happened with Mount Polley way further north. You know, Xaxli'p has been not involved in any way in these kinds of assessments, you know. So I think under the current process, you know, that's an example that how is the interested party going to be defined in a better way or who is directly affected. So just wanted to raise that. It's a problem.

Cumulative impacts, you know, we've heard all of the impacts in this territory. Definitely support the idea, it's been mentioned previously in another presentation about the regional strategic approach to assessment, absolutely that needs to come in.

Climate change assessments, I don't think I've heard anything today. What is — that's a huge, huge issue. Obviously going forward we know we have to address climate change. Really, it's a question for consideration how are we going to do that in the EA process, you know. Is there any thinking. I guess it is more of a question than a comment at this point, but how, you know, like to — you know, even here how — what is the thinking about how to integrate that into the process. So that's a huge one there.

We heard about land use planning from the Chief. So Xaxli'p has developed — they have a community forest for a huge portion of their territory and have developed very much an ecosystem-based plan. That's really integral for the community.

The concept of doing land use planning before environmental assessment, I think, is very key and defining things if a community or it could be at the nation level. So in this area, the St'at'imc Nation, is developing a land use plan for the whole nation that's going to be implemented and determining communities — you know, communities would determine no go zones, that kind of thing for developments. How do we bring that in, that's key. We see that being key, to look at that before, you know, before — you know, very early on right. So if that's been defined by communities it's really not open for consideration. So that would be a key shift.

A big one I want to talk about, we heard some presenters a little bit mention about monitoring, environmental monitoring, compliance enforcement. The idea of — well, of course, capacity. It links to that because I was going to probably end on that. We all need, you know, to build capacity. We need may more support, more resources to build capacity, training for everything, to do studies and so forth. But the monitoring piece is huge and we'd like to see communities being involved in that monitoring. So we would call that indigenous monitoring.

In fact, I don't know if you're aware but I'd like to raise — there is a national network, a new concept being put forward for — it's called an Indigenous Guardians Network. And work right now — or attempts right now are underway to various federal government departments to get that resourced at a fairly high level, like 500 million. That would be something we'd really like to see, you know, linking up, that communities can be involved in the monitoring.

I think I heard a comment earlier, you know, okay, we do an EA. It's done and what about the follow up. So this is going to be key for continuing on,

right. Like, the entire lifespan of any project, if a project does go forward and that, you know, there's consent. And, of course, we want to see consent and how that's going to be done. But if there is a project going forward we want to see that in place and we want to see it resourced and we want to see communities doing that monitoring. So that's key. So we hope you will look into that. I don't know what the role is in linking with some of these others initiatives, but how that could be — could link with the indigenous monitoring approach.

And I think that was it. Yeah, I think we've covered most of the points that we wanted to bring forward. Thank you.

Johanne Gélinas: Thank you very much, from both of you. When you're mentioning the indigenous monitoring is it something similar to the community-based monitoring program?

Unidentified Female: I know the term community-based monitoring. Are you saying that as a general concept or specific program when you say community-based monitoring? That's just concept, an approach.

Johanne Gélinas: The way it was presented to us is more communities being in charge of some aspects of the monitoring of their territory.

Unidentified Female: Mm'hmm. Yes, so this would very much be like that. Community-based monitoring, that's what we're talking about. We're just saying in this concept it's indigenous communities doing the monitoring and a network is being, you know — well it's actually launched. It's just needing to get it resourced so that all indigenous communities across the country could be doing the monitoring at every stage and, you know, integrating traditional knowledge in that too.

So monitoring in ways, you know, as we've heard other presenters talk about, not just sort of standard monitoring. And working, of course, with government and proponents in whatever way developing frameworks, but they be really involved not — I think I heard somewhere like a token environment monitor being hired, some presenter mentioned earlier this morning. You know, we're not talking — we're talking about like full on, right, full programs, communities resourced. We want to build that. That's something we want to embark upon and become part of this national network and really see that resource. So it would really tie into the new EA approach as we see it.

Darrel Bob: Just to respond, add a little bit more to that, just listening to the questions — we're already living it. In our community we're living it. We have range riders. They don't carry guns okay.

Unidentified Female: Yes that's right.

Darrel Bob: We have range riders that go out and ride the ranges to drive cattle out, to kick out motor bikes, to kick our four wheelers, all these. There is no machines, motor bikes allowed in our territory. Absolutely not. The range rider responsibility is to do that. We patrol the lands ourselves. We finance it ourselves, no matter how we do it. So that's — it's already — for us, it's already working. We're so small we have that ability to do so. And we will continue to do so. But at the same time, the struggle is, again, finances. But it doesn't matter.

Johanne Gélinas: Thank you. If you can point us to any information related to the indigenous monitoring network we will appreciate it.

Unidentified Female: Yes.

Johanne Gélinas: Because it's the first time we hear about it.

Unidentified Female: Okay. I will definitely — we'll include that in the submission.

Johanne Gélinas: Thank you.

Unidentified Female: All right.

Renée Pelletier: Just to pick up on your comments around the — determining what communities are impacted. That is something we've heard kind of across the country with criticism of what is seemingly kind of a random approach of just drawing a circle on a map and contacting the communities within it. Do you have a solution to that? Like, when there is a project that is proposed, who should get consulted? How do we recommend to the government that they know who to contact?

Darrell Bob: Well, it's nation to nation, right. So we have to work with Canada, not the province, Canada. Nation to nation. Again, going back to the comment I made earlier about treaties, you can't — a community is not a nation. A community is a community. A nation is St'at'imc. So the whole of St'at'imc needs to be —

Doug Horswill: Yeah, I'd like to understand a little bit more of what your elders would like us to take from Mount Polley, but to be able to understand your answer — could you tell us where your territory is geographically in relation to Mount Polley?

Darrell Bob: It's about — gees, water wise — I could tell you drive, two and a half hours. But the major — this is the impact, it's the biggest wild salmon run that's been impacted by the Mount Polley spill. You know, thinking about how enormous that spill was and they're still dumping. It's crazy. Who gives that — who gives that company the right? And all of the people in this room aren't going to see nothing. The children that are coming aren't going to see nothing. So Mount Polley isn't far from us.

And just to be very direct, and I make it very blunt, that we are pursuing a legal action against all involved. The biggest question I have is where was DFO. The biggest joke running was as soon as Mount Polley happened DFO locked the doors and took off. This is the system we're in.

Our elders have the knowledge to protect the territories. Like, this range riding, that was developed by our elders. They said we need — we have (Speaking Native Language) which is known as a watchman. We're doing it now on the Fraser River in our territory. We're very small. So what we do now is we send (Speaking Native Language) down to the rivers. We do not allow boats, anything into the — into our area. If you want to fish, you're either walking down a mile down the hill and a mile up, or horse back. That's it.

So Mount Polley is a big impact and it's really bad. Our elders have just said let them have it.

Johanne Gélinas: Rod?

Rodney Northey: I actually just wanted to — you asked about the climate issue, I just want to confirm a couple things. Our mandate expressly requires us to deal with it. We've heard a lot of submissions about a climate test. That doesn't mean I can tell you today what our answer is, but we are asked to deal with that expressly so we will be. And secondly, the monitoring point that you were making at the end, that's also expressly part of our mandate. So we are hearing a lot of submissions. We have to write a report and we have to consider all the submissions. But those are certainly squarely in our mandate.

Unidentified Female: Okay.

Johanne Gélinas: Thank you very much. Thank you very much for your presentation. We'll take a break. It's 3:00 so at 3:15 we have four more presentations to hear from.

Darrell Bob: Is it 3:00 now?

Johanne Gélinas: Yes it is.

Darrell Bob: Okay. I'm on now, at 3:00. I'm just warming up, my dear.

(Laughter).

Johanne Gélinas: That's a good one. Thank you.

(BREAK)

Johanne Gélinas: Please have a seat. We'll continue. May I ask you to take your seats so that we can continue?

So the next presentation will be made by Chris Tollefson and Anthony Ho and Chad Day.

Chris Tollefson: Good afternoon.

Johanne Gélinas: Good afternoon, gentlemen. I think you know how that works so I leave it to you to make the presentation.

CHRIS TOLLEFSON, CHAD DAY AND ANTHONY HO, TAHLTAN CENTRAL GOVERNMENT

Chris Tollefson: Thank you, Madam Chair, members of the panel. I am here to introduce Mr. Chad Day who is the president of the Tahltan Central Government, who will be carrying the bulk of the presentation this afternoon. He was one of the co-authors of this report along with my other colleague Mr. Anthony Ho. And we're proud to say that both of them are recent graduates of the Faculty of Law at the University of Victoria program of a couple years ago.

I also want to recognize Ms Nalaine Morin who is a co-author of this report. And she will be addressing you a bit later this afternoon. In fact, panellist Northey raised an issue relating to indigenous knowledge and I believe Ms Moran has some answers on that topic.

So, with that, I will pass it over to Mr. Day. He will provide you with an overview of the Tahltan Nation history, the territory and some of the environmental and resource related issues and challenges they are facing and then I will offer some comments on the reform process.

Rodney Northey: So we better get the mics working here. Did you catch any of that yet? Okay.

Chad Day: Chad Norman Day, (Speaking Native Language). My name is Chad Norman Day. I am Tahltan. I live in Telegraph Creek. I am from the Raven Clan and my great, great grandmother is a Nahanni. That's how we represent ourselves back home.

I want to acknowledge where we are today in the territory of the Coast Salish Peoples and my birth place. It always wonderful to be back here in the land of the Tsleil-Waututh, Musqueam and the Squamish People.

I want to thank the Panel for this opportunity and I just also want to acknowledge that I am here with Nalaine. We're both pro clan. We both wore our red vests. I swear you didn't plan it that way but —

(Laughter).

Pretty awesome either way.

I'll just start off by sharing some information about our homeland in the Tahltan Nation. As you can see up on the screen here, it's a large territory. We assert Tahltan rights and title over approximately 93,000 square kilometres in British Columbia. It's about the same land base as Portugal. And it's 11 percent of British Columbia.

It hugs the US border there with Alaska. The northern tip goes into the Yukon as you can see. We have three communities back home. We have the communities of Telegraph Creek, Dease Lake and Iskut. Our nation is about 5,000 strong; 80 percent of that 5,000 live outside of the territory. We have two bands back home. We have the Tahltan Band and the Iskut Bands and then we have the Central Government.

The mandate of the Central Government, which has been around since about 1975, has been to basically represent the Tahltan Nation on territorial issues that impact the collective rights and title of the Tahltan People.

I'm the President of the Tahltan Central Government. I've been in this role for about three years.

You know, back home we have a vast wilderness. We only have one major highway that cuts through. That's Highway 37. With that vast wilderness we have, you know, some of the best hunting in the province. We have large populations of grizzly bears, stone sheep, moose, caribou; all of the iconic animals that you can think of in Northern British Columbia.

We also have the Stikine Canyon. A lot of Canadian's don't realize the Stikine Canyon is the Grand Canyon of Canada and that still has a thriving salmon population that sustains our people. You know, the people back home still hunt and fish a lot, and the salmon and primarily the moose meat, still make up the majority of the protein for our local people back home. So it's a very special place.

You know, outside of the cultural pieces that I just mentioned, one thing that the Tahltan Nation is best known for it's obsidian from Mount Edziza. Our people, we can trace it back at least 8,000 years, have been mining obsidian from Mount Edziza. And that obsidian has been found in South American so it was obviously used along many trade routes years ago.

You know, mining continues to be a huge part of the Tahltan Nation. It's been the main part of our economy since I've been alive, in 30 years. And I'm sure that it was the main part of the economy 30 years before that. We had mines such as — I'll just look at the list here — Eskay, Johnny Mountain, we had Golden Bear and we've had jade mining up there for decades.

Currently, you still have one third of the mine exploration in the province takes place within our territory. So when we talk — when we come to an event like this and we talk about permitting processes we are intricately involved with that.

You know, back in 2005, the Tahltan Nation was involved with six major EA processes for six projects that could have enormous impacts on our traditional rights and title. Some of those projects went through and are not operating. Some of them are hanging in the balance as we wait for the — well, for mineral prices to bounce back I suppose.

In response back in 2005, the leadership of the day which was led by Curtis Rattray and a team, created the Tahltan Heritage Environmental Assessment Team — Resources Environmental Assessment Team. THREAT for short. That's why it's great to be joined here by Nalaine here today because she was a huge part of that. She was the lead on that. She continues to be a huge part of the THREAT team.

This was a team made up of Tahltan and non-Tahltan experts. They advocate for the Tahltan Nation, for the Tahltan Government. They bring Tahltan knowledge together with scientific knowledge. They advocate for our people. They bring that expertise and it makes a huge difference when you have, you know, your own people coming back to inform your membership about what's happening in the territory.

It's important for me to make a distinction between traditional knowledge and Tahltan knowledge. We are very stern on the fact that we call it Tahltan knowledge not traditional knowledge, because we recognize that today, that our people and our communities continue to grow, to build on that knowledge. There is many examples, particularly with global warming and the impacts that it's having on our wildlife populations where the local knowledge of today never would have been known by our elders in previous years.

We have elk that are moving into our territory now. We have grizzly populations that are getting a bit out of control near our communities. These are issues that Tahltan knowledge covers but maybe traditionally it would have been different.

You know, before I pass it off to Chris I'll just say that, today, we're in a very different environment in the Tahltan Territory since we went through the process in the — Northwest Transmission Line was built in our territory. Now that you have the Northwest Transmission Line there it makes a lot of projects economical viable that maybe wouldn't have been in the past.

We have active projects in the territory. AltaGas is run-of-river — or is obviously a major company and they have three run-of-river projects in our territory that are operating now. We have Red Chris which is an operating mine. Then we have the Brucejack Project that impacts our southern territory and the Silvertip Project that's located in our northern territory and several other pending projects.

I'll let Chris take over from here. I'm very happy to be here and look forward to taking your questions later on.

Chris Tollefson: So the lessons that have been learned from these EAs, and, in particular, in this intensive period of development during the early 2000s, I think the lessons are summarized at page 8 in the submission. Essentially they distil down to this, that a project by project approach to making important decisions that lock in pathways to the future is not the way that decisions in Tahltan Territory should be made going forward.

THREAT has, I think, worked hard to make a project by project approach work, but, in the end, it is not the way to protect the land-base going forward. And so it's actually very opportune now that we're in a bit of a hiatus in terms of development. It's actually a very opportune moment for us to consider new approaches to fundamentally, in fact, revisit how environmental assessment is done in Tahltan Territory, and, in fact, across Canada. I think an important platform for thinking about how to do that is the UN Declaration of the Right of Indigenous Peoples and, in particular, the concept of FPICK.

In our submission, it provides a flexible, a fair, and, in fact, quite a visionary approach to chart the road to the future. Yet, I think aligns very much with the approach that Tahltan would like to see going forward.

I think I'd like to just, in closing, sketch out the principles that the Tahltan think should be embedded in an environmental approach for the future. Firstly, it must be an approach that operates on a nation to nation footing. Tahltan are a nation. They are ready to step up and have demonstrated a capacity and vision to step up and to play that role.

The approach must also be one that engages early with the Tahltan Nation and allows for the nation to properly and thoroughly consider proposals about developments in the territory.

Thirdly, it must be an approach that looks at the whole territory as a region, as an ecosystem, as a territorial unit. And, for that reason, as you've heard from other submitters, regional assessments and strategic assessments, I think, are a good fit in Tahltan Territory.

Fourthly, it needs to be an approach that builds, in a robust way, on Tahltan knowledge. On the knowledge that is there, both traditional and current day knowledge about the territory. And it needs to be as well an approach that builds on cutting edge science, as we talked about yesterday. The very best science needs to be brought to the table.

And then, finally, and I think this is perhaps an opportunity that uniquely presents in Tahltan Territory, there is an opportunity here to engage in cutting edge cumulative effects assessment that looks at the whole picture on a regional basis, on an inter-temporary and inter-generational basis. Looking at all of the opportunities and potential impacts going forward that can impact this territory so that this — the people here can make decisions about how they want the territory to unfold for generations to come.

So, this is, I think, a very timely moment for the committee to be weighting in on this. And we welcome your questions. Thank you very much for letting us present.

Johanne Gélinas: Thank you very much to the three of you and Nalaine. Questions?

Rodney Northey: Sure. Let me just go back because I was going to ask, Mr. Day, I think, I just want to catch up to my notes here for just one second. So, just starting with the idea of — let's say it's a regional assessment framework for the territory and the idea of working together. Do you see that as a — is that a tripartite arrangement? Have you got a sense of how that works from your end? Is it more jurisdictions than three? Is it three? Is it dual? Federal? I'm just — what's the sense of a starting point for a regional EA? Is it led by you with other subsidiary? What's the model you want to suggest we think about?

Chad Day: Well, obviously it depends on the project. I mean, the constitution, some of our processes involve only the provincial government, some of them involve the federal. I think that right now we have a shared decision-making agreement with the province but it's not adequate. It provides process certainty for the province when they're dealing with us and I think, you know, to go higher level and to build something where we have more involvement from the federal government when they're supposed to be involved, because we've had some issues there as well. I think that would make sense to do something with the tripartite.

But, at the end of the day, I would have to go back to, you know, our environmental assessment team and talk to them about the ins and outs and if that would make the most sense on all parts of our territory. But we are hugging Alaska so it's very important that the feds are involved.

Rodney Northey: That's why I was just — okay, could you go back to that map? We actually heard a submission — when I look at where you are — we heard directly from the US side, from an ENGO, speaking about the watershed issues with the boundary, not respecting watersheds. I see in red, looks like watershed flowing north. But what I'm — I think — we hearing a great deal about the watershed flowing west. Is it fair to say from that red line that's in the middle, the territory west, we have the — a different flow pattern going out to the coast or where does the flow — where is the boundary?

Chad Day: Yeah. I mean, the Stikine River flows in Alaska as does the Unuk River and those are the — you know, I hear a lot of concerns from Alaska on those two rivers specifically.

Rodney Northey: About mines in particular in your territory. So can you comment of where — it was unusual to hear from somebody from another country complaining about mines in our country. They're in your territory. Can you give us any perspective on those mines?

Chad Day: Well, we're hearing the most concerns about the KSM Project by Seabridge; that they're proposing. It's going to be an enormous project. One of the biggest in BC, if that mine ever goes ahead. And, of course, after Mount Polley there is a lot of concerns from Alaska who probably isn't going to see many of the benefits that British Columbians are going to see with the mine that size. They don't want to see, you know, a tailings breach and have it cause detrimental impacts to the Unuk River and who knows what else could happen if that dam ever breaches looking forward.

As far as a perspective, I don't go into Alaska right now. We're not at a stage where we are confident something like that is going to proceed. But once we got to that kind of a stage I'm sure we would be meeting with Alaska more often.

Rodney Northey: Thank you.

Johanne Gélina: Have you put some thoughts on what a regional assessment may look like and looked at?

Chad Day: This is why I'm so happy that Nalaine is in the room, is because I don't pretend to be an expert on all of these things.

Johanne Gélinas: You can invite her to the table if you want her to respond or we can wait for later.

Chad Day: Yeah, it would definitely be a team discussion and I don't have a big draft for you guys right now.

Johanne Gélinas: Usually my colleagues will say that I give homework, so if you want to put some thoughts on that and let us know if there was to be a regional assessment how it should look and what it should cover.

Chad Day: A good professor of mine once said that if somebody asks you a question and you don't know the answer just say I was just getting to that and then pray they don't ask again.

(Laughter)

Renée Pelletier: Okay. I'm just trying to focus my thoughts. I'm really fascinated by this THREAT concept that you have. Maybe I'll start with, I feel like you are possibly in the unique situation of being able to really kind of run your own environmental assessment. Am I reading too much into this? I mean, it sounds like this organization is — you guys could do EA. Is that right?

Chad Day: Yeah, I'm sure with adequate funding and an agreement in place that we could do that. Because we have the high level capacity of people like Nalaine where we don't have Tahltan's that are able to fulfill a role of a hydrologist or some kind of a wildlife specialist, then we go out and we hire our own people, or, you know, non-Tahltan experts. It's worked wonderfully. So I definitely think we would be in an excellent position to do that because we have the capacity and we have the credibility with the province, because we've worked through these processes so well with THREAT and with the leadership.

One thing about the Tahltan Nation is that our leadership is very well organized. Our people are bought into the fact that we are the Central Government. I am the spokesman. We work closely with our bands and we share the benefits together and we do a really good job consulting the local leaders and Tahltan's everywhere. So I think we're in a very unique position to run with this and we would welcome that opportunity.

Renée Pelletier: So is that, in an ideal world, where you would like to see EA go? I mean, we talk about implementing UNDRIP and nation to nation relationships, is that sort of the answer for you, that you would run EA in your territory or do you see, imagine a project that has federal interest, provincial interest and Tahltan interest? Is it three different processes, three different decisions? I don't know if you've thought about those kinds of details but I've loved to get your thoughts on how to get to that nation to nation relationship within environmental assessment.

Chad Day: Yeah, I won't be able to go into big details about it, but, I think, you know, overall when we talk about the regulatory process and stuff like this — I'm working very closely with wildlife right now. We definitely want to get to a place where it's not just shared decision-making and government to government and all these things that sound good, but we should really get to a place where we're co-managing with the feds and with the province. And if you do that, then you're going to have buy-in from the First Nations. And if you have buy-in from the First Nations it's going to — I mean, just being involved every step of the way it's going to build a lot of trust. It's going to build a lot of certainty. I mean, I hope that one day with a consent-based regime that it'll be very straightforward. Either we're partners with the governments in trying to push a project through in a good safe way for the environment or, you know, it's just off the table.

We're lucky in Tahltan Territory because our territory is so big that, you know, there is always probably going to be a project that we can work with. And we've certainly done our part to be a huge economic driver for BC and Canada as a whole with the projects that have come through our territory in the last 80 years. Yeah.

Renée Pelletier: Thank you.

Doug Horswill: I think just to clarify for my colleagues' benefit — I think that red line in the map is actually a highway, right? Is that Highway 37?

Chad Day: Yes. Yeah it is.

Doug Horswill: So the red line isn't a river.

Rodney Northey: Thank you.

Doug Horswill: The river is going — the rivers are going to the other way.

Rodney Northey: I thought there was something very odd about it. And then there was some puzzlement over here. So you have clarified that. Thank you.

Doug Horswill: Could you talk a little bit about impact benefit agreements and their place in your thinking around assessment and your relationship with proponents?

Chad Day: With environmental assessments?

Doug Horswill: Yeah, with project approval, effectively. I guess one element would be as an accommodation tool between the proponent and the Tahltan Nation, but any other views you have on how they work and are they effective and so and so forth?

Chad Day: Well, I guess I would start by saying that all of our modern day IBAs in the last decade all have components where the Tahltan Nation is very involved with the environmental side of things to make sure that we're constantly being informed and, you know, have a decision-making body and have representation on those bodies to make sure that we're mitigating the environmental risks and we're involved, and our people are informed. So that's one positive with an IBA. Obviously with the evolutions in the law to ensure that our people get more economic benefits, and otherwise, from IBAs, is a positive thing.

You know, we had Eskay Creek come through our territory which one of the highest grade gold mines in the world at the time. You know we got a couple rec centres and stuff like that. Nowadays if that mine came through it would have been worth hundreds of millions of dollars to our nation which really could have obviously been a big boost to our future generations and stuff like that.

I'm certainly happy that I'm in a position today where I have the ability to work with our people to benefit more from the economic benefits from these companies and to share in the tax revenue from the province and all of these basic things that have evolved through that law. But, you know, there's still a lot of work to do and we're going to keep pushing.

Johanne Gélinas: Thank you very much for your presentation.

Chad Day: Thank you.

Johanne Gélinas: Our next presenter is Tamlyn Botel.

TAMLYN BOTEL, CITXW NLAKA'PAMUX ASSEMBLY

Tamlyn Botel: Good afternoon. Thank you for your time and consideration. I would also like to give thanks to the Musqueam, Squamish and Tsleil-Waututh People who are hosting us today. My name is Tamlyn Botel and I am here with the Citxw Nlaka'pamux Assembly. I am also joined by Nalaine Morin who is my advisor, and Wayne Kaboni who is the manager of the CNA.

The CNA, it's an assembly of eight Citxw Nlaka'pamux Bands who have come together to implement an impacts benefit agreement with Highland Valley Copper. Within the CNA is the territorial stewardship department which was a form to implement the environmental aspects of the agreement and essentially is a technical resource to our eight communities. And it's really key that the TSU works collaboratively with the mine to manage risks associated with the mine and to engage in long term planning that respects our values and our interests.

So, myself, I'm an Nlaka'pamux Nation Member. I'm a youth of my nation. To put into perspective, I was born the year that CEAA was developed for

Canada. I have a bachelor of science in biology and environmental studies from the University of Victoria and I have been the lead of the Territorial Stewardship Department from October 2015.

So for the purposes of this review, it was really important that we sat down with our decision-makers, our knowledge holders and our elders to have a discussion about CEAA and really let them form what this review look like and what they wanted us to bring to the table today. We had four sessions; three with general community members and then one elders' session. We did also make a presentation to our eight chiefs after those sessions.

So participation in these sessions was nine out of the 15 Nlaka'pamux Bands. So our eight CNA Bands and one band that acts independently. It's really key to note that this isn't representative of the nation, this was just — the timeframe was super short and this is just a snapshot of what a full review would really look like.

So through those four sessions there was a really strong notion of our decision-making that were carried throughout all of these sessions. I think it really reflects on one of the questions that yourselves have posed around the renewing of the nation to nation relationship. A key thing that came out of these sessions was that the nation to nation relationship is only possible if full recognition of our decision-making authority as a nation. Our decisions have to hold weight in this process. I think that decision-making can be reflected in various stages throughout environmental assessment. I'll speak to those later.

I think, also, throughout those four sessions a lot of what was talked about really reflects UNDRIP as well as FPICK which I'll speak to a little bit later.

These are just general slides about UNDRIP but I think a key one is Article 18. So we have the right to participate in decision-making matters which affect our rights in accordance with our own procedures.

So it's key to note that we've always had a governance system. Indigenous people have always had a governance system. And a key component of that is the management of our (Speaking Native Language), our land. A key thing that came out of that management was the assurance that we would forever be able to carry out who we are on the land, a sustainability of who we are.

Through this long term engagement and management of our land, we're not only on the land, we have become a part of the land. We are actively managing the land and our part of the landscape and that is something that our elders really wanted us to stress: we are the land.

Now I'm going to speak to these stages in an environmental assessment where our decision-making authority should come into play. The first section I'm going to talk about early engagement. The project description right now is kind of a back and forth between proponent and the feds but that should really be a three-way discussion and we should be reviewing that collaboratively together. And I would say engagement should probably happen even before this, as soon as possible. And it shouldn't be the RDPA alone or the minister that determine if an EA is required. That should be something that's collaboratively done.

And this is a really good one. This was stressed across all the sessions. The engagement that happens, it really needs to be culturally appropriate. It's not enough to send 17 binders to us and say what do you think. We're a people based on relationship and reciprocity and that needs to be reflected in this process because that's who are, that's how we engage.

And, of course, the scope of factors to be considered in an EA should be developed collaboratively and CEAA 2012 currently does not provide for that collaboration.

If you're going to achieve a nation to nation relationship, then discussions around things like a substitution really needs to, you know, come in to play between the feds and the First Nation. The same can be said for referral to a panel for review.

The engagement and participation in this process has to be unrestricted. It can't be, you know, selected community engagement meetings here and there. We really have to be entrenched in this process.

So this reflects back to pre-2012 CEAA where there was language around considering the need for a project as well as its alternatives. If you're wanting to achieve FPICK, you can really only achieve the I in FPICK with including this information.

And, of course, impacts need to be discussed collaboratively between the nation and the feds, because, in our perspective, proximity doesn't always mean you're going to be the most affected and distance away doesn't mean you're going to be the least affected. Our fish speak to that. Our salmon speak to that.

Intergenerational learning is key and it should be reflected in the process. So we're all about passing the knowledge down. So something that may seem like a quick email or a quick back and forth to the feds, for us, could be, you know, a sit down discussion with our youth, with our elders and everyone in between. I think this also speaks to the capacity piece about how communities have to relearn almost each time an EA comes through. You know, we have it built into who we are to always pass that knowledge down and have that continuity.

So decision-making, right now there's not transparency in the cabinets decisions around what a justifiable impact is. When you think about the legacy of some of these projects, the project I work on I may never even see the proclaimed mine site in my lifetime. So we have to be really honest with ourself about impacts and justification for that.

I mean, also, for the record, the Canadian Federal Government does not have any expertise or capacity to assess impacts to aboriginal rights, so why are they making that decision?

And if a project moves forward we should have some say in what the conditions look like. That should be collaborative as well.

This was a big one: there needs to be an option to say no.

So, in conclusion, for UNDRIP to be realized our decision-making processes and authority needs to be built in to the process and it's our right to arrive at a decision in a way that we see fit and no has to be an option.

(Speaking Native Language). Thank you.

Johanne Gélinas: Thank you very much. You want to go?

Renée Pelletier: Sure. So thank you. Wela'lin for the presentation. I wanted to just pick up on your last comment about your governance systems being integrated into the environmental assessment process. I don't know if you've given thoughts into the specific details of what that looks like but I would love to hear it if you have, because that is kind of my big question, how we do that?

Nalaine Morin: So I think there's been a few models that have been explored around that. I know in BC that there are efforts moving towards things like reconciliation, so seeing both governments sort of work together towards decision-making. But, I think, as indigenous people, and I'll talk a little bit more about it when I speak about — during my presentation — the uncertainty with regards to some of the decisions that have been made here really make it difficult for us to actively and meaningfully participate in this process. So really the decision-making is sort of happening in absence of our decision-making. I think in order to get to a place where we are collaboratively decision-making, a lot of the trust needs to be — trust issues need to be overcome, right. I'm sure over your tour you've heard people speak about things like transparency, things like trust, respect, right. And I think that that is something that continuously seems to be absent from these processes.

Doug Horswill: On the early engagement notion, you talk here about the project description being review collaboratively but then you made a slight mention to maybe even earlier. We have heard in previous consultations, previous cities the notion that there should be something well ahead of project descriptions, because they're often

at a point where a company has committed directions and money and design. Have you given any thought to that sort of notion, a pre pre-planning type approach where maybe some kind of working group or whatever could scope out what matters to the people to whom it matters? Have you thought about how that might work?

Tamlyn Botel: I think a key thing is proponents who are looking to come into the territory and do business they need to recognize, you know, where they are and who they are dealing with. They have to be ready to come into this already forming a relationship before we even go into an EA. It's kind of a marriage of sorts when you're thinking about the longevity of these projects. There has to be that willingness to come together and do the work.

Doug Horswill: Have you examples where that has in fact occurred?

Wayne Kaboni: I think one of the concepts that the elders talked about when we were at our elders' round table, was everything is circular. You need to get — when they talk about the Coquihalla — how the river used to flow and fish used to flow in the cold water — they never looked at — the people that made the decision around Coquihalla being constructed didn't look at the impacts at water levels and fish would have to the people, the Nlaka'pamux People within the Nicola Valley. One of things that they're doing now is that they're having discussions around how do we engage circularly. So how do we record and manage that history.

The organization we represent are starting to collaboratively work together. We're working with the ninth community of the 15. The example that they're using is that we're trying to get a better understanding of that circular cycle. So when we talk about EAs it's just not about one seasons, it's about multiple seasons. The salmon run in great volumes every four years; the migration patterns of animals; the temperatures of the water and the water levels.

The examples that we have is just a history, the observations that elders have made and disclosed to us, in terms of how they want to proceed moving forward, in terms of — you know, as Tamlyn said, if you want to get an understanding you come and you've got to live and breath the way we are attached to the land, how we perceive the land.

Johanne Gélinas: Maybe it's similar to the question that Renée asked, but what do you think about joint review, where you would be a party of the joint review?

Nalaine Morin: Sorry, can you just provide a little bit more context?

Johanne Gélinas: Renée asked her question and I'm not sure if — I was expecting a difference answer. Let's say it that way. So I'm trying differently with my question — what you would —

Nalaine Morin: Okay.

Johanne G  linas: How you will receive the idea of having a joint review panel which will be tripartite, so including yourself?

Nalaine Morin: I would advocate for that if the points we had raised earlier, about overcoming the trust —

Johanne G  linas: Okay.

Nalaine Morin: — respect issues, if there is some certainty that the decision-making brought forward by the indigenous government is part of the overall process, right.

Johanne G  linas: And when you talk about substitution you would like a nation to nation discussion, so between yourself and the federal government before a decision is made to go with the substitution for a project? Am I correct saying that?

Nalaine Morin: Well, I think that the decision-making on substitution — and I can talk a little bit about that a little bit later on, because we have an example of that in Tahltan Territory. But I think it needs to be a joint decision, right.

Johanne G  linas: Okay.

Nalaine Morin: Right. That's what I think.

Rodney Northey: Can I just clarify though, I think we are getting confused — joint can mean two, it can mean more. I think the question you're raising is BC signing agreement with Canada, a joint agreement without your participation.

Nalaine Morin: Yes.

Rodney Northey: I think the Chair and you're advocating for having participating in that kind of joint. We're sitting here wondering if joint means you do a substitution agreement with the feds and so the feds don't participate in your territory.

Nalaine Morin: Again, I think that that is a model that needs to be explored.

Rodney Northey: Right. Okay. That's all — that's what —

Nalaine Morin: So I know that there a number of different models that are out there.

Rodney Northey: Right. Okay.

Nalaine Morin: I know that we've experienced ones where it's the provincial and the feds.

Rodney Northey: And you're out of it?

Nalaine Morin: And we're almost out it, right. Like there's, you know, our participation, consideration of our information, but a lot of the decision-making doesn't include us which is part of the reason why there is a lot of hesitation, there is a lot of what you're seeing in the courts, right. We just want to get away from that.

Rodney Northey: Sorry — oh, Chair is —

Johanne Gélinas: No, no. Go, I was —

Rodney Northey: I'm sorry. The one question I do want to confirm is some people think the idea of substitution, full stop, is misconceived because the jurisdictions do not overlap so significantly everyone has an essential role. So it's either duo or trio as opposed to single. So the question I'm going to ask you is: do you think that substitution as an approach is a way forward, or do you want something more like collaborative and harmonized? Do you know what I mean? Because substitution means take one out of pick the play.

Nalaine Morin: Right.

Rodney Northey: Okay.

Nalaine Morin: I think harmonization earlier on is an important factor. I mean, I think right now when we look at some of the situations that are occurring — we have one project right now in Tahltan Territory that has been — a project description has been accepted by CEAA and what isn't clear is — it's a hydro project. There is not call for power in BC, right. There is no consultation with the Tahltan. So it's really unclear as to why CEAA is pursuing or moving ahead with this project with some very clear factors that are missing, right.

So I think the idea that governments would be working together to answer that question, which includes things like cumulative effects, land use, those sorts of things, prior to looking at an individual project needs to be considered, right.

Johanne Gélinas: Thank you very much. You will have the chance to pursue it, Ms Morin, later on. Thank you, for the three of you for your presentation.

Rodney Northey: Are you going to move chairs just so you get over here so we can —

(Laughter)

Anyway, thank you very much.

Johanne Gélinas: So ladies and gentlemen, Nalaine Morin is our next presenter.

(Laughter)

So good afternoon. Welcome.

(Laughter)

NALAINÉ MORIN, ARROWBLADE CONSULTING SERVICES

Nalainé Morin: I just wanted to say a few things before I got started. I also want to acknowledge the territory of the First Nations of which we are currently having this discussion today. I am here on behalf of a number of different nations of which I am truly honoured to have that responsibility.

I, myself, have been involved in the environmental assessment process now for a number of years and was involved in managing a number of environmental assessments in Tahltan Territory as well as participating in a panel hearing or in a panel in Williams Lake for the Prosperity Project.

So when thinking about what to speak to yourselves today about, I think you've heard a little bit of my voice in the last two presentations but now I really want to talk about the experiences of the First Nations that I've been involved or I've had the opportunity to work with.

You know, a key one for me is my own nation, and I think Chad and Chris did an eloquent job of describing some of what we've been involved in reviewing and what we've experienced through the environmental assessment. We have, through that process, learned a lot about the importance of our information, our knowledge, our participation in some level of decision-making with regards to any sort of project development in our territory.

Sorry, I'm just going to put the whole list up there.

Just to speak a little bit about myself, again, I'm currently involved in a number of boards. I had an opportunity to be involved in the Tailings Advisory Committee for the Mining Association of Canada. Worked, again, on the Prosperity CEAA Panel, but also involved in federal EA processes on a number of large projects, both in province of BC and in Ontario. I haven't listed the Ontario project here.

Through this, one of the things that we learned or what we've developed with the Tahltan Nation was, again, the technical advisory panel. We did a lot with that group, with THREAT, in terms of really identifying and valuing our knowledge and putting it up against or parallel to western science. And I truly believe that one needs to inform the other or that our indigenous knowledge should form the basis of what an environmental assessment application should look like, right.

Once we form that foundation, the scope, then supplementing or including the western knowledge will really help us to identify what a baseline looks like without interpreting or making assumptions. Because, you know, quite often when we're doing the collection of scientific information, while it follows standards, we're still making assumptions because we're not continuously on the land.

I'm sure over your tour one of the things that you've heard, and I will echo, is that indigenous people can say that one of the things that, you know, is part of who we are is our continuous occupation of the land, right. So I think it's really to our own detriment and a detriment to this process not to recognize that.

I forgot the Arctos Project. That's an interesting one as well. Oh Kutcho Creek.

So I wanted to focus a little bit — the presentation by including one of the questions that yourselves identified, right. So what is the role of indigenous people, public, government, environmental organizations, in an environmental assessment process? What role do we all play?

What I'm presenting to you on the slides — I also worked with Tamlyn on the community meetings — is a representation of the words that we heard in the community meetings. Myself as a practitioner will speak to some of the experiences, but one of the things that we wanted to make sure that we provided to yourselves is an understanding from the community level what's involved in an EA and what are some of the things that they would like to see.

So earlier on we spoke a little bit about the importance of maybe doing pre-assessment type work understanding prior to, you know, a proponent or a project entering into the environmental assessment process, what may potentially be involved in a project. I strongly believe that that is something that we should be considering because I think being able to identify much earlier on what potential impacts could be, that could result in a number of risks, not only to the project but to all involved, would really help to identify, shape what the scope of a review could look like.

And if I could provide a specific example, I worked for a short time on the Ajax project which is in the environmental assessment process. By the time we got the project to look at most of the project components were already outlined. One area that was particularly contentious was the pit itself because there were significant heritage resources for the First Nations in the middle of the pit. So, you know, had that discussion been had prior to entering the process, instead of after the fact through multiple layers, levels of consultation, it might have really assisted in what that project could look like. And that's only my interpretation of it. I'm not involved in it anymore and I don't — you know, I don't speak for the First Nations, but I just bring that to your attention as an example.

One that's a little bit closer to us, or to me, is the Galore Creek Project. So much earlier on in scoping we're looking at potential transportation corridors for the concentrate. And because we were able to be involved in those discussions at the design and planning stages, we were able to eliminate options that we knew straight off would be impactful to the Tahltan Nation. They were looking at the possibility of using the Stikine River, which is a lifeline for the Tahltan, as a means of transporting concentrate. And so our first response to that is no, like don't even look at it. It's not an option. The impacts to our values, our way of life, our rights is too great for that to even be considered, right.

The reason why it's important for us to have these conversations is these are our — a number of the questions that we asked ourselves, right. Things like what are the potential losses of livelihood, losses of employment, aboriginal rights, impacts to aboriginal rights, ecosystem impacts and social impacts. So you can see that there is an overlap there between what would be indigenous or local knowledge and science. These are some of the things that we're thinking about, right. And cultural impacts.

For us, for myself as a practitioner, who is Tahltan first, you know, metallurgical engineer second, these are the kinds of things that we need to understand when we participate in a review of a project. These are the kinds of words that we get from our decision-makers.

I mean, I was speaking to one elder about a project — actually, I think it was the Arctos Project when it was in the environmental assessment, and he said to me, understanding that that project would involve removing a substantial amount of Mount Klappan — that project has since been stayed so we don't have to speak a whole bunch about it — what he said to me, based on his understanding, you see those mountains over there, the snow pack on them feeds our rivers and lakes. What do we do if the mountain is gone? Where will the waters from our streams come from, right. So these are the kinds of questions that they ask themselves or we ask ourselves when we start to pursue or look at what a project might look like in impacts to our way of life.

So, some of the things to be considered, in terms of the collection, understanding of indigenous knowledge, an understanding needs to be developed much earlier on in the process. And that can happen during scoping. So there needs to be some rigor involved. And I think that, for the most part, you will get participation, but there is a reluctance to do that without an understanding that the information that people are providing to you, their indigenous knowledge, is being considered and respected.

And so through my experience, one of the things that I have found is I haven't really come across a practitioner who has, you know, the — who

completely understands and can interpret what might be impacts to indigenous rights if they're not from that nation, if they're not that indigenous decision-maker, right.

I often come across, like when I do presentations or speak, how do I impart upon my audience the importance, the ultimate value, the connection that people have to the land? You know, it's one of those things that you struggle with because, you know, it's different for everybody. But, I mean, that's the place where we come from, right.

So when there is discussion, when there is requests for information without having that understanding of the importance, there's always a reluctance to share. And if decision-making — if someone outside of the nation is doing a review, an assessment of impacts to our rights, to my rights, I mean that person might not have understood how important the Stikine River is to Tahltan, right. But if you go and talk to a Tahltan they're going to tell you, right.

So we wanted to add just a little bit of information, some specific references to the act. Section 5.1 talks a little bit about the definition of effects. We think that that should be expanded because it's more than just effects to traditional activities or traditional uses, right. So we find that somewhat limiting.

Also, in Section 19.3 it talks about may include aboriginal knowledge. I think that it should be a must. I mean, I think before an actually review takes place, and we as practitioners sit down and do a scoping to determine whether or not an EIS or impact statement has the information that's been identified or what's required in the scoping, I think that one of the things that we should be asking ourselves is is it sufficiently — does it incorporate or include, you know, enough indigenous knowledge to assert to a standard, before we start to go through the assessment process. And I think that's part of the reason, too, why you see a number of First Nations now undertaking independent and parallel reviews, because we're consistently coming up short in what's this current process and our understanding and handling and respect for indigenous knowledge, indigenous governance participation, you know, in talking about indigenous knowledge.

One of the other projects that I would like to just identify for yourselves as well — and the process is the Prosperity Panel. You know, up in to this point we've been talking about the collection of knowledge. We haven't really talked about what that could potentially look like. One of the things that we must understand too is that, you know, indigenous knowledge comes in many different forms. When we went through the panel for Prosperity and to hear the words of the — (crying) — sorry — to hear the words of the Tsilhqot'in People, it still, to this day, resonates with me. And that's not something that you can get out of an application. It just, it's not there, right. I'll move on. Gee, it's not often I get emotional in these things.

So through the impact assessment, you know, one of the things that we also have to think about, too, is the time aspect, right. And I'm sure that it is something that you've heard quite a bit about through the process. You know, the timelines that quite often get associated with these things are — they're problematic when you're thinking about how information is collected, different types of decision-making, right.

I'm not going to spend a huge amount of time on this because I think I'm getting close to the end of my time, but I think I've covered this in some of the words that we've talked about today.

But I would like to talk a little bit about the follow up which seems to be something that's missing in the environmental assessment, the federal environmental assessment process. So once, you know, a project is certified, what happens next. How do we know that auditing and a review of the commitments that have been imposed upon the project — are they being met? Are they being followed through? Because quite often, we, as First Nations People, are not involved in that and I think that really needs to change.

So I always like to end with a quote. You know, it's important that we understand the land is part of who we are and it not only feeds us but it feeds our future generations as well. I think that's one of the reasons why you see people are standing up. Because, if I can go back to the presentation that we saw earlier today from Caleb and the effects of what decision-making has created there, it just — I think it's something that we need to revisit. And I'm really, really glad that Canada is doing this. (Speaking Native Language).

Johanne Gélinas: Thank you very much. I will take it on me to ask you two questions related to your role as a panel member, and feel free, if you feel uncomfortable to answer those questions, not to answer them. The first one is that we heard over and over and over that when indigenous communities bring information of any sort to the panel, at the end of the process they feel that they were totally ignored and not considered. You have been sitting on one of those podiums. Can you explain to us why it is such based on your own experience?

Nalaine Morin: So based on my experience with the Prosperity Panel, our terms of reference was quite clear in terms of what our mandate was. I think that the other thing to consider as well was the breadth of experience that sat on that particular panel. So between the experts that were there, I think one of the things that we made a point of addressing, because it was a mandate, was all of the information that we heard.

I have limited experience with Gateway and others so I'm not entirely sure what happened at those ones but all I can speak from is the experience that I had on Prosperity and I, myself, from that experience am a strong advocate for the

idea that, you know, there is that level of decision-making involved that includes, you know, an indigenous expert, right.

Johanne Gélinas: And that's a good segue for my second question. What will be according to you the best approach to have on each panel an indigenous person who will represent the indigenous community?

Nalaine Morin: I think that that would — I think that would depend on the project. One of the things that occurred — or happened to me in the Prosperity Panel is there was a question raised about whether or not my position there was from a position of bias. And, you know, I completely disagreed with that. And, you know, basically said, you know, we all as human beings have a natural bias. We have that. It's part of who we are.

The reason why I was on that panel was because of my background, being First Nations, working with First Nations, representing indigenous knowledge and my background in mining. That was why I was there. That's why CEAA picked me. I think that in thinking about panels we still need to apply that thinking, that transparency.

So I don't think that trying to say that it shouldn't be a community member is the way to go. But, I mean, we still need to think about the idea of — yeah, no I don't think you can restrict it. I don't. I think it's important that the appropriate experts, the appropriate decision-makers are there to review the project.

Johanne Gélinas: If you have further thoughts that you would like to put on paper, don't hesitate. You still have one week for final submissions.

Nalaine Morin: Excellent. We're actually — we'll be submitting papers for this presentation and the last one as well.

Renée Pelletier: So just to sort of pick up on the Chair's question, this idea of having a panel, perhaps like a tripartite panel that has indigenous representation, I think we've heard in some areas of the country where there's cohesion amongst the various communities, that that might work well. You know, we just sort of started our tour in BC and we're seeing that there's a lot of overlapping claims in different nations. What are your views on whether that kind of a model works here? And, if it does, does that change the way in which — the Chair was asking about how do you select the person that represents Indigenous People on the panel — does the various nations here sort of change how you would recommend that that process sort of roll out?

Nalaine Morin: No.

Renée Pelletier: No. Okay.

Nalaine Morin: No it wouldn't. I think as long as you've got a terms of reference and a description of what you're — basically an understanding of what you're looking for for a panel member, I think that that should form the basis of your decision-making.

Now, let me add, though, if you're looking at doing a tripartite panel those key pieces need to be decided upon by all three parties, right.

Johanne Gélinas: Doug?

Doug Horswill: I guess I could ask a question following up the other two and that was going to be how do we — would you submit to cloning?

(Laughter)

Rather than that, I'll go back to your comments on the previous panel where you talked about the need to develop trust prior to being able to collaborate. Can you talk a little bit about how that would happen? And I think it's trust between the government and the First Nation. Yeah.

Nalaine Morin: I think there's a number of ways to do that but quite often that understanding is done through negotiated agreements. And I know one of the things that we did with Tahltan is, you know, once we identified where the shortcomings were in both BCEAO processes as well as CEAA, we went to have a conversation with them about identifying what our expectations were and how that might fit into the current processes that exist, right. So I think that's the best way to do it, is to just develop that sort of an understanding.

Rodney Northey: Oh, good. I've got some questions. Mr. Tollefson deferred some of my questions to you, so here we are.

There are some very important things you've said already and I just — but I want to get the context. So it's the idea of not traditional land use, which I'll just say for the moment I can imagine how one can map that, but actually the use of traditional knowledge and how to best present that. I'm very vexed by this because, on the one hand, if you say it should be oral and not in writing, which I'm reading as part of this, you would then say that there should be a setting where it can be heard. We do have lots of oral settings. Often they're quite adversarial. Those aren't, I think — I could ask you — but you can tell me on the fly whether having Kinder Morgan, where the testimony is only cross-examined, is the appropriate way.

What I am concerned about is this, if we say that the oral approach is best for a hearing or an approach; one, how do we avoid the problem or get early engagement of that traditional as opposed to a hearing, which is usually the very end of the process? How do we get that benefit of that knowledge early in planning? That's one.

And two, just to go to your experience with the Prosperity Panel and your personal memory of it, something must have happened there that the knowledge came forth in the right way, and, nevertheless, we heard that described as a very adversarial process by someone else. Yet, people participated. So very complicated. I want to ask you, as a panel member, was there a specific way that panel heard and received that knowledge that allowed the community membership to engage well? And, if so, what was it? I don't think that process has worked at all in the majority of hearings we've heard about in NEB processes. I don't know. But I have not heard many success stories of this. Prosperity might be one, in your telling of it. I'm just really interested.

Nalaine Morin: So, yeah, I don't disagree. It was really quite a controversial experience all the way through, right. Like, there's a fair bit of division there.

One of the things that we had for our panel was we had a really strong panel chair. And when thinking about how we were going to go about talking to communities and community members, we set our schedule in such a way that we made sure that we went to all affected communities, right. Like, we didn't go to Vancouver. We didn't do any of those things. Like, we met in Williams Lake and within the communities of Williams Lake. The hearings, while we continued to maintain what was important in terms of making sure that we were unbiased, unfettered, we also respected the governance of the Tsilhqot'in People in all of those communities, right. So it was important that the leaderships in each one of the communities took a role in making sure that things were done in an appropriate way, right. So that was part of it.

Another panel, a joint panel that is worth mentioning here, because I think it followed similar suit was Amazay Lake, right. So that was the Kemess Hearing Panel.

Rodney Northey: Yes, okay. We have heard about that. Thank you.

Nalaine Morin: Yeah. That one sort of followed a similar fashion. I think part of that, too, was how the terms of reference for that particular panel was struck and what was the mandate of the panel. So I think that's a key piece in that as well.

Rodney Northey: All right. I'm just now going to return. That was a very helpful answer to part of it. What about the early engagement of this? Have you got any thoughts? Again, this may be something you defer to writing, ironically. What would be a way early on in the process — because one of the things that I heard you say and I think is a fair assessment of where we are — is we have a parallel track because the incapacity so far of EA to deal with traditional knowledge well has meant that First Nations don't integrate it. They follow their path and so we have parallel tracks in EA. But somewhere along the way we've got to figure out an integration.

Nalaine Morin: Yeah.

Rodney Northey: And I would only hope without knowing quite how, that the earlier the integration the better, as opposed to the longer they stay apart and come — somehow at the end is a hope that doesn't seem to get realized all that often.

So I guess my question is — is there any thought that you might have of how early on — even ahead of a project description, for example, or something — what could happen that would be a forum to replicate a panel where it's orally recognized? Something happens, people feel able to come forth and give some evidence or whatever, knowledge that's relevant, that everyone else can then build on? I'm just — I'm really vexed by this.

Nalaine Morin: I actually think you just said it. That would be the most appropriate way to do it, is to identify an opportunity for some kind of engagement. Typically something like that could even happen within the community, but could happen on the land. I know someone spoke about that earlier. That was one of the things that was important in a number of the panel hearings, is to get outside of the venue, the traditional venue that you normally see, right.

Rodney Northey: Oh, you mean off the podium?

Nalaine Morin: Yeah.

(Laughter)

Off the podium, right. But one of the other things that we made sure through that process, and you see it in a number of applications, is the importance of the indigenous knowledge integrated throughout the application, right. So important place names, important locations, and even some of the values to be referenced in the language of the First Nation of which the territory that we're speaking of, right.

That's why when I, you know, earlier talked about — I really believe that indigenous knowledge should form the basis of scoping. That should happen first. I think your question then would be answered in that conversation.

Rodney Northey: Thank you.

Johanne Gélinas: Thank you very much for your presentation.

Nalaine Morin: Thank you.

Johanne Gélinas: We have one last — I don't know if you're staying with us but we have one last presentation.

Rodney Northey: I think she's done.

- Johanne Gélinas:** And it's —
- Ceilidh Stubbs:** Ceilidh.
- Johanne Gélinas:** Sayley(ph)?
- Rodney Northey:** Ceilidh.
- Ceilidh Stubbs:** Yes.
- Johanne Gélinas:** Oh, so we pronounce the C like a K.
- Ceilidh Stubbs:** Yes.
- Johanne Gélinas:** Okay.
- Ceilidh Stubbs:** Okay. Hello. I have to turn this on.
- Johanne Gélinas:** Good afternoon.

CEILIDH STUBBS, SAHTU RENEWABLE RESOURCES BOARD

Ceilidh Stubbs: Good afternoon. First I want to also acknowledge the Squamish, Tsleil-Waututh and Musqueam First Nations Lands that we're on.

I want to thank everyone who presented before me. I really appreciated hearing everyone talk and thank you for the opportunity to present here. I'm also thankful I'm last because I think I'm going to take the conversation in a little bit of a different direction.

As I said before my name is Ceilidh Stubbs. I am presenting on behalf of the ʔehdzo Got'ıne Gots'ę Nákedı which is the Sahtú Renewable Resources Board in the Sahtú of the Northwest Territories. I'm going to switch this here. I'll give you an idea of where it is. This is the Sahtú settlement region. It's a region of a 450,000 square kilometres. So it's quite large. It encompasses Great Bear Lake as you can see on the map and the Mackenzie River which are important areas.

The Sahtú Renewable Resource Board, who I work for, is the primary instrument of wildlife and forestry management in the Sahtú settlement area and it's a creation under the land claim act. The land claim, so Sahtú, Dene and Métis comprehensive land claim agreement which was signed in 1993. It's a co-management board so three members are appointed by government and three members are appointed by the Sahtú secretariat and our community members. Then the chair is also appointed by the Sahtú secretariat and is a community member as well.

There are only two full time staff members. So, as you can imagine, we also face some of the issues in terms of staffing that I know some of the other people have expressed today. That's two staff members for an area larger than Vancouver Island.

So, the Sahtú, we are a fly-in community or region only. There is no road access. For example, for me to get here I flew in on Saturday. It took me four flights and 12 hours to get here. I was fortunate enough that I was coming down for other business anyways and that's why I'm here.

I also wanted to say it's unfortunate that I don't have any other community members or elders with me today, but that's also a fact of our position and where we are located.

The focus of this presentation, as I said, I'll be switching track a little bit. I'll mainly focus on the committee process. I know that part of that is not necessarily what you control but I was asked by my board to read some of this or speak to some of this on the record.

I'll tell you a little bit about my role in all of this. I am currently a student at the University of Victoria Law School. I have been working on and off for the board for a number of years. I've just spend four months working with the board in the Sahtú and I am now coming back for Christmas. When I started, I started at the beginning of September and I was asked by my director, the director of the Sahtú Renewable Resources Board, to start looking into the environmental review processes.

At that point, we had actually already missed and I think — this is another one of the issues I was saying, there is only two staff members for this entire region — we had already missed the deadline to apply for indigenous funding for CEAA and the National Energy Board Review. We did go ahead and we applied for funding for the Navigation Protection Act Review and to the Fisheries Act Review. As you can imagine, we have, as I mentioned Great Bear Lake within our territory. That's the largest fresh water lake within Canadian boundaries, solely within Canadian boundaries in Canada. Those are very important issues to the people of the Sahtú. And so we did apply for that and received notice of that funding application.

Since that time, I've actually received no further communication, at all. This is something that I've been personally taking on and I have sent about five or six emails to each different party involved in that. So that's five or six different emails to Transportation Canada as well as the Department of Fisheries. We did receive on, I think — because for that review process, submissions were due for the Fisheries Act, I think that was November 31st, around that time period. Then for the Navigation Protection Act Review, they were due on December 7th.

On November 29th I received my first correspondence after multiple phone calls that were unanswered and emails that were unanswered, and I was notified by the Department of Transport that they would be pushing the funding back. We would have another week to make a submission. So, a week to make this whole submission, and we still didn't have funding and they were going to look in to it. So I responded, three times and received no response. So, as I mentioned, again, we're an organization with two staff members. We service a very large area and these are issues of large concern to the people of the Sahtú.

So since that time, our board made the decision we're not going to go ahead. We don't have the resources. We don't have the funding to go ahead and make written submissions without the funding and without the proper communication. So we made the decision to write letters instead and then come here and present to our challenges to make it know.

I realize that this is a pre-consultation process, but we want to make it known that this is a challenge, and this has been a challenge for our organization. Moving forward, we want to make it known that when it comes to consultation this isn't acceptable. This needs to be resolved.

So there are a few issues that I wanted to draw out. In particular, the poor communication was a huge issue for us, rushed timelines. When I did receive response it was a week before and then I had no follow ups. We actually didn't even get funding approval. There was limited travel to the north.

I understand you were in Inuvik on September 29th which to our massive confusion we knew nothing about, because Inuvik is right above us, right. The settlement is right above and we had no knowledge of that until, I think, mid-November that the Panel was actually there. So the communication avenues were really not there for us. And, to be fair, there might have been one or two emails that were missed by our director, but, as I mentioned, we're an organization of people that service an area larger than Vancouver Island. So that communication and that effort needs to be there at a stronger level. Also, the travel to the north. That was an issue for us, the restricted travel. As I mentioned, it takes four flights for me to get down here and a whole day of travel.

So I think that mainly summarizes my main points about my concerns and it is our hope that moving forward that the ministers and the departments take it more seriously, the issue of funding and the issue of communication, recognizing the challenges that are facing many First Nations organizations in terms of funding, in terms of staffing, in terms of timing. We have a lot of things come across our desk, a lot of really important issues. We need the time and the funding and the staff, really, to be able to accommodate those concerns. Okay.

Johanne Gélinas: Okay. One thing for sure, if you want to put that in writing we will take on us to send that information to the right people in the different departments, because, I think, like you, it's totally unacceptable. Questions?

Rodney Northey: Yes, well, welcome to our discussion this afternoon and your sitting in area where the decision-making is shared in multiple ways all the way through the process. You've heard a lot this afternoon. Do you feel inclined to say anything, whatever, or do you feel not appropriate what your official mandate is? Have you seen some hearings to date in your area and how it's all worked out?

Ceilidh Stubbs: One of the things I would say is that I know — so the organization that's in charge, particularly of environmental assessments in our region is the Mackenzie Valley Environmental Assessment Review Board.

Rodney Northey: Right.

Ceilidh Stubbs: Which I know presented to you in Ottawa. So I am happy that they had the opportunity to do a little more work.

As I mentioned, because we didn't have the funding we didn't do a ton of work or we didn't do any work on research, in terms of this, because we were waiting for the funding to come through and we don't have the resources to do that without. So that is why my presentation, as I mentioned, is shorter.

Rodney Northey: I see. Okay.

Ceilidh Stubbs: But yes, in recognition of the fact that we are a co-management board there is a unique situation there. I can say that I think it is a very successful partnership. I think that both community governments — and, of course, there are issues within co-management as well, but the way the board runs and having worked with the board for the last three months — obviously I can't speak to what everybody in the Sahtú thinks — there is a strong ability to work together and come to those decisions together.

Rodney Northey: Thank you.

Renée Pelletier: In light of the fact that you have not had much of a chance to prepare I won't ask you any substantive questions but I just do want to echo what the Chair said, that you are not the first to complain about the funding issue, which is unfortunately outside of the panel's control, but we share in your frustration and thank you for being here in spite of that.

Doug Horswill: And you certainly made your point well.

Renee Pelletier: Yes.

Johanne Gélinas: More questions? Thank you very much for having taken the time to travel that long. I hope you will go shopping a little bit.

(Laughter).

Rodney Northey: She's from here. She's from here. I think she's going to school across the way.

Johanne Gélinas: So that will conclude our session for today. As I mentioned earlier, we have an open dialogue session which will take place in this room at 6:30. Any of you in the room — yeah. Oh, sorry, it's on the third floor. May I ask how many of you are planning to come to the open dialogue session? Good. Thank you very much. See you later.

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