

Expert Panel Indigenous Presentation Session

Review of Environmental Assessment Processes

September 20, 2016

Radisson Hotel Saskatoon, Saskatoon, SK

Expert Panel:

Johanne G elinas, Chair;

Doug Horswill;

Rod Northey;

Ren e Pelletier.

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**TRANSCRIPTION/TRANSCRIPTION
EVENT/ÉVÉNEMENT**

Transcription prepared by Media Q Inc. exclusively for Canadian Environmental Assessment Agency

Transcription préparée par Media Q Inc. exclusivement pour Agence canadienne d'évaluation environnementale

DATE/DATE (of transcription): November 1, 2016

LOCATION/ENDROIT: Client Supplied Audio

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SUBJECT/SUJET: Review of Environmental Assessment Processes, Saskatoon Indigenous Presentations.

OPENING REMARKS

Kelly McGee (ph): If you are presenting today, please be sure to check in with the secretariat staff at the table near the entrance. And the schedule for today's presentations is also available at that desk, and the Panel encourages you to visit the website for the review, www.eareview.ca. There's a wide range of information on the review and other opportunities to participate. Thank you. Madame Gélinas.

Johanne G  linas: So good morning, everyone, and welcome to this first indigenous presentation.

Unidentified Male: (Off microphone)

Johanne G  linas: OK. So let's start over. Welcome to the first indigenous presentation session of the Expert Panel for the Review of Environmental Assessment Processes. My name is Johanne G  linas. I'm the Chair Panel, and I would like to introduce you my colleague Panel members. On my right, Ren  e Pelletier and Doug Horswill, and on my left, Rod Northey. I would like to give the mic to my colleague, Ren  e, to welcome our indigenous people.

Ren  e Pelletier: Thank you. Before we begin, on behalf of the Panel, we'd like to acknowledge the First Nations of Treaty 6, on whose territory we are meeting today. I'd also like to acknowledge any Chiefs, elders, and community members that are in the room. Thank you very much for having us on your territory.

Johanne G  linas: Thank you, Ren  e. The Panel was named by the Minister of Environment and Climate Change, and directed to consider how to: first, restore robust oversight and thorough federal environmental assessments; second, to ensure decisions are based on science facts and evidence, and serve the public's interest; third, to provide Canadians with ways to express views and opportunities for expert to participate; fourth, to require projects' advocates to choose the best available technology to reduce environmental impact; and fifth, to enhance the consultation, engagement, and participatory capacity for indigenous group.

These presentation sessions are an opportunity for interested organizations, groups, communities, or individual to share their views on environmental assessment processes. All engagement sessions are open to all Canadians. In particular, indigenous organizations, groups, community, and individual are encouraged to participate in the indigenous presentation to the Panel. That will be all day today. Over the next three months, the Panel will be travelling across Canada and hold in-person public and indigenous engagement events. In addition, the Panel website offers both information on how to register for these events and several other options for sharing views with the Panel. No later than January 31st, 2017, the Panel will submit a report to the Minister of Environment and Climate Change that includes our conclusions, recommendations, and rationale with respect to the issues within our mandate.

So without further ado, I would like to invite our first presenter today, Mr. Brad Michael.

Unidentified Male: (Off microphone): OK. I think there's been a misunderstanding because I'm with the Federation of Sovereign Indigenous Nations.

Johanne Gélinas: OK.

Unidentified Male: (Off microphone): We applied for funding through your participation funding program and received confirmation on that. I'm just here to observe. There's going to be other representatives from the Yeppa-Sayan (ph) who will be speaking, and I think that's this afternoon. So I just wanted to make that clear.

Johanne Gélinas: OK. Just for clarification, the request for funding is not covered by us.

Unidentified Male: OK.

Johanne Gélinas: But it's through a government department – INAC, if I'm right.

Unidentified Female: And the Canadian Environmental Assessment Agency.

Johanne Gélinas: So welcome, and we'll call our second presenter, hoping that Ms. Diane McDonald is here.

Unidentified Female: No.

Johanne Gélinas: No?

Unidentified Female: No, she's not here.

Johanne Gélinas: OK. So a few changes this morning.

Unidentified Female: Oh, is it – no, this is Diane.

Johanne Gélinas: OK.

Unidentified Female: (Off microphone)

DIANE MCDONALD, YA'THI NENE LANDS AND RESOURCE OFFICE

Diane McDonald: Morning, Panel.

Johanne Gélinas: Good morning.

Diane McDonald: I'm here with Chief Tsannie of Hatchet Lake First Nations.

Johanne Gélinas: Would you like to join Mrs. McDonald? Thank you very much.

Diane McDonald: I want to say thank you for the Panel for giving us the opportunity to speak to you today in respect to the EA process and our experience in – in the Athabasca region. Unfortunately, two of our other Chiefs could not join us because of the short notice and because of logistic issues for them to travel down here. So I just want to say thank you, and – and I'd like to just dive into the presentations. And I will be presenting on behalf of Chief Coreen Sayazie of Black Lake First Nation as well as Chief Rudy Adam of the Fond du Lac First Nation. And Chief Tsannie will represent on behalf of the Hatchet Lake First Nation. With that, thank you.

So greetings, Madame Chair, and the Panel, and my name is Diane McDonald, and I am the Executive Director of our recently organized Ya'Thi Néné Lands and Resource Office, representing the interests of the three Athabasca First Nations in northern Saskatchewan. I'm here with my colleague, my Chief, and – and certainly, like I said earlier, that two Chiefs were not able to – to be here with us. The Ya'Thi Néné Lands and Resource Office will be representing the interests of and engaging with the three First Nations of Black Lake, Fond du Lac, and Hatchet Lake. The Ya'Thi Néné Lands and Resource Office works to promote and enhance environmental, social, and cultural, economic, health, and the wellbeing of the Athabasca Basin communities and the – and our greater population, over 5600.

We've been asked to address a range of topics and questions that were put out by the Panel. And I would like to start with a comment on the timing of this expert panel. There are five ingredients for adequate public participation, and that's the area I would like to focus. There are adequate notices, access to information, opportunity for public comment, and participant assistance and follow-up. These are basic requirements for environmental assessment. The process used by this expert panel is flawed because it has not given adequate notice to nations from the time of the application deadline to the hearing today. There was a lack of proper information given to the nation well in advance of this hearing; insufficient time to respond adequately on the presentations today and consult with our membership well in advance.

So we feel that we've been very pressured, with less than five days of notice. It is a entirely unreasonable expectation to give us, you know, less than a week in notice for the hearing that is being held today, while participant funding is in place and confirmed as of the other day, and our team was notified of the hearings only on late Thursday afternoon. And this really doesn't give us time to prepare our thoughts on the legislation. So this type of example of – is a flawed process, and that we've always been concerned with. We feel that it is unfair, and this type of process needs to be rethought and given more time for public participation from an aboriginal perspective.

This does not accommodate our nation-to-nation relationship. The timing is not sufficient, and short notice of the Panel is an example of this and puts us in a very awkward position because our communities really want to make comments to you about the CEAA legislation, but we are rushed into it without time to brief our leaders and our – our technical groups, teams that we work with. And yesterday, by me contacting the Chiefs with the short notice, you know, travelling 800 kilometres from the Athabasca Basin, I've tried whatever I can to get the other two Chiefs here, and – and it wasn't possible. And you know, from our perspective, this is unreasonable for us, and that we did request to give us another different date to participate because of the short notice.

For – for this reason, this goes directly against one pillar of the United Nations Declaration on Indigenous People, that adequate notice of an issue or a review prior to it being reviewed. So I want to note that. Going forward, we recommend that this expert review panel, and the Minister in particular, give further clarity on the question on how the legislation will be introduced and how it will be reviewed, and the timelines for this review. We request that the Panel share their indigenous engagement plan that is required in the terms of reference as soon as possible. We also ask that the Panel carefully consider how this process aligns with the United Nations Declaration on Indigenous People. Adequate notice of an issue or a review prior to being reviewed is a crucial element.

Now turning to the EA, generally the timelines for the EA should be longer. The fundamental key concern in the EA process is the capacity issue we are faced with, the three First – Athabasca First Nations, who do not have the financial capacity or technical staff to initiate a review that is comprehensive and technical in nature. We're always bringing in technical expertise at a cost and resources. Both governments and industry have staff and capacity, unlike us First Nations. For industry and government, when industry puts a claim in for an exploratory (ph) of minerals, they go through the province to get the necessary permits. From an exploration point of view, the province needs to consider the initial consultation at a start – at a staking process.

As the – the – as they issue the permits to the mineral companies, every year the mineral company has to meet certain stages in the exploration phase to carry out its efforts to maintain its permit to carry on their projects, and during that process the province should include nations' involvement throughout the exploration process and to the development stage. I say this because this – when it comes to the permitting stage, it's under the jurisdiction of the province. And – and certainly our recommendation to the Panel is to ensure that there is the duty to consult along with, you know, our – your counterpartners, the provincial governments, as well.

And when it comes from – when a company's given – undertaking an exploration phase, they go – they go through that phase over a period of 30 years. And over a 30-year period, both the – the industry and the government have

all the data and all the information necessary for them to compile to move into an ex—into a development stage. And where we end up is, when it becomes to the phase where the EA process is initiated through the development stage, they have 30 years' experience and knowledge of that area, and yet we, the Athabasca communities, are only given 30-day notice to – to participate in the EA process. And that's very unfair for us, especially with the period of – over the period of 30 years they have engineered studies, they have all these technical studies that they've done over the period of 30 years or so to get to a mining stage, and yet we're only given 30 days. That is an unfair process for us. And – and – because, the reasoning being is that we do not have the capacity issues, whether we have engineers or scientists to – to review all that data that's being presented to the E—the Environmental Assessment Agency for their consideration.

So what we're asking is that we need to be involved at the very outset, from the beginning of the – the design of the process, at the terms of reference stage, and through the design of the project and – and review of it. Part of the problem that exists with the EA panels and reviews is when the – where traditional knowledge is recognized, the panel itself does not have expertise to actually understand traditional knowledge. You know, you have chemists and chemistries and always peer reviewed and interpreted by chemists. Traditional knowledge should be given this equal treatment. The – there are very rarely – you know, there are very rarely aboriginal people on panels, and they are usually all scientific driven, and they don't understand the oral history and background of our own history as aboriginal people and the cultural and the values and the distinct language that – you know, that we carry, and the barriers that were faced when – in terms of given misperception of understanding of what traditional knowledge means.

The EA process no – has no understanding of aboriginal people and where they come from in terms of their social-economic issues and their understanding of being in remote communities. We are isolated communities in the Athabasca. We're most often forgotten about, who we are. The social-economic issues and the impacts are unique to aboriginal communities. They don't understand that people continue to live off the land. They hunt, trap, fish off the land. We do this on a daily basis. You know, we're not people that can have full access to all the stores that are available in the cities and – and in small towns and buy, you know, beef or cow or whatever. We don't have that – that advantage in our social life, and we are, you know, people that continue to live off the land. And so we recommend that we – there be a requirement that there be aboriginal people on the panels to understand what is presented, particular when it comes to TK. They need to understand what it means. A strong traditional knowledge expert is always beneficial when reviewing TK reports and how it is presented. The expert then need – can argue the key points with other members of the EA reviews so that it understands the nature of the culture and the language and the way we – the way – the way of life of us as the Dene people.

We – when we do give our guidance, we want to know what

is being done about it. And it's the same with this expert panel. We want to know what is being done with the information we're giving you, and how are you going to change the legislation. Will we have the opportunity to give comment again when there is a draft legislation? The same goes with the projects, future projects. When we give really clear guidance based on our knowledge on – on our land, we want to see the guidance brought into the measure of the EA. If they're not brought into it as measures, then what happened to them? If you didn't agree with us, then we need to have a conversation about why some things are being brought in and – while others are left behind.

It is technical science people who end up making all the determinations about impacts and what is a significant impact, but it is our people that really feel the impact, and it is our people that are best able to judge the significance. That is why we think there should be our people involved on panels and in decision making. We should be making up – we should be making up their own minds about how a change will impact us. The EA process has a clo—has to get closer to the communities. Meetings need to be held in the communities, especially scoping sessions. We have to be able to follow the process all the way through. It is our judgment of how a project might affect us that has to be carried into the Crown's final decision.

You also have to ask us to speak on how the United Nations on the Rights of Indigenous Peoples apply. Based on the UN, we need to be able to give our free, prior, informed consent in relation to the projects that are in our lands and territories. Consent is something that builds with time and with information, however it should be – however, should certainly be given prior to approvals. When we are involved in the beginning of processes, we have a better security and understanding of the process. Prior to consent, there needs to be social impact agreements in place for our communities before approvals are issued. We are giving up a certain amount of land for developers within our territory, and our hunting and trapping and fishing rights should be compensated in advance for the development taking place.

I want to thank the expert panel for your time, your consideration, and we are eager to contribute to this review of the federal EA process, and we make this plea to you. Don't rush us into a high-speed debate on this topic. Even if you are having your timelines set by the Minister, the United Declaration calls for consideration and consent to be given on changes in legislation. We need to be consulted properly from the outset. And out of the mark that you have already erred, we suggest you give this fact some deep consideration and push back on the timelines set for you. And I want to thank you, Madame Chair, and the Panel for this presentation.

Johanne Gélinas: Thank you very much, Ms. McDonald. Would you like to say a word, Chief Tsannie?

Bart Tsannie: Good morning.

(Speaks in native language without interpretation.)

Just said good morning and want to thank the Creator for a good day again today. Excuse me. Just want to say a greeting to Madame Chair and the Panel. My name is Bart Tsannie. I'm from Hatchet Lake First Nation, which is Wollaston Lake in north – the north-east corner of Saskatchewan. As Chief, I have been – live off the land with my late dad and mum for a number of years before I become a leader to our – my community. And it's very important to talk about environmental because I have – I've been raised on a trap line and hunting with my dad and fishing with all my family. And my family still do, and myself I still do.

You know, I'm here to talk about the questions and what's needed for a nation-to-nation relationship. From our perspective in the Athabasca region, the federal government has made statement about nation-to-nation relationship in their campaign. From our perspective in our Athabasca region, we feel we are forgotten. We haven't approached or given any consideration to speak to the federal government about our issues and concerns thus far. Anytime new policies has been developed and rewritten with a federal agency, there is always a lack of opportunity for aboriginal people to be involved. The government simply create their legislative without concerns or review about our designed legislative. This is what happened with our CEAA 2012, and we are not sure how this new round of legislation review will go.

There is no clear guidelines, except for the fact there will be review. We have never invite when these transaction occur between CEAA, CNSC, major projects. This type of level engagement is so disappointed to our nation, especially when it affects our treaty – treaty rights. This is – this expert panels itself has start out with misstep, process to (inaudible). You may have the right question, but if you lead off to the wrong way, then you will fail. You have to give enough time for us to review the past legislative, engage our members, and you need to give us proper notice. Within a short notice, we cannot consult our members, and this should be considered in consultation and accommodation.

We seem always in this position. We as nations feel that we are not given time to understand the project and have not been fully involved. We don't want to see this, another checkmark on consultation as the checklist, that we kept in the Crown level fill up a black mark against us. We have to give more sufficient time, even where you say we can send our written comments. We are an oral people, and we prefer to give in comment and our thoughts to you personal. And sometimes we would – to do in our language. There is a thing that we can across in Dene, and we just cannot cross this in English. We need to follow up in us, each individual First Nation through our Executive Director from Ya'Thi Néné Lands and Resource, which is Diane that's been working, on how this issue that we were raise and will or wouldn't be addressed. Panel review, this very really get back to you, then the Panel itself is a failure and we end up in the court system again, which we – we have did quite a few times.

The real nation-to-nation dialogues in going to be one of which parties speaks together about setting the frame. First, our treaty rights have been clearly protect and understood. They require certainly for land, both surface and subsurface, then we also make a better plan and policies, like land use plans. It help guides development and government in clearly recognizing the regional base in the consultation protocol. And that was signed by a former Chief and myself. We develop process like this one to help guide clearly to – on consultant to both government and industries when the process project in the Athabasca Basin. There is a need to have clear land use plan in place, jointly agree to areas, land, and ongoing to protect the career (ph) for our First Nation, you know, the way – the way we live. And still, like I said, we do – we do utilize a lot of – lot of lands in our area.

There is need to be clear process in which we have faith, our faith to be placed in the EA. If we are able to see that our rights and protect, this means we have to have clear and set context and strong initial meeting with staff. There needs to be ongoing meeting with staff, and we need to be provide sufficiently information so we are able to speak on the matters in the hand of being present by the government. There has to be initial meeting, then follow-up and response and on ideas brought forward. Right now everything is weight towards industry, which we do have a lot of mines across from our First Nation. They write the rules, and they write how to assess and will conduct. We need to see the EA be—becomes more centred in aboriginal communities. Our feel that we see environmental assessment is there is no ability to really consideration for mutually respect or that the consideration is very weak.

We – there is uranium mine already operating. We see connected roads, access, and more (inaudible) increasing exploration in our region. This project offering too small to get to assist, and we find that there's no assistant and potential for native environmental to affect in this matter. Let's get engaged with this assessment. Because there's a lot of exploration that's happening in our area, and you know, it's more and more happening.

There are need to (inaudible) in ideas that are the legislative. For example, there is a CEAA 2012, Section 5, 1C, that assessment affect aboriginal groups will be done on per aboriginal groups base, not the communal basis. We have always been lumped in with all First Nation north of Prince Albert. We are very different group, and we want to see real recognition and individual. We are primary impact communities in Athabasca Basin, where all the uranium mines are located within our traditional territory. Connected to these needs to see the broad principle and public interests, it seems like no matter how many concerns we bring to light, we seems as small. Remote aboriginal communities, the right of the people in (inaudible) seems to be always a greater weak (ph) than our rights. The project are always going ahead in the public interest.

It is our view aboriginal rights protect under treaty and

Constitution Act 1982 (inaudible) right and need to start the way to higher decision making and identification of accommodation. With these legal principle as well as EA principle of impact, equity, who's most likely to be impact by the project of their Crown decision should both be major focus on assessment and be subject to demand (inaudible) higher benefits and offset advice chains. They are likely to see the current CEAA process does not set up, examine, and implement histories of – of our protect and minority rights. I hope you take the chance, and I talked about – today about consideration. Thank you for your time, Madame and the Panel, to hear our issues in our Athabasca region. With that, marsee-cho (ph).

Johanne Gélinas: Thank you very much, Chief Tsannie. First of all, I have to apologize, even though if this was the mandate that was given to us, for the short notice. We are very well aware of that, and we are working ourself under those constraints, time constraints. I would like to thank you, and I would like also to extend our thanks to other Chiefs who cannot be with us today.

A few things before I turn to Renée, who will explain to – to you a little bit more about what this process is all about vis-à-vis the duty to consult, because it's a little bit different. The one thing I would like to mention, though, is that we have informed, we have talked with First Nation people in Ottawa in September, early September, to ask how we could reach as soon as we can't communities all over the country. And listening to you, Ms. McDonald, when you were saying that you just got this information a few days ago, shows us that we were not that successful to reach out with the community. And anything – any advice that you can give us to do better will be more than welcome.

I will also like to mention that we will be in Edmonton. I know that it's not in Saskatchewan, but we will be there next week. We have also a full-day event with indigenous group. And if ever we could accommodate you to have some of your people coming to talk face-to-face with us, it will be more than considered by – by us. Having said that, I would like Renée to give you a little bit more detail about how this process fits into the duty to consult requirement.

Renée Pelletier: Thank you. So first off, thank you – wooleeman (ph) – to both Ms. McDonald, Chief, for your presentation. As the Chair said, we very much appreciate the timeline concerns. I wish that, you know – we are, as the Chair said, that we are, you know, stuck with these as well. They were in our terms of reference. I think that I can say that we've – we tried to push them, and we appreciate that we have not given particularly Sask—communities in Saskatchewan really any notice at all. That being said, I really need to extend my gratitude to you for having come all this way, given that you just heard last week. And not only having – I want to extend my gratitude for you having come, but actually given such a great presentation. You know, I really didn't expect to be—able to hear much depth, I guess, and substance, given that there would be such short notice, but you've really provided us with a lot of great recommendations. So you know, sincerely thank you for that.

With respect to how this – this process fits in with the duty, one thing that I think maybe the Panel needs to do a better job of is explaining to communities that this is not consultation. We are an independent panel, so we do not represent government. And the idea is that we want to hear from communities, both indigenous and non. We want communities to tell us what we should be recommending to the Minister in terms of how the law on environmental assessment needs to change. Once we have our report, the Minister – it'll be up to the Minister to decide how to actually have consultation on what happens next. So this, in a sense, is pre-consultation. It doesn't excuse the short timelines. I think pre-consultation, it's still important for you to be able to put your thoughts together and have some time. But we do want communities to know that you will have an opportunity later on – this is not your sort of one shot – to talk about these issues.

If I – I'm also just going to address a few of the other points that you raised, Ms. McDonald, in your presentation. First off, your comment about, you know, you would like to know more about what the Minister intends to do once she gets the report. We will send that message to the Minister. I can speculate what I think she'll do, but I – I can't speak for her. So we will – we will pass that message along. The other thing I believe you mentioned was wanting a copy of the indigenous engagement plan. So that is on our website, but if I can maybe put some pressure on the staff here and ask if we could get a printed copy that we can give to you before you leave today.

I had some questions, but I feel like I've been talking too long, so maybe I'll – I'll pass it to the other Panel members, and then – but yes, Ms. McDonald.

Diane McDonald: Before – if I could ask the – the Madame Chair and the Panel if I could present Chief Sayazie and Chief Adam's presentation, if – if that is OK with you.

Johanne Gélinas: I was going to ask you if you want to go through all the presentations that you have given us, but I understand that it's the case, so please do so.

Diane McDonald: Yes. So Chief Sayazie sends her sincere apologies for not being here. So in her presentation, we'll – we will talk about recognizing and protecting treaty rights in the federal EA process. When you're trying to determine impacts to treaty rights of a project, you need to understand whose treaty rights you are referring to and – and the people that are in within that area. This – this requires taking proper steps to get to know who our people are, our lands, and what – what is important to us. The estimation of significance on impacts to treaty rights are being done by hired consultants to the company based on a narrow, limited viewpoint. These estimations don't live up to the standards and promises of protecting land and our communities because there is no ground truthing (ph) of the data or the estimations of impact in the

communities. This requires day-to-day monitoring and follow-up to see how we, the – how do – how – follow-up to see how we – the impacts really occur in our – our communities and our surrounding lands.

And one of the things that is troublesome is that, even though when we share our concerns about impacts to our communities, governments rely too heavily on industry's data and do not give equal weight to our deep traditional knowledge of the land and – that comes from the generations to generations of living off the land. More often the cultural, the social, and the treaty right affects the projects are treated as a – as a tick the box under the EA process. Even though the proponent must collect data, they – they need federal guidance on the spirit and intent of the Section 1C of the Canadian Environmental Assessment Act of 2012. And this guidance needs to be informed by aboriginal communities. There is no guidance of – for understanding how treaty rights are being impacted. There is guidance on consultations, but there is no technical guidance on how to conduct an effective assessment of a project on our treaty rights. And the guidance on consultation is simple about how to work and speak with us and not – and – on how to assess impacts on treaties. There needs to be clear guidance on this, not open to interpretation, and clearly articulated.

When there are impacts, we need to find ways to accommodate those impacts or reject projects, because treaty rights should be prioritized. It doesn't do us any good to monitor caribou or water quality or food safety if there are no plans in place to act on what you find. In monitoring plans, there has to be – has to be a defined point that will trigger action to make things right if you find something is wrong. So you always have to make sure there's follow-up instead of assuming – assuming a project would have a significant effect. And there also needs to be a plan for how we will measure those effects and how we will manage any negative outcomes.

And just on the topic of caribou, your – you know, as Dene people, we're a primary people that rely on caribou as a number one food source in the Athabasca Basin. And we understand, you know, through the – the numbers have declined over – over the years in our region, and we have a very hard time answering, you know, the question of what – what it was caused by in terms of the declining of the caribou, the Beverly herd. And if you live off the land for 12 months a year, you – you know, you're not able to use the wildli—if you're not able to use wildlife for your subsistence, how do you prove why, you know, those things have declined over a number of years? And just – not only is it harder and harder for our harvesters to – to find wildlife for subsistence, there's no way for us to know if the ones that do remain are safe for us to eat. So you know, for us, food security's really important for us.

I guess that's try to – making my point is that traditional harvesters of caribou – and it's our primary food source, and we want to make sure that it is safe for us and that there has to be monitoring that has to be done on a daily – daily basis, rather than, you know, ad hoc monitoring program that doesn't give us any

security in terms of our – our impacts to our health and to our people. So that's really important for us, that, you know, the – the EA process needs to consider the day-to-day livelihoods, you know, and that's an impact to our treaty right. So – so I just want to allude to that. And – and these impacts, too, whether if it's caribou, fish, or migratory birds, and – and these things don't have boundaries. You know, they – they go anywhere, and – and certainly it's important for us as part of our culture and our tradition as who we are.

So one solution to this problem of uncertain is to involved us in the community level in review of projects, and setting in place measures we can track. We have a hard time having faith in second-hand science that says that there will be no significant impacts when we see the evidence of impacts all around us. Because we seem to be going to – over the years, we participate in the EA process. We're always given the answer there is very little significant impact. And you know, for us, from our perspective, we're getting tired of hearing that. And it's based – you know, you have your EA team, and – and basically determines based on your – your presentations, but the weight is not given to us in terms of our traditional knowledge. And I think that needs to change in the EA process because we're being undermined. We're the people that live in the Athabasca region, and that needs to change.

So like I said, it seems like we get left out of the equation because when – even when we see these impacts, we have a very hard time proving it in ways that are accepted. If we were involved in each project ahead of time, we could have an understanding between the parties about which impacts matter and how they will be measured and what needs to happen to make impacts right. By engaging us in a way that can bring all the knowledge we have within our territory to make the process stronger, it will need – it will help maintain trust and faith in the process. Not only that, that we need to be engaged in the assessment of the treaty right impacts because they are our rights being impacted. No one knows our rights better than we do, and no one feels the impacts more than – clearly than us.

And improving the federal EA process to recognize treaty rights also includes having clear guidelines on traditional use and occupancy. There is no consistency in the way use and occupancy is assessed, which really undermines the process. Sometimes a consultant is hired, you know, like I said, by a company, interview a few people and then table a traditional use study without understanding the protocol and the methodology in terms of how that information has been collected. And we need to assess the parameters and the methodology protocols in place when industry is conducting studies, utilizing local experts to assist in those matters.

As First Nations, sometimes we find funding to do proper descriptions of our own traditional knowledge and making our voices heard for such projects in the past. And we certainly want to continue that going forward in the EA process for future projects. And the goal should be to get a full picture of how the land is used and valued by the nation, and not a check box saying it's done. Because that's

seemed to, you know, from our feeling and perspective, that's sort of the attitude that we feel from the EA process. It's just a check box and – and really don't consider or weigh in our value and our way of life and the TK.

So a process that asks for our input and – but then goes ahead anyway destroys the confidence we have in the assessment. So – and violates our rights, so – and this is how we feel. You know, this is how we've felt over the years through the EA process that have happened in the Athabasca, and this is based on our experience of how we feel that we've been treated through the EA process. And you have to be ready to hear what we have to say, and you have to be ready to act on what we tell you. So that's really important.

And the last point I wanted to make is about court cases. Although, you know, court cases, if your process is done in a way that represents – I guess not your process but the federal process – is done in a way represents aboriginal treaty rights, there wouldn't be a lot of court cases out there across Canada where aboriginal people are – are engaging in the last – you know, last effort that they have, is to prove their point that their treaty rights are being impact through the court system. And that's really the last resort we have, and – and I would, you know – and we feel that our arguments to the regulatory processes are not strongly considered. And that part of that process needs to change. And you have to weigh the information in a balance. We need to avoid those decisions and approaches by agencies so that aboriginal people are respected. And I think that's really important, being a Dene person, and my cousins are sitting behind us. So we need to be respected throughout this process.

And we, as Dene people, are not against economic development, but it needs to be a balanced approach. Part of that approach needs to include recognizing the rights as a fundamental, important part of involving us in the monitoring and the impacts to those rights, and having guidance on determining the traditional use and traditional knowledge. And – and we'd like you, the Panel, to take this review seriously because the changes you make or don't make may have real impact on us. And we want to see process change so that our treaty rights are given due weight and consideration in making project decisions to – so that we don't have to compromise our rights in the name of development.

So that's on behalf of Chief Sayazie of the Black Lake First Nation, and I'll just dive into Chief Adam's presentation.

And as you are aware, our focuses are based on the questions that you've asked in the review. So today – Fond du Lac is probably the farthest community – the First Nations community of the three communities, about 800 kilometres from here. And on behalf of the Fond du Lac – the Fond du Lac First Nation, what they'd like to see into – what they'd like to see brought into the EA process is the – the key element for them is meaningful engagement throughout the process. Meaningful engagement involves not only effective consultations but also relationship

building of – of trust throughout that process, relationships made by, you know, from the beginning, deeply engaging with our knowledge through the use of TK and our own land use activities and commitments to follow up on approval conditions after EAs. So there always has to be a follow-up throughout EA process. That seems to be a lacking issue for us. There's – when a EA's – you know, there's different steps in the EA through the screening and – and the follow-up after decisions are made. You know, nobody reports back to the communities as to the reasons why the EA has been approved or not been approved. So there needs to be the follow-up with our leadership and our communities.

A new EA process could do several things to encourage meaningful engagement. A process to support building a relationship between companies and First Nations and the Crown. Companies need to be required to come to us early on, before their project design is finalized. Relationships need to be started from the beginning and encouraged throughout. We need a space for us at the table to discuss not just impacts but solutions to what we see. So there always has to be a discussion at a table where we can find ways to address these issues and find solutions to resolve those issues. And there has to be the opportunity to do so, so that – so that, you know, we're not running into a debate on who's right or who's wrong.

We want to – we'd like to be checked in with more frequently by the regulatory bodies to confirm that the process is supporting our involvement. Because our experience in the Basin is that, yeah, you hear from the EA processes and then once or twice, and really that's the end of it. And I don't think that's true nation-to-nation engagement from our perspective. I think – I think there needs to be more frequent visits, more frequent follow-ups in terms of projects that are being proceeded by the federal EA. And we want to ensure that our voice is included in these decisions. Importantly, relationships must be built on trust. We want to know that our opinion is respected, and that includes giving us the time and space to share our voice. It also means confirming that we said what – what we said was heard and interpreted correctly. Sometimes there's always a misunderstanding of – because the number one language for us is Dene, and – and that's really important, is that when it comes to these processes, there has to be, you know, translation for our aboriginal groups that may bring elders and their first language could be Dene or Cree. And – and that needs to be respected in the EA process.

So both companies and regulators need to be open and transparent and honest with us if you expect us to be open and honest with you. Information must be shared openly and with adequate time for us to form and share an opinion. So I want to tell you about a good example of engagement that – where Fond du Lac First Nation was involved in the Gunnar remediation project in the EA with a proponent, the Saskatchewan Research Council through the Canadian Nuclear Safety Commission. For the community of Fond du Lac, this was a great example because the – it was a good process because of careful and strong relationships were formed between SRC and the communities with the help of the CNSC. And having said that,

and – and it's because of Chief Tsannie and the other Chiefs going to the hearings of the Communication Nuclear Safety Commissions and making their points about how they're being left out. And certainly SRC has initiated to take that approach and – and to build a better relationship with the Athabasca First Nations and the communities that are there.

You know, we were not undermined during that process. We were able to come to the table and be directly involved in the EA from the beginning. We were part of the design of the decommissioning of the Gunnar and Laredo (ph) mines. So the elders, our community members, we've had tons of workshops and where our people were involved, where efforts were made by SRC to even in – even have participation from Hatchet Lake in – at their community level.

So – so we feel that when we say we want to be involved in the design, we want to be involved in the beginning, in the development of the EIS. And – and it gives us more certainty and understanding of what it entails in the EIS, rather than trying to get a 30-day notice and – and for our own people to try to figure out what – what the whole project means. So from that – from that perspective, I think we want to allude that to – to the Panel, and that – we were asked how the clean-up should happen, and we were able to share our traditional knowledge, and – and how they listened to us. And you know, they – they didn't undermine us when they asked us for – be part of the process by doing our own traditional knowledge and sharing that with them as part of the EIS. So it's – so that be somewhat an important project to consider when engaging aboriginal people from the design of the project.

Our traditional knowledge changed the project. Like for an example, there was better and stronger monitoring done in certain areas that we depended on for different food source, harvesting, and drinking water, and I think that's really important. And integrating that with science, and – and that was really important for us, you know, how do you integrate science and traditional knowledge together to protect the ways that we continue to clean up those old, abandoned mine sites. And it's a starting point, and other processes should be considered this approach with making some recommendations on some key issues that are still aroused during the EA process. And we should – we would like to see the federal EA process foster the same kind of relationship that we did with the SRC. And – and one way of doing this is through how traditional knowledge is used in the EA.

And TK is important, how to – we as nations make decisions, and should also form how the federal government makes environmental decisions. It is important to us that both companies and government clearly understand and agree on what a good TAK study and how it can be used. Coming to our community and then talking to us is not a TAK study, from our perspective. Consultation is not a TK study. So we just want to make sure that – that these does not determine consultations. TK collection and analysis must be – always be conducted by following our community protocols. So we, as Dene people, have our own protocols when it

comes to traditional knowledge, and we want to make sure that these knowl—those protocols are respected and – and are included.

And again, relationships must be made and maintained so that we know we are both heard and understood correctly. And it must be understood that we're not sharing our law – our knowledge, like I previously said, that we're not a check box here. And we do not want to see our knowledge stuck in an appendix in the EA in the environmental impact studies. It should be part of the report, as far as our concern, although the – I'm not saying that the – it's the best outcome out of the Saskatchewan Research Council, but there are some things that can be changed to make things a lot better in the EA process on the engagement as well. But there were some good things that came out of it, and we want to make sure that – you know, that our TK was put in the back of the EIS, and that's why we feel that it should be part of the report. If it's a part of the project, it is part of what's in the environment, it should be part of the full report, not an appendix in the back. So that's our recommendation to the Panel as well.

And we would like to – for other scientific studies that are started in the beginning of the EA process, so too our TK should. So any scientific studies that are being done in a specific project, we suggest and recommend that the TK or traditional knowledge is initiated at the same time as those studies that are being projected by the company or industry or governments. And our knowledge can be informed in many – many things, and TK is critical not only for understanding of baseline studies and what – what the impacts might be, but it also can inform solutions. So – so it's really important that these studies through the CEAA 2012 have, you know, some baseline studies, and certainly, you know, we – I think we need to be methodical on how this – the TK should be designed and could be integral for developing and designing mitigations for monitoring programs on – on development. And it can and has been successful and meaningful, you know, in the past in some of the EAs, as mentioned, through the Gunnar project.

And – and I guess the other is being involved in finding the solution is important to us. I say the – the Gunnar remediation project itself was successful to us because we were involved in developing the mitigations. The proponent gave us the opportunity to be involved in how these mitigations should be put together, and – and give us how the remediation should happen. You know, we were fully involved in. And so we were be able – we were able to understand the project clearly, and it wasn't something the elders could not understand, because these were recommendations coming from the elders and the leaders in the communities.

But developing mitigations and monitoring other approval conditions is – is not enough. It is implementation of those conditions. So it's really important that the implementation part of it is really important of these conditions success – successfully that will accommodate, you know, our rights and other aboriginal rights across Canada. Developing mitigations is – you know, if there's no real

commitment to follow up – follow through the – after the EA process is over, then right now we have no guarantee that these conditions – those conditions we support in the federal EA will be undertaken. So we feel that, if there's no follow-up and – and it – and says OK, your license have been approved by the federal EA, the Minister has approved then there is no follow-up, then for us, we go back to square one again, where we end up.

Furthermore, we have no guarantee that, even if conditions are implement, they will be done correctly or will work as they were intended. So a solution must be put in place in the new EA process to address that. And I would like the expert panel to look to Saskatchewan as an example of how to ensure successful follow-up on the EA. Saskatchewan has found a way to ensure that conditions are followed through successful – through mandatory reporting. So there has to be some reporting. In the 2012 Saskatchewan initiated a mandatory condition management process requiring companies to create and submit commitments registered as part of their EIS. And companies are now required to report annually on how their conditions are being followed through. Having a condition management process as part of the EA process would not only ensure that conditions are being implemented, but they are also effective at the – addressing environmental impacts. And the Fond du Lac First Nations and the other supporting communities surrounding would support the institution of mandatory reporting requirements for approval conditions as part of the new EA process.

So in conclusion, commitments must be made to changing this process, and that Chief Adam... how this could be possible, and that the Fond du Lac First Nations have witnessed and been part of a EA process that includes meaningful engagement, and we have see our – the TK – our TK being used appropriately. And we know there – there are other ways to ensure that approval conditions can be followed through. If this can be done in Saskatchewan, then certainly it can be done at the federal level. And I hope you learn from the examples that Chief Adam has provided you, Madame Chair and the Panel, and say thank you very much.

Johanne Gélinas: Thank you very much. We are very grateful for all these proposals. We will take into account every word of it. Thank you very much. I would like now to open the floor for dialogue with – with you. I mean, I'm sure my colleagues have a lot of questions to – to ask, so I will start with you, Doug, if you want.

Doug Horswill: OK. Thank you.

Johanne Gélinas: Would you mind – excuse me, Doug for a second. Would you mind if we go up to 12:15 or 12:20? Do you have any reason to leave earlier? No? That's OK?

Unidentified Male: (Off microphone)

Diane McDonald: (Off microphone)

Johanne Gélinas: Thank you very much.

Doug Horswill: Thank you, Madam Chair. I appreciated very much your thoughtful comments today. As well, I just echo the Chair's comments. I wonder if you could elaborate on a couple of things. In terms of First Nations indigenous people's involvement in the EA panel itself and in monitoring post a project's conditions, have you – can you elaborate, and sort of what format should that occur in? Would the individual, you think, would that be a person very much from the local community or – or beyond in an EA panel? That's one of my questions.

And then another question would revolve around the notion of funding for indigenous peoples' involvement in things like study and collection. How should that funding be managed and – and provided, from your point of view?

Diane McDonald: Thank you, Doug. From the perspective of traditional knowledge, the Athabasca Dene Denesuline have been involved in traditional knowledge gathering over a period of 16 years. From our perspective, we've – we've trained our own people. We've hired an expert that you may be aware of. His name is Terry Tobias (ph). We've utilized him in the past to do training, methodologies that are being developed by our elders on key important things that are really important to us to what we harvest as – as part of our food. And certainly from the perspective of traditional knowledge funding, that we feel that, from our perspective, we're more knowledgeable. We know – we know who we are, and we feel that these types of studies should be done by our own aboriginal people, and funding should be driven back to the organizations that work for the First Nations, whereas for the three Athabasca bands, recently developing Ya'Thi Néné Lands and Resource Office out of – out of the creation of our collaboration agreement with Cameco and AREVA, which the two major companies supporting this office. You know, I think it's – it's in the best interests of our First Nations that these funding commitments are made through the organizations that actually work on behalf of the First Nations.

So – so to answer your second question – your first question, I guess – is that when it – when it comes to the environmental monitoring, I guess one – one example that we have is with Cameco and AREVA. Over the years we've done environmental monitoring program. And from our perspective, we – we – we're working together to improve those things with the companies. And it's a good thing. It's a good relationship building, that we're renewing our relationship with both Cameco and AREVA, and I think there's going to be some positive outcomes in the coming years with our building relationship on how we're going to do things differently and how we're going to work together and – and where.

And so it's really important from the, you know, building the capacities, really the important key issue for us is the environmental monitoring, and –

and certainly have our – having our own experts, indigenous people, working alongside with the companies is really important. And I think that gives you security and understanding, and that the trust you're building is – is the key thing. Because we – we're oral people, and we live off the land. And from our perspective – and I cannot speak for, you know, other First Nations, but from our view is that the aboriginal people are best to give observation in terms of the changes in the environment, and whether if it's water quality or the landscape itself and the wildlife, there's changes. And our elders and our young people tell us this, and from that perspective I feel that – we feel that aboriginal people are best in terms of initiating these projects with the companies.

And – and I don't think we'd be sitting here today asking the Panel to talk, you know, recommend that more monitoring programs should be involved and that – that – you know, asking that our involvement, you know, throughout the design and the follow-up after a project, and that certainly dialogue is really important on – when it comes to the EA process. So I'm not sure if I --

Doug Horswill: Just one slight elaboration, if I could. When you're in the monitoring process that you have set up with the – with the proponent companies in your area, is there government involvement in that, either the CNSC or the province? Do they – or is that just an arrangement between the First Nations and the company?

Diane McDonald: We just recently finalized our collaboration agreement. So we are working towards making some changes. Currently there is the old Athabasca Working Group that was there, but this is to replace that. But the opportunity is to work, you know, with the agencies, the provincial, the Cumulative Effects Monitoring Program. So we're – we'll be able to review what's out there already in existence and – and look at what we need to do to make the changes that really affects the people in the Athabasca Basin. So I can't really answer that question for you today.

Doug Horswill: Thank you.

Johanne Gélinas: Thank you. I have a few questions to make sure that I can validate my understanding of some of your comments. When you talk about traditional knowledge, would it be OK if I was to translate that in a kind of parallel but integrated impact studies done by yourself, your community, that will happen at the same time as the proponent is doing its own environmental study, and at some point that will merge and we will have a very good understanding of what are the impacts from a indigenous standpoint and also from non-indigenous? Am I right saying that?

Diane McDonald: Yes.

Johanne Gélinas: OK. In the example of the Gunnar remediation project, since how long you have built that relationship and collaborate together to get a good understanding of the impacts and the mitigation measures?

Diane McDonald: With who?

Johanne Gélinas: The Gunnar. The – the Gunnar?

Diane McDonald: Oh, the Saskatchewan – or SRC.

Johanne Gélinas: But you can take any kind of project. But how long does it take to build that relationship and making sure that your info is integrated in any kind of decision process?

Diane McDonald: Well, it wasn't a easy start, put it that way. I think our Chiefs over the past years had to make strong arguments and – for the proponent to understand our frustration. You know, it has to – for us is, you know, going to the hearings and media just to get the attention of the proponent. So it wasn't an easy fix to get to where we were with SRC. We had to make, you know, public appearances and – and try to prove – say that, you know, you're not listening to us, you know, you're ignoring us. And it took a lot of effort from our leaders and our elders over the past years. So to – I probably would say it took us six years or more before the – before we started building a good relationship with the – the proponent on that specific project.

Johanne Gélinas: And I'm not an expert in aboriginal rights, but when you talk about treaty rights in your treaty, for example, can you explain to me the link between the treaty and EA?

Diane McDonald: Well, I guess when you look at a project, right, so I'm just going to use a project – you know, a make-up project. So if – let's – let's just use something that we're familiar with in the Athabasca Basin. So let's say a company is proposing a TMF, a new TMF, a tailings management facility, to store their tailings. So – and they need an area of maybe 400 metres by 400 metres to develop this tailings. But yet our land users have used that area that they're proposing on for hunting and fishing, if it was a lake. And from – from that perspective, if – if the TMF is being proposed where our water is going to be dewatered and – and the fish is going to be taken out or fish is going to die, and then you're taking away – from our perspective, you're taking away our fishing right when you're dewatering a lake for a TMF. So you're limiting us from where we should harvest. You've taken that right away from us where there was good fishing, and whether if it's good trout or good jackfish, and from the EA perspective, the EA would have impact on that right from us. If we had set traps, if a trapper had set traps there in that area, within that 400 metres by 400 metres, if you've taken that landscape away, you've taken part of the person's livelihood away. So from our view is those are types of impacts when we say to our treaty rights. You're limiting us to a different area where we've depended on since we're children. And – and certainly that's how we see our treaty rights, you know, the effects of that integrates through the EA that needs to look at those types of consideration.

Johanne Gélinas: So if we take the other example that you were providing us earlier, what you are saying is that a proponent will not come to you in the first place to

understand your rights and then to start a dialogue on how to consider the impacts and how you see yourself the impacts, right?

Diane McDonald: Yes.

Johanne Gélinas: OK. Another thing. In one of the submission that you presented to us, you refer to a regional-based consultation protocol that you have. Would you share that with us?

Diane McDonald: We'd be happy to share that with you, and we've shared that with the Canadian Nuclear Safety Commissions at our hearings in the past. So we'd be happy to forward that to one of your staff.

Johanne Gélinas: Thank you very much. Rod?

Rod Northey: Yes. Thank you, Ms. McDonald, and Chief, for the presentation, and all four of them say very different things that are all important, so I'm just trying to catch up to you. So I want to just acknowledge the gap that you've set out about traditional land use. We heard some submissions yesterday about that. And if one looks at what the Canadian Environmental Assessment Agency has looked at and does provide guidance, there is not presently guidance on how to deal with traditional land use as a specific matter. So that's a very important point you've made that we'll try and figure out how to deal with.

So I want to step away from, if I could, the characterization. The – a lot of the things you are unhappy with speak to projects happening without you knowing, and then reacting to them, etcetera. And I want to ask because there are a lot of projects in your area. We were hearing yesterday about the region, and we were talking and our panel's been asked to look at the question of something called regional assessment, which is to take an area broader than a specific project and try and figure out what should happen in that area. Have you been involved – and we've heard very much about the Athabasca area, and I'm just asking the question because I'd like to understand better. You refer to it, to my interest, as the old Athabasca group. What is going on as far as you know to monitor things in Athabasca, the area, as the broad area?

Diane McDonald: Interesting question. The Athabasca Monitoring Program that's driven by the province, we have no clue what's going on. We've never been involved. We've never been informed. Yet the province has initiated that program with – through the – in the Environment Department, and the Athabasca communities – the Hatchet Lake nor Fond du Lac, which is probably the closest community to that program, the Eastern Monitoring Program, we've never been consulted, we've never been asked to be engaged. So you know, those types of things are, you know, not unusual for us when projects like that are initiated by governments. And from – so I have to say that, from that perspective, we – we have no clue what's going on.

Rod Northey: Alright. So I – I'm not minimizing that. So now we'll move to – are you involved, just to try and clarify this, in any ongoing monitoring at a regional level that might involve the CNSC or any other government? So if the Saskatchewan government hasn't engaged you, are you engaged in some other regional effort on things like your use of traditi—your food use, traditional country food? All that stuff we've heard about, I'm just curious if you're engaged in part of those efforts.

Diane McDonald: The office itself, the recently organized office, we're not yet. But our plan in the future is to work with the mining companies to be more involved and revisit the existing monitoring program that is – that we're currently involved in in the Athabasca through the – the old Athabasca Working Group. So the opportunity – there are some – there are going to be some changes in terms of how the monitoring is done and what types of things will be monitored. We as Chiefs and former Chiefs have felt in the past that it's not enough in terms of the – the partnership agreement we have, and we're building on that and we want to make some positive changes with our counterparts, the mining companies, so that, you know, the – from moving, you know, forward from now on, that, you know, how can we make some good strides with industry and – and certainly bring some positive changes that might be effective for processes in the future through the EA process, you know, that you may want to consider changes in the future again once we've – you know, we've worked out the – the ducks and where we want to go with industry. And I think, you know, I can only speak of where we think we might go. And if you ask me that question two or three years from now, I might have a better answer for you.

Rod Northey: Can I continue? Or do you have --

Johanne Gélinas: One more and --

Rod Northey: Or you – go ahead.

Renée Pelletier: So I had a question for Ms. McDonald and Chief, for both of you. As I'm sure you know, one of our mandates as a panel is to look at the United Declaration, look at UNDRIP, figure out how to integrate that into our recommendations to the Minister. And I know, Ms. McDonald, you mentioned that in one of your presentations. I'm wondering if you have thoughts – you've talked about the SRC project as kind of a best practice in a way. Acknowledging that that is a project that sounds like it took you a long time to get to a good relationship, and I think you mentioned there were a few things that you'd see – you would have liked to have seen done differently. Acknowledging that that has happened under the current legislation, would you see that as a way in which – that best practice example as a way in which the United Declaration is reflected? Did you feel like you had your free, prior, and informed consent in that? Or do you have other ideas of how UNDRIP might be better reflected in the federal environmental assessment process?

Diane McDonald: Well, in terms of the free, prior consent in relation to the

project, I – I would say these are abandoned mines. From that perspective, I do not feel that free, prior and consent was met. So – but in terms of remediation on that project, when the federal and provincial governments engaged to remediate the 33 abandoned mines in the Athabasca region, it took – you know, it took, like, six, seven years, whatever, for us to be fully involved, but you know, based – you know, that was based on the determination from our Chiefs and our municipal leaders. And – but in terms of the process in the design perspective of the EIS is – is – we feel that it was – it was a good step for the Saskatchewan Research to – to involve the communities in the Athabasca Basin to be part of the development of the EIS statement. So --

Johanne Gélinas: Thank you. Doug, one question?

Doug Horswill: Yeah, I had – I had one more. I – taking you back to your comments a few minutes ago regarding your interaction with the companies, the notion of something often referred to as impact benefit agreements but they can take many forms and have many different names, do you have a view on whether such agreements should either be required within an EA or reflected in an EA or otherwise – or should they be entirely independent? And I'm not talking just about the commercial side, really; I'm talking more about the environment monitoring, social monitoring, those various things.

Diane McDonald: Well, just – you think about it right across Canada, right? So it depends on where you are as a nation and where the development is. Some nations do not have the capacity and ability to negotiate such an agreement with industry. Because some First Nations are just learning and coming aboard. So that would – you know, it should be a trigger if it does impact, you know, your way of life. Part of the social impact assessment of the EA, that should be a consideration to – for the EA to consider an – an agreement with the nations if the proponent is somewhat, somehow will impact an area that you normally utilize all your life and has taken that away from you. From our perspective, I think that should be something that should be a consideration.

Rod Northey: Yes, I just – there are a couple of things I'd like to follow up further. One is just to go back to this question of the industry discussions and then the federal government. And I know you've given me and given us some information about the Saskatchewan government, but I do want to try and understand, because we're a federal panel, whether the CNSC is engaged now, back to this question of regional work. Is the answer that you are not engaged with them? Are they part of the engagement with companies? I'm just trying to get a sense of where you are in that broader landscape with the CNSC.

Diane McDonald: So there's two things. The proponent has the obligation to engage with aboriginal people whose rights may be impacted. There's also the obligations of the Crown to engage with aboriginal people based on their rights under – that are protected under the Constitution rights. So from our perspective, we find that

the proponent is doing mostly the groundwork, rather than the Crown. And from our view, the – it's – the Crown also has a duty and responsibility to engage with aboriginal people when it comes to developments. The EA process, we feel that the Crown is behind the scenes, and the Crown needs to step up and be more involved in these processes. You know, from our perspective, we were just only speaking from the Athabascas' experience, and we – the Crown needs to be up there. You know, the Crown needs to be more fully involved, fully engaged, and not rely on industry. We know that industry has a responsibility as well, but you know, as – under the law, you know, the Crown has the responsibility under the duty, their – their obligation with First Nations.

Johanne Gélinas: OK?

Rod Northey: Got one more. So then just to – to – sorry, everyone. I've had my mic miles from my mouth for a while. Just to follow up on that, then, so the CNSC is a regulatory body. Do you then hear from any representative of the Crown, from NRCan, Natural Resources Canada, or the Major Projects Management Office? Have you – have those kinds of organizations been part of what you've heard from?

Bart Tsannie: No, there's nothing.

Rod Northey: None?

Bart Tsannie: No.

Rod Northey: OK. Thank you.

Johanne Gélinas: We thank you very much for your participation. Very good information. Thanks also your colleague for their participation. We will take a pause for lunch, and we will reconvene here at one o'clock. Thank you very much. Thank you again.

Diane McDonald: Thank you, Madame Chair and Panel.

Bart Tsannie: Yeah, thank you.

(BREAK)

CHIEF MATTHEW TODD PEIGAN, PASQUA FIRST NATION

Matthew Todd Peigan: In deference to the Panel and to the other presenters, I will keep my presentation short and to the point. As I mentioned earlier, we – the United Nations Declaration on the Rights of Indigenous People, and specifically the right of free, prior, and informed consent. And to help avoid unnecessary recordings and

transcribed, I will provide a hard copy of this presentation to the Panel, which I've – I've done when I registered. I've also provided the Panel with a hard copy of past – was the 2012 draft of government of past was regulations respecting consultation and accommodation. These proposed regulations go a long way towards answering questions one, two, and four of the five questions posed by the Panel in the information sheet capturing the overarching indigenous considerations. This presentation will answer question number three, and that leaves only question number five in regards to the overarching questions that you pose on the website. They incorporate our regulations as well as our right to free, prior, and informed consent not only into environmental assessments but also into the entire federal review process of any project contemplated in Treaty 4 territory. And the Government of Canada may be well on its way to renewing the nation-to-nation relationship and moving towards reconciliation with Pasqua.

I'm just about ready to move into my – the body of my presentation, but first I feel I'm compelled to put on the record an assumption that I have made and that has led me to be here. I would not be here if I did not make this assumption and truly believe it will prove to be a correct one. I'd probably be somewhere else, like sitting in a strategy session with the Idle No More movement, for instance. And just to expand on the Idle No More, many people – and you've heard the comedians talk about, if I may be so blunt as saying it, the Indians are walking when they were – when they were protesting. And there was jokes of gesture saying there goes the Indians, they're walking again. And I was involved with those because one of the Idle No More founders is one of my – the people from Pasqua.

The Idle No More movement was not about indigenous peoples. It was about people as a whole. And the impacts that I'll get into later, that more specifically Bill C-38, Bill C-45, the two omnibus bills that were a part of the budgets, but also the Bill S-8, the First Nations Clean Water or First Nations Safe Water bill. Those three legislations, when you – when you put them together, it compromises by the – the Crown on First Nations jurisdiction and how that jurisdiction is purportedly and unilaterally transferred to the provincial government that those First Nations lie in. And again, my comments are because of the location of Pasqua First Nation and the impacts that we have endured because of these bills and because of the cumulative impacts that I talked about earlier. We have the National Energy Board that deals with regulatory body that is involved when it passes provincial boundaries into other provinces, so the National Energy Board is involved with that. Then we have provincial regulations on industry that is excluded from our federal regulatory board. But those two regulatory boards do not look at the cumulative impacts, and we at Pasqua are experiencing that.

When we have pipelines coming through the Qu'Appelle Valley, and the breach of any of those pipelines, the impacts to the waters – and as you'll recall my earlier comments is that the Qu'Appelle Valley is the only main waterway in southern Saskatchewan. And the impacts to that water body not only

impacts First Nations but impacts thousands and thousands of – of non-First Nations people as well. So when we put in safeguards through the National Energy Board – and I just want to talk about the National Energy Board for a bit. Because I know you have some of the questions, more than the overarching there's a number of other questions you have in your website that maybe there might be an answer that I will provide.

For example, the National Energy Board was involved with the Line 3 replacement project for the Enbridge program – Enbridge pipeline. And you have to proceed through a process of filing as an intervener, filing for funding, and then you're tasked with looking at thousands and thousands of pages of submissions done by the proponent. For the Line 3 replacement, Pasqua First Nation, I believe we received 9500 from the National Energy Board to review the thousands of papers. We could not hire a professional. I could read those documents, but I cannot interpret them. And many a late night I would be sitting up reviewing these documents, trying to understand what they meant, and then trying to formulate the information requests to have submitted to the National Energy Board, only for that regulatory body to turn around and – and send that to the proponent to respond, and hoping the proponent justifies and satisfies my information request. It's like taking a fox and putting him in front of the henhouse and say here, guard my chickens for me, please. That is what the National Energy Board and proponents work on.

So we were not satisfied with the question on how the environment will be protected and how we can be involved as First Nations people. There's no enforcement for that. We even asked the National Energy Board if they could use their technicians to help us, but unfortunately that – there was no response to that. The Line 3 replacement report was received by the Governor-in-Council and they're currently reviewing. Pasqua identified six conditions, and not one condition was – was recognized.

So what are we doing here today? We're looking at the Northern Gateway project in – in BC that the court said that, federal government, you have an obligation, you have a duty to consult. You have a duty to consult with First Nations. You cannot leave it up to the National Energy Board. The National Energy Board cannot leave it up to the proponent. And that's the way everything happens. So that's why we're – we're here today, to look at federal legislation and the impact to First Nations, to see how the federal government can better streamline processes and coordinate with federal and provincial governments, but also, if possible, coordinate and include the indigenous peoples.

The body of my presentation deals with the Fisheries Act and Navigable Waters Act because, again, going back to Pasqua First Nation, prior to the – the implementation of these bills, we depended on the Fisheries Act and the Navigable Waters Act. Because whenever there was a provincial project, we at Pasqua, we would call on the federal government because it's their fiduciary responsibility to protect lands and lands reserved for Indians. And in this case, we had a province who

had a provincial proponent impacting the First Nations' aboriginal rights. And why I saw aboriginal and inherent rights is they're not treaty rights. Treaty did not give Pasqua the right to fish, hunt, trap, and gather. Treaty only affirmed and said you have those prior to us, as the newcomers, the Europeans, being here. But you still have, as the Crown, an obligation to protect those. And unfortunately, if I may be so blunt, you did a terrible job.

And it's forums like these that I commend each and every one of you for being here. Because you're going to hear the frustrations of First Nations people. Because they're given an opportunity to now voice their concerns – voice their concerns to a group that hopefully will listen; voice their concern to a group that would hopefully make changes; voice their concerns to a group that would hopefully not think about today but tomorrow.

As I mentioned, we depended on the Fisheries Act and the Navigable Waters Act. Because again, Pasqua is bordering the south portion of Pasqua Lake. Because you've also got to recognize that the federal government and the common law principle to water. One of the things that at Pasqua what we look at is, if we cannot use the provincial government to assist, we cannot use the federal government to assist, you talk to a proponent, they listen to the provincial and federal government, those ones that are not assisting First Nations people. So if they're not assisting First Nations people and the proponent's going to proceed, where do the First Nations go? And what we're doing at Pasqua, the only place we're going to go is the only place we can go, is to the courts. We can only go to the courts in order to make the – make that known to both levels of government and the proponent that – the impacts and that – how serious as First Nations people we are.

Pasqua is currently involved with two litigations dealing with – with lands, Crown lands. The province is currently taking the – asking leave to go to the Supreme Court of Canada on one. And I'm always up front. I'm always up front with the federal government, the provincial government, proponents, is that we are now working with legal counsel on the National Energy Board and – and the discriminatory practices that they – that they – that they're engaged in. Because the federal government is allowing that. Because I'm – I'm really, you know, intrigued by a comment that I've read in legal counsel's submissions to the National Energy Board. And it was on – on two separate projects, is that the National Energy Board is the masters of its own process. So if they're the masters of their own process, and they do not include First Nations, then are they not discriminating? And that was our presentation that we did to the National Energy Board on the TransCanada Pipeline back in November 2015.

I'm assuming that this government will also restore and upgrade any further environmental provisions that were affected by the Harper passage of his two – the two wicked budget bills, which is again 38 and 45. And it's my understanding that these two bills directly affect 130 existing or proposed pieces of

legislation, several with environmental provisions. And finally, all of this was not part of the government's election platform. I'm assuming from the statements made in the intervening period that two key sustainability considerations will be put back into all environmental assessments. One is the requirement to consider the real need for a particular project, as well as alternatives to the project. The other is the requirement to consider the capacity of renewable resources that are likely to be affected by the project to meet present and future needs.

With that, I will now move on to the matter of free, prior, and informed consent. As we all know, the right of indigenous peoples to free, prior, and informed consent is stipulated in clause two of Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples, and provides that the Government of Canada must consult and cooperate in good faith with the indigenous peoples concerned through their own representatives, institutions in order to obtain their free and informed consent prior to approval of a project affecting their lands and territories and other resources, particularly in connection with the development, utilization, or exploration of minerals, water, or other resources.

I also must make two points here as concerns the indigenous peoples of Pasqua. First, a representative institution for the purpose of free, prior, and informed consent is and always will be the government of Pasqua, unless we formally delegate some other institute to act on our behalf. And for the record, as of today, we have not formally delegated the authority to any other institute to act for us in this matter – not the Assembly of First Nations, not the Federation of Sovereign Indigenous Nations, or any other organization.

Secondly, the Pasqua people's territories as present is defined by Treaty 4, and therefore includes the entire Treaty 4 territory, even though representatives represent only a small part of our ancestral territory, which stretches north to Edmonton and south to Montana and Minnesota. The people of Pasqua have always been opposed to industries' and the National Energy Board's policy of only consulting those First Nations within 50 kilometres of a proposed project. Our people must be engaged in any and all projects within Treaty 4 territory. While we all know that the UN Declaration includes free, prior, and informed consent as an indigenous right, not everyone seems to know that it's an inherent right of First Nations that exists without the UN Declaration; that it is a right found in other laws; and that it is not the same as the concept of social license. So I think it would be helpful if I spent a few minutes on these issues.

Let me begin by saying that the industry throughout Canada, and indeed around the world, has for some time embraced the idea that the process for obtaining a social license to operate from indigenous peoples and communities begins with consultation and ends with consent. Through our research, we have found that the vast majority of industry players who embrace this idea further agree that: one, consent must be freely given and not coerced, and it must be obtained prior to significant project

decisions. Communities must be fully informed, with access to accurate and comprehensive project-related economic, social, and environmental information. Companies must also provide communities with time and access to the technical expertise necessary to acquire a complete understanding of project impacts and benefits. And companies must acknowledge that communities have the right to withhold their consent. In other words, what the majority of Canadian industry players are saying is that social license can only be obtained through a free, prior, and informed consent.

What they are also saying is that consultation and free, prior, and informed consent are the two extremes of a singular process, a continuum, a continuous sequence in which the two elements are not perceptible different from each other, even though they may be quite distinct. However, while Canadian stakeholders and affected communities may not take issue with industry equating social license with free, prior, and informed consent, doing that represents a huge problem for the people of Pasqua because we see social license and free, prior, and informed consent as two separate concepts with significantly different characteristics.

At Pasqua, we see social license to operate as an extra-legal principle, something that occurs outside of the law. We know that neither government nor courts can grant a social license; that only people can – are – who can and are the Canadian public, the local communities and stakeholders affected by the project. We also know that, even though a social license is not a legal requirement, extractive projects seek them because, by not doing so, they run the risk of community projects – protests, work stoppages, budget overruns, and inevitable profit loss. And looking at it from a government perspective, we know that any government that approves a project lacking social license not only hurts business within its jurisdiction but encourages civil unrest and perhaps even violence.

Free, prior, and informed consent, on the other hand, is not only a part of customary international law in Canada, but is also a legal and indeed a Constitutional doctrine associated with the Crown's duty to consult and accommodate First Nations peoples. As such, it guarantees the government of Pasqua and the people of Pasqua the right to self-determination and the rights that flow from self-determination, including the right to freely pursue our own economic, social, and cultural developments. In other words, the right to free, prior, and informed consent entitled Pasqua to the capacity to effectively determine the outcome of decision making in all matters that affect us. However, having said that, we know that, just as in the case of the UN Declaration, Pasqua does not need customary international law or Constitutional doctrine in order for us to propo—to possess our inherent right to free, prior, and informed consent. We do find it beneficial, however, to the extent that the UN Declaration as well as these laws I mentioned obligate both the national and sub-national – example, the provinces – the governments to protect our indigenous rights to free, prior, and informed consent.

In summary, while social license and free, prior, and

informed consent may be halves of the same whole where the Canadian public may be concerned, in First Nations country they are two separate and distinct principles – one extralegal and one legal. Social license is rooted in our beliefs, perceptions, and opinions. Free, prior, and informed consent, on the other hand, is solidly grounded in our inherent and treaty rights, and affirmed in Section 35 of the Canadian Constitution. And because of this, it takes precedence over social license.

When we talk about social license and we talk about provincial and – and federal governments cannot provide that, one must look at do we just deal with federal and provincial governments when reviewing, regulating, and approving any proponents, may they be either provincial or federal jurisdiction? What defines a government? My earlier comments: nations make treaties; treaties do not make nations. What about the Indian governments? That was part of our submission to the National Energy Board on TransCanada under discriminatory practice because they do not recognize Indian governments. Are we Indian governments? Do the courts identify we're Indian governments? The Supreme Court of Canada takes in consideration discussions around the creation of particular laws and legislation. And the Supreme Court of Canada takes those comments that are made in crafting and implementing specific laws.

So when we look at Indian governments, let's look at the – the discussion notes in regards to recognizing them. We have the Meech Lake Accord, we have the Charlottetown Accord, we have the Royal Proclamation, we have the United Nations Declaration on the Rights of Indigenous Peoples, and the last legislation I believe by the Harper government was at the G7 summit on the extractive measures – Extractive Sectors Measures Transparency Act. That Act identifies and recognizes that it also is implemented and is subjected to Indian governments. So if we have federal laws, federal discussions, Supreme Court of Canada discussions identifying First Nations as Indian governments, why are the Indian governments not involved, and again, in receiving, reviewing, approving, and regulating proponents on their applications?

Those are some pretty tricky questions you're going to have to try and find an answer to. Because when I talk about discrimination, is that the way we feel in this country because we're not involved? Is the governments concerned, worried, afraid of not having First Nations involvement? My earlier comments, I identify that you're going to hear the frustration. Because it's an opportunity. I could be more frustrated, but I got to – I've got to be more, I guess, toned down.

When Pasqua government meets with industry, I only have two comments for them when I first meet with them: we could either get along or we could fight, the decision is yours. And we're fighting. We're fighting because federal legislation allows the proponent, allows the regulatory bodies to not fully include us. I mentioned the Line 3 replacement project for Enbridge and the 9500 that we received at Pasqua. We were involved with the TransCanada Pipeline as well. I believe we received 8000 for that one. But we also have to leave out the game plan. Pretty unique,

isn't it? You want 8000? Who's your lawyer? Who's your professional researcher? What's your submissions? Wow, that's kind of laying out your battle strategy, I think. So part of our submission was, if they don't want to fund us, we still want to be an intervener. Why? Because these things have to get done. These things have to be held accountable on why they want to exist.

That – I want to conclude my remarks by addressing the elephant in the room, as the saying goes, and it has done in whether our right to free, prior, and informed consent extends to the power of veto. The answer to the question, I believe, can be found in 171 decisions of Canadian courts that in essence have affirmed First Nations their veto power over proposed projects. The answer can also be found in industry's own literature, which states that companies must acknowledge that indigenous communities have the right to withhold their consent. But in the end, it really doesn't matter whether Pasqua and other indigenous peoples have near veto power or full veto power, whether a glass is half full or entirely full, because the obvious truth is that it's not an empty glass. I suggest we accept that as a given and move forward in pursuit of the peaceful cohabitation and coexistence our forefathers and yours wanted in 1874 when they entered into Treaty 4.

Let us move forward in a spirit of mutual respect and trust. Trust Pasqua to not stand in the way of proposed resource developments that have sustainability at their core and are environmentally sound, but respect our right to oppose them when they are lacking either or both of these requirements. Pasqua in turn will trust the Canadian government and industry to live up to 171 court decisions that I've just mentioned as well as the implement—the Supreme Court of Canada's directives to reconcile pre-existing First Nations sovereignty and assumed Crown sovereignty, and to secure the full consent of First Nations on very serious issues. Doing these two things will give the Government of Canada and industry a high rule of law score, which is something that Pasqua can respect because we know that a high rule of law score is the single biggest contributor to national prosperity, peace, liberty, and freedom from the evils of fraud and dishonour. As these – are these not the qualities that Canadians want to see in their country? Is this not the kind of country that they have a right to expect from their governments and their industry?

In closing, I want to quote the following from many of our indigenous elders that has always been stated, and I heard this many a time last week in our Treaty 4 gathering. When we make decisions, we have to make decisions in the best interests of those children of tomorrow, those yet unborn. And also, Terry Tempest Williams stated the eyes of the future are looking back at us and they are praying for us so that we may be – seen beyond our own times. I want to thank the Panel for allowing Pasqua First Nation this opportunity to sit before you today. Ah-how (ph). Megwitch.

Johanne Gélinas: Thank you very much, Chief Peigan. Would you like to introduce the person who is accompany you?

Matthew Todd Peigan: I did. His name is Lindsay Sear (ph). He is a councillor of the Pasqua First Nation.

Johanne Gélinas: Thank you very much. Any questions from my colleague Renée?

Renée Pelletier: So walee-win (ph) megwitch. Thank you, Chief, for your presentation. I wanted to pick up on one thing that you said near the end of your presentation. But before I do, there's one clarification I think I wanted to make. In your presentation you referred to the federal government, and I think you referred to the Panel as the federal government. So this is a point I made earlier this morning. So just to clarify that we are an independent panel, so we are not the federal government. But feel free to vent your frustrations to us because we are the open ears. But I did want to make that – that point.

You mentioned First Nations not currently involved in the environmental process in receiving information, reviewing applications, and then approving applications. And I wondered whether you thought, if that – if that would happen, whether that would be a way in which you could ensure free, prior, and informed consent of – of nations with integrated in the environmental assessment process, if you had that role.

Matthew Todd Peigan: Ms. Pelletier, what is your expertise?

Renée Pelletier: Sorry, what is my expertise?

Matthew Todd Peigan: Yes.

Renée Pelletier: Like, what's my background?

Matthew Todd Peigan: Yes.

Renée Pelletier: I'm an aboriginal rights lawyer.

Matthew Todd Peigan: OK. So I'm going to ask you about farming. I'm going to ask you about grain farming and how do you begin grain farming and the process. And I'm going to explain that to you and I want you to agree with me. That's the question you're asking me.

Renée Pelletier: Oh, no, sorry. I didn't mean any disrespect. I was wondering whether – I'm just --

Matthew Todd Peigan: I – I guess I'm trying to put it in context of – because when industry comes to a First Nations and – and just in regards to your comment, is here,

Pasqua, here's thousands of pages of documents. We want you to review these. And now we did full disclosure. Then we want your consent. No, it doesn't happen because First Nations are required and need expert technical advice. But they also need legal advice outside of the technical on these projects, which was going back to my earlier comments, is that's what we needed. Because we couldn't afford it, so we had to craft our own information request for the National Energy Board and hope the National Energy Board has that technical expertise to go and see the questions we had. But instead, they gave them to the proponent and said answer these questions.

Johanne Gélinas: So what will be the ideal procedure so that you can really get involved in your own way to contribute to improve a project or to comment on a project and feel that you are – people are listening to you and you have some comeback in terms of how your concern have been taken into account?

Matthew Todd Peigan: Those individuals in the area that the impact is – is – may – may happen, those entities, First Nation governments, should be involved. Not all together, but someone should be identified. If I may give an example, you have the TransCanada Pipeline, Energy East. I would have had someone from Alberta, Saskatchewan, Manitoba, Ontario, Quebec First Nation involved identified by the First Nations. I cannot talk about the cultural and spiritual and traditional about the Mi'kmaq, as they cannot talk about it on the Saulteaux. So now we have non-First Nations trying to comprehend that, and they just can't get it. Because Mother Earth doesn't need us; we need Mother Earth. If we all die today, Mother Earth will survive. If Mother Earth died today, we will all die. So we're dependent on her, so shouldn't we look after her?

And we – just in that context, I explained. Maybe in your head you were saying what's he talking about. And that's the point I'm making. What I just said, if any First Nations sitting behind me, they knew what I was talking about.

Johanne Gélinas: And I'm asking you, if we take the example of TransCanada with the Pasqua community, how you will describe the best way to get you involved, starting when, doing what? This is what we have to hear from you to get a better understanding and make sure that, whatever recommendations we will make, we will take into account what fits your need.

Matthew Todd Peigan: Like I said, the First Nations need required the financial resources to bring in our own expert people. When we brought that issue up, we were asked – we were told, well, we could – our staff could meet with you. And I think I used an example of the fox in front of the henhouse. That's why First Nations need the financial resources to hire their own expert person to review those documents to put them in layman's terms what's in them, what are potential impacts. Because questions have been raised – and I'm not talking about just one professional person. You got to understand the soil that the – these pipelines are in. You got to understand the aquifers, and the depth of those aquifers. You got to understand what is being put through these pipelines. When we talk about oil pipelines, everyone just thinks, well, I just bought a

litre of oil at the Walmart the other day, so that's what's going through the – those pipelines. No, it's not. There's different types of products that goes through those pipelines, and each one of them have a separate impact to environment. First Nations don't know that, so they need the technical expert—the technical and professional advice that they could make an informed decision. And once they know what those informed information is, they could raise questions. Those professionals could rephrase those questions into the technical terms that need required for information requests with the National Energy Board or whatever regulatory body it is. But we don't have that.

Johanne Gélinas: I understand that point. Can you tell me now how you engage your own community in the assessment of a project?

Matthew Todd Peigan: When we have membership meetings, we identify all the proponents we're currently dealing with, both federal and provincial. And it's pulled between of environment, employment, procurements. So we have to also gauge that. But at the end of the day, we would put aside the employment, the training opportunities so that we could ensure that the environment is protected. So the avenue today is litigation. But if you litigate against a proponent, well, they don't want to talk to you anymore about training and employment and procurements. So that's a big decision a First Nation has to make.

Johanne Gélinas: Understand. Rod?

Rod Northey: Yes, I'm just trying to stand back away from our project for a moment and just ask about the region. I've been asking this question throughout the last couple of days. So in terms of your area, how – how big is the area of concern that you would call – if you have a project coming through there, this is the kind of thing that we want. Just so – and I'm trying to understand. You've got a framework and you've got a regulation, and I'm trying to understand a little bit of how big the area is and how – and I was going to ask a second question about is there a legal distinction, is it traditional, is it reserve. I'm just trying to get a sense of how, for our purposes, we could understand better how something impacts you.

Matthew Todd Peigan: Very good question. And I got a very good answer.

Rod Northey: OK.

Matthew Todd Peigan: As I always tell, it's a pretty damned big area.

Rod Northey: Right. OK.

Matthew Todd Peigan: No, --

Rod Northey: (Inaudible – laughter) stay there.

Matthew Todd Peigan: No. One of the things that the proponents, if – I'll get to your question, but I want to --

Rod Northey: No, no. (Crosstalk).

Matthew Todd Peigan: -- and my – my answer would be what we're experiencing because when we proceed with pro—with the regulatory bodies, agreements are identified, and want to bring your attention to an agreement that we have with Saskatchewan and recognized by Canada, and it's called the Pasqua Lake Water Management Agreement. That – that agreement was negotiated between the Pasqua First Nation, the Muscowpetung Sauteaux Nation, and the Province of Saskatchewan. That agreement identifies protecting the water quality, enhancing water quality, in what is known as the Lower Qu'Appelle Valley. And all that I tell people, it's a pretty damned big area because it – it covers a large land base because we're dealing with natural drainage into the Qu'Appelle Valley from all the tributaries. So it goes as far as the Quinton-Punnichy area to the south side of Qu'Appelle Valley all the way down to Paskatebwa (ph) Lake. In terms of area size, I cannot tell you if it's --

Rod Northey: No, but --

Matthew Todd Peigan: -- if it's 2500 square miles, but it's a – it's a large area. That document has been also submitted to the National Energy Board for their consideration. Because – I talked about government. The government of Pasqua entered this agreement, but it wasn't – it wasn't considered. So the area is big, and we do have agreements for it.

Rod Northey: No, that's excellent. Can it be found on line? How do we find it?

Matthew Todd Peigan: Just give me your e-mail and I'll send it off to you.

Rod Northey: Thank you.

Johanne Gélinas: Chief Peigan, Mr. Sear, thank you very much for your contribution.

Matthew Todd Peigan: Thank you.

Johanne Gélinas: Thank you. Have a good day. I would like to call for Mr. Victor Fern for his presentation.

VICTOR FERN

Johanne Gélinas: Good afternoon, Mr. Fern. Welcome.

Victor Fern: I'm here as a representative for Cameco and also as a – as a resident of the Athabasca Basin. So first of all, I'd like to tell you about where I come from. I'm a Denesuline (ph) First Nation from Fond du Lac. That's a First Nations community. Our culture is still very strong. We live off the land. There's still some people that still trap and fish for a living. And you know, environment is a very big issue in our – in our area. We have all the mines, the uranium mines and – in our back yard. And you know, we have a lot of people that depend on mining as well as living off the land. So it's very important that we feel that we work with the industry and we partners as too so that we can look after the land that we want to exist way for future generations, you know. So we have seven communities in the Basin right now, where there's four municipalities and three First Nations that work closely together with industry, that – just recently we signed a collaborative agreement with – with AREVA and Cameco, with the seven Athabasca communities, again, which are three First Nations and four municipalities.

We feel very strongly that working with industry is the way to go, that, you know, we want to provide for future generations, that – that the environment is looked after. And we feel the – you know, the licensing and all that, the – we feel that there could be more – some improvements in that area, where we have the – the time limit is always an issue, where we only – after receiving the – that we get a month to review before – before the hearing. You know, we'd like to see that extended. And also, the other thing is that we – the funding to do the re—to bring in the experts is also an issue. We – we don't really have the funding to provide all the expert to review in such short notice. So – so that's always an issue. And always – another issue is always been brought up in the region is the location of the hearings. Usually people want to see that in the Basin. You know, we have reviews in Ottawa and Saskatoon, and it's – you know, it – that we ever – hardly ever see the reviews being done right – right in the – right in the Basin communities.

You know, we work closely with the industry. We know that it's very important that the – that the environment is looked after, so we – we have monitoring programs that – that are out there to do annual report – annual reporting and quarterly reviews from – with industry that provide information to the communities in the Basin. You know, so there are some good things that have come upon, but there's – and we still – you know, with our new agreement that – with the seven communities in the Basin, we feel that we can improve more on – on monitoring, that we can have our own people and, you know, even though these are independent reviewers or – that look after the environment, that bring out the reports, they don't work for the comp—they're not employees of the company, they're independent companies that do that, but we feel as a resident of the Basin that we – in the future that we are going to work towards

doing these monitoring ourselves. You know, I think it's very important that – that the people that live in the – in the Basin are the ones involved in making decisions and – you know, and making sure that all the – all the environment is – stays the same, you know.

And as for licensing and projects, I guess we feel that we – we feel that we should – you know, instead of that one-month notice, that we feel that the communities of the Basin should be more involved right from the start for new projects or expansions. So you know, while we – like again, I said we work with the industry. We do a lot of business with them, so we do get the business proponent of it, but – but I think towards the environment review and all that, we feel that our people and the land users need to be involved right from the start, just so that we – you know, we – we're engaged in the decision making as to whether the project is safe for us, or that it – that it's going to, you know, be environmental friendly for years to come.

So – and also the waterways, you know, we live on Lake Athabasca. That's our main provider, you know, all the mines that – most of the mines in the Basin, that we live downstream from the – from all these mines, so you know, waterways is very – is something that we take seriously. You know, we know that the mines need water to operate, and you know, that, like I said, we do – we get all the monitoring reports and all that, which is good. And so you know, a lot of – a lot of the people will still fish, you know, that's our – that we want to make sure that that's always, you know, the case for future generations. So I think when we – when we work with industry, we – we have a say – we will have a say into how the environment is taken care of. And the standards that the industry have is way lower than what – what is – what the roles are set for – for the – from the federal side.

So you know, I've – I myself worked in the uranium industry for over 20 – about 24 years now. I still work for Cameco. So – and I've also been a former Chief of my community, so I've seen both sides of the table, where, you know, while we're – we look at the environment for the future generations, and also the industry, where they're there to make money. We know that. And you know, that's why we feel that it's very important that we work as partners. So you know, I've seen a lot of people that depend on the mining industry. You know, we – there – even though there are still a few people that live off the land to do the hap—the trapping, the fishing, but the younger generation I've seen changing. We have a very young population in the Basin. And so we feel that, you know – that, you know, we support mining, and – but – and still, we need to look after environment as well. You know, I've seen a trend myself where the younger generation is leaning more towards – towards min—working in the mining industry, so – so working as partners and working together, looking after the environment, is very, very important to us. So that – thank you.

Johanne Gélina: Thank you very much. The agreement that you are referring to, is it something that you can share with us?

Victor Fern: There are some proponents that could be shared, and it – I – it's – but I don't think that – that there is some – some confidentiality in there as well.

Johanne Gélinas: The – let's call it the management of environment, which might be part of the agreement. Is it something that you can share?

Victor Fern: Yes. We – we just recently, after the agreement was signed, we – we have a proponent of the – of that agreement where we have what is called a Ya'Thi Néné Lands and Resources Office, where we will have all of our environmental information. And in the future, when we – like, all – if we do the monitoring ourselves, that all the information could come from that. That will be public information.

Johanne Gélinas: That will – might be very helpful for us to have a look at. And when you were talking about getting yourself involve in the monitoring process in the future, what exactly would be your contribution? Or what you would like your contribution to be, I should say.

Victor Fern: Well, I think when we – when we talk about our own contribution, where we have our own people that are doing the monitoring, that are – you know, that are doing the assessments of – of what – how – if there's any changes that we're seeing, we want to see, you know, our own people, where we have our own documents that we can reflect back on how – how – so this is where there's Ya'Thi Néné Lands and Resources Office will come in.

Johanne Gélinas: Questions?

Doug Horswill: Yeah. I have a few more on the – on the committee as well. First of all, just to allow us to understand better what is existing today, could you talk a little bit about how it came to be, what the history was? Because there – as we've heard some other structures in place before the one you're referring to, so it's kind of why now and how did you get to this. That's my first question.

Victor Fern: Well, I think it's important where we – we did have an agreement, if that's where you're elaborating on, is the collaborative agreement, where had an agreement before where it was called the Environment Management Agreement. And we wanted to make sure that we – you know, for the future, where we wanted to improve on what the agreement was, where we wanted to have more input as to how – how these resources are being – you know, to – that we could get more out of it. You know, we – obviously we – we've wanted more training and more jobs and for the – for the Basin, and also that we can control – can be part of the decision making as to how these projects proceed.

Doug Horswill: How does – is the makeup of the committees – you said three First Nations, four municipalities, and I guess industry or company participation, but how do you choose representatives and – and how do the decisions get made

within that?

Victor Fern: Well, we – we came up with a formula where we've – we have – there – there's about three committees that came out of there. This is the Ya'Thi Néné Lands and Resources, where there's what we call AJESS (ph), where it's – those will have people from – from the company and representatives from each community. And for the Ya'Thi Néné Lands and Resources, we – what we did was we – we went as a population, where we have three First Nations which have a bigger plan, and the four municipalities, which are way smaller municipalities. So we – we have two First – two board members from each muni—each First Nations, and one representative from the municipalities as – as – that's how we went to choose the board members.

Doug Horswill: And – and can the Land and Resources Committees, can they make demands of the company that in fact are in some way enforceable?

Victor Fern: Well, that's – that's what we are – we are working towards. Like, when – when I talk about being partners and having to make decisions regarding projects and expansions, and that's – and that's – this – right from the – right from the exploration is where we – we are hoping that we can start being involved in project developing.

Doug Horswill: OK. And my last question. Do the regulatory agencies, either provincial or federal, have anything to do with these committees whatsoever?

Victor Fern: These – these would be our own committees, which came out of this collaborative agreement, where the Ya'Thi Néné Lands and Resources Board is basically for the seven communities. And the – the other joint implementation committee would be with the industry and the communities as well.

Doug Horswill: OK. Thank you.

Renée Pelletier: Thank you for your presentation. Walee-win (ph). A question about the government's role in past projects. It sounds like a lot of the engagement that's happening, or that has happened to date, has been with industry. Wondering if you could say a little bit about what, if any, the role of government has been in engaging with your communities, and how you might see that improved in the future.

Victor Fern: Well, the – myself, I've – you know, I've lived in the area all my life, and been a past Chief, the former Chief. And I've – you know, there's very little engagement from the federal government where – to – in the communities. We hardly ever see anybody from the – from the federal government to – to our communities to present any – any projects or anything. And – and again with the provincial government as well, we're – they're the ones that are responsible for – for giving permits and that for exploration. You know, we – we always seem to have a concern with duty to consult,

and you know, that's a – that's a issue where the whole province is dealing with.

Johanne Gélinas: Thank you. Rod?

Rod Northey: Yes, I'm just sort of following up on that. So just turning to environmental assessment, what we're trying to work through and how to improve it, and I know you gave some recommendations at the beginning about timelines and greater notice. One of the things we were hearing about earlier was just recognition of traditional use. And I was just wondering, are there things – notice and timing are what I might call the process of environmental assessment. Do you have any comments about what you think environmental assessment should look at, or are you content with what you've seen?

Victor Fern: Well, I think it's – there's always – like I said, you know, there's always room for improvement, where – where we feel that it's a vast area, again. You know, I heard you talking to a Chief there before my presentation about the land mass. You know, when you look at the Athabasca Basin, that's – that's a pretty big area as well. So you know – so in the – there's always – should be improvements when you look at culture, you know, our traditional ways of life, and how – and how it'll impact the people that are using that land at the time of – when these processes start. You know, those – those – we feel that those are very important issues that should be addressed before – before any project starts. And you know, I think that's where First Nations people should be involved, right from the start. And that's how we feel. It's very important.

Rod Northey: Thank you.

Johanne Gélinas: Thank you very much for having come and share with us your – your views and proposal for better consideration for environmental assessment. Thank you. All the best.

Victor Fern: Thank you.

Johanne Gélinas: Are Ms. Chad and Mr. Ashkiwi (ph) in the room? So maybe we'll move with the next person to come to speak to us, Chief Sanderson. Mr. Sanderson, welcome.

(Off microphone exchange)

The floor is yours, Chief.

CALVIN SANDERSON, CHAKASTAYPASIN BAND

Calvin Sanderson: Good morning again. I'd just like to thank the Panel for coming out to our territory. I guess where I'm from, I'm part of Treaty 6 territory. I also – I'm also recognized at the FSIN as an independent First Nations. Our community back at home is unique. We have three Chief and councils. We call ourselves James Smith Cree Nations and Peter Chapman Cree Nation, and Chakastaypasin Cree Nation. And Chakastaypasin signed treaty in 1876 at Fort Carleton.

And I guess as you're aware of the impacts that we recently had in our North Saskatchewan River with the Husky Oil, and also that affected the First Nations on our riverbanks, in our community, the contaminants on the species and also the wildlife, I guess. And we're also in discussions with Shore Gold, an industry that's been drilling in our traditional territory for the past 19 years, and we've been going through an EIS with the provincial governments, and I think the federal governments were a part of that process. We gave about 80—188 recommendations to the industry on the recommendations that we feel that we need protection of our little traditional forest, we call it the island forest. It's surrounded – it's surrounded by municipality, towns, reeves, and also, I guess, industry. The other area that we're looking at is a hydro project in our community and how to regulate and build a hydro project in our community. And the process, I think we've been going through that for the past maybe, say, 13 years.

So I seen a lot of impact, and also benefits, that can come along with that EA review that you guys are doing here on the long terms. But on the other note that we're having difficulties, and just listening to the other presentators coming to the table here is the provincial government that have their environmental assessment departments, and also at the table that it almost seems like we're caught in the middle with the industry and also the environmental departments from the provinces. And I think to make things short in that area and how the two can get together and more or less listen to the First Nations on IBAs is to make sure that EIS and the environmental assessment departments are looking at all the issues with industry and First Nations.

Because we run into stumbling blocks when we're negotiating with industry. And when you're negotiating with industry, you know, at the end of the day, they're going to – they're going to, I guess, more or less agree with industry that you have your impact – I guess more or less EIS agreement in place. And then if they don't get their agreement in place, then now you're leaving the First Nations out of the picture, where they're going to go ahead and start either mining or drilling. In our area, it's a unique, open-pit mine. And like I mentioned before, that it's an island forest. It's going to impact our little forest. Might as well just say it's not going to be a forest anymore. The footprint itself on the Star-Orion and they call it the Orion Pit is also going to – it's huge. It's about maybe five kilometres diameter on the open pit. So can you imagine that open pit going down I don't know how many metres – 300, 350 metres down – that it's going to affect aquifer water and also the veins of that water that we rely on back at home. And also, there's surface water that – that's there, obviously, the

North Saskatchewan River.

So these are things that we look dearly to the heart on a long-term basis. And when – what our – what is our future kids going to be looking at, the unborn and the born today, and that we're just trying to protect Mother Earth. That's one of the things that we're looking at.

And I think one of the – the other – the other areas that we run into with the provincial governments, we get letter from the governments every day on their consultations and seeing if they're impacting our hunting, gathering, and fishing, and our traditional areas. But yet they go ahead and give industry or any other little departments that are drilling or logging without the consent of the First Nations. Because we don't have the capacity nor the funds to have our own environmental management to correspond back to these letters that are coming every day. I wish I had a few of them, but I get them just about every day from the province.

And that's the protection I think – I know that you're an independent body here, hearing out the First Nations across Canada and how we can benefit and how we can be an advocate in protecting our sovereign right as the First Nations. And I've always believed that when the treaties were signed in our territory in 1876, it was all written in there and how to protect the interest of the First Nations. There was a medicine trust in there, education trust in there. All these items were in there to protect us. But you know, industry and the NRTA was not a part of consulting with First Nations in the 1930s, more or less overstepped their boundaries, and left us with nothing in our pockets, our forefathers. You know, now industry are more or less just drilling left and right in any traditional territory that have resources.

And you know, the big thing in our – in our Saskatchewan now is mining. You know, obviously it's potash, uranium, potentially maybe diamonds. I think that's what the other Shore Gold company's looking at. But those are three major resources in Saskatchewan. And when you look at impact benefit agreements with First Nations, they now probably have a plan in how they're going to flourish and invest in their own community, either putting the economic dollars into an arm or an education legacy fund into an arm, and also First Nations, another arm for economic developments for band members and all that. But those are long-term scenarios that we're looking at back at home, three boxes where we can benefit and look after our own traditional territories.

The Treaty 6 was a massive – one of the biggest Treaty 6 in the territory here. And it goes right as far as Manitoba, right up to Alberta. We never gave up those – those rights. But when the NRTA came in, they took everything away from the First Nations. You know, we're not beggars here. We – we never try to be beggars. It's bad enough we went through a lot of hurdles just to be acknowledged, just to even have the decency to have a lawyer go and argue our issues. Those days are gone. This is the 21st century, where industry has to come at the table and start

respecting the traditional territories that we inherit. We were put in a box, in a reserve, a six-by-24 box I guess I'll call it, or 12-by-24. And we lost the majority of our rights to even leave our reserve back then. We had to get a permit to leave our reserve in order to go and even hunt, you know, to go and provide food for the families, back then. And that was like more or less a genocide.

You know, 21st century's still here and it's 2016, and we're still running into roadblocks with industry. Fracking. I don't know whether or not you live in the cities or in the countryside. But when you live in the countryside, you see a lot of these industries around your territory – log trucks, heavy equipment – whatever they're doing, drilling, impacting our daily lives, and yet we're not getting anything back at home, that we only live on contribution dollars. You know, it would be nice if industry would be at the table there and start giving back the royalties. Because they're going to get it back anyways. Eventually the provincial governments or the federal governments will increase the royalties and what they're going to be getting out of the diamonds or potash or uranium.

And jobs is always an issue. You know, jobs is always a given. It's going to be a given anyways, whatever – what kind of industry's actually coming to your traditional territory. There's going to be jobs there no matter what. But how do you accommodate the impacts that are going to happen? I would say in our little island forest, how are you going to accommodate that, with all the loss of the hunting and fishing and gathering, the medicines that are there? You can't adapt to that. How do you adapt to that? That's another thing you're going to have to consider too. And I think that's a part of this process here. How do you adapt us in growing sweet grass or some kind of medicine in another location where it normally grows and comes out every spring and it's harvested every fall? These are things that are going to be impacted that we still practice today on our traditional territory, is our own medicines. A plant could be replaced and be grown back there, but it may not grow in another place.

And how do you migrate wild animals, where they're calving during the calving season in the spring and then you move them into a muskeg area? They're not used to in – having calves in the muskeg area, any – any wildlife. And how do you adapt to that? How does that animal adapt to that? These are impacts that are happening today. Wildlife is moving around from the north. They're actually most that are actually moving to the south now. You see a lot of moose signs here on the south – on the TransCanada Highway that you never seen before. Those are migrating. You see the – these vultures that are coming around in Saskatchewan. You never used to see these vultures coming around. But there's tons of them now coming around Saskatchewan, along the Saskatchewan River. You never see these things.

You know, unfortunately, it's all about money. Yes, I know we have to continue operating our vehicles, getting these plastic bottles or whatever they make – oil or any – any other substance that they – they use. You know, one of the things when you go back to your recommendations is that I think the First Nations

need their own technical and their new management – environmental management at their own grassroots community, so we can finally go back and start making comments on all the letters that are coming from the provincial government that no, we can't accommodate this. We'd like to come and talk to you and talk about accommodations, not consultations. It's good to consult with First Nations, but also you got to accommodate at the end of the day when industries are going ahead on any other operations they have in your traditional territories. You can't also look at the First Nations reserve. You got to continue to look at the traditional territories that they've been – that they've been occupying I guess since the day that our great-grandfathers have been setting foot in our area.

You know, we still practice our hunting and fishing and gathering. You know, it doesn't matter how far we go back, to the 16th century, to the 17, 18, 19, 20th. We still do those things. We never lost those. We don't go to Sobeys, Safeway, to go and buy our wild meat. You know, it's out there. It's pure. When you eat these pure wildlife, you're more or less healthy. You know, we talk about diabetes and cancer. Our people are being affected by all of these – these things that are – they're consuming today. But it's the wildlife that preserves the First Nations on the long life that they – that they so desire. And when you contaminate our water, our North Saskatchewan River, we call it the beautiful lady that used to look after us at one point, and now that river, North Saskatchewan River, was contaminated by oil. And how do you replace that beautiful lady now to more or less look beautiful again? You know, unfortunately, when you contaminate something like that, you got to look at the species, the wildlife that actually runs through along that water, and the medicines that are along there. That could have a long-term effect.

I just finished coming from a Husky Oil meeting here this morning. And yet, you know, industry now, they're not stepping at the plate there and more or less saying yeah, it's our fault. You got to prove it, that it's our oil. Well, let's do that later; let's clean up the river here first, you know. Let's not wait and let it contaminate it right down to the delta to the Winnipeg. It – that water goes all the way to Ontario. It goes all the way down there. It doesn't come upstream. So all that water you guys get in Ontario comes from the mountains here. Look at that vein. And whatever ha—impacts on there, it'll impact you down – down the years to come. And whatever the farmers are – are there, on their fertilizers, it washes down that river, creeks, riverbeds, slews (ph), whatever they're throwing in the toilet bowls. It's happening, it's going down there. That algae is in that Saskatchewan River. Eventually maybe it will kill all of the fish in there, whatever lives. The sturgeon is an endangered species in the North Saskatchewan River. So if that sturgeon is gone, then you know, there is no more sturgeon there. And that's another species gone into the list.

But we as First Nations, we talk about protecting our land, our traditional territories. Industry's got to come to the table and start respecting our rights, our sovereign rights not to be stripped from it and then move on, and then the – the well is empty, and now there's no resources. There got to be compensation

somewhere. Industry's got to be forced, either from the EA or provincially, federally, and to be a part of that meeting, to be a part of that process, where they can sit down with the three – with the First Nations and the industry and the environmental assessment panels that are looking at these EIs, and say no, we can't give you this. What kind of agreement do you have with the First Nations? What do you have on the table? We can't give you this ticket until you have a concrete agreement. And if that EA, that IBA is a part of the agreement, then industry's got to acknowledge that until they're done mining, and do reclamation, put it back to possibly the state that they bothered it when they first broke ground. It may not happen. But you know, on it – at least there, that agreement will be a concrete, and the federal or the justice ministers have to be a part of that process to acknowledge those agreements.

I know the First Nations that have agreements with IBAs do fall apart. And industry just walks away from the table. And that's why you have lots of these mines that are not, I guess, they're not decommissioned, I guess, properly. Contaminants are still there because industry walked away at the end of the day. That money's got to continue to stay in the trust—in the trust.

So you can see the – the issues that the First Nations have, is that it costs a lot of money when you're – one letter is coming in, two three. I probably get maybe five letters a day from the province on harvesting wood, industry drilling in our traditional territory, fracking, all these other little things that come along with the permits. And then when we don't respond back to these permits, that they're going to go ahead and give it to industry or the harvesters that are doing in our traditional territory. And yet we don't have the resources to fight back and correspond back and say no, we can't allow you to do this. You know, but at the end of the day, they are going to have to answer it eventually because they're releasing these permits to the industries or harvesters because we never gave them that consent nor responded back to those letters that they gave us.

You know, these are the type – at one point we had – we had the environmentalists at the table in our negotiations, and it did help that one – at that one point. But after that it fell apart again. You know, First Nations have to be protected at that negotiation table too, where the environmental panel or the departments have to be a part of the say, and say we can't issue anything here until the First Nations are accommodated.

Johanne Gélinas: I will invite you to conclude so that we can have a few questions for you.

Calvin Sanderson: Thank you. I thought – I got to be grateful for being here because I was on – I guess I do have other issues. But I will keep an eye on this, and I am a part of the Climate Committee at the AFN level. So I guess enjoy, I guess, the rest of the speakers, and welcome to our traditional territory, and thank you.

Johanne G elinas: Thank you. Questions?

Doug Horswill: Sure. You mentioned early on in your presentation – sorry, better put this over here. You mentioned early on in your presentation the federal and the provincial governments, and as I understood it, it related to the need for cooperation and coordination so that First Nations, as I understood it, saw kind of one voice. But could you elaborate on that? I'm not sure that I got your message correctly there. Thank you.

Calvin Sanderson: When – when we have meetings with industry and the First Nations, and the environmental department's not there provincially, is that it'll make it a lot stronger to negotiate these agreements, and that – I would say that – I'm just talking off the top, there may be hearsay is that maybe Shore Gold is just waiting on the sidelines, waiting for that impact – that EIS to be signed off from the provincial government. OK, we don't need the First Nations anymore. So we'll go ahead and start developing and working on our open-pit mine and all that. But they're going to run into roadblocks if they don't get that EIS approved. And Shore Gold's probably high hopes is that we can start digging here. To prevent roadblocks and all these other things with the First Nations, sit at the table, get these environmental departments at that table to sit down, mediate it if you have to, to try and resolve the impact benefit agreements with the First Nations.

You know, you can't just let industry come into your territory and run it dry. How you're going to impa—how are you going to compensate and accommodate the First Nations that rely on that? How do you put a dollar sign on the wildlife that's going to be impacted on that? Because it's not going to be – it's – and just more or less like when you let your back yard lawn grow, it's growing with grass. Then all of a sudden you decide to go cut it, and then it looks different there. You know, when you dis—when you're disrupting a forest, knocking down trees and putting an er—taking an overburden, it's going to be a big mountain, five kilometres. Can you imagine what's going to – and that soil will be on top, from the bottom. That soil from the top is going to be at the bottom of the overburden. It's not going to be on top. So whatever they dig out, it could be contaminants through there. That's dust that's blowing around. So we need the department from the environmental side sitting with the First Nations to negotiate and mediate and say well, we can't give you this – this environmental agreement until you talk to the First Nations and agree amongst yourselves first.

Doug Horswill: OK. Thank you.

Johanne G elinas: Short question?

Ren e Pelletier: Yeah. Just a question about accommodation. You've talked a lot about accommodation through IBAs. And I'm wondering, in your experience so far, have there been situations where, for whatever reason, you haven't been able to reach an IBA with a co—with industry and you've looked to the government for – either

provincial or federal – for accommodation. Has that happened?

Calvin Sanderson: Well, I think provincially or federally, they're – they're not going to consider looking accommodating the First Nations because I guess you're opening up a whole can of worms in that area. And you're letting the industry walk away. I guess it's one of the comments that the industry and maybe the governments pass the buck at is that, no, it's the government that has to accommodate; no, it's the industry that has to accommodate. But you know, that doesn't make us any unique dif—nothing's preventing us to go back to the government to accommodate anyways. And yet you can get the industry no accommodating with the – on the IBAs, but nothing is saying you couldn't go back to the government and say now you have to accommodate us because now you're giving them that permit to go and start doing exploration. So it can go either way. Because if you do have an agreement with industry, they're going to increase the royalties anyways, and that's how the IBAs will be accommodated. That's my thought anyways.

Renée Pelletier: Thank you.

Johanne Gélinas: Thank you very much, Chief Sanderson for your --

Calvin Sanderson: Thank you. Thank you.

Johanne Gélinas: -- participation. Now we will welcome Mrs. – Ms. Carol Crowe. And I don't know how we're going to do that, but it's going to be by phone. That's the premiere.

CAROL CROWE, ENVIRONMENTAL CONSULTING AND TRAINING, INDIGENOUS VISIONS INC.

Carol Crowe: Hello. Carol speaking.

Johanne Gélinas: Hello, Ms. Crowe. Johanne Gélinas speaking, Chair of the Panel. Can you hear me?

Carol Crowe: Yes, I can. Thank you.

Johanne Gélinas: That's fantastic. I will just ask you to let us know when we have to change your slide.

Carol Crowe: Sounds good.

Johanne Gélinas: So the floor is yours.

Carol Crowe: Super. Thank you very much. OK, my presentation here that I've – going to share with you just as a guide to my speaking, if you could flip the slide to introduction. I've just provided a brief biography of myself. This is why I'm interested in presenting here. But the key is that I've been working with probably more than 30 First Nation communities over the last ten years, training environmental monitors at the community level. Next slide.

Just in terms of some opening comments I wanted to make to the panel is that, as you know, one of the biggest concerns today is – and this is something we hear from elders – is the cumulative damage. It's not merely the size of a project necessarily that would constitute more or less environmental damage, but many of them over time all connect. Certainly we're seeing that movement to looking at future generations, and we really need to – to have more projects that are committed to more cradle-to-cradle approach to business. I mean, we have so many highly toxic wastes that are being left for future generations, and not necessarily effective ways of decommissioning or reclaiming those. Of course it's always great to see any project that demonstrates giving back to sustainable future as we transition, you know, to that less greenhouse gas.

On my next slide, I – I wanted to just key in on some of the themes that the Panel had – had wanted to review, in particular some of the overarching indigenous considerations. And I wanted to – because of the work I've been doing at the community level, I just wanted to identify that there certainly is a real need for that long-term environmental monitoring in general. We know that from reports of the environment, that there's not a lot of data or long-term observation. And most of it is project driven, so it's really only looking at certain times of the year perhaps, or certain snapshots of that environment. At the same time, you know, we need to consider that at the community level there's indigenous environmental monitors that can be available to look at these environmental effects that are happened because they are grassroots and – and they're living there, so it really helps as well. But the key is that we need to build capacity at the – at the community level. Certainly in some communities there – there is quite a bit of capacity starting to be built, but in – in many others there isn't any.

On my next slide, again, just reiterating the – the need for these grassroots environmental monitors. In this particular case, they've been trained through ECO Canada, and really focused on bridging that western science and traditional knowledge for any environmental assessment that's done. And again, on my next slide, these community-based environmental monitors, their – their role is that collection of that baseline data – you know, GPS, all the way points, collect that mapping information, document the concerns, catalogue the – you know, picture the flora and the fauna data, and of course, most importantly, traditional use data, both past, present, and future. So you know, this role's critical, particularly in document reporting, whether it's mitigation or reporting for conditions perhaps, but also, you know, to start looking at the protection also of the information that's shared because that's –

that's also of great value to the community, and that's intellectual property that should also be considered. Again, our monitors work with that.

On the next slide, their – their role can also be community level participation of – of getting everyone involved. You know, I – and the reason that I'm sharing the environmental monitor is because, you know, this is a – this is a new area that – that needs to grow. And you know, they're skilled to – to bridge these two worlds. So when they're working at the grassroots level, collecting that historical data of sacred sites, you know, getting involved in the participatory mapping sessions, just ongoing collection of the – of the data from elders and knowledge holders, you're also really talking about a transfer of – of cultural knowledge at the same time, which is – is very important. We don't want that information necessarily always going to environmental companies; we want that capacity to be built at – at the grassroots.

On my next slide, I always think that the long-term environmental monitoring – and I've even seen – seen the results of this – it's going to improve environmental legislation. We – we need to look at different buffer zones. We need to look at improving those mitigation measures. But that – that bridging of these two worlds can also facilitate the innovations that traditional knowledge can offer, you know, whether it's new technologies for cleaning up wastes, alternative energies, but we really need to build the capacity at the community level. Even to start some of that, we've recently formed an Indigenous Environmental Monitor Network of Canada to – to help the monitors, you know, facilitate ongoing learnings and access to – to current information.

On my next slide, one of the things I think that the Panel has a challenge with is that, you know, as we look at bridging traditional ecological knowledge and science-based data, there needs to be that real acceptance of that – that traditional ecological knowledge is natural science, working at finding ways of not necessarily rewriting it or having a western scientist write it into their notes, but finding a way that's inclusive at the community level, that they're OK with. And I'm not sure what that is yet. I don't think we're there yet.

On my next slide, I know that one of the themes was the UN Declaration of the Rights of Indigenous Peoples, and of course the free, prior, and informed consent. Of course that's very critical. I always think of right away the hierarchy in each level of government, whether it's any kind of legislation or policies, like the Species at Risk, every level of government has some kind of way of respecting that – that federal level. I think that's really the same thing that has to happen for – for both of these, in particular with the UN Declaration of Indigenous Peoples, to really look at all levels of government having some similar policy to support – to support those rights.

My next slide around – the other theme that came up was reconciliation with indigenous peoples. You know, my – my experience out there and – and with communities, and – and my own experience, is that that reconciliation for

indigenous peoples is also with Mother Earth. It's not just with government; it's not just with industry and non-native people. It's something that we're rekindling our relationship to know – to know the land again.

And in – in my last – or my second-last slide, as you look at your decisions and your – and particularly follow-up, I'm sure you're getting a lot of feedback on the decision part, but the follow-up, it's a real gap in – in Canada. It's – but it's an opportunity for us to learn. I've been to areas in western Canada where EIs – EIA – or EIAs have been completed, and I know that those communities today have increased social and economic disparities, and yet there's a lot of development continuing around them. Many communities are travelling farther to harvest food – meat, berries, medicines – without knowing if they're safe to eat. So how – how are those subsistences protected? And knowing that there's going to be an increase in contaminants level in that traditional food, you know, the nutrients.

So you know, my curiosity is how have the EIAs in the past been looked at, you know, followed up with, and how are they doing – how are those communities doing social economically? I think that information would be extremely helpful in – in the work that you're doing.

My last slide in – in just closing, I just – I just want to thank you for the opportunity to – to contribute my thoughts. I – I wanted to just share, you know, for indigenous people it's a – it's a duty for us to look after Mother Earth. You know, we belong to her, not to us. And so however we can get involved, you know, in terms of – of making that difference in land stewardship and participating more in – in these EA processes, it's going to be a benefit for everyone. So I'd just like to thank you – thank you all for – for giving me the opportunity to present.

Johanne Gélinas: Thank you very much, Ms. Crowe. I will start with one comment or suggestion and a question. You talked about this – a new network which is called Indigenous Environmental Monitor Network of Canada. If you can spread the word that, wherever we will be in our road trip in Canada, to ask your colleague or your partners to come and meet us if they have good practices or good experiences to share with us in term of how to engage with indigenous group, that will be more than welcome.

I have a quick question for you. Will you say that it – it can be feasible to establish a community-based environment monitoring system at the project level, starting from the – the early beginning of a project, and making sure that when the project is approved, that this group can continue the monitoring as the – for the mine, for example, is going into full-fledged operation?

Carol Crowe: Yes.

Johanne Gélinas: Can you elaborate a little bit more?

Carol Crowe: Oh, sorry. Oh.

Johanne Gélinas: How – how that will work.

Carol Crowe: Well, I – I think it has to be at the community level up like patrollers. They need to be available to look at each season, have input from community members that are harvesting, to be able to also acknowledge of course the environmental effects that are happening, or potentially happening, from that project. It's really about collecting data and analyzing it ongoing. It's – I know it's a new area, something that hasn't been done a lot. There's a few methods that they could do that. There's databases of course that are available that can collect that data, but it's really about sitting down with the knowledge holders ongoing and saying, you know, what's changed, should we be concerned, is there something we can mitigate or do.

And I think that, because we don't see the environmental effects till during the operations, that we really don't know how well those predictions are really working. And just the communities I've been in, even the conditions that are put on companies, often they're not addressed from the simplicity of garbage clean-up. So I just think that that grassroots – almost like a patroller, environmental monitor, security person is available ongoing throughout the project's, you know, life cycle. Maybe it's not 24/7, but it's something that they're doing throughout those four seasons to be able to ensure that that information is being collected, the data's being looked at with the knowledge holders, and – and even recommendations are made while they're going for mitigation.

Johanne Gélinas: So if you have any information that you can share with us on how we structure those committee from day one as a project is announced, and making sure that over the years this committee plays different roles, please send it to the – to the Panel. And I would let my colleagues ask you some other questions. Doug?

Doug Horswill: Thank you. I – I want to take you back to a question I think that you were trying to put on to us and put it back on to you. And that's – regards the integration of traditional knowledge and – and western science. If – if the – for – maybe a for-example, if – if traditional knowledge was that a species, an important fur-bearing animal or species was declining, how would that bear on the – on the EA? And how would that be integrated, or should it at all be integrated, into maybe a scientific analysis of the question of why and what impact the project would have? Could you just – you must have some thoughts on that. Maybe you could elaborate for us.

Carol Crowe: I think in terms – in particular when we think about species at risk, one of the key areas that's always being monitored is – is the species itself. Most of the monitoring on the western side is about, you know, doing collection of data, how many are seen or how many, you know, are – are tagged, this – it's not necessarily based on habitat. And at the community level, you know, the knowledge holders are the

ones that out on the land so that they know that landscape. If they were to work closer with people on the western side who say OK, this is what this kind of species at risk needs to host, this is the kind of habitat they need, the community level can be so much more aware of what the risks are or declining species. I think there's a gap in – in that communications, in that relationship between those two worlds. They're not talking.

And there's no capacity. That's the reality. The – you know, who are we talking to at the community level? We're talking about knowledge holders and elders and community members that, you know – and then on the other side we're talking about western scientists that are in a job, ready to go out and execute a project or to participate in one. How does the community employ those people to be available to help as well, even though we're talking about the protection of traditional ecological knowledge? So I think part of it is building that capacity in that format of – of, you know, true traditional ecological knowledge, where it's not diluted but it's – it's a bridge where the two work together.

Johanne Gélinas: Thank you. Other questions? Thank you very much. And I'm pleased to see that having people getting involved with us through telephone works very well, and I will encourage other to do that. Thank you.

Carol Crowe: Thank you.

Johanne Gélinas: We'll take a short – a short pause for about 15 minutes, so 3:15 – it's even shorter than that – 3:15 we will be back.

(BREAK)

CLARENCE NATOMAGAN

Johanne Gélinas: So please have a seat. We now have the pleasure to welcome Mr. Clarence Natomagan.

Clarence Natomagan: Natomagan, yes.

Johanne Gélinas: Natomagan.

Clarence Natomagan: Close enough.

Johanne Gélinas: The accent was not exactly right, but I'll do it again. Natomagan.

Clarence Natomagan: Yeah. We're ready?

Johanne Gélinas: Mm-hmm.

Clarence Natomagan: Alrighty. Anyway, first I want to say, you know, I am certainly not here to negate any of the previous presentations. I'm actually going to touch upon the presentation that Diane did, which I really appreciated her feedback because, having been an officer for the federal government within the mining industry, I think I took it for granted the amount of support I had from the – the environmental – the environmental scientists, environmental engineers, hydro geologists, geologists, hydrologists. Whatever I had at my disposal in Ottawa, I took it for granted for the amount of information I received in knowing the potential impacts to the environment, and not really understanding the – the impact it has on First Nations communities because they don't have the same team at their disposal when they receive EAs. So my intent is not to negate or nullify their – their presentation at all, so – but I am going to speak based on my experiences, based on my experience in the mines, my experience with the feds, and now as a performance manager with a consultant.

My presentation, like I just said, is based on my experiences throughout my career and my belief system based on my experiences living in northern Saskatchewan. As you stated, my name is Clarence Natomagan. I've been working in the mining industry for over 27 years. I have a Certificate of Occupational Health and Safety from the University of Alberta, a Certificate on Radiological Protection from the US. I also have a Certificate in Environmental and Radiation Sciences from the Northlands College based out of La Ronge. I have ten years in the uranium mining industry. I started right at the bottom. I made my way through as a Superintendent of Licensing and Compliance at one of the world's highest-grade uranium mines, and that's the McArthur River Mine. I have nine and a half years as a federal mines inspector with the Canadian Nuclear Safety Commission, and also as an environmental – environmental mines inspector for the same group. Currently I work as an independent consultant on performance management that assists various specialty contractors with satisfying strict laws, rules, and expectation on the nuclear industry.

I grew up in a small community of Pinehouse Lake, which is about 210 kilometres by road south of the Key Lake operation, which was an open pit mine. Now processes uranium from the McArthur Mine. I lived in Pinehouse until '93, and I left just to further my education. The only opportunity was I had to leave my community because we didn't have the education system at the time. While growing up in Pinehouse, I learned how to recreationally fish, I commercially fished, I hunt moose – I still hunt moose. I hunt moose with my kids. Berry picking still happens. Snared rabbits throughout all my elementary school years. And I've utilized the roads that the uranium industry has built in concert with the province. I've harvested moose on Fox Lake Road, and hunted with local trappers on that road leading up to the McArthur River Mine. I've harvested moose on the lakes adjacent to the Key Lake Mine, and have hunted near the Millennium Project. I made dry meat, pemmican, ground burger, and I still feel safe in harvesting wildlife in and around those roads, those facilities, because of what I know, that the proponents or the operators and what they do to protect the

environment.

I believe that the industry is not a biological detriment to the local and regional flora and fauna, our plants and our animals. There are some contributing negative factors about mining. A lot has – has to do with the lack of understanding to the available information. Some of it has to do with the lack of education or access to education we have in remote locations. The other one that I've learned is the comprehension of the volumes of EA documents that are disseminated to communities, First Nations group, Métis locals, because they don't have the resources to be able to understand the scientific and technical data that's input into these EAs. Another one is the finances to carry out effective feedback to the responsible authority that CEAA assigns in terms of collecting environmental – the environmental data.

You're going to hear throughout your indigenous engagement, and this is my – my opinion, far left comments, far right comments, and then commentary that supports the industry. My experience while I was with the CNSC as a consultant, you know, I've gone to northern Quebec, you know, to – to talk to First Nation communities, and I've gone from being a trait—accused of being a traitor for who I worked for and who was giving me my paycheque, and to many people who said that I was a blessing, having been to work within the CNSC so that I can voice the same opinions that they have because I grew up in the same regions as they did. As a CNSC inspector, I travelled to communities annually to provide information on the industry and to solicit feedback. I've watched the industry representative provide details on their mining activities. Yet there is always mistrust. And I don't blame a culture of mistrust because it is grained in us.

From an EA perspective, was the EA process effective yesterday as it is today? You know, I didn't have a lot of time to prepare this. In fact, I did this from about seven o'clock to twelve o'clock last night because I was invited Friday. I heard about this session on Friday, and I was in McArthur at the time. So there wasn't a lot of notification – well, whether or not it's through a CEAA process, it's challenging. Even your 30-day limit is challenging. Just last night I said unequivocally I say yes, that the system still works. Hearing Diane today express their beliefs and their opinions, you know, I question my yes. And that's because they don't have the same information I had at my disposal.

It's easy for me to understand the EA, the four-inch – the four-inch volumes of four binders or 16 binders, whatever the case may be. Because I was there from the inception of the proposal to the time the EA was done. And I can understand their position that, when – when you provide EA documentation, volumes of it, to a municipality, a lo—a Métis local or a First Nation band and council, you got four binders in front of you, and they say here, review this and give us your feedback, and you have 30 days to answer us. It took – sometimes it takes several years to develop the entire documentation that is submitted to First Nations group. Thirty days is not enough.

You know, involving, engaging – early engagement with First Nations group, even through the EA process, because proponents know that they're going to be – they're wanting to build a mine. They know well in advance where they're going to build it, right from the time exploration arrives, they find the material in the ground, and their way of actually pursuing the – the materials that they're going to mine. They know well in advance, yet the EA system does not – does not allow that to happen. My friend in the CNSC used to say when we submit the stuff, he's say *fait accompli*. And I really understood that the job is done already and there's nothing you can do to change it because the EIS has now set the ground rules for how the RA, and in my case the CNSC, was going to license or permit the proponent in terms of getting their license to operate a mine. So at that stage, 30 days is not enough. Early engagement should be done. And that's what I – what I heard today.

Another thing is that people and groups can be informed or uninformed, and that – and that really impacts their way of providing advice or guidance to the proponents. Right? Because it takes – it takes a lot to actually understand the EA and the documentation associated with – with the EA process.

Just a quick – if you can turn around there and just look at the – the two photos I have on the screen. I was a project officer when they were decommissioning the Cluff Lake Mine. And the top-left – the top-left picture is, if I remember correctly, is Claude Pit. And the material you see on the top part of the picture was one of the waste piles. It was a benign waste pile, and the proponent developed an engineering cover for it. That was in 1999. They decommissioned the facility in 2003. At that time I was the project officer. And what you see at the bottom now is the reclaimed waste material with an engineered cover. So the industry does their part to protect the environment. I understand the impacts associated with it, and, in my opinion, the impacts are acceptable in terms of, you know, like I say, I hunt in the areas and I feel comfortable with what I harvest from any of the mine sites in northern Saskatchewan. It's only because I feel confident and because I know the numbers that are going into effluent streams and into the environment, and then what we are actually, you know, letting out into – into the air. This – the uranium mining industry is one of the most heavily regulated and rigorously regulated industries in – in – well, in Canada. So – let me see here. Give me two seconds.

Another one you'll hear is inadequate funding to participate. CEAA offers limited – and this is right out of the – the website. CEAA offers limited participant funding – funding, but it is responsibility of impact indigenous nations to secure those funds and listen to the input of its people. I've participated in a few CEAA-funded and CNSC-funded reviews myself as an individual. Groups – First Nations groups, they usually get the majority of the funding. But regardless of the funding, the funding happens after the fact, after the documentation, after the EA is done. Right? So again, the job is done, you get a hundred thousand dollars to – to review, get a scientific and technical team together, a legal team, to review the EA. But

at that point in time, it's really hard for First Nations group to actually have any impact or any real impact on the process going forward. The EA is not really the one and be-all process because the responsible authority is still required to ensure that the impacts to the environment, to the public, to the wildlife is still minimal and not adverse.

People will talk about lack of education to respond effectively. In my opinion, this is out of the scope of this engagement. The level of engagement and resulting responses from indigenous group is not a CEEA responsibility. And I believe it's our own challenge to be able to do that. The – the public funding that you have at the end of the day will certainly assist in the review, but again – again, the job's already been done. It is important to understand that the EIS should be geared toward understanding—the understanding of major stakeholders, such as those most impacted by the mining industry.

Another one you'll hear is not enough time to respond, and listen to the people, not the biologists and the scientist. Thirty days to respond can be challenging if the volumes of paper is immense, or when CEEA notification process is lacking in terms of when it can be done. Regarding the people and the biologists and the scientists, in my experience, working with my people and the academic team at the CNSC has provided insight in so many things about the environment. The things my grandma told me about nature is so contradictory to science, yet so protective of Mother Nature and myself. Each has its merits, but science is still strong – is still strong in my belief system, only because I've worked in it for ten years, nine and a half years. We don't get that in remote locations. We don't have scientists, we don't have technical people living with us that can help in this. Right? So you need that extra time.

Another one that – that I heard about is our leadership is not transparent. Well, again, that's not the Panel's issue. Right? It's our issue. It's our local government, it's our band council. There are unknown consequences in sacrifice area, and we sacrifice areas of our zones of interest. The lack of transparency of indigenous leaders is not within your mandate to resolve; it is mine and everybody like me. Potash, gold, silver, lithium, bitumen operations all have uncertainties. Does that mean we are to stand by and not reap the rewards in a safe and effective manner that is protective of the environment? From the geographic perspective, the areas affected by mining industry is small compared to many other industries. Be truthful about the impacts because we will be the ones living with the consequences. You know, that – that was said yesterday; it was said again today. In my ten years in the CNSC, as the responsible authority for the – for the EA, I have not seen any actions, behaviours, or conduct of work that was not protective of the – the public, the environment, the health and safety of workers in the uranium mining industry.

And finally, does the EA process work? The EA process works because it involves all stakeholders. It assigns a responsible authority to lead the EA. The environmental impact statements get disseminated to various communities, First Nations group. The Minister approves the EIS based on the recommendations

from the RA. At that point, the EA is done, but it's not the end of the process. Stakeholders such as the public provide input through a licensing and permitting process. The public have input through mechanisms such as the EQC, Athabasca Monitoring Group, as well as opportunities for individuals' input at the CNSC local office in Saskatoon. The mining companies carry out annual visits to impacted communities to solicit feedback on their operations. The mining companies have up to 18 license program that govern everything that they do. Provincial and federal inspectors regularly visit the sites to inspect and confirm compliance to the EA in all associated license programs. There are periodic reviews of the sites from CNSC inspectors. Undeniably, the uranium mine industry is the most heavily and rigorously regulated resource industry in Canada.

One responsible—one responsible authority is adequate. People talk about bringing in other groups. NGOs will tell you we need more governing agencies in the EA process. But I support the principle that the entity providing the permits or the licenses should be the responsible authority in order to reduce timely – timelines and ambiguity. And the RA must interact with those most affected by their decisions.

Johanne Gélina: Thank you very much. I will wait for the end. Who wants to start?

Doug Horswill: I can.

Johanne Gélina: OK. Go ahead.

Doug Horswill: One question on the – that builds on your comments about your being informed, and the speakers we heard this morning not having the same opportunity. And relate that to the notion of being involved early, that – not after the EA is complete, probably before it even starts. Have you got any thoughts to give us on how that should happen, what form information should be provided that indeed is useful to – to people, and how the – the proponent or whomever should be compelled to make sure that there is early input?

Clarence Natomagan: You know, again, I'll go back to Diane's comment. She said engaging First Nations communities, setting up a committee of sorts where the – where the RA or the EA group, the proponent interact early in the process with First Nations groups that are most impacted by the proposal, whether or not it's in their hunting region or just their traditional territory. I really never looked at it that way. And she kind of struck a chord for me in terms of how she – she would like to see it, how her and her community would like to see the process – the EA process engaged in early in the process.

From my perspective, I always believe that when I was a federal officer for the CNSC, the province set up the environmental quality committees,

which had a member from each community in northern Saskatchewan that identified impacted communities. One representative from that community would attend these environmental quality sessions, where the proponents, the responsible authorities provided information to them, and they would take that back to their community, whether or not it was a town hall meeting, a mayor and council, whatever the case may be. I saw that as a means of taking home the information that the proponent and the RA were providing to the EQC members, and then the EQC members had a mandate to ensure that their communities knew about what the proponent and the RA were doing.

That doesn't seem to be working, from what I understand, but it's been there for many, many years. And I've presented in many, many cases as – not only as an RA; I presented from – from the point of view of the mining companies. Because that's – that's where my career started. Early engagement with the EA process, I think she has a hell of idea – an idea in involving the community that's most impacted. If it's in my back yard, I want to know about it and I want early engagement. And that's what I'm hearing from her.

Doug Horswill: Thank you.

Johanne Gélinas: Rod?

Rod Northey: Yes, thanks. Just a minute. Thank you. I just want to follow up a little bit on the early engagement. I'm still at a bit of a disconnect, trying to figure this out. So it appears there – just to go from your experience, you entered the process in the regulatory arena when the EIS was filed? And – and the only reason I'm asking you that is because there is – has been a step under CEAA for a long time of scoping, which is pre-filing, there is an EIS guidelines step. I'm just curious, did you have direct experience in those early steps, or really was it the EIS landed and all those earlier steps were not part of what you were dealing with?

Clarence Natomagan: I'll use my experience with the Cluff Lake Mine.

Rod Northey: OK.

Clarence Natomagan: When the proponent decided they were going to decommission Cluff Lake, they had to go through a CEAA process. From day one, I was part of that process. So I really understood what the terms of reference were, what work needed to be done, what work we needed to do as the RA, and what work the proponent needed to do. And one of those is collecting data from First Nation group in terms of socioeconomic impacts, impacts to the environment, trying to disseminate the right information to First Nations group. But from hearing the other speeches, it doesn't seem to be working as well as I had thought as an inspector. Because I took it for granted that I had all of this knowledge because of the team that I had, that people could understand the – could understand or see the same information from me as a

presenter for – as a representative of the RA and listening to the proponent provide the – you know, provide details of their proposal to a First Nations group.

But at the end of the day, it's a very summarized version of the EIS and the path forward and to decommissioning the Cluff Lake Mine. So if you have early – early engagement, to me, early engagement is not coming to my hut (ph), coming to my home town and doing a town hall meeting, and then two hours later you're gone. Early – early engagement and involvement from a First Nations perspective, I still believe what Ms. McDonald said holds a lot of value in that, you know what, keep us involved. Don't just tell us what you're going to do. Keep us involved. It's – whenever a proponent or the RA are trying to figure out something, you're having meetings all the time. You know, federal government has meetings all the time to figure out what they're going to do tomorrow. Right? First Nation groups are involved maybe once every six months, maybe quarterly. Do you think that's enough?

Rod Northey: OK. Can I just follow up one?

Johanne Gélinas: Yeah.

Rod Northey: So one further part. I – again, we're trying to understand things a little bit better, and one of the things that we've been hearing about is the way the federal and provincial governments work, in particular in Saskatchewan. So one piece I just want to follow up on that is the mining exploration piece, which can go on a number of years, appears to be provincial – provincial permits. You get to a certain point, and we heard the presentation was it could be multiple years. You get to a certain point, and then all of a sudden you're into a regulatory queue which might then take you to the CNSC. And it strikes me that it's not clear from all that I've heard in the last couple of days just how the governments cooperate.

Because it appears that it's the province for the mining side until you get a proposal that's clear enough that the CNSC knows there's a project, and then the CNSC gets a project and then the CNSC for—goes to the Saskatchewan Environment Ministry to find out and encourage them to trigger an EA. And so from that point on of CNSC engagement, I think we're at the point where you're agreeing some early engagement right then would be helpful. But there's also been, it appears to me, years perhaps of pre-project preparation, monitoring, and exploration. And I'm still not seeing much of a fit of the resource exploration piece that leads to an EA, and it seems the First Nations are outside most of that, even including the early EA. So I just – do you have any comments to offer on that? Does that seem accurate to you from what you know? Am I missing something?

Clarence Natomagan: You know, I've had the opportunity in the last five years as a performance consultant to review a lot of data. I even came out of the – I was actually just a couple of months ago at an exploration site. It still surprises me that the province is the only permitting entity for exploration activities in Saskatchewan. So a drilling

group can go in the bush, drill, and try to find uranium ore. Right? That's still under the regime of the province. At the point where the company's pay—that's paying for the exploration realize, you know what, there's something under here, they get a lot more aggressive in their drilling to – to define the resources, or the inferred resources. But that's still under the control of the province.

At some point in time, a company or a proponent is going to realize, you know what, this is probably a minable – a minable resource, and we got to go to the next step. Right? So they're already in preparations into getting to an EIS process. They know who they have to involve, and that's the CNSC and the province. The province and the feds have a harmonized process, and it's usually led by the CNSC because they're the ones that actually issue the license to operate the – the nuclear facility.

So right from the get-go, from the point where a proponent realizes they're going to have to do an EA, they already have a lot of information. They already know where they're at, they know where is the nearest community. They have had a lot of practice. They've been here since 1975; '63 is when they discovered Rabbit Lake. So they've had a lot of practice. And they know when they can involve communities. But you know, at the end of the day, the EA process is finish your environmental assessment, provide the statements, the Minister of Environment signs it, then you've got all the rules and the roadmaps on how the RA is going to proceed with the licensing. Then you've got to go through the rigorous process of licensing the proponent under 18 programs now in terms of how they're going to protect the environment based on the rules of the EIS, how they're going to protect the public and the wildlife.

So there's a lot of history before a mine starts, before a mine gets permitted to operate. So there's ample opportunity to involve the people who are in the back yard of the operation you want to set up there. I mean, it's a – sometimes it's a ten-year process from the time you realize you want to dig the material out to the time you get a CNSC license to operate, and a provincial license to operate. So there's – there's a lot of time in there to involve – to involve groups who are impacted by your facility or your operation.

Rod Northey: Thank you very much.

Johanne Gélinas: Just to continue on the same topic, if the proponent sees that there's potential for exploitation, and he starts with an environmental assessment project, at that stage CNSC will be involved. And we are just at the beginning, so the scoping exercise, per se. Under CEAA, groups will get funding to get involved in the process. Are you saying that under CNSC there is no funding at the scoping stage?

Clarence Natomagan: There's – the CNSC provides funding at the intervention stage. And that's – that's when the CNSC and the Commission – the CNSC staff make

a recommendation to the Commission, and the proponent provides their evidence that they're going to operate the facility that they're applying for in a safe – in a safe manner, protective of the environment, protective of the public and the workers. Right? So I've been to those interventions. You get funding for your room, your review, your time review, whether or not you're going to solicit the help and feedback of technical specialists. You have to put a case together in order to qualify for that funding.

And so you get that funding, you do your work. You go in and you do a presentation. And that's it. So if the Commission takes your advice or your intervention to heart, they may advise the Commission staff or the proponent that you shall do this. Right? But you have to make a case for it. Again, you're at that point where it's fait accompli. It's done.

Johanne Gélinas: OK, so how do we change that? How do we change that, this notion of fait accompli? Because we are looking at ways to improve the process. But if, in people's mind, it's a fait accompli, why they should get involved? So my question is how we make sure that they get involved at the right moment with some inputs that will probably make the project better. I mean, that's our hope, right?

Clarence Natomagan: Yeah. Well, I think, you know, just to go back to the EQC process, the environmental quality committees that represent First Nations communities in northern Saskatchewan. I don't know the membership, but I know my home community has a representative that goes to those. And I know he comes back to the community. There's no meetings for people in the communities. Right? There's 1500 people in my community. He goes in, talks on our behalf, comes back, he gets a per diem, and then that's it. We don't get information. It's ineffective. But that's the RA's fallback and that's the province's fallback.

I think, from the EA perspective, when the proponent is working for two and a half years to develop – to do the environmental studies, to show the – the Environment Minister that this is what we're going to do to be protective of the environment, the public, and the workers, this is what we're going to do, I think that's the time First Nations people should be involved in the process. Now, how do you set that up? Do you send one member and expect them to come back and have a town council meeting or a band and council meeting and say here's what I learned, here's what we need to do? It's too late at that point. The funding is too late, the resources that's – that a First Nations community need isn't there in your own home town because scientists all live in Saskatoon and every other – every other city in Canada. They – you won't find scientists in northern Saskatchewan.

So how do we – how can we be effective in the – in the EA process or have effective input is that provide the funding up front, regardless of the outcome of the EIS. Will the Minister of Environment sign the EIS and approve it? Maybe not. Maybe she won't sign it because First Nations group had an effective input and said, you know, we don't want this. Right? Doing it at the – at the early stages and

involving First Nations group and providing the resources, and not providing financial resources at the end of the game. You provide them when – when the game starts. They can provide – then at least First Nations group can plan, recruit the resources they need to effectively address the proponent's position on protecting the environment.

And as Mr. Fern stated, we're not here to say you can't do this because you're going to kill our plants and our animals. We want to be a part of the process so that we can also benefit, not just from the standpoint of socio – more or less from a standpoint of socioeconomic and have input on what you can actually do when you're actually digging the dirt in our back yard.

Johanne Gélinas: I have one last question for you. We heard quite a bit that at the government support – at the government level there's not much support. You heard that, like we did, today. There's a problem with respect to capacity building or capacity. You are an independent consultant. Are you solicited on a daily basis to help indigenous group to go through all the 30 month – 30 days request that you're – or at least the Chiefs are receiving on a daily basis?

Clarence Natomagan: You know, I have a website, and I've always made it known at CNSC interventions that I have the capacity to be able to provide that type of assistance. But even I know that 30 days isn't enough when you give me three sets of binders that are four and a – four inches thick. Right? You need a team to be able to assess that. And you need a mechanism to be able to effectively provide input to the proponent and the RA so that they can integrate whether or not it's traditional knowledge, integrate scientific knowledge, or even change a sentence in the EIS, you know, so that it's better for the environment and it's better for the people in and around those facilities.

Johanne Gélinas: Thank you very much.

Clarence Natomagan: We're good?

Johanne Gélinas: Thank you. Yes. Thank you so much.

Clarence Natomagan: OK, thank you. Thanks.

JACK HICKS

Johanne Gélinas: The next presentation will be by Mr. Jack Hicks. Good afternoon.

Jack Hicks: Thank you for the opportunity to present to you, and thank you for taking up the challenge that you've taken on. I'm one of the many citizens

across the country who care deeply about these issues and will be following your work and will be reading the report with great interest – no pressure.

Johanne Gélinas: No, we don't feel it, for sure.

Jack Hicks: I just want to speak to you as a citizen who's been involved in environmental assessment processes, mainly in Nunavut, and with some reflection on the UN Declaration and its relationship to environmental assessment.

Johanne Gélinas: Can you speak closer to the mic, please?

Jack Hicks: Sure.

Johanne Gélinas: Thank you. So I'm going to be speaking about the proposed Kiggavik uranium mining project, or the reviews thereof. So we are roughly in the middle of the country, if you think about the country in the biggest sense. It is where the Kiggavik ore body is located. So it's close to the Inuit community of Baker Lake, and it's also very close to the Thelon game sanctuary and the calving grounds for the Beverly and Qamanirjuaq caribou herds, which is a large part of the issue that I'll be talking about. And here you – Baker Lake is the – you can see the community, the dot there in the upper right-hand quadrant. And surrounding Baker Lake is a treasure house of minerals. So the blue is the existing mineral leases. So west of Baker Lake, the blue in the middle of all the red is where the Kiggavik ore body is.

So when you talk to people about Baker Lake and environmental assessment, the point is often made that they're surrounded, and they think very carefully and strategically about choices that have to be made for the future because there's a lot of minerals out there. So the Kiggavik ore body is – I think it's an important and possibly unique case of an ore body that's gone through two environmental assessments – the first one through the federal process before CEAA, and then under the process put in place by the Nunavut land claim. In neither case did the project proceed. Neither panel publicly acknowledged the strong opposition from the community because it was outside of their mandate to do so, which doesn't mean that grassroots groups didn't play an important role. They did, but, while participating in the review process, a lot of the points could not be written up in the documents.

So the first review took place from '88 to '90 under the auspices of FERO. The proponent was a Germany – German company, Uron Gesselshaf (ph), that we call UG. At the community level, opposition took the form of a concerned citizens' committee, and there was a regional group called the Northern Anti-uranium Coalition, which is actually a pun because, in the Baker Lake dialect, if you ask people if they like something and they don't, they screw up their nose and say *nauc*. So it's actually a pun, NAUC. The primary concerns in the community: some were uranium-specific – lack of knowledge in the community, especially in Inuktitut; the usual environmental and health questions around uranium mining; and, because people are

pretty Christian, there were some very strongly held perspectives on the end uses of uranium that was excluded from the review process. But I think what's important is that, if we leave aside the uranium side, there was a bigger concern about the cumulative impacts of what would be a base and opening project and how – how would the environmental assessment project handle that, and it was pretty much excluded, which struck people as really not very logical. The prime organizer in the community is the woman on the left, named Joan Scottie, who's a pretty tremendous hunter and generally smart and wise person.

The Kiggavik review was the first FERO review in which draft EIS guidelines were issued. And those of us living there took this as a strategic opportunity, and we spent a lot of our resources getting advice on proposed changes to the guidelines. And a lot of what we gave the FERO panel was included verbatim in the final guidelines. At the end, the draft EIS was found to be deficient in several areas. Roughly the same time, there was a municipal plebiscite held in the community, and there was a 90 percent no vote. UG requested that the panel delay the process indefinitely but did not acknowledge the community vote, and the process was never restarted.

Over the next 18 years, UG was brought – bought out by AREVA. A proposal to open a gold mine north of the community was largely supported by the community. So we're not talking about a community that's anti-development in character, not at all. Baker Lake was a desperately poor community before Meadowbank opened. It's a much healthier place now. So we're not talking about anti-development sentiment. Nineteen ninety-three the Nunavut land claims created – resulted not only in the creation of Nunavut --

Johanne Gélinas: Excuse me. Is it possible for those who want to talk to go outside the room so that we can follow what Mr. is saying? Thank you.

Jack Hicks: Yeah. The settlement of the land claim created not only the – the territory of Nunavut, about which I have recently published a fairly dry book, but also co-management institutions, including the Nunavut Impact Review Board, which is requi—responsible for environmental assessment.

So in 2008, AREVA announced that they wanted to re-launch the project. The community opposition took the form of a hunters and trappers organization, and at the territory level there was a group which we call Makita. So 2010 the process began; 2011 the EIS guidelines were released; yada-yada-yada. September 2014 the EIS was released; finally hearings March 2015th. May 8 the NERB released its recommendations, and over a year later the federal government accepted the recommendations because the federal government, until devolution, is the final authority. Many people thought this was a fait accompli, but it turned out not to be, and the NERB panel said no to the Kiggavik uranium mine at this point, to the surprise of many.

So just a note on Makita, our NGO. It was formed – this is a young lawyer in – in Iqaluit, who is one of the sparkplugs. And one of the strategic thrusts initially was to get the territorial government to – to hold a public inquiry into all the issues surrounding opening the territory to uranium mining, which was rejected. And the point was that Inuit had not given their free, prior, and informed consent to uranium mining, and instead there was a technically limited environmental assessment happening instead. So those of us in the group got a little bit of funding, huge amount of volunteer work, a lot of our own time and money. We did a lot of public education work about the process. We participated vigorously in the NERB process, commented on guidelines, attended meetings, usually at our own expense; commented on the EIS, and participated in the final hearings.

The kind of comments that were offered from – from our group were whether the project was actually needed, whether AREVA had justified the need for the project; significant questions around cumulative effects assessment for caribou in the context of the base and opening nature of the proposal; debates about the company's approach to setting thresholds for impacts on wildlife; how does one define what the threshold for impact should be, which has impacts of course for compensation down the road possibly; and the end use of uranium and the lack of Inuit consent for the project were ruled outside the mandate of the – of the group. In 2013 we also made a submission to the UN Special Rapporteur on the Rights of Indigenous Peoples in which we raised the question of cumulative impact assessment.

So we played the role that interveners are supposed to play. And I say that because there's not a lot of love in being an intervener in an environmental assessment process. The panel gets it. The panel respects that the process assumes that there's going to be spirited input from community groups, some of which they'll have to rule out of order. Not everybody feels the same way about interveners. We had a great web—we still have a great website, where we put out a lot of information. We gave voice to community concerns, people who were not comfortable speaking up in public. We raised issues that other participants like government didn't ask, like: what if AREVA were to go under, who would assume the various liabilities; what commitments are cast in stone and what are just from the very nice guy that they sent in to soften up the community.

We carefully scrutinized all the 16 or 18 binders of freaking documents. We were the only group that noted that AREVA had provided out-of-date projections for uranium prices. They were using old OECD projections, and we provided the newer ones, which are much darker. Yeah. So the panel appreciated us less than a lot of other people did.

So the question of consultation versus consent. At the heart of our work in the two reviews are the issues raised by Article 19 of the UN Declaration, the principle of free, prior, and informed consent. And we argued that Canada's concept

of the duty to consult, which has been evolved through various court decisions, is a relatively weak safeguard for indigenous rights, weaker than that of the UN Declaration. So as I'm sure you're acutely aware, the recent federal court decision regarding the Northern Gateway pipeline suggests in a sense that First Nations people had been consulted but had not been given their consent. And I suspect this will be a focus of your – your discussions in the coming months. And there's also in November the Supreme Court will be hearing the Clyde River challenge to the National Energy Board's approval, making – on the same kind of arguments.

And I was – I was – the reason I decided to put a PowerPoint together for you was yesterday the person from AREVA – I didn't realize there was going to be someone from AREVA – stated in her presentation that the UN Declaration should be addressed through the appropriate Constitutional changes. And I would suggest that actually there's more to it than changing the Constitution; that meaningful action on the UN Declaration means all of us have to do the right thing right now in whatever way we can. And that certainly includes environmental assessment processes.

So in your review of CEEA, I think you need to give serious consideration to at least two questions: How is the UN Declaration principle of free, prior, and informed consent going to be honoured by and reflected in environmental assessment reviews in this country? And what is to be done in those cases – and they're probably going to be very small in number – where consent is not obtained and where a thoughtful indigenous community has decided no, thank you, we don't want this development? Because, as we see with Kiggavik, and as we see with Clyde River, there are cases where people say no, thank you.

Johanne Gélinas: Thank you very much. I was hoping that you were going to give us some part of the answers. We'll still have to work hard. Any question? I'm sure that my colleagues have interest in what you have to tell us.

Renée Pelletier: So thank you very much for that. I too was hoping that you'd give us the answer. I'm wondering if – if you can perhaps share a bit of your thoughts on – you've talked a lot about FPIC in UNDRIP, but also the principle of the right to be participant in decision making when rights are potentially impacted, and how you could see the federal environmental assessment process changing to incorporate the right for decision making.

Jack Hicks: Well, we – we actually had an internal debate whether or not to participate in the – in the environmental assessment, all things considered, and we concluded we had no option to. So then you run into the usual questions of how does the legislation in place govern your – your participation; what kind of funding do you get. In our case it was minimal, but it was something. I mean, they – we can't say we got nothing, but we didn't get nearly – we could have made a far greater contribution if we'd had greater resources. Our timelines were not unreasonable. It was – everything in

Nunavut is incredibly expensive, most of all travel. So our biggest limitation was the ability to – to send volunteers to meetings where we really needed to be. Thankfully, we live in the age of the CD-ROM and the Internet, so we were able to – you know, the first review, everything was done by fax. Remember that horrible, greasy fax paper? My God. But now we're able to network with resources that we wanted literally around the world just by sending them files. So you know, technology makes being an intervener a lot easier, but there are times when you need to physically be there, and that takes money. But the process was not unreasonable, basically.

Rod Northey: Yes. Sorry, I do have some questions. I'm hoping that you might go back up some slides. I'm interested in the slides dealing with the NERB process because one aspect of what we were hearing earlier today is the idea of having indigenous peoples on some of the decision making bodies and I just want to get a better sense from you --

Jack Hicks: Ah, thank you for mentioning that. The – the --

Rod Northey: How – (crosstalk).

Jack Hicks: The FERO panel, there was one non-Inuit resident of the (crosstalk) --

Rod Northey: This is the FERO one in the early nineties?

Jack Hicks: The FERO one, yeah.

Rod Northey: Yes, OK.

Jack Hicks: Under NERB, I believe – I think everybody on the panel is – lives in Nunavut and most are Inuit. The chair was Inuit, the working language of the meetings is Inuktitut.

Rod Northey: So how, in relation to the FPIC idea, how do you think – I'm just – I don't have an answer, so I am asking a question. How does FPIC work when a body such as NERB is providing – now, again, I don't know the under—the full framework here. I think they provide recommendations, and that's why I was looking to your slide to understand how it worked. So the body had indigenous peoples on it. It provides recommendations. The recommendations go to – and this is – I'm just trying to understand – this is a federal minister?

Jack Hicks: Until devolution occurs for lands and resources to Nunavut, the final decision for a whole lot of things under the land claim actually rests with Ottawa. And there has been one case of Ottawa overturning a NERB decision. But in this case NERB made its recommendations to the federal minister, which is what it

does, and eventually, more than a year later, the – the Minister of Indigenous Affairs as the lead minister, but Fisheries was in there, etcetera, etcetera – they all signed off on the NERB recommendation.

Rod Northey: And so you – I think you said it, but I'm just trying to clarify. Was the recommendation then in support of the project?

Jack Hicks: In opp—(crosstalk).

Rod Northey: Oh. That's what I – OK, that's what I --

Jack Hicks: The main – the main argument was – that we made, that the panel accepted, was, between the time the process started and the price of uranium tanked, AREVA had the choice of either: asking that the thing be cancelled; providing a fake start date, which nobody would believe; or, doing the honourable thing and admitting we don't know when we can start this thing, but asking for approval in principle. And on purely technical grounds, the panel said you can't model social and environmental impacts if you don't have a starting date. There's other projects happening.

I – I want to clarify that the NERB panel is a – everything in Nunavut is public. It's not Inuit self-government. So the members of NERB are recommended by different governments – federal government, territorial government, Inuit organizations. They're all there – they're not there as representatives of Inuit; they're there to serve the members of the public, to serve the public good. Most of them happen to be Inuit. That's how Nunavut works. So Nunavut is like the cutting edge of what was possible within the Canadian Constitutional framework, but this is not free, prior, and informed consent. The Inuit members of the panel had to live within the limits of their mandate as set out in legislation.

Rod Northey: That was going to be my question. Alright. So I – I --

Jack Hicks: So we would argue, and I don't think anybody would dispute, that nobody in – that Inuit have not given their FPIC for uranium mining in Nunavut. It – it hasn't – the process hasn't occurred yet.

Rod Northey: Well, you – you've answered very many questions. I think I've asked many questions, and I have many more, but I think I'll let my colleagues go. But I thank you very much for those – those answers.

Johanne Gélinas: Doug.

Doug Horswill: I – I just want to build on – on your last answer, just so I understand it. So NERB is operating within these legislative boundaries. Earlier on you talk—you talked about the communities of opposition and regional opposition, including a vote at 90 percent no. And I think you said that those votes and that opposition, that

expression, was not taken into account within NERB. You used the term technical reasons. But is the technical reason somehow associated with the legislative framework not allowing the board to take that into account?

Jack Hicks: Yeah. They have to give – they have to justify their recommendations. And public – any measure of public opinion is, in and of itself, not a reason to accept or reject a proposal. Now, that doesn't mean that they weren't well aware of it.

Doug Horswill: Right.

Jack Hicks: But the decision was made on technical grounds.

Doug Horswill: I see. So is – in your brief, should that set of technical grounds be open to additional criteria?

Jack Hicks: We – we think it should, but we also think that there should have been an FPIC process outside of the environmental assessment process, and that if – if the NERB review had recommended that the mine proceed, that it – it would have been an unacceptable outcome to us. We were always open, and we remain open, to the possibility that the Inuit leadership or the Inuit people would decide yes to uranium mining. We called for a public vote, and we were prepared to live with – with whatever the outcome was. And it certainly wouldn't have been 90 percent the second time, but we think it would have been a majority no vote. But in the absence of some form of FPIC, an environmental assessment process in and of itself is not an acceptable settlement – although of course we're quite happy with the outcome, and more than a little surprised.

Doug Horswill: OK, thank you.

Johanne G  linas: Rod has one last question for you.

Rod Northey: Yes, this is actually not a small problem, and I just want to try and work this out. Under CEAA '12, and, I believe, the Nunavut legislation, the direct socioeconomic effects of a project are not in play. You're dealing with indirect. You need biophysical first to get to. And that then – if one was to have a full discussion on FPIC, you would, in my view, possibly need a much broader array of socioeconomic to say that internal to an EA is a full FPIC array of considerations. Now, I just want to – and it's very abstract. The idea is can you actually discuss FPIC in the confine of the definition of environment under the Nunavut legislation and CEAA '12 as written. And I wonder if any of your – you have any thoughts on why your strategy was. Because I am interested in your comment that FPIC should be outside the EA. Our – one of the questions in our mandate is should FPIC be inside EA. You're an interesting observer in that you've been through something, and I'm curious whether it was definitional.

Jack Hicks: I suppose it would be possible to – to achieve clarity on FPIC within an environmental assessment process, but my gut instinct is not; that any environmental assessment process has its constraints. I don't know how you would frame the legislation to – broadly enough to allow an FPIC test that would stand the scrutiny to happen within the constraints of an environmental assessment review. Maybe I just – I'm not creative enough, but I – I'm not sure how that would happen. In our case it would not have been possible, and therefore we wanted some kind of political decision involving some kind of, you know, information provided to the public, some kind of public decision making process. And only then should there have been an environmental assessment process.

Rod Northey: Thank you. I think I will not – you said in your introductory comment the challenges is ours, and so you've left us with a good one. But I --

Jack Hicks: Good (crosstalk) --

Rod Northey: -- did want to see if there was some part of the answer lurking, and you've given us some very interesting things to think about. Thank you.

Johanne G  linas: Thank you very much for your participation.

Jack Hicks: Don't know how to turn this off. I'm sorry.

Unidentified Male: (Crosstalk)

Johanne G  linas: And of course we – we'll have a copy of your presentation. Thank you.

OK. Just before we continue, is it possible to leave the back door open, please?

Unidentified Male: (Off microphone)

VICE CHIEF EDWARD LERAT AND CYNTHIA WESTAWAY, FEDERATION OF SOVERIEGN INDIGENOUS NATIONS

Johanne G  linas: OK. So the next presentation will be by Vice Chief Lerat of the Federation of Sovereign Indigenous Nation, and by Cynthia Westaway of the Federation of Sovereign Indigenous Nation. Please have a seat. Hope we will not be interrupt by ground noise this time. So please, can you introduce also the other people that are with you?

Edward Lerat: I will.

Johanne G elinas: Thank you very much, sir.

Edward Lerat: Yeah. Good afternoon. I'd like to call you Commission, but I guess we'll call you review panel. We're joined with – by Jamie Benson, who is the Executive Director of the FSIN's Lands and Resources Department. So I want to start by welcoming the members of your review panel to Treaty 6 territory. I want to also acknowledge and thank our relative from the east for the tobacco in terms of the protocol. And we thank you for that and acknowledge your presence on the panel as well.

My name is Vice Chief Dutch (ph) Lerat, and we are joined today by some of our Chiefs that are here. And I'd like to welcome our Chiefs: Chief Peigan, Chief Sanderson, Chief Star Chief (ph), and Chief Wutnee (ph), and the many councillors that are here, the leadership from the First Nations territories. I am the third Vice Chief of the Federation of Sovereign Indigenous Nations, which represents all 74 First Nations in Saskatchewan, with over 144,000 members both on and off the reserve. I am the portfolio holder for the Lands and Resources portfolio of the Federation of Saskatchewan Indian Nations. I receive my direction from the First Nations in Saskatchewan, the 74 First Nations, the – the Lands and Resources, Commission, which is made of representatives from the 11 tribal councils and independent First Nations and our – ultimately our Chiefs in assembly. We hold four assemblies a year where we get direction, both politically and technically as well. I also acknowledge our elders that are here with us: Maggie and Isaac Chamakees (ph) from Chittik Lake, from the Pelican Lake First Nation, sitting behind me, and the support. Sheldon Wutnee is also here, former Chief of Red Pheasant and now President and CEO of Saskatchewan Business Centre of Excellence.

We are – we were pleasure to observe the newly elected government's quick action to keep its election commitment to meaningfully involve First Nations and indigenous groups in reviews of its legislation, policies, and processes. We welcome the announcement of the appointment of this Panel. However, we – we too are concerned about the time – timeframe from when the review panel was announced and when the FSIN was notified that the Panel was going to be accepting submissions from indigenous groups at today's hearing. The deadline for submission for proposals from indigenous groups was September the 9th, which was only seven working days ago. This short timeframe did not provide enough time for the FSIN to engage our communities, our tribal councils, and our elders prior to appearing here today.

We did – we were fortunate, though, to – last Wednesday to call an emergency meeting by conference call of our Lands and Resources Commission, which I described, to get the direction whether or not to participate – to proceed with participating in this review. The Commission passed a resolution endorsing our participation in all four of the reviews, including this one for the environmental assessment process. But the Commission also expressed concern that the process must not be rushed, and that there must be proper consultations with

communities, and – and that this be done properly according to our FSIN's own constitutional policy, which was adopted by our Chiefs in assembly in May of 2006.

I am tabling with you a resolution from our Lands and Resources Commission calling for the review panel to, if possible, schedule another hearing in Saskatoon after we have had time to work through a consultation process with our communities, our tribal councils, our elders, our Lands and Resources Commission and our Chiefs in assembly. And if it can't be done here, we would ask for some time at a location in the future, wherever you are holding your hearings.

I also wish to note that we met with a large number of First Nations Chiefs this morning and councillors in relation to the recent Husky oil spill that flowed into the North Saskatchewan River eight weeks ago. Although this is a prime example of why First Nations inclusion in environmental assessments is necessary, the First Nations, by and large, were never included in the process which approved the pipeline in the first place. They were not included in the ongoing monitoring of that specific pipeline, and now feel excluded in the clean-up process and the assessment of the long-term impacts. This needs to change.

With that, I'm going to turn it over to our legal counsel, Cynthia Westaway, to make a presentation in relation to this review. Thank you.

Cynthia Westaway: Thank you, Vice Chief. Like to introduce my colleague from – from my law firm, Westaway Law Group, Zachary Miloff. Because we have not had a chance to – to really consult and get the consensus and the advice of – of the nations in Saskatchewan, we have been able just to bring to you today a bit more of a legal review and a bit more of an analysis that way. We have heard from Chief Peigan and Chief Sanderson, those – though today some very important comments. So hopefully we can at least make a – make a start.

I have decided to give you a copy, even though we only had seven days to produce them, of the speaking notes, and we will send you electronic copy. And they will end up being a very detailed report once we have the chance to get the consultation with the – with the – the nations. And we will provide all of that to you in writing of course at our first opportunity. But today what I've given you is just a copy of a – of a summary of what the challenges are. And of course these are things that you are quite familiar with because that's how you got appointed to this panel, that you – you kind of know what the problems are, and so do I. We've been living with them at least the last 20 years, and most recently since CEAA 2012. So rather than take you through those in detail, because it's a bit late in the day as well, I think we'll – we'll go right to the questions that I keep hearing you ask: what are some proposed answers; what are – what are some possible recommendations.

We have the brilliance of the nations who will help us flesh these out, but to start today, what we're hearing consistently of course is that it's too late in the day and that there's never been a proper marriage of – of free and prior

informed consent and a proper constitutional consultation in the context of the EA process and other regulatory processes across Canada. It's been experiencing this for the last 20, 25 years in – in our practice. So we would recommend that the first thing to consider is creating what we have named, and can be renamed once we have proper consultations, a regional indigenous rights compliance office. So if you go to – I think I gave a copy of the paper at page 11. Is it up in front of you, Maitre Gilesque (ph)? Then that's kind of the – where we – we'd like to start.

So before a proponent puts their proposal on writing and submits it to the first permitting process, that's when the opportunity is – is greatest for partnership, for true listening. So at – at that stage there can be a conversation about whether there is a tailings pond. And if there's going to be a tailings pond, where – where does it have to go so it doesn't interfere with the trap lines? Or how can it best be protected? Can there be more money raised, and can the First Nations who are – who are neighbours contribute to that effort so that there is another way to do this particular mine, depending on whether we're talking about gold or uranium, of course, or – or potash. So the idea is that there has to be that conversation. And I think that if there's an office that would be structured and created by legislation, regulation, that makes sure we have Section 35 compliance.

We've always had the mandate of the environmental assessment or the mandate of the Fisheries officers. I worked for the federal government for 15 years. I understand all these stovepipe mandates. What instead we need to do is look at what are the Section 35 impacts. And I suggest that that's in the greater interest, that's a win-win-win-win result, because we are all trying to get to a place where whatever industry is – is produced is – is constitutional in nature. We don't have to go to a Supreme Court case to get to the Supreme Court in ten years in Rio Tinto to find out whether it was an infringement that was justifiable or not. We look at it right at the beginning. What are the – what are the requirements of Section 35 compliance? So we're dealing with FPIC not – not in the context of the environmental assessment, we will deal with it as that goes along as well, but right up front with a compliance office.

We're going to suggest that this compliance office has to be made up of experts, indigenous experts, who understand traditional knowledge, who are able to work well with the governance structures, the hearing from the elders, the youth, and – and the women's councils, who understand the – the consensus building and communication requirements of a community, who understand traditional medicines and how important they are to the community, and the gathering. They have to have that expertise and have a real capacity to listen to the neighbouring nations who come and – and raise their concerns initially or their questions. So that would be a key component to this particular compliance body.

The second component we think would be key would be that they have to have access to ready funding and contractual capacity to bring in the

expertise. That's what we've been hearing from our – our panellists and our – our speakers today, that we need to know what kind of science we need to engage at the right time in the north so that, if they're going to put clean water – that they say is clean – back into our lake, and they tell us it's cleaner than when they took it out, we need to know if that pH balance will – will work with the fish. So we need those kind of experts at the right time, and the right time is early.

So what we're suggesting is, if there's a capacity to contract for this body, there's a link to the provincial governments, there's a link to the federal governments and their various departments that's already created and built up, we could really resolve a lot of the issues early up – or early up front. And those – those – that plan, that compliance plan, could be formed at a very early stage. It also gives the chance for industry and First Nations to develop a relationship at the beginning. So maybe this is a wind farm that's produced – 51 percent owned by the First Nations and 49 percent by the – by Northland Power. Or you know, there's – there are other options of course that can come about when there's early engagement between the communities and the industry, more than just an IBA. There are – there are equity partnerships and there's expertise that truly passes early in those stages.

Then I think we need to look at the other part of our – of our initial presentation, which looks at the challenges that we have after 2012 and the CEAA process. And this report, this compliance report of the – of the initial rights compliance office is – that's really focused on Section 35 – treaty rights, inherent rights, governance, all those important things – is iterative. So it changes. It gets built. It – it gets more life as it goes through the process. So I think that there will be a way to marry the legislation and marry the regulations with the role of this compliance office.

So that's the idea of what we would like to develop and to – to work with – with the Crown and with – and with the Panel to really breathe life into something that finally addresses Section 35. We have other recommendations that we want to talk about too, but I think I want to pause on that one and maybe answer your questions or – or any comments that you might have on that.

Johanne Gélinas: If you pause here, we may not be able to come back to you.

Cynthia Westaway: OK. So I should keep going?

Johanne Gélinas: Would you like to take a few more minutes and highlight other elements of your submission?

Cynthia Westaway: OK. So the – the other elements of our – our submission really – really deal with – I'll just go to the next one. We've kind of, in our recommendations, gone through each of the challenges that we see in CEAA and have – and matched our recommendation to that, again to be fleshed out. So the first one deals with the creation of a new office that's well funded and – and deals with Section

35.

The second recommendation is that we require preliminary comprehensive environmental assessments for all development projects. It really is unacceptable to have EAs only for certain projects that are – that are megaprojects or – or designated projects or large projects when in fact anything that changes the water levels and severely damages the wild rice harvest is – is sufficiently an impact in a northern nation where there's no grocery store. So – or where that's our industry. We're selling our wild rice, or we're selling our fish. We have a big commercial harvest. So the – the damage to the reputation if there's mercury in our – in our water system, even if it doesn't touch the lake where we're fishing, we can't sell our fish because people think that there's wa—you know, that they're all mercury poisoned. Or now we're worried about the Saskatchewan River. There's oil in – in all of this. Now, what will that do to our industries and what will that do to our farms and our – and our elk? You know, so those are the big concerns. So there is no project that impacts the lands that – that is too small to be assessed in – in the First Nation and Inuit and Métis communities.

We would also suggest that – that we have to end the substitution of provincial and regulatory assessments in the decision making. First Nations take a very strong view that we have treaty partners and they need to be involved, and they – they need to make sure that especially federal lands, reserve lands are not left to – to the purview of a regulatory assessment that doesn't deal with the federal Crown. And I think, again, if we had a compliance office that had a real link to the federal Crown and a real funding source that supported those scientific needs, then that would be a better way to go.

We talk about the broad definition of environmental effects. Again, we saw some crazy changes in the definitions for aboriginal fisheries, for navigable waters – we'll deal with those as we go forward – where we are going to protect the fish but not their habitat, or we're going to protect a certain species but not the actual, you know, environmental effects as we go forward. So again, that would be too small for us. We feel that, again, if you're looking at Section 35, you're already going to look at – at the health, the culture, the gender issues, the lifestyle, the elderly who – who require certain medicines for – for cancer or diabetes that they're gathering, all of those aspects of Section 35 rights and governance will be included. And right now they are being left out in our current regulatory and – and legislative environment.

Recommendation number five, we would like to remove broad government discretion and control. You'll see earlier in the paper where we describe that the discretionary government powers over the environmental assessments need to be withdrawn in favour of a more transparent process. There was a concern, again, that we've described in more detail, that there was a broad ministerial discretion that was brought in in 2012 that doesn't reflect our Canadian and First Nation values.

People have talked at great length about recommendation number six, that the length—we lengthen the timelines for indigenous-specific consultation. Again, we have to recognize the requirement to communicate, to have consensus, to share information with the communities. It can't be rushed, and it's a real disrespect for – for governance.

Number seven, increase funding for indigenous participation and consultation. Again, we – we haven't had a chance to – to really find ways to ensure that the proponents are contributing as well as the governments in a way that is really meaningful at the right time. I know in certain other provinces, for example, the proponents don't pay for the process or for the scientific expertise that we need, but they get a benefit or a cut on their costs because – if they consult with the First Nations. So there's some kind of incentive to get them into the room, but they're not there for the right reasons, and so the consultation doesn't usually go anywhere.

And then increasing opportunity for the indigenous consultation, again throughout the environmental process. We will take the time in – in – when we have more than – than just a week or two to go through the various stages of the environmental assessment process. We've done it in the beginning pages of our paper and show exactly where the consultation can be built in. But again, I think if we have this – this compliance – Section 35 compliance office participating and – and updating their report and their – their plan throughout the various stages of pre-feasibility right up until closure plan, then we will have been very effective throughout the process.

The last one is very important, almost as important as the first one. And that's engaging indigenous communities at the strategic policy level. This is where there – there needs to be a real – I would say a joint advisory committee that operates at a very high level and deals with these policy issues broadly and consistently. We have great models in our country. We have a NAFTA Policy Directorate that deals with all of our trade issues. We have an Environmental Round Table that deals with all our international environmental issues. We have lots of models. Why we do not have an indigenous and Crown joint policy team that works regularly and is appointed to do their job I don't know. Again, it's, you know, 2016. I think the idea is extremely ripe. And so we would like to work on that as well.

I've had to be brief. Anything, Chief, that we want to add at this point? So now we'll – we'll (crosstalk).

Johanne Gélinas: Thank you very much. You go first.

Renée Pelletier: I have a ton of questions. So thank you, first, to both of you for your – your presentation. Maybe I need to sit with this idea for a little bit more and it'll become clear to me. But I think right now I'm trying to figure out how all of the different pieces fit. So imagine we have this compliance office. How do you ensure that

– that it does not become another exercise in box checking? So I'm – I'm wondering how – how does the need for free, prior, and informed consent fit into this? Because I'm – I'm wondering does – does the compliance office just kind of look at OK, we see some impacts over here. Oh, oh, but they're being mitigated by the proponent, so check, it can go ahead. You know, is it – I'm just – I'm seeing it very kind of linked to, you know, duty to consult and accommodate, and not necessarily to UNDRIP. But maybe I'm not – I'm not clear on – on how it would all sort of play out.

Cynthia Westaway: Yeah, no. I think if you're looking at the – the issues from the First Nation perspective, so – so the – the First Nation communities would come and nations would come and work with the office. And the office would listen to what they were concerned about. And they would probably be concerned about what's going to go on with the water. We want more information on the water. What's going to go on with the replacement of the soil? We want more information on that. And they would be asking for more information from the proponent that that office could then facilitate as a resource to engage or to get – Because otherwise, we just get an industry report. And no one trusts that industry report because it's so self-serving. So we need something independent that – that can – that can – can speak to those issues.

In that same context, you're going to hear we're concerned about jobs. We want to make sure our local communities and – and youth have the truck driver training or the heavy equipment or the engineering degree that they need to participate. If there's going to be a mine here, first of all, we want it here and not here; secondly, we want to participate. And we know it's going to take now five to ten years of raising money. Right now we can educate our children to be in – to be ready to go. So it starts so early that there's all kinds of great conversations that can have there. So that really, by the time you get to the actual production and the EA process, you already have a form of consent, if you're ever going to get it. Because there's enough knowledge and enough ideas, OK, we're interested, we'll – we'll participate to the next stage. We'll make the next decision at the pre-feasibility stage and when we know more, once the drilling's been done and we know if we have to have an open pit mine or – or how we have to do this. So that I think that there – everybody's going to feel informed. If it's not a good idea and it's going to be so damaging, well, then there'll be a no.

Johanne Gélinas: Is it possible that the word compliance may not be the right one with what you're proposing? Because the first time you mentioned it, before I looked at your document, you were talking about some sort of a bureau. Right?

Cynthia Westaway: Yeah.

Johanne Gélinas: What you have in mind, because we haven't had a chance to – to read your submission, is it a unit of some sort, independent, which will accompany First Nations in all the process from day one to end of life of a mine –

Cynthia Westaway: That's right.

Johanne Gélinas: -- for example?

Cynthia Westaway: Yeah, that's right.

Johanne Gélinas: OK. OK.

Cynthia Westaway: And so compliance in that I'm trying to – that's maybe not the right word. We're looking for something that is constitutionally – what's another word for compliant? Like, it – it meets the – it meets the values of our – of our Section 35. We have constantly, last 20 years, have had problems because nobody's really addressing what the First Nations are saying. They're always saying, well, I'd like to help you with that but my mandate is this. I'd like to – to talk about that further but I don't have the right expertise or the right person here. So nobody's addressing the treaty and title and governance issues.

Renée Pelletier: And just a follow-up question. Where do IBAs fit into this, if at all?

Cynthia Westaway: I think once you have the preliminary plan, that the – the industry and the First Nations will likely go off and – and draft not necessarily an IBA but probably a partnership agreement, or some kind of – you know, or a ten percent interest now in five years will be – we're going to buy – be able to buy in. Or we don't have the expertise but we're going to run this oil and gas project, and you will bring in the experts for us and we'll go to the banks together. So I think that there'll be more of that. If you do get into an IBA because you've got a nation that really wants to have a small interest and have employment and that's it, then maybe they will go ahead and negotiate that. But I think you'll more often have business ventures.

Renée Pelletier: OK.

Johanne Gélinas: Doug?

Doug Horswill: Maybe it's the chair – the chairman struck on one of the words that was – I was having a bit of problems with, and that's – that's compliance. But the other word I am to some degree is region, to try and understand what you mean by that. And the thought in – in my mind as I – as I ask that question was our presentation this morning where the Chief indicated that – I think it was Treaty 4 First Nations – that – that they would speak for themselves, that no other organization spoke for them. And – and so I'm – the word compliance and – and that position taken by a First Nation, and I think each of – each First Nation may have its own view of that. How does that fit together? It – is it – does – are you saying to me that the organization you're talking about is actually facilitating the exchange of information from a proponent –

Cynthia Westaway: Exactly.

Doug Horswill: -- to the --

Cynthia Westaway: Exactly.

Doug Horswill: -- and they -- but they still stand on their own feet and make their own decisions?

Cynthia Westaway: Yes. But what they're trying to do is -- is implement the constitutional rights of the -- of the community. But yes, the community, the nation, will speak for themselves. And they will ask for those supports that they need, and they may not really need any. If they have scientists available, if they understand the water issues right away, then they won't ask for that kind of support. But if they need it, they will ask for it.

We have agreements all across our country where, for example we did a health agreement in Quebec, Ontario, and the -- and the federal government recently where, you know, the First Nation provides all of their own doctors and nurses, but when they want more training or nurses, they go and ask under this agreement, and they have to provide them.

Doug Horswill: OK.

Cynthia Westaway: So it's -- it's a opt-in type thing.

Doug Horswill: Just -- just a -- just slight elaboration then. The word regional. Is this actually an organ—your -- your notion is a -- is an organization that's actually a national organization that could serve the interests --

Cynthia Westaway: It could well be a national organization.

Doug Horswill: -- across the country?

Cynthia Westaway: The challenge that you have is you will need to reach into provincial relationships as well. So it might be more appropriately something like the Federation -- you know, the FSIN here in Saskatchewan that would house that -- that body to assist because it's a regional area. But there will have to be relationships that go across borders because pollution doesn't stop at the border, and neither does the treaty. We have treaty nations that are on both sides of two different provincial borders. And nobody deals with that. It's the Ontario rules or the Manitoba rules or the Saskatchewan rules, and that's a problem for treaties.

Doug Horswill: Thank you.

Johanne G  linas: Rod?

Rod Northey: Thank you. It's very – it's very interesting, and I – I guess I share my colleagues' concern about the word compliance because it's – sometimes compliance seems the horse has left the barn, or you're looking for the horse as it's leaving the barn. And I think what you're trying to do is plan the barn so the horse doesn't leave. So compliance might not be the – but I understand what you're also saying is that there's a rights framework and you don't want it to be a soft framework. That's what you've got compliance in. Is that really why that's the phrasing?

Cynthia Westaway: Yeah. We – we need to make sure we respect the Constitution, all of us, or it shouldn't go forward.

Rod Northey: So a couple of questions. If you've been here today, we've been trying to figure out the dichotomy, or whatever you might want to call it, between a project level engagement and a regional engagement in the backdrop. And increasingly it appears that a project level analysis might not be the right point of entry. And I appreciate we also had a discussion about too late in the project, the fait accompli analysis within the project. So one of the things we're wrestling with is just what is the right entry point. And one of the things I wanted to just ask in relation to this is, if it was a regional framework the – where the First Nations were participating in the regional development – and I'm going to use a term that is not usually used around aboriginal, but just a land use plan. We have land use plans every municipality in Canada –

Cynthia Westaway: We use them too.

Rod Northey: -- except not so widely used in rural, wilderness, far north (inaudible) Ontario. It's starting to happen.

So the question I'm asking you is, as you are developing this, could you give us some input on how, at a regional level, this might be implemented instead of merely – and I don't want to mean merely in the sense you haven't done enough, but we are trying to figure out whether the project approach is the way to start this in any new framework. And I will just say we're giving serious thought to whether there's a regional backdrop or background to this that might be more appropriate. We heard some interesting examples, and I'll just give one that came from a federal discussion we had that's on a webinar with Parks Canada, where their experience is, if they do a park management plan of a national park, the projects inside that park thereafter can be very simply assessed against compliance with a larger plan, which means the project assessments are simpler and narrow and fit better your idea of the wild rice, where it might not be a full project assessment you want; what you want to know is, in relation to this plan, here's a protected area or economic activity, what's this project doing on it, which would be a very focused – so I --

Cynthia Westaway: Yeah, we – we want to set the water levels, yeah.

Rod Northey: So – anyway.

Cynthia Westaway: Yeah. No, no. I think that that's – we'll definitely address that, and we'll work with the – the Chiefs to address that issue. The – I think you're going to be able to have a marriage between your regional strategic review and your – your specific review. Now, what I mean by regional is that it might be housed in a region. So for example, you know – you know, Algonquins of Ontario has one consultation office. All the consultation goes there, but it's actually then they go out to each First Nation.

So that's what I mean by regional. But you're going to have only certain First Nations who will need to have a voice and want – and – and must have a voice because they are impacted. So we wouldn't ask the whole region what do you think when you're going to cross Pasqua First Nation, right? So we'd have to make sure that there was maybe a regional plan and Pasqua was already part of that bigger plan, and then we dealt with the initial issue of water levels if it's something like that. But you would never be able to bypass a First Nation because you had a regional plan. That would be problematic, and it wouldn't – it wouldn't meet the constitutional requirements, which are the constitutional right holders are each First Nation.

Rod Northey: I – I'm not going to pretend there – a regional idea is free from (crosstalk) --

Cynthia Westaway: No, I'm just saying that some people might, right? So --

Rod Northey: Alright. Can I just ask one further and then – so the – the further question that relates to your second bullet under this, and I – just trying to again understand the study. So some context of this study, independent review, is a peer review of what somebody's done. We also heard today, though, the idea that perhaps First Nations on certain topics, among others, but certain topics like traditional land use, should do their own study and not be peer reviewing somebody else's study. I don't think you've addressed what the body is doing. Perhaps you could give us some thoughts --

Cynthia Westaway: Yeah. Yeah.

Rod Northey: -- about those two things. Those are very different models.

Cynthia Westaway: Yeah, for sure. I would say that each – and you'll correct me if I'm wrong, of course – each First Nation does their own traditional land use study because they have to decide we're going to set aside these forests for carbon protection, we're going to put our industry here, and you know, they – they have to make those kind of decisions, map those things out. And – and First Nations have done that across the country. Again, it's a slow, expensive process, and so it needs more

funding. But I think maybe through this process it would be – it would get going. But yeah, we have traditional land use study, and we need an economic development plan and strategy for each of those nations. I hope that helps.

Rod Northey: OK. Thank you very much.

Johanne Gélinas: Good? Vice Chief Lerat – do we pronounce the T at the end? Lerat?

Edward Lerat: Lerat.

Johanne Gélinas: Lerat. It's – it's learning for me. Thank you very much for coming. Madam also; gentlemen. I cannot promise that we will come back to Saskatoon. If we were, it would be January. We heard that it's not the ideal season or month to come back to Saskatoon, but might be a possibility. We'll see. Having said that, you still have time to present to us a full submission. I will say the sooner the better because, as you can see, as we learn, we are using some of the materials that are given to us to test some ideas, and we will want to do that more and more in the coming weeks. But you have at – at least until, I will say, end of December, but the sooner the better. And I would like also to – you mentioned more than the two Chiefs that present in front of us, so I would like also to welcome you all and say thank you for having joined the presentation that was made to us today. Thank you very much.

Edward Lerat: Thank you.

Cynthia Westaway: Thank you.

Johanne Gélinas: No, we have one more.

Unidentified Male: (Off microphone)

Johanne Gélinas: Yes, the resolution.

Unidentified Male: (Off microphone)

Johanne Gélinas: Yeah.

Unidentified Male: (Off microphone)

Renée Pelletier: That's great. Thank you.

Johanne Gélinas: Thank you very much. Pleasure.

Renée Pelletier: Wuh-lee-win (ph).

KYLE VERMETTE

Johanne Gélinas: I will now invite Ms. Kyle Vermette. Mr.? On his –

Unidentified Male: Mr.

Johanne Gélinas: Mr. My apologies. And with Mr. Vermette's presentation, that will end our session for this afternoon. Your name is, for a French Canadian, easy to pronounce. Welcome.

Kyle Vermette: Thank you. I'm – I'm feeling challenged to be articulate at this point in the day. But I did want to thank the expert panel today for providing an opportunity to speak with you as a citizen of the Métis Nation of Saskatchewan. I – the Métis Nation of Saskatchewan, I understand, wasn't in a position to give authority to provide a formal presentation to the panel at this time, but certainly, I would expect, is looking forward to doing so. I also wanted to recognize our – our First Nation relations, and acknowledge that today we're meeting on – on Treaty 4 territory. I also further wanted to recognize First Nation elders, Chiefs, councillors, and members who are here and attending today.

I'm not an elected person. I'm simply going to share my personal perspectives with respect to some of the comments that I have been able to observe over the last day and today. I also wanted to further express my appreciation for the First Nations presentations that we've heard today. The – I know I've learned a great deal, and I look forward to learning more about some of how they've resolved some of the issues that I think have been raised by the Panel and – and identifying some of the shared challenges that the Métis Nation has with First Nations.

The – in order to be brief, I just wanted to identify a document that may be of assistance to the Panel with respect to understanding and providing some context to the Métis Nation, particularly with respect to Saskatchewan. Thomas Isaac produced a report as the Minister – or the – INAC's Minister, Special Representative, on reconciliation with the Métis, Section 35 Métis rights, and the Manitoba Métis Federation case. And that was in July of 2016. That may be a useful source for the Panel to provide some of that context. In particular, there were 17 recommendations provided in that report. Recommendation one, I think, is a useful point to set some context.

Recommendation one says Canada immediately establish a program to educate federal employees involved with aboriginal-related matters about the history of the Métis, Métis contributions to Canada, existing federal initiatives relating to Métis, Métis culture and traditions, Canadian law relating to Métis and their

Section 35 rights. I feel like this is an important point simply because I – I think it just highlights the fact that, even within the federal government and INAC, who is intended to be – or is intended to hold some expertise with respect to aboriginal peoples in Canada, I think this report identifies that they do not. And so I thought some of the factual context would be helpful for the Panel in kind of a furtherance of that recommendation.

I think I want to also highlight some of the unique challenges facing the Métis. I think some of the challenges that were mentioned over the – the past day are very similar, but certainly there are some unique challenges that the Métis people face that I thought would be helpful to identify, point number one being that there are very few existing relationships between the Métis Nation and federal departments. Many of the presenters, both yesterday with respect to industry, the regulator and government, identified and highlighted how important those relationships are to an effective EA mechanism or an ineffective EA mechanism. And the present state with respect to the Métis Nation is that there are no strong existing relationships in federal departments.

In Saskatchewan there is a consultation policy framework for which the province uses to conduct its – and meet its duty to consult obligations. But obviously that's – that's a provincial process, and – but does reflect that there is some level of relationship there. But there are also very few benefit shar—benefit sharing agreements. Again, I think we've heard today that that has been kind of the impetus that – that successful communities have used to be able to build in good buy-in to these EA processes. And with respect to the Métis Nation, there just aren't good examples of those happening, and particularly in Saskatchewan.

Point two, again, just to highlight that there is a lack of understanding with respect to Métis issues or governance structures, even within INAC, which would be where all federal departments would turn to look for that information. This can even trickle down to something simple like the funding application to participate into this process. It's not – it doesn't adequately recognize the governance structures within the Métis Nation. And so the criteria that it looks at in determining how much funding should be allocated doesn't actually reflect the number of people that each of those bodies might be responsible to and be accountable to. So I just wanted to highlight that as something that – again, it's just kind of a – if – another way to highlight the fact that there's just a bit of learning that also needs to happen, even with respect to something as simple as can a – you know, how much money is adequate to fully participate in a process like this.

I think also that that speaks to communication. We've heard industry proponents, people talk about effective communication strategies and notification strategies as being an important part of an effective EA process. If the – if the agencies or the government departments that proponents or others go to to find out who they should be talking to, if they don't know who that is, then obviously the Métis

Nation isn't participating because they're not providing appropriate communication with the right people. So again, that's why I think the education component is important so that that communication is as effective as possible.

Point three, the government – I – and proponents I heard frequently using the term indigenous engagement. But I think it's important to be detailed with respect to what they mean. I think explicitly identifying whether First Nations or Métis peoples were engaged in various processes will help to bring clarity to exactly what engagement is actually happening. So for – for the Métis Nation, there are very few examples to – to where Métis people have been involved in some of these processes. And so I think that it sounds very good and positive to say that, you know, engagement with indigenous peoples is happening on a regular basis, but from the Métis Nation's perspective, it's important to say, you know, to be clear about differentiating exactly who – which indigenous people they're – they're talking about. And the Constitution obviously recognizes three; in Saskatchewan you'll find two – First Nations and Métis. So I think it could be quite simple, particularly in Saskatchewan, to have industry say our engagement activities are with these communities, these First Nation communities and these Métis communities. The detail I think is important. It gives a better view as to actually what's happening.

Point four, I – I just wanted to reiterate the point around developing capacity and expertise. Again, I won't belabour that point. I think some really strong arguments and – and evidence have been put forward on that point.

Point five, with respect to traditional knowledge, the UN Convention on Biological Diversity, through their work program on Article 8J, developed the Akwé: Kon voluntary guidelines. These guidelines were developed for the conduct of cultural, environmental, and social impact assessment regarding developments proposed to take place on or which are likely to impact on sacred sites or on lands and waters traditionally occupied or used by indigenous and local communities. So the purpose of those guidelines were to provide a useful tool for indigenous peoples who are interested in addressing and protecting biological diversity in order to conduct impact assessments that – that respect indigenous and local communities' views, and also in particular to integrate traditional knowledge. I thought I may raise it as a useful mechanism to perhaps guide the Panel, and – and again, just another example of something that may be something that could be implemented. But obviously, the – the adoption of that and the usefulness of it will really be in how it's implemented, you know, in a particular way, in a regional way or in a – in a context that makes sense for that particular Métis Nation or – or particular First Nation.

With respect to specific recommendations, I know I've been – my comments have been quite high level, but I know that there are going to be specific submissions made directly to the Panel to address, I think, more of the – kind of the practical side or the practical mechanisms that perhaps the Métis Nation would like to see. So certainly I would expect those kind of recommendations are going to be

forthcoming.

And I – just in conclusion, I wanted to highlight the Environment Minister's mandate, which is – where she mentioned that no relationship is more – pardon me, the – the Prime Minister identified that no relationship is more important to me and to Canada than the one with indigenous peoples. It's time for a renewed nation-to-nation relationship with indigenous peoples based on recognition of rights, respect, cooperation, and partnership. And certainly I'm looking forward to having the Panel's recommendations assist the Minister in meeting her mandate, and in particular through reviewing the EA process. So I just wanted to thank you very much.

Johanne Gélinas: Thank you very much, Mr. Vermette. One question for you. Have you been involved in any process here in Saskatchewan?

Kyle Vermette: I personally have. It – I'm a lawyer by training, so it would have been, though, through the view of – of proponents and through acting on behalf of the First Nations.

Johanne Gélinas: How will you describe your experience?

Kyle Vermette: I think I share a lot of the concerns that were expressed today, which is that I think, you know, there are a lot of fundamental issues that, you know, have – that need to be fleshed out in a – in a fuller way. So there are fundamental issues for people feeling as if they are – that their issues are being heard, that they're being considered, that there's a clear understanding to which it is being weighted and how it stacks up against other considerations and the basis upon which decisions are made. I think there's a need for a fleshing out of how that operates, I think, for people, at least in my experience, to feel as if the process has some level of validity and usefulness.

Johanne Gélinas: Thank you. Questions? Renée?

Renée Pelletier: Thank you for your presentation. It was great to get a bit of a Métis perspective. We haven't had that yet today, so very much appreciated. I'm wondering if you can explain a little bit about why it is that – you mentioned that there are no IBAs between Métis communities and industry happening in Saskatchewan. Do you know what the reasons are for that?

Kyle Vermette: Sure. I – I can – I can comment. I didn't say that there were none; I said there were few. I think that the – there are a number of challenges. I think one in particular – and I think it will likely trickle into how this process plays out. But you know, there's been an election called, and so on a – on a political level, there – much like at in any level of government, there's an election period is set, and – and so there is some – there is some hesitance to start to make big decisions in the absence of a conclusion of that process. Part of it has to do with the – the fact that – I mean, the

impetus for – behind the report from Mr. Isaac resulted from some recent Supreme Court decisions, in particular the decision that Métis people are – should be considered a federal responsibility under Section 91(24). And that's a very recent – I mean, that's – that's last year.

I found it interesting that we – I really enjoyed the – the presentation with respect to the Inuit, and it was really fascinating to see how far they were able to kind of progress, and some of the things they were able to put into place. But you know, they've had their – you know, they've been able to act out their – or negotiate their – what their Section 35 rights look like as of 1999, and the court decision that supported that was from 1930. The Métis Nation has just had that decision last year. So in a constitutional context and from a negotiation context, you know, there's a lot of work yet to be done.

So I think that – that those are some of the – some of the challenges that I think are – are showing up on kind of the – some of the on-the-ground problems I think that you highlighted. But I think certainly the – the groundwork is there now, and certainly the – the momentum from – from a lot of – in a lot of different areas are moving towards trying to – to resolve those issues.

Johanne Gélinas: Thank you.

Kyle Vermette: You're welcome.

Doug Horswill: Pardon my ignorance, but could you explain a little bit more, in very rudimentary terms, what the Me—when you say the Métis Nation, what exactly are you referring to? And – and I'm asking it in the context of provincial divisions, and is there – is there a governance – separate governance vehicle between, say, Métis and Manitoba or Saskatchewan or Alberta, or is Métis Nation one and – and it has a single governance structure?

Kyle Vermette: Yes, I can – I can talk about that. I – I had skipped it in the interests of time, but I can certainly – I can certainly explain it. The Métis National Council is the national representative of the – of the Métis Nation, which, for purp—for convenience sake, stretches from British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario. The governance structure is that within the Métis Nation, there are five governing members, again, each of which govern a traditional territory that is, for convenience sake, in – within the boundaries of each of those respective provinces. And then within each of those provinces, there are – there is a governance structure from a Métis local, which is in a particular community. There are regional – there are regional leadership – there's a regional level of leadership, and then there is a provincial governance structure, which in Saskatchewan case would be the Métis Nation of Saskatchewan.

Doug Horswill: Thank you.

Rod Northey: Just one very quick.

Johanne Gélinas: Yes.

Rod Northey: You did mention some – oh, oh, oh – biodiversity convention in that reference you gave us, which was – moved along quickly, too quickly for me to follow. Could you just remind me what you called the protocol under the biodiversity convention? I had not heard of it before.

Kyle Vermette: Sure. So it's called the Akwé: Kon voluntary guidelines. Akwé: Kon is a – is a Mohawk term which is aimed at – it – it means all things. And – and the purpose, I think, behind it is – the meaning is – is to try to reflect the fact that the development of these guidelines, which are voluntary, are aimed at trying to capture all – trying to develop a tool, to develop a process, that does effectively implement all aspects, in particular those aspects which are of particular importance to indigenous and local communities.

Rod Northey: And could you spell it? I'm sorry, I'm just --

Kyle Vermette: No problem. Actually, I can provide it. I have a copy of it. I can certainly provide it.

Rod Northey: I'd be very interested in that. So thank you very much.

Johanne Gélinas: Thank you very much. Just before you leave, I should have mentioned that we – in fact myself and Renée, our – my colleagues were not with us that day –

Unidentified Male: I was.

Johanne Gélinas: -- we met with the – you were? Oh (off microphone).

Unidentified Male: (Crosstalk)

Johanne Gélinas: Sorry. The Métis --

Doug Horswill: (Crosstalk) our presence felt apparently.

Johanne Gélinas: The Métis National Council about a month ago. And we were told that they will be active in this process.

Kyle Vermette: Yes, and – and I represent the Métis National Council on the Multi-interest Advisory Committee. So part of the reason why I wanted to comment was

because I was hoping that someone would be here to provide the Métis perspective, but no one was, and there really wasn't time to get proper authority to make formal submissions. So I thought it just may be helpful, as you mentioned, at this early stage, to try to provide a little bit of context that may be helpful in terms of your deliberations moving forward.

Johanne Gélinas: And sorry, were you at the MIAC (ph) meeting where I was presenting?

Kyle Vermette: I certainly was.

Johanne Gélinas: OK, sorry. I think I need some rest. My apologies again.

Unidentified Male: (Crosstalk)

Doug Horswill: Our Chair is going to renew her subscription to her glasses tomorrow.

Johanne Gélinas: So thanks very much for having taken the time.

Kyle Vermette: Thank you.

Johanne Gélinas: Very much appreciate. We'll take a break. And we'll reconvene in this room. For those who want to participate, you are more than welcome for the open dialogue session, which will start at 7:00 p.m. Thank you very much.