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PUBLIC HEARING

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Jim Shaw - Member
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1 Tuesday, January 7, 2014

2 Upon commencing at 11:00 a.m.

3 THE CHAIRMAN: Good morning. We'll
4 reconvene. I believe, and I expect we'll have a
5 relatively short day today. We have two items of
6 business, both of which are timed. So when one is
7 finished, we will adjourn until the next one,
8 timed in the sense of timed when they start.

9 This morning we have an opportunity to
10 cross-examine Partnership witnesses on two pieces
11 of rebuttal evidence, rebuttal evidence both of
12 which respond to papers presented by Dan
13 Soprovich, one about beaver habitat and the other
14 about flycatcher habitat, or more specifically the
15 models used in the environmental assessments.

16 It's my understanding, unofficially,
17 that both the Fox Lake Citizens and Consumers
18 Association will not have any cross-examination
19 questions. Is that correct?

20 Okay. Ms. Whelan Enns, on behalf of
21 Manitoba Wildlands, does have some questions. And
22 once the examination is complete, we will adjourn
23 until 1:30, at which time the Concerned Fox Lake
24 Grassroot Citizens will have 90 minutes for their
25 final argument.

1 MS. WHELAN ENNS: Mr. Chair, the
2 questions that I have this morning are specific to
3 the beaver rebuttal from Manitoba Hydro and the
4 Partnership, and we will not have questions in
5 terms of the olive-sided flycatcher.

6 THE CHAIRMAN: Okay, thank you.

7 Mr. Bedford, I noticed you moving
8 towards a mic. Did you have --

9 MR. BEDFORD: Given what we have just
10 heard, I'm sure Ms. Wyenberg's welcome to remain
11 seated where she is, but if she wasn't here, there
12 will be no questions for you Leanne, so you are
13 also welcome to return to your seat at the back.
14 Your choice.

15 THE CHAIRMAN: She's going to abandon
16 you guys.

17 Okay. Ready to go, Ms. Whelan Enns?

18 MS. WHELAN ENNS: Yes, Mr. Chair. I
19 am not remembering the second person who's up this
20 morning, and that's just probably got to do with
21 the sheer numbers.

22 MR. BERGER: To my left is Mr. Peter
23 Hettinga, and normally he would be sitting in the
24 back row. If it would please the Commission, if
25 it would be okay if he just sat beside me but he

1 will not be responding to any questions.

2 THE CHAIRMAN: He will not be?

3 MR. BERGER: He will not be
4 responding, I will be.

5 THE CHAIRMAN: That's fair enough, he
6 can stay right there.

7 MS. WHELAN ENNS: Thank you.

8 Could you tell us what the -- or which
9 of the sources listed were used to arrive at the
10 content in your rebuttal?

11

12 MR. BERGER: The sources that were
13 used to arrive at the content of the rebuttal
14 includes the last page of the rebuttal materials,
15 and anything that has been used has been cited as
16 part of that response.

17 MS. WHELAN ENNS: Thank you.

18 I'm going to double-check then within
19 the rebuttal document. So, number 1 is a quote
20 from?

21 MR. BERGER: I believe number one is a
22 quote directly from Mr. Soprovich's written
23 testimony.

24 MS. WHELAN ENNS: Okay. And is number
25 2 then also a direct quote from Mr. Soprovich?

1 MR. BERGER: That is correct.

2 MS. WHALEN ENNS: That would also then
3 apply to number 3?

4 MR. BERGER: Correct.

5 MS. WHELAN ENNS: Thank you.

6 Then on page 2, we have two bullets
7 approximately the middle of the page, and there's
8 a reference to page 6-3 and then a reference to
9 table 6-1. Are they from within the literature
10 cited on the last page, page 3?

11 MR. BERGER: You said 6-1?

12 MS. WHELAN ENNS: Yes. We have a
13 reference to page 6-3, and then below that a
14 reference to table 6-1.

15 MR. BERGER: Okay.

16 MS. WHALEN ENNS: There's also a quote
17 below that that says page 6-22, so I assume the
18 answer may well be the same for the three?

19 MR. BERGER: 6-1, aquatic food items
20 is listed is an important item several times. 6-1
21 is from the habitat quality modeling report.

22 MS. WHELAN ENNS: Thank you. So is
23 6-3 also from that report?

24 MR. BERGER: Correct.

25 MS. WHELAN ENNS: And then is page

1 6-22, in the larger quote below these bullets on
2 the page also from that report?

3 MR. BERGER: Correct.

4 MS. WHELAN ENNS: The report in
5 question is not listed in your literature cited;
6 is that correct?

7 MR. BERGER: Yes, the habitat quality
8 modeling report is not listed in the literature
9 cited.

10 MS. WHELAN ENNS: And it is a product
11 provided to the proponent by Ecostem. Is that
12 correct?

13 MR. BERGER: That is correct. It is a
14 product that has been provided by Ecostem in
15 collaboration with Wildlife Resource Consulting
16 and Stantec Consulting, and we were responsible
17 for providing the wildlife portions.

18 MS. WHELAN ENNS: Thank you. You then
19 would be aware of when that report was made
20 available in the sequence of reviews, proceedings
21 and hearings regarding Keeyask Generation Station?

22 MR. BERGER: Yes, I'm aware of the
23 approximate time, but I would have to check the
24 exact dates.

25 MS. WHELAN ENNS: Would you accept

1 that it has September 2013 on it?

2 MR. BERGER: I believe that's correct.

3 MS. WHALEN ENNS: Thank you.

4 Do you know then whether this report
5 that was provided late in the proceedings and just
6 before the hearings began, whether it had any peer
7 review?

8 MR. BERGER: This particular report
9 had internal review only, but the contents of the
10 caribou portion of the habitat quality modeling
11 report did have peer review some time ago, just in
12 terms of understanding the methods used to collect
13 the data that were used in the report.

14 MS. WHELAN ENNS: Could you tell us
15 what that -- I understand that you're saying it's
16 some time ago -- could you tell us what the nature
17 of that review was, as in when and how it was
18 reviewed?

19 MR. BERGER: Pardon? When and how?

20 MS. WHELAN ENNS: Um-hum.

21 MR. BERGER: That was approximately in
22 2010, I don't recall the month, I believe it was
23 in January. It was reviewed by Doug Schindler and
24 Dr. Stephen Atkinson.

25 MS. WHALEN ENNS: Thank you.

1 Does the content in the EIS for the
2 Keeyask Generation Station regarding beaver agree
3 with and substantiate the information in the
4 rebuttal document?

5 MR. BERGER: The rebuttal document
6 referring to the document we produced in rebuttal
7 to Mr. Soprovich's?

8 MS. WHELAN ENNS: Yes.

9 MR. BERGER: Yes, the document
10 inherently agrees with what the content is of the
11 EIS.

12 MS. WHELAN ENNS: But there was need
13 to then file the September 2013 habitat modeling
14 report with beaver content within it, that there
15 was a -- sorry, statement, I am trying to make a
16 question here. It was then, am I correct,
17 determined that the late 2013 report was needed
18 and that the content regarding beaver in that
19 report, was further information needed?

20 MR. BERGER: The information contained
21 and used in the habitat quality modeling report
22 was simply the more detailed materials that were
23 part of the content used in the EIS. So it
24 strengthens the suppositions in the EIS with
25 respect to beaver habitat.

1 MS. WHELAN ENNS: Would we all agree
2 then that we are talking about a habitat modeling
3 report that was not available during the review of
4 the EIS under the Environment Act, was not
5 available then in spring 2013, when the technical
6 reports were provided for the CEC proceedings, and
7 was not available at the time that the two rounds
8 of IRs in the CEC proceedings were conducted?

9 MR. BERGER: As I indicated in my
10 first answer, the habitat quality modeling report,
11 which primarily relies on primary and secondary
12 habitat and where it is located in the Keeyask
13 project area, and those -- the information
14 contained therein in terms of habitat loss were
15 all calculated and produced as part of the EIS.
16 The details of the habitat quality modeling report
17 which supports the information used in the EIS was
18 not available until September of this past year,
19 correct.

20 MS. WHELAN ENNS: A small head nod
21 here, I'm going to ask a question that has to do
22 with the previous work of the secretary of the
23 CEC. I'd like to ask you, because you have two
24 reports that are work product from Cathy Johnson
25 and I believe it is a Mr. Nieman from 1987 and

1 1990, in the literature cited in your rebuttal.

2 Would you advise us how you used the information
3 in those 1987 and 1990 reports?

4 MR. BERGER: One moment to confer,
5 please?

6 And as a clarification, you're
7 speaking about Nieman used in either the
8 supporting volume habitat quality model or the
9 response to EIS guidelines as opposed to the
10 rebuttal evidence supplied?

11 MS. WHELAN ENNS: That's right. The
12 two that are approximately in the middle of your
13 literature cited are work product for both
14 Ms. Cathy Johnson and Mr. Nieman. There's two
15 below each other, if you will, one 1987 and one
16 1990.

17 MR. BERGER: Okay. One moment,
18 please?

19 Those particular materials were used
20 to supplement the rebuttal evidence used as part
21 of the rebuttal.

22 MS. WHELAN ENNS: Thank you.

23 You mentioned Mr. Doug Schindler as
24 having participated in peer review in terms of I
25 believe data sources and methodology regarding

1 woodland caribou in 2010. You have not included
2 any of his many work products and reports,
3 including regarding woodland caribou in the
4 literature cited. Is that an oversight?

5 MR. BERGER: Could you please clarify
6 the question?

7 MR. BEDFORD: We have wandered over to
8 the caribou. This is to be focused on the
9 rebuttal paper which very clearly is about beaver.

10 THE CHAIRMAN: Exactly.

11 MS. WHALEN ENNS: Yes, absolutely. So
12 let me try again, Mr. Chair.

13 Did I hear you correctly that you were
14 referring to woodland caribou or is that my
15 mistake, when you mentioned Mr. Schindler?

16 MR. BERGER: I believe the question
17 that you asked me was, was the beaver or models
18 ever peer reviewed, or were materials used in the
19 EIS peer reviewed? And I responded in the
20 affirmative, and I indicated that beaver was not
21 peer reviewed and that the materials that were
22 peer reviewed were the woodland caribou and those
23 included two peer reviewers.

24 MS. WHELAN ENNS: Thank you.

25 I have a set of questions that I am

1 going to ask where I'd appreciate an answer, both
2 in respect to the content within the EIS regarding
3 beaver and also the content that your rebuttal is
4 based on, because of this other additional
5 technical report.

6 Are the sources and the basis for your
7 analysis for beaver as a VEC in the EIS and then
8 also in this additional late report, are they
9 specific to the boreal regions in Canada? Are the
10 sources Canadian and relevant in terms of similar
11 natural regions, as where the Keeyask Generation
12 Station would be built?

13 MR. BERGER: We used a large variety
14 of literature to support the construction of the
15 beaver habitat model. Yes, that does include
16 sources throughout North America, but we did try
17 to find as many sources as possible from the
18 boreal forest environment, and in particular tried
19 to find sources that would pertain most to
20 Keeyask, of which there are very few.

21 Our work at Wuskwatim, for example,
22 some of the data were inherently captured and our
23 understanding of how beaver use habitat in North
24 America was largely based on our studies at
25 Keeyask with an understanding of what we had

1 learned from Wuskwatim as well. But in terms of
2 peer reviewed literature for our area of interest,
3 no, there is precious little.

4 MS. WHELAN ENNS: Thank you.

5 Then would there be data sources for
6 your analysis, sources for the content in the EIS
7 and rebuttal that are specific to hydro projects?
8 I heard you make a reference just now to
9 Wuskwatim. Is there any other additional source
10 that is specific to a hydro project?

11 MR. BERGER: One moment, please.

12 So a two-part answer to your question.
13 Sources of information used from other hydro
14 projects such as peer reviewed or grey literature
15 are not available for our area of interest. But
16 certainly we used, let's say the Stephens Lake
17 area and our understanding of the Nelson River
18 system which is going to be affected by this
19 project, and we took a careful look at what beaver
20 lodges were like along those areas of interest.
21 So Stephens Lake is a relative proxy for
22 understanding hydroelectric development was in
23 fact considered. And as you read through our
24 document, there are very, very few beaver lodges
25 in the area in Stephens Lake, for example. So we

1 expect that the same thing might happen if Keeyask
2 were to go ahead and the area was flooded in a
3 large lake environment, we predict that there will
4 not be beaver lodges that could, in fact, or in
5 the colonies could survive under those
6 circumstances.

7 So we did look at our past experiences
8 at Manitoba Hydro electric projects from the
9 Stephens Lake area and we have a further
10 understanding downstream as well. But we didn't
11 look at materials like grey literature from past
12 hydroelectric developments, if that's the question
13 that you were asking.

14 MS. WHELAN ENNS: Yes. Thank you very
15 much.

16 Then we may take your answer as
17 applying to hydro projects and also reservoirs,
18 given your reference to Stephens Lake?

19 MR. BERGER: Correct.

20 MS. WHELAN ENNS: And to Wuskwatim.
21 Thank you.

22 Did you have access to, and were you
23 able to use in your analysis, for instance,
24 studies regarding beaver that Quebec Hydro or Sask
25 Power Corporation may have undertaken?

1 MR. BERGER: One moment, please.

2 Not for model construction, but we did
3 look at that particular literature. So I believe
4 it was the Lower Churchill River project that we
5 took a look at what they in fact did with respect
6 to beaver, the types of surveys that they
7 conducted and so on.

8 MS. WHELAN ENNS: So you are referring
9 then to Quebec Hydro studies and Sask Power
10 Corporation as per my question?

11 MR. BERGER: I don't recall Sask
12 Power, myself referring to or reading Sask Power
13 environmental impact statements. It's possible
14 that my staff did, but I can't attest to
15 personally having looked at that.

16 MS. WHELAN ENNS: So an EIS, an
17 Environmental Impact Statement, of course, is a
18 planning phase. So my request of you is to give
19 some consideration to the questions that -- the
20 question I'm asking in terms of the basis for your
21 assumptions about beaver in the EIS in the habitat
22 modeling report and in the rebuttal, and whether
23 you in fact studied the results post construction
24 for beaver in relation to hydro projects and hydro
25 project reservoirs in Canada, anywhere in Canada?

1 MR. BERGER: As I indicated in my
2 first answer, yes, we did look at other
3 hydroelectric developments in Canada, and I can
4 recall one in particular. We looked at the peer
5 reviewed literature with respect to reservoir
6 development. We looked at the field information
7 which is right next door to Keeyask as a result of
8 Manitoba Hydro electric development, which is the
9 best representation of what might happen as a
10 result of the Keeyask project. And that's where
11 we used, or collected that information, looked at
12 carefully, and used and developed the habitat
13 quality modeling report in our understanding of
14 how beaver use water and how beaver use adjacent
15 riparian areas.

16 MS. WHELAN ENNS: Would you tell us
17 then which reservoirs in the Manitoba Hydro system
18 in Northern Manitoba you specifically referred to
19 in terms of whether the modeling and the
20 projection, if you will, in the EIS and the
21 modeling report for beaver is substantiated in
22 your other reservoirs?

23 MR. BERGER: One moment to confer,
24 please.

25 So as we are developing our habitat

1 quality modeling report and developing, you know,
2 our understanding the characteristics, we did not
3 cite in particular any other Manitoba Hydro
4 electric studies as part of the development of
5 that habitat modeling report. However, given my
6 experience in Northern Manitoba with beaver, and
7 our understanding of how hydroelectric
8 developments in Manitoba affect beaver, I used
9 professional judgment as part of that development.

10 MS. WHELAN ENNS: We will need to take
11 your answer as it is, and if I'm hearing you
12 correctly, that you have not identified any
13 specific existing reservoirs in the system that
14 you studied in relation to the beaver content we
15 have for the planning phase for the Keeyask
16 Generation Station. Is that correct?

17 MR. BERGER: That is incorrect.
18 Again, as I emphasized that with the Stephens Lake
19 studies that we did, we used the next nearest
20 hydroelectric reservoir in our understanding of
21 what the effects of beaver, what will happen to
22 beaver.

23 MS. WHELAN ENNS: Thank you.

24 Is it correct that the studies for the
25 technical reports that support the EIS for Keeyask

1 Generation Station were done in 2001 and 2003 in
2 zones three and four?

3 MR. BERGER: One moment, please.

4 As indicated in the beaver habitat
5 quality modeling report, we relied a lot on the
6 earlier studies, which included 2001, '02 and '03.
7 We supplemented the information with respect to
8 the effects assessment in 2011 when we more
9 focused on zone two. But, overall, the earlier
10 studies that we conducted for beaver were regional
11 and primarily limited to zone four. However, if
12 you do look carefully at the map that is produced
13 as part of the response to EIS guidelines, as well
14 as in the supporting volume, we did extend surveys
15 outside of zone four. And we were certainly north
16 of highway 280 when we took a look at some of the
17 creeks and lakes and streams that were located
18 there. And we also did look at Split Lake, for
19 example, so we went as far as that. But I would
20 say that the large majority of our beaver studies
21 were truly focused on zone four as our broadest
22 extent.

23 MS. WHALEN ENNS: Thank you.

24 Going by what our researcher
25 identified in the technical reports, it appears

1 that these studies were aerial studies. Is that
2 correct? Or is there more to glean in terms of
3 how you arrived at your conclusions on beaver?

4 MR. BERGER: We used a couple of
5 different approaches in our understanding in the
6 development of the habitat quality modeling
7 report. One was certainly aerial surveys, and it
8 was well-established technique to be able to
9 easily see where a beaver lodge is located in the
10 air, as well as certainly you can see food caches
11 and food cache development. You can ascertain
12 whether or not a lodge is active or inactive as a
13 result of those surveys. But the second approach
14 that we also did use is that we looked at 20 lakes
15 that are going to be potentially affected by the
16 Keeyask project, and we did walking lake perimeter
17 surveys as a part of those assessments. As well
18 we had information that we would have used as part
19 of the professional judgment in our understanding
20 of some of the work that we did outside of region
21 four, and we took a look at streams and what sort
22 of beaver use was along a particular stream. So
23 we had a broader understanding, both from the air
24 and the ground, with respect to its development.

25 MS. WHALEN ENNS: Thank you.

1 Is the information you are giving us
2 this morning in the EIS volumes and in the habitat
3 modeling report? And I would specifically refer
4 to what you have just told us in terms of the
5 checking 20 lakes potentially affected by the
6 Keeyask Generation Station, and also both the
7 Stephens Lake and Split Lake reviews and
8 assessment with respect to beaver?

9 MR. BERGER: In terms of the Stephens
10 Lake summaries as well as the Split Lake summaries
11 as part of the aerial surveys, they were certainly
12 in the supporting volume as part of the appendices
13 where you will see those lakes listed.

14 And one moment to confer further,
15 please?

16 And within the habitat quality
17 modeling report, we specifically refer to Stephens
18 Lake and its development and use in the beaver
19 habitat quality model.

20 MS. WHELAN ENNS: Your reference to
21 the 20 lakes potentially affected was the reason
22 for the question. So thank you very much.

23 MR. BERGER: In addition, my apologies
24 that 20 lakes were also referred to in the
25 supporting volume in the appendices.

1 MS. WHALEN ENNS: Thank you.

2 Did you incorporate any ATK in your
3 technical work, your studies, the technical
4 reports and your conclusions in terms of beaver as
5 a VEC for the Keeyask Generation Station?

6 MR. BERGER: Yes, we did.

7 MS. WHELAN ENNS: Was that late
8 coming? Was it a result then of the Partnership
9 communities' environmental evaluations, or was it
10 part of your ongoing studies and technical work
11 over time?

12 MR. BERGER: The information and ATK
13 that was offered by our First Nations Partners as
14 part of this project was considered very early on
15 in the process. I'm not sure if I would describe
16 it as ATK at the time, where we would certainly
17 work with a lot of our project partners with us in
18 the field, and certainly local knowledge was
19 offered at that time. And through the course of
20 the mammals working groups, we did certainly talk
21 about beaver and potential effects of the project.
22 We reviewed the environmental evaluation reports
23 that were offered by our partners. And those
24 ideas, thoughts, were incorporated into the
25 response to the EIS guidelines, and wherever we

1 could, and certainly it was considered and used.

2 MS. WHELAN ENNS: Thank you.

3 As a VEC, beaver will be monitored.

4 That's an assumption I think we all have. You
5 have indicated your concerns, including in the
6 comparison to Stephens Lake next door as a proxy,
7 and the effect of hydro development on beaver with
8 respect to Stephens Lake. So would you identify
9 what kind of time line or pattern in monitoring
10 beaver you think will emerge?

11 We have a certain amount of
12 information in the EIS which is, you know, a lot
13 of that work was done in 2010, 2011, maybe early
14 2012. So the question I guess is based on whether
15 you have any specific expectations or assumptions,
16 based on what we know now and what you know now,
17 with respect to the beaver monitoring? Will it
18 stay specific to the zones that you studied in,
19 for instance?

20 MR. BERGER: Certainly with the
21 timelines with respect to beaver we did indicate
22 in the rebuttal, as well as in the supporting
23 volume and the response to EIS guidelines, that
24 beaver certainly are quite resilient with respect
25 to their habitat use. Although we don't expect

1 them to use an environment like the Keeyask
2 reservoir, because that environment certainly is
3 too harsh for them to actually survive in. And
4 with the reservoir fluctuations, we wouldn't
5 expect that if a beaver would happen to try and
6 develop a lodge in there, it highly likely
7 wouldn't be able to survive, to be perfectly
8 honest.

9 So with respect to monitoring and
10 monitoring timelines, as beaver can certainly
11 expand their habitat use and try and explore new
12 environments, we would expect that beaver would --
13 oh, how can I say this -- beaver would reoccupy
14 habitats on a fairly short-term basis as soon as
15 it may become available.

16 So the short-term timelines are
17 important for monitoring purposes, but there is a
18 longer term monitoring series that was proposed as
19 part of the terrestrial effects monitoring plan
20 where we plan to monitor beaver over time.

21 With respect to elsewhere, I think our
22 primary focus of concern would be zone one. But
23 if we would need to take a look at control areas
24 to see how the rest of the broader beaver
25 population might be doing, we would certainly

1 consider going beyond zone one into zones two and
2 three and so on.

3 MS. WHELAN ENNS: You made a comment
4 in terms of monitoring beaver over time. Do you
5 mean just the construction period, do you mean
6 the -- and this goes into lakes and reservoirs as
7 proxies, do you mean the 30-year time period that
8 is often cited in the EIS in terms of full return
9 to equivalent function?

10 THE CHAIRMAN: Ms. Whelan Enns, you're
11 starting to go beyond the scope of this rebuttal.
12 The rebuttal is in respect of a challenge to the
13 models used in determining the environmental
14 impact on beaver. I have allowed you a lot of, or
15 some latitude because most of your questions up
16 till the last two were about how they arrived at
17 their conclusions in respect of beaver, but now
18 we're getting into monitoring and that's a step
19 beyond. And we did have an additional
20 presentation on monitoring yesterday that did
21 identify some of the issues around the monitoring
22 program.

23 MS. WHELAN ENNS: Fair enough,
24 Mr. Chair.

25 The remaining questions I have are to

1 do with methodologies and standards with respect
2 to assessing beaver. And I'd like to ask you then
3 whether there are technical standards and use
4 elsewhere in Canada or in North America where,
5 when an environmental assessment is being done,
6 beaver are assessed in relation to the proportion
7 or percentage of the study area that they occupy,
8 or have occupied recently?

9 MR. BERGER: One moment to confer with
10 my colleague, please.

11 Could you please clarify the question?
12 I'm not quite sure what you're asking?

13 MS. WHELAN ENNS: This has to do with
14 the rebuttal and the previous contents in the EIS
15 and presentations about the beaver model. And
16 what I'm basically asking, and this might in fact
17 be -- might from your perspective have to do with
18 the habitat modeling report from September 2013.
19 What I'm asking is whether you, you know,
20 thoroughly reviewed and sought out any other
21 standards that may be in use for assessing beaver
22 in arriving at the model you did use? And within
23 my question then was whether or not there are, in
24 fact, standards in use for assessing beaver that
25 start with the percentage of the study area

1 occupied by beaver?

2 MR. BERGER: There are certainly other
3 models that we did take a look at with respect to
4 the development of the habitat quality model.
5 Allan 1983's U.S. Mission Wildlife Model. We
6 looked at the Manitoba Forestry and Wildlife
7 Management Project's beaver model in 1995. And as
8 we used professional judgment and the data that
9 were collected as part of the development of the
10 habitat quality modeling report, we put those
11 materials together and did consider the best
12 approach that would be used as part of the
13 Environmental Impact Assessment. We knew in no
14 uncertain terms that beaver require riparian
15 habitat, so that our spatial delimitation was
16 certainly going to be important in the development
17 of that model, as well as, as our model indicates,
18 beaver require water as part of their habitat
19 needs. And with respect to those standards in
20 terms of availability, the availability in fact is
21 limited by those spatial characteristics in
22 proximity to water. So the standards that we
23 incorporated as part of habitat availability
24 included those elements.

25 And we did take a look at other EIS's

1 and had an understanding of what was done with
2 respect to beaver, not only in terms of the
3 habitat quality, but we have a very good idea of
4 how many beaver are located in our project study
5 area in terms of population and estimates. And
6 that's as strong or stronger with respect to the
7 data that we use and understood and developed as
8 part of the impact statement.

9 So all of that combined lead us to
10 taking a look at what the habitat availability of
11 beaver was in the Keeyask project area, and it
12 certainly is limited with respect to the spatial
13 extent of the beaver habitat use in terms of the
14 project related effects.

15 MS. WHELAN ENNS: Thank you very much.
16 Questions done, Mr. Chair.

17 THE CHAIRMAN: Thank you, Ms. Whelan
18 Enns. That concludes our examination of these
19 witnesses. Thank you.

20 Unless there are any impending matters
21 we need to deal with at this time, we will adjourn
22 until 1:30, at which time the Concerned Fox Lake
23 Grassroots Citizens will make their final
24 argument.

25 (Proceedings recessed at 11:44 a.m.)

1 and reconvened at 1:30 a.m.)

2 THE CHAIRMAN: Okay, I would like to
3 reconvene. We have final argument, closing
4 statements from the Concern Fox Lake Citizens
5 group.

6 I would just like to note that all
7 final arguments will be limited to 90 minutes,
8 that's a total of 90 minutes no matter how many
9 different people you have making statements. I do
10 have some flash cards that I will flash up at
11 about ten and five and one and two, somewhere
12 around there. And at the end of 90 minutes I will
13 ask the sound man to cut you off. We have to
14 stick to a pretty tight schedule, perhaps not
15 today, but certainly tomorrow and Thursday if we
16 are going to conclude on Thursday.

17 So, I will turn it over to
18 Ms. Pawlowska-Mainville. You are taking the lead
19 on this, so --

20 MS. PAWLOWSKA: Good afternoon, my
21 name is Agnieszka Pawlowska-Mainville and I'm the
22 coordinator of the Concerned Fox Lake Grassroots
23 Citizens. And we do realize that we have 90
24 minutes and we plan on fitting in within that
25 time. We have, however, allocated a little bit of

1 time for our grassroots individuals from Fox Lake
2 to speak, along with our expert Dr. Kulchyski.
3 And we will start off with Ivan Moose, and then we
4 will follow with Noah Massan, and finish off with
5 Dr. Kulchyski, who has even worn a tie for today,
6 his lucky tie. So I will start off with Ivan. So
7 go ahead.

8 MR. MOOSE: Good afternoon. I would
9 like to thank you for this opportunity. I would
10 like to welcome everybody here, all of the
11 participants, proponents, and all others.

12 Before I start I would like to send my
13 condolences and pay my respects to two elders we
14 have lost recently, John Garson from Tataskweyak,
15 and Derrick Saunders this morning from York
16 Factory. Both of these men were involved in a lot
17 of these negotiations in a different form or
18 another, so I would like you to remember them.

19 I'm going to read from what I wrote
20 because I tend to ramble and I tend to rant. So I
21 wrote, so I will read. Because I only got so much
22 time. But I'm glad for the time I am getting, I
23 appreciate it.

24 As I said, my name is Ivan Moose, I'm
25 from Gillam, Manitoba, with Fox Lake Cree Nation.

1 I lived there from day one of all of the
2 construction. So with all due respect to the
3 present chief and council, I feel that critical
4 issues weren't given the weight deserved, they are
5 either glossed over or at the worst ignored.

6 As the CEC may know, or not know, the
7 people of Fox Lake that reside in Gillam, Bird and
8 elsewhere are a product of Hydro development at
9 its worst, hydro development undertaken at a time
10 when the human rights of First Nations people were
11 sorely lacking. It is with this historical
12 relationship with Hydro that Fox Lake gauges how
13 it should proceed in current and future
14 developments.

15 Previous Hydro developments brought
16 social and human destruction that can be likened
17 to communities in war zones. In my community of
18 Gillam and Bird during the construction of the
19 Kettle Rapids, Limestone and the Conawapa dam,
20 there have been beatings, there have been rapes,
21 there have been forced removal of elders,
22 destruction of our homes, moving of graves, and a
23 hostile Hydro town that was bent on removing the
24 people of Fox Lake from Gillam. There has yet to
25 be a single criminal charge laid for criminal

1 offences that happened during this time.

2 Fox Lake will see the drastic adverse
3 effects of Hydro development. Regardless of what
4 supporters of the Keeyask project may say,
5 Manitoba Hydro at the end of the day will not
6 understand our plight and will therefore insist
7 that they have done all that can be done.

8 The home language of the Fox lake folk
9 people is dying off. We find in our communities
10 the younger generations can't even converse with
11 their grandparents and the grandparents cannot
12 speak with the younger generations without the aid
13 of a translator.

14 As Agnes said in her report, why not
15 support our Inninew language, the Cree language
16 supported, make all signing announcements in both
17 English and Cree, so we promote and not destroy
18 our language as a Cree Nation, as Cree peoples.

19 It is a language, it is a culture that
20 has already been destroyed. Sorry, guys, just --
21 it is a language that's already endangered, along
22 with all of our lands. The knowledge, traditions,
23 customs and more are no longer naturally
24 communicated in order that we may survive as a
25 strong people we were.

1 It is true that Fox Lake has
2 negotiated and signed an agreement for past
3 effects, but the community members -- but the
4 signing of that agreement and the monies therewith
5 does not erase the suffering of the community
6 members.

7 In order for the people of Fox Lake to
8 prepare for future development, to heal past
9 wounds, a project to measure in some fashion in
10 the state of the community members was developed.
11 This project is key for Fox Lake members in order
12 that we fully benefit and not get further hurt
13 from future developments. The social, cultural,
14 health impact project was specifically designed
15 and implemented by the Fox Lake for what it saw as
16 its purpose. The current document is being
17 attacked by people that do not want to see the
18 findings come out, because some of the findings
19 are difficult to hear, such as findings of rape
20 are identified as criminal actions by people that
21 are associated with the construction of Kettle
22 Rapids, and Limestone and Long Spruce dams.

23 I truly believe the Skip document will
24 bring out the true cost of Hydro development, and
25 that is something that these current supporters of

1 Keeyask do not want to hear, nor do they want
2 others to hear.

3 Our community's support for the
4 Keeyask project was based on the findings of this
5 study. And since the findings of this report
6 continue to be hidden and ignored, we withdraw our
7 support for this project until the findings of
8 this report are made available to the public and
9 to the CEC.

10 When Fox Lake undertook to negotiate
11 on its behalf, on its own behalf, the key to the
12 support of the Keeyask dam was that we would be
13 fully prepared. Skip is instrumental to this
14 preparedness. If this project is allowed to go
15 forward without the community members of Fox Lake
16 feeling they are prepared to move forward, we will
17 witness the complete destruction of what little is
18 left of Fox Lake's social, cultural and moral
19 fabric. We have lost many elders. I have
20 interviewed many elders in the past. I have sat
21 down with these elders. In our own language I
22 told them that we have to support, work with the
23 people, Hydro and the government, because there is
24 going to be benefits that we are going to see in
25 the immediate future.

1 Of all the elders that I have
2 interviewed, 80 per cent of them have died not
3 seeing any benefits whatsoever. My grandparents,
4 my mother, my aunts, my uncles, are those that
5 passed on without seeing any benefits from all of
6 these projects that are happening. My
7 grandchildren are going to suffer. My children
8 are suffering now. How long, how much more do we
9 have to suffer?

10 That is why it is so detrimental that
11 the Skip be allowed to come out. I want you to
12 know that I grew up when all of this -- I had to
13 change that one word, I changed it to crap -- I
14 was told that using the other word is not too
15 good. I grew up when all of this crap was
16 happening. And I will say to you all sitting
17 here, how many of you that are speaking against me
18 can say the same? Thank you.

19 MS. PAWLOWSKA: Thank you, Ivan. I'm
20 just going to give a Kleenex to -- the next
21 individual who will speak for us will actually be
22 Mr. Massan. But since we wanted him to focus on a
23 few things, we have compiled four questions that
24 he can just answer.

25 So, Noah, the first question that I

1 have for you is, Manitoba Hydro has stated that
2 there will be no significant impact to your
3 trapline. Can you perhaps discuss briefly what
4 impacts do you see that will happen on your
5 trapline?

6 MR. MASSAN: First of all, I would
7 like to say thank you for having me here, the
8 Chair and the Commission, and all the other
9 people, also the people downstairs. Thank you,
10 Egosi.

11 I have got a lot of concern about my
12 trapline. As you are aware, there is going to be
13 a switching station there, just where all of the
14 forest is going to be like, that's at trapline
15 ridge. How can Hydro say there will be no
16 disturbance in my line? There are going to be
17 three power lines on the road. You know, they are
18 going to destroy quite a bit of that from the
19 river. I don't know how it is going to be. We
20 will see after they clear all of the bush if they
21 build that Keeyask dam.

22 The other thing I was wondering, why
23 would they want to build another road when we have
24 got a two-way road over there? Why don't they
25 just upgrade that road? They're spending a lot of

1 money trying to build another road through my
2 line. They are opening everything for every
3 hunter to come in my line. And they are going to
4 say there is no disturbance in there? Come on,
5 wake up, Hydro. I harvest off that land, and my
6 family. I know, like they deal with me already
7 but not a hell of a lot, you know. I asked for
8 certain stuff I didn't get. I asked for million
9 bucks for all of the power lines that are going to
10 be there. Like before when they were telling me
11 about all of this thing, no disturbance, these
12 land initiatives. There is one of two lands that
13 we are dealing with. Bob Monkman. There was only
14 two lands that were going to come right from
15 across the river to DC lines that go to Kelsey.
16 That took my number 7 trapline holders, the other
17 holders, they were all concerned about that. Now
18 they are coming my way. Most of my trapline is
19 pretty good on that side, it is starting to come
20 back after over 45 years, you know.

21 And there is caribou too I'm concerned
22 about. They have their babies around that area.
23 That's why I ask whether these people, how close
24 is that switching yard there? But Fraser was
25 further, and after they studied, it was a little

1 closer. What is going to happen those caribou
2 that have their little ones there? And also there
3 is caribou there in that island right on the
4 Nelson River. They said they are blasting about
5 four kilometres in, the blasting area, but that
6 island is pretty close there. What is going to
7 happen to those caribou that have little ones on
8 that island?

9 There is going to be a lot of
10 disturbance in my trapline. You guys don't see.
11 Like my late dad didn't get what Hydro promised
12 him, because I started holding this trapline 2000,
13 after my dad died, I took over, you know, and my
14 brothers are still trapping with me, and
15 brother-in-law -- I mean son-in-law. And I'm
16 trying to teach my grandchildren too there. You
17 know, all this is going to be gone.

18 It all started off in 1974, I will
19 tell you a story. When cottage owners started to
20 build a marina, they started a little marine club
21 right at the -- what do you call -- Butnau dyke.
22 When me and my dad went fishing at Gull Rapids for
23 sturgeon, when we come back late that evening,
24 about 10:00 o'clock, my dad was surprised, he seen
25 all of these -- I never seen a boat dock in my

1 life before. They got all of these boat docks.
2 And one Hydro guy come running to my dad, hey, you
3 can't put your boat here, you have to belong to
4 the marina club. But my dad didn't take no crap,
5 I don't want to say that word what he said. I
6 have a lot of respect for your people, you know.
7 But my dad was yelling there. I just took all of
8 the fish off and put them in the truck. Because
9 that's where we put our boat, it is our trapline.
10 Even right now you go there and they have got a
11 big sign there, you have to be a boat marina
12 member, you know. I forgot to take that picture
13 when I was out for Christmas, it is there.

14 They treat those people, those cottage
15 owners better than I am. They get Hydro machines
16 to put in their docks, everything. You guys don't
17 see in there. It is taxpayers money they are
18 using, the machine loaders and everything. But my
19 dad did a lot of arguing about that. I just let
20 him argue. But there was one Hydro guy that was
21 good there, he doesn't -- he died too, he told
22 that Hydro guy, calm down, calm down. His name
23 was Tom, by the way. He told that Tom, he has
24 more right than us here, this is his land. So
25 everything sort of kept quiet then.

1 So we went down a couple of days
2 later, that guy went to my dad, my dad lived near
3 the hospital, and he told him, he wanted to
4 apologize to my dad, he was trying to give him two
5 of those docks there, whatever those -- but you
6 know what my dad told him, you know what you can
7 do with those things. But I don't want to say
8 that word what my dad said, I don't want to repeat
9 it. You can take those and you know what you can
10 do with them, you know.

11 When we go through my trapline, look
12 at the Skidoo club too. You guys say there is no
13 impact in there. There is a Skidoo club right
14 through my trapline. They didn't even tell me
15 they wanted to build a trail through there. It is
16 all done by Manitoba Hydro machines too, they
17 pushed that trail right through my trapline. No
18 communication from the Manitoba Hydro with the
19 trappers like me.

20 You know, how can you guys say there
21 is no impact? There are going to be impacts.
22 Some of our trapline is under water, my dad didn't
23 even get nothing out of it. But I got little bit
24 off Hydro. I asked for quite a bit, I even tried
25 to get a house off Hydro with two meters, that

1 didn't happen, but they deal with me a little bit.
2 They did give me a little bit of money, not a hell
3 of a lot for all of the damage they did in my
4 trapline, you know.

5 And look it, they say too, 2010 there
6 was going to be work there when I was negotiating
7 with Hydro here. I sort of put a stop to it, that
8 thing, but I heard some of those guys at Split
9 Lake got mad at me because I put a stop to it,
10 because I was negotiating on my trapline. I know
11 I'm in the Split Lake resource area, and Hydro
12 promised me job there. I didn't get nothing.
13 Every time there is work there, I'm not getting
14 hired like Hydro says. You know, they are always
15 lying, lying to the trappers.

16 And then another thing too, you know
17 those beavers along the dyke, they get a former
18 Hydro guy to kill them. One time the former Hydro
19 guy come to me, here is your beaver but I want
20 that meat. I told him to hell with you, who gave
21 you permission to kill beaver on my trapline? Or
22 they are causing problem there in the creek. You
23 know, Hydro always says, well, get the trappers,
24 they will kill these beavers. They never do that
25 to me, I never get letters like the trappers in

1 Bird. They get letters what is going on in their
2 trapline. I don't get nothing like that.

3 I talked to Bob about that. We will
4 send you a letter. They never send me a letter.
5 Jack Massan showed me one letter what they want to
6 do in his trapline. I don't get letters like
7 that, you know.

8 But there is going to be a lot of
9 stuff going on in my trapline. They are going to
10 be opening up quarry, there is going to be a
11 quarry, they are going to be blasting, there is
12 going to be lots of noise there. How can Hydro
13 say there is no disturbance in my trapline? But
14 they are not going to stop me too. When you guys,
15 if you ever let that licence go, I'm going to keep
16 on trapping too. I'm not going to listen to you
17 guys, I'm going to just keep trapping on my line.

18 Is that it?

19 MS. PAWLOWSKA: Thank you, Noah.

20 So my second question to you is,
21 you've been here, you've seen some of the
22 presentations, you've seen some of the evidence
23 given by Manitoba Hydro. Can you hear me, Noah?

24 MR. MASSAN: Right.

25 MS. PAWLOWSKA: Okay. So you have

1 attended some of the hearing presentations and you
2 seen some of the evidence presented by Manitoba
3 Hydro. So I want you to think about some of the
4 promises that were made by Manitoba Hydro
5 throughout the hearings, and also the promises
6 that very little environmental effects will be
7 done by Keeyask. So keeping that in mind, do you
8 think that this project is going to be different
9 than the other projects like Kettle, Limestone and
10 Long Spruce?

11 MR. MASSAN: Well, I worked in all of
12 those other projects, I didn't see anything
13 different, how this one is going to be different.
14 I think everything will be the same. How can they
15 say that something is going to be different about
16 it? I don't understand that. Because I worked in
17 all of those dams to see what is going on. They
18 are all the same. I can't see it any different.
19 I know they are going to flood the last two
20 rapids, that's the only two difference I see,
21 Birthday Rapids and Gull Rapids, and maybe a
22 little bit of that Caribou Island. That's the
23 only difference I'm going to see is a new forebay.

24 Another thing too, I was thinking
25 about that, I worked in Birthday Rapids too, way

1 back, I worked when they were drilling. I'm
2 pretty sure when I seen that forebay, if they ever
3 build Keeyask, it is going to end up in the Butnau
4 River, Butnau lake, because that -- that is my
5 experience in the bush, I got to see these
6 meadows, it is going to end up in there, but Hydro
7 says it is not going to happen. Unless some of us
8 don't see it, look at the forebay in Gillam. Like
9 there is a lake I have been watching pretty
10 careful, there is a river, there is -- the lake is
11 getting bigger and that channel is getting bigger,
12 it is going to end up in the lake there near 280
13 highway. I don't think that Hydro is looking
14 after or checking that, the back area there where
15 the flood is.

16 You know, I can't see anything
17 different. I know I'm going to have lots of
18 noise, like I say, around my trapline, blasting.
19 Like the fish too, when they start building that
20 cofferdam, there is going to be a lot of dirty
21 water when they start hauling dirt. Because I
22 worked and I put a lot of dirt in the river, I'm
23 sorry to say, I held my land or whatever, my
24 community, I destroyed, I destroyed my community.
25 I'm ashamed of it to say that. Because I worked

1 in those other dams, I got to see what really
2 happened. What I see, the bush we destroyed, the
3 creeks, everything, you know. I helped them doing
4 that.

5 MS. PAWLOWSKA: Thank you Noah. Can
6 you hear me?

7 Okay. And the final question I have
8 for you is, how do you see the teachings and the
9 practices continued for Fox Lake band members in
10 your community with Keeyask and each additional
11 project?

12 MR. MASSAN: Well, what I see in my
13 community, there are not too many elders left, but
14 in Bird there is a few, they are still teaching.
15 Our people, they go hunting, what do you call that
16 place, Limestone, they have a camp there they go
17 hunting, spring hunting. Now, look at those kids
18 that come here, the band brought up those kids,
19 look how far you got to go now for trout, and the
20 trout used to be right in our community before
21 Kettle, you can go fishing.

22 Look how far we got to go now. We got
23 to take a train, Gillam is 326, we have to take a
24 train to 374. That's 48 miles away. And you have
25 got three trains that are running that go to

1 north, passenger. Our kids have to go on that
2 train. And the people, they won't let the boat
3 and the gas on the passenger, they have to put
4 them on a freight train. They got to, somebody
5 has to load up them in Gillam, and you have to
6 phone over there and tell them your stuff will
7 come in. Like that train that comes in, that
8 freight train, it is never on time, you never know
9 when it is going to come. I live near the track
10 to hear all of these trains go by, sometimes it
11 comes in 10:00 o'clock. Somebody has to be at the
12 station to load these boats and everything. Then
13 you have to phone those people, be there in a
14 couple of hours, three hours. They have to unload
15 it, because HPR don't do it no more, the people
16 that work in the train. You have to do
17 everything, unload everything yourself. By the
18 time you get moving, like the kids were showing,
19 and the elders, like when you go down river it
20 takes about roughly three days, two days, but they
21 did it in a hurry, two days to go to the end of
22 the mouth of the river. Then they have to go up
23 the river to Conawapa, and then somebody picks
24 them up. It takes about, like that Elder Robert
25 Beardy told me, it takes about week, two weeks,

1 just to go and catch trout. Look how far Hydro is
2 chasing us away from our -- like one elder told me
3 our fish used to be right here in Gillam, look how
4 far we have to go now for our food. For sturgeon
5 we have to go to Conawapa now. And the trout you
6 have to go wherever.

7 That's another thing too. Those
8 elders are supposed to come here with them kids,
9 the people that used to harvest off the land.
10 They didn't. They got burned off and they brought
11 these other brothers and sisters that don't even
12 trap or harvest off the land. He was kind of mad
13 about it when I went home for Christmas break, you
14 know, he was kind of mad about it, because he
15 would have talked to you too, he would have told
16 you the stories, you know, how those kids enjoyed
17 it, nice trout and everything.

18 You know, we are going further, like
19 he said, Hydro is chasing us away from my
20 community to go fishing. And it costs a lot of
21 money now to go on the train, and you have to buy
22 everything, go down river, you have to have
23 everything, you have to be prepared.

24 MS. PAWLOWSKA: Thank you, Noah.

25 So I will hand over the stage and the

1 microphone to Dr. Kulchyski. Peter?

2 MR. KULCHYSKI: Egosi. The stage.

3 And I did wear a tie today, so memorize that
4 because you won't see it very often, ladies and
5 gentlemen, I have to say. And I do want to say
6 that I'm really very proud, and it will go down as
7 one of the pleasures of my life to have been able
8 to work with Ivan and with Noah, as well as with
9 Agnes and Tommy Nepetaypo, and Jack and Christine
10 Massan. Especially, I think I will say a few
11 words about working with Noah, and I'm mindful of
12 the time and all.

13 One of the things I'm very good at is
14 talking right down to the last minute, I will use
15 every ounce of time I have got and not an ounce
16 more than that, so I will assure you of that. And
17 I will try and talk slowly.

18 I have worked with quite a number of
19 Inuit elders and very closely with some Dene
20 elders, and different elders have different areas
21 of strength. You know, we spent some time with
22 Noah in Gillam, we spent an intensive week with
23 Ivan and Noah in a research room at the
24 university, and then another week back in Gillam
25 and in Thompson. And in that process and in the

1 subsequent exchanges, I have gotten to know Noah
2 very well. And I would say, you know, what
3 Mr. Massan offers is really a refined and very
4 strong ethical sense. I think that his profound
5 insight is really a deep and unshakable faith in
6 the value of right and wrong and knowing what is
7 right and wrong. I think that's what Noah -- he
8 has a lot of knowledge about his trapline. He and
9 Ivan know a lot history of their community, but
10 what will really stick with me, and I hope to
11 continue to work with Mr. Massan, is his really
12 foundational understanding of, you know, what is
13 good and what is bad, what is right and what is
14 wrong, what we are doing that's helping the
15 people, what we are doing that's not helping the
16 people.

17 And it has been for me really a
18 privilege and a pleasure to be able to work him
19 and be able to work with him, and I hope to be
20 able to do so in the future. The elders that I
21 have worked with in the far north have passed
22 away, and so you might be stuck with seeing the
23 Massan and Kulchyski, you know, song and dance
24 troupe for a while into the future. Because I
25 think there is much that they can learn from him.

1 Some of what I have to say here is directed along
2 that ethical plane.

3 In your terms of reference, you know,
4 assuming we will all be getting away from this and
5 we all need our breaks, and so we go back to the
6 beginning, and the beginning is your terms of
7 reference. And you are asked whether this project
8 should be granted a licence, and if it is granted
9 a licence, what conditions should be attached to
10 that licence. And in my written report I'm going
11 to concentrate probably a bit more on the
12 conditions, but in my oral report today I'm going
13 to talk about the whether -- whether or not they
14 should grant a licence.

15 I believe, I guess, speaking on behalf
16 of the Concerned Fox Lake Grassroots Citizens, we
17 believe respectfully, but strenuously, that this
18 project should not be granted a licence. That you
19 should do the highly unusual, unexpected, but I
20 think profound and important thing of recommending
21 that a licence be denied to this project.

22 And I don't think that the mountains
23 of paper that have been produced cover over the
24 basic facts. You know, the basic facts is we have
25 a long troubled history of Manitoba Hydro's

1 engagement with northern indigenous communities.
2 And I am going to review a little bit of that to
3 say how we got to where we are now, and then I
4 want to talk about where we are now and I want to
5 talk a little bit about the future. So maybe
6 that's how I will couch my remarks.

7 You know, that troubled history
8 included a period when there was no thoughts to
9 consultation that provided any benefit to the
10 indigenous communities. The thought was, if they
11 are getting a dam built next to their community --
12 for me it goes back to the Winnipeg River which I
13 cross every time I drive up to my home town of
14 Bissett. Sagkeeng was not consulted about those
15 projects, and only very, very belatedly given any
16 compensation for its impact on their community.

17 When the projects were built at Grand
18 Rapids, similarly there was no consultation, and I
19 personally worked in Grand Rapids and gathered
20 what amounts to a horror story about the impacts,
21 and the continuing impacts of that project.

22 When the Churchill River Diversion and
23 Lake Winnipeg Regulation project and the beginning
24 of the dams on the Nelson River were started, you
25 know, we were in a post 1983 era where suddenly

1 there was a notion that Aboriginal title at least,
2 and aboriginal rights, were legal facts of life in
3 Canada. So the communities were able to organize
4 opposition, they were able to join together, and
5 in a very intense political climate they managed
6 to negotiate the Northern Flood Agreement. And it
7 is interesting talking to them, you know, to Tommy
8 Nepetaypo who was then chief. He said Fox Lake
9 didn't join the Northern Flood Committee because
10 they didn't want to concede that the dam should be
11 built, that the river should be damaged. They
12 stayed apart from that process and weren't
13 signatories because of their absolute entrenched
14 opposition to the dam.

15 I have to give Mr. Nepetaypo credit,
16 for all of that period he has basically stayed
17 fairly consistent. I mean, he has worked in
18 different capacities, but I think in his heart and
19 to this day he believes the original dam shouldn't
20 have been built, and the dam should not be built
21 today. But that was a piece of historical
22 information. I never knew why Fox Lake was not
23 part of the Northern Flood Committee.

24 So, we had the Northern Flood
25 Agreement and immediately, almost immediately

1 after signing the Northern Flood Agreement, you
2 know, Manitoba Hydro got its signature, they went
3 ahead and did their dams and did their dredging
4 and did their diversion. They were told by
5 engineers, by an engineer from the University of
6 Manitoba who I have been in email correspondence
7 with, that they shouldn't flood South Indian Lake,
8 that additional flow wouldn't be needed for many
9 years to come. They were destroying a healthy
10 fishing community for basically no reason for
11 another 20 or 30 years. But they were smarter
12 than everybody who was advising them. They knew
13 best, they knew the right, they knew it was time
14 to do this, so they went ahead and did it, causing
15 untold misery that is still being experienced by
16 the people of South Indian Lake. And the people
17 of South Indian Lake even now are pushing to try
18 to have some influence on how the lake is
19 regulated, so they might be able to get their
20 fishery back. And to this day Manitoba Hydro, so
21 friendly to Aboriginal people, remains basically
22 intransigent towards them.

23 And Manitoba Hydro began largely
24 abrogating the Northern Flood Agreement almost
25 from the moment it was signed. They got their

1 signatures, they got their dams, they didn't care
2 about the First Nations communities.

3 We had a ten-year period where the
4 communities -- well, the other thing that happened
5 was the Northern Flood Agreement, the unity of
6 those five communities that signed was dissolved.
7 The Northern Flood Agreement, through all sorts of
8 mechanisms -- and I think that has hurt the
9 Province of Manitoba. Instead of dealing with
10 communities working together, we are dealing with
11 communities one at a time.

12 The Northern Flood Committee was
13 eventually dissolved, not seen as a legitimate
14 voice of the Hydro affected communities. And
15 since that time the Hydro affected communities
16 have been negotiating one by one with Manitoba
17 Hydro. And when we ask, what is the difference
18 between Manitoba and Quebec, one of the
19 differences is the Quebec Cree speak with a single
20 voice and it is much more powerful. And Manitoba,
21 I think, to our discredit, we didn't pay attention
22 when we had a body that was willing to speak with
23 one voice for many of the communities. I think we
24 would be in a better position, the communities
25 would be in a better position today if that body

1 still existed.

2 So we fast forward to the '90s, after
3 10 years of struggle, after not appointing an
4 arbitrator, after dragging their heels on the
5 Northern Flood Agreement, you know, the words that
6 are in there in the schedule that say the Northern
7 Flood Agreement promised, you know, studies that
8 would work towards the eradication of mass poverty
9 and unemployment, you know, it looks like a bitter
10 pill to people who read that and look at their
11 communities today in Northern Manitoba. There has
12 been no eradication of mass poverty and
13 unemployment.

14 So we have actually a very sad, sad
15 history. Through the 1990's, communities
16 frustrated with not achieving any progress and
17 wanting to do something began first at Split Lake,
18 now Tataskweyak, to sign implementation
19 agreements. And four of the five original members
20 of the Northern Flood Agreement eventually signed
21 implementation agreements with of course
22 Pimicikamak, who will testify here, insisting that
23 the original provisions of the Northern Flood
24 Agreement be respected, that they don't need a
25 cash payout as a so-called implementation of the

1 Northern Flood Agreement.

2 As an aside, I'm going to on the
3 record state my legal opinion that the
4 implementation agreements are not constitutionally
5 protected. The Northern Flood Agreement is a
6 Treaty, therefore to amend the Northern Flood
7 Agreement you need a constitutional amendment.
8 The implementation agreements are signed without a
9 constitutional amendment and, therefore, it is my
10 view that ultimately they will be found to be of
11 no legal value.

12 I am just a professor, I do teach
13 books that get taught in law schools, I'm not a
14 lawyer, but for the record I'm stating my opinion.
15 I think somewhere there it should go on the
16 record. I think ultimately the implementation
17 agreements will not be worth the paper that they
18 are written on. But that's a highly technical,
19 legal question and it takes us a little further
20 away from the issue at the moment.

21 So communities that signed partnership
22 agreements, then other communities like South
23 Indian Lake and Fox Lake that weren't part of the
24 Northern Flood Agreement, or weren't a part of the
25 original committee, signed compensation

1 agreements. They decided to accept for their
2 long-standing grievances, you know, single,
3 largely what amounted to single cash payouts. The
4 communities that signed those agreements then had
5 a modest capital transfer, you know, which to
6 Manitoba Hydro is a significant amount of money to
7 the communities involved, certainly not enough to
8 help them deal with the substantial problems that
9 had built up over the many years, including the
10 problems of being able to access their traditional
11 resources. And so, you know, Manitoba Hydro
12 offers implementation agreements in part because
13 it knows it wants to build more dams, and it knows
14 that there is an entrenched hostility, what I
15 write once called a legacy of hatred towards
16 Manitoba Hydro -- if you go to northern
17 communities now, and you say you are with Manitoba
18 Hydro, I can tell you the reception is not
19 necessarily so friendly. When I was doing Treaty
20 research five years ago in Tataskweyak, several
21 people, I went into their houses and they said,
22 are you working with Hydro, because if you are
23 working with Hydro, we are not going to talk with
24 you. Fortunately, I wasn't working with Hydro.
25 So the reputation on the ground in Northern

1 Manitoba is, continues to be what I would call
2 really deep, deep anger, and what I have called in
3 the past a legacy of hatred.

4 But the communities having signed
5 implementation agreements, or compensation
6 agreements, then had nothing left to fight for.
7 So Manitoba Hydro offers them partnership
8 agreements to buy into the latest wave of dams.
9 You know, and it has been by then 30 years, 40
10 years since the first dams were built. There is
11 no prosperity for the communities, there is no
12 improvement in the quality of life, and there has
13 been serious degradation. People can't swim in
14 the rivers that they swam in as children, people
15 can't practice the traditional lifestyle that they
16 practiced that might alleviate the kind of misery
17 that they experience, and they are seeing
18 prosperity in other places as they are falling
19 further behind.

20 Now, in the Wuskwatim debate, I think
21 I wrongly to some extent was guilty of
22 personalizing the debate. And I'm going to say
23 here for the record, you know, I think Councillor
24 Thomas, Elvis Thomas, then Chief Jerry Primrose --
25 and Chief Primrose and I have had some notable

1 face-to-face disagreements -- but I think that
2 they were and are capable leaders, I don't mean to
3 insult them in what they did. And similarly, you
4 know, the people that I have seen presenting for
5 the communities at this conference, Councillor
6 Neepin, his assistant, Karen Anderson, Martina
7 Saunders, as well as Mr. Bland from York Factory,
8 you know, I think are capable leaders who have
9 integrity. My colleagues may disagree with me
10 about that, and they are free to in the community
11 context, but for me as an outsider, I thought that
12 they spoke well, that they had knowledge, and that
13 they cared about what is going on with their
14 community. And I don't blame them for signing a
15 partnership agreement and trying to derive some
16 financial benefit from what to many people
17 probably seems inevitable. And I don't doubt that
18 they are doing the best for their people.

19 What I'm critical of is the hand that
20 they are dealt, the cards that they have. And I
21 think that the cards they are being dealt are not
22 the cards that we should be dealing, for many,
23 many reasons. Not because they don't compare
24 favourably to the Peace of the Braves, but because
25 the ultimate outcome -- you know, I feel like I'm

1 watching a social train wreck in action, piled on
2 top of an existing disaster, and that we are
3 almost helpless to do anything about it. But I
4 remember the fact that we are not helpless, that
5 you have statutory powers, you have a power to
6 make a recommendation, you have the power to slow
7 this train wreck.

8 Now, yesterday I was not as clear in
9 my answer as I would have liked to have been. The
10 two kinds of shares, the preferred shares and
11 common shares that are being offered to the
12 Partnership agreement in no way come to close to
13 the kind of agreement that the Peace of the Braves
14 involves. Because in both cases preferred or
15 common shares, yes, the preferred shares will give
16 a guaranteed rate of return and I believe that,
17 yes, that's an improvement as an option over the
18 previous deal. It still doesn't come anywhere
19 close to meeting the standard of the Peace of the
20 Braves. And why? Very simple. Because to get
21 preferred shares, the community has to make an
22 investment. To get the common shares it has to
23 make an investment. In either case it has to
24 invest its own very precious resources, the
25 resources that was paid to compensate for the

1 damage done by previous dams, where the community
2 was harmed, harmed in very serious ways by
3 previous projects, by previous practices. They
4 were given compensation for that, and now they are
5 expected to take that compensation, and instead of
6 using it to alleviate the very serious community
7 problems that exist, they are expected to invest
8 it, or borrow more money to invest it, and then
9 choose what kind of return they want.

10 In Quebec the Cree were given money
11 for them to say these projects can go ahead. They
12 didn't invest capital, they gave their permission
13 effectively. They said, yes, we will allow these
14 projects to go ahead. Even when there was a lot
15 of criticism of the projects, I remember Grand
16 Chief Ted Moses from Quebec saying, we gave our
17 word we would stand behind these projects, we are
18 not going to criticize them now. So they were
19 paid a significant amount of money. They didn't
20 invest capital.

21 You know, the sense that I get from
22 here is Manitoba Hydro basically saying, aren't
23 these communities lucky, we are making them -- we
24 are allowing them to be co-owners in the dam if
25 they invest some capital in these dams. It

1 shouldn't be looked at as Manitoba Hydro is making
2 this great opportunity available to the
3 communities. The communities are making an
4 extraordinary opportunity available to Manitoba
5 Hydro by not standing up and fighting with every
6 fiber of their beings.

7 And we know in the modern era, if
8 these communities said no to this dam, the
9 political, the way in which we now respect
10 Aboriginal rights, the general impression, you
11 know, and support on the part of the public for
12 Aboriginal issues, the communities could halt the
13 dam from taking place.

14 So I think Manitoba Hydro is actually
15 privileged that the communities are willing,
16 especially after this long history, to come to the
17 table and sit down with them. And I think it is
18 unfortunate that we are not dealing them a better
19 hand of cards, that we are giving them a deal that
20 is second rate, that demands they use the
21 resources they desperately need right now, that
22 doesn't start compensating them immediately as has
23 happened in Quebec, and that allows them at some
24 point in the future to decide whether they want to
25 take more of a risk or less of a risk in terms of

1 the return they are getting. This is not a Peace
2 of the Braves and this isn't a deal that compares
3 favourably to the Peace of the Braves in any
4 account.

5 Now, I'm going to step out of my "no
6 dam" hat for a moment, my no dam hat, and say, you
7 know, I think certainly if we want -- and I don't
8 think that the Peace of the Braves, you know, I
9 think it is the standard now, but I don't think it
10 is the best. And I think in Manitoba, given the
11 proportion of Aboriginal in our population, given
12 the future of the Province, given the place of
13 Aboriginal in the economic development of the
14 province through their position in Northern
15 Manitoba where the dams are being built and, you
16 know, the previous impacts, I think we need a
17 broader global political solution.

18 I think it might be possible for the
19 Provincial Government to embed the existing
20 Partnership agreement in a broader nation to
21 nation agreement that would provide additional
22 benefits to the community. So if we were going
23 ahead, I would say still we can think of maybe
24 some global and broader treaty making process that
25 might provide more benefits to the community.

1 Because what is being provided right now is
2 another generation of misery, of what the social
3 scientist Stephanie Irlbacher-Fox calls social
4 suffering.

5 I have been to Tataskweyak and spent
6 time there living with people, not staying in the
7 hotel and flying out the next day. I have spent a
8 fair bit of time in Gillam. I presented to you
9 some of the results of those trips. I'm not going
10 to, you know, go over all of that material again,
11 except to say that I think the situation in both
12 cases is very dire and very distressing and not
13 something that we can be proud of as Manitobans.
14 We don't have communities in Northern Manitoba
15 associated with Hydro that are being nominated to
16 the United Nations. The communities that are
17 affected by Hydro in Northern Manitoba are I think
18 demonstrably worse off than the communities that
19 are not affected by Hydro. It is my view that
20 Manitoba Hydro should not get to build another dam
21 until it improves that record.

22 I think results, you know, you have
23 mounds and mounds of papers and promises and, you
24 know, views that you are better now than you were
25 in the past, without having apologized for what

1 went on in the past. But I think results are
2 actually the best, you know, indicator of where we
3 stand. And the results of 40 years of Manitoba
4 Hydro's involvement with northern Aboriginal
5 communities is really misery, is people losing the
6 ability to go back on the land and to at least,
7 within the poverty, you know, get out in the bush
8 close by their community and feel an alleviation
9 from those pressures, and practice the customs and
10 traditions that they know their ancestors
11 practiced, to do those kinds of things.

12 You know, in Pimicikamak, as in Fox
13 Lake, you don't swim where you used to swim. You
14 have to go a lot longer or you have got to pay to
15 swim in the swimming pool. I mean, I have respect
16 for Mr. Bland, but I think he is dead wrong when
17 he says he would like to see a swimming pool in
18 his community. One of the glories of Northern
19 Manitoba is to be able to go and jump in a lake,
20 you know, and to dry off on a warmed rock by the
21 sun, and to run home and then run again and do
22 that as you need to. To jump into a chlorinated
23 swimming pool where you need to have a bathing
24 suit and you need to follow rules and all of that
25 is not a glorious experience. It might be nice to

1 be able to do in winter, but it is not the same as
2 what you get from a simple Northern Manitoba lake
3 that these children, you know, people of Noah's
4 generation grew up with. They are seeing their
5 children and grandchildren's childhoods being
6 robbed from them right before their eyes.

7 I don't think Manitoba Hydro deserves
8 to go ahead and tell us again, with all of the
9 arrogance that it had in the 1970s, we know
10 better, we know best, we are doing it right, we
11 have always been doing it right, we continue to do
12 it right, whatever mistakes we made in the past,
13 those are in the past, we are not going to
14 rehabilitate them, we are not going to look at
15 alleviating the situations we have created, we are
16 just going to go forward and we know best.

17 If you look at, you know, the two
18 people with doctorates who spoke on environmental
19 questions that I saw, Dr. Lunenberg and Dr.
20 McLachlan, you know, I think spoke quite
21 eloquently and passionately and very seriously
22 about the flaws and their doubts about the many,
23 many environmental reports, mostly produced by
24 unrefereed scholarship, by people who don't have
25 the same level of credentials, and it is just

1 counterintuitive that report after report says
2 with mitigation the impact will be neutral.

3 The impact will not be neutral. The
4 impact on Gillam right now from the previous dams
5 is not neutral. You have been there and you have
6 driven around and you have seen it. So I don't
7 need to show it to you again. It hasn't been
8 neutral and the mitigations don't make it neutral.
9 We don't know that sturgeon will be able to
10 recover their populations if one of their last
11 natural spawning grounds is totally destroyed.

12 Mr. Massan reports seeing the
13 so-called summering woodland caribou having been
14 hunted by his relatives a few weeks ago. So the
15 summering woodland caribou are staying I think
16 quite a length of time in this area that they are
17 not supposed to be in, so we in fact are
18 endangering woodland caribou habitat.

19 And Mr. Massan emphasizes to us
20 repeatedly, you know, it is not these particular
21 endangered species that he is concerned about. As
22 a Cree person he has a responsibility to the
23 squirrels, to all of the wildlife in his area, and
24 he is seeing that responsibility being abrogated
25 before his eyes. And the squirrels aren't an

1 endangered species, but the squirrels in Gillam
2 are becoming endangered. The birds, all of the
3 wildlife in his area is becoming endangered. It
4 is counterintuitive to say that a Bipole, a dam,
5 flooding, quarries, transmission stations, will
6 not have an impact on Mr. Massan's trapline, or
7 will not effectively destroy Mr. Massan's
8 trapline. He is seeing lynx come back after 40
9 years of being away. This is what we are talking
10 about. By next winter those lynx will be gone and
11 they won't come back, maybe never, maybe not for
12 another 40 years, more likely never.

13 The road alone has an enormous impact.
14 The amount of traffic on the road, the amount of
15 dust is going to frighten off wildlife and is
16 going to make like much more difficult for Noah.
17 Noah is a stubborn man, he is going to continue to
18 go out and do his patient rounds and get as much
19 as he can from his trapline, but his trapline is
20 not going to be the same.

21 I should also say, you know,
22 Mr. Massan entered a room in good faith with
23 Mr. Monkman and two lawyers from Manitoba Hydro,
24 you know, on his own, to figure out what
25 compensation he would get. And so did the late

1 Frank Beardy. The late Frank Beardy got
2 significantly less compensation than Mr. Massan
3 got. I mean, this is not a process that stands,
4 you know, the light of day. You have people with
5 grade eight educations who have lived all of their
6 life in the bush sitting across the table from a
7 lawyer, and the lawyer says this is how much you
8 get. And they say, you know, Noah Massan has no
9 idea how much to ask for, a million dollars, a
10 house, different things. And he is asked by these
11 lawyers, sign on the dotted line. Now you have
12 given up your legal right to make any
13 representation about any of the impacts that have
14 happened.

15 You have got to look at that process
16 and do something about it. Again, I'm falling on
17 to -- but it horrified me when I heard that with
18 no legal representation, no support, he is in a
19 room alone and told, here, we will give you this
20 much money, sign this piece of paper. There has
21 to be a better process than that, a more public
22 process than that for compensating individual
23 trappers, if that's what you are going to do for
24 the particular damage that's done on their
25 trapline.

1 Again, one of the areas that Manitoba
2 Hydro is living in the past with regards to when
3 it talks about compensation, it will compensate
4 for material tangible losses. It has no idea
5 really of what intangible cultural heritage is,
6 never mind how to compensate for it.

7 I can tell you one thing that
8 intangible cultural heritage is; intangible
9 cultural heritage is, where will the next
10 generation of elders come from?

11 I'm in an extraordinary privileged
12 position. I worked with an elder named Albert
13 Wright in the Northwest Territories, I worked with
14 elders in the Northwest Territories, both of them
15 have passed away. We all mourn, as did my
16 colleague Ivan Moose today, the passing of elders.
17 In some of the northern communities that I go to,
18 you know there is a young man, Peter (inaudible),
19 a young man, he is three years old. His
20 grandmother knows already he is not going to be an
21 old man, he is going to be an elder. They can
22 tell already he has that flicker of wisdom in his
23 eyes as a very young child. And they are very
24 deliberate about nurturing that. They will raise
25 him to be an elder, so there will still be an

1 elder in Tulita 70 years from now.

2 Will there be an elder in Fox Lake, in
3 Tataskweyak, 70 years from now? There won't be an
4 elder who will have a land-based experience to
5 draw from. I found it extraordinary in that
6 exchange with, you know, the young people talked
7 from Fox Lake, and like everybody, isn't that
8 cute, that's nice. They were talking about the
9 wilderness experience and they were moved by it,
10 so that's very nice. And then Chairman Sargeant's
11 innocent question, how far away did you have to go
12 to catch trout? And their answer was basically an
13 eight hour train trip and another five days in the
14 bush is where they go to catch trout, which is
15 what Mr. Massan was referring to. Those children
16 will not grow up to be land-based elders. And I
17 don't want to be picky and academic, but the fact
18 that it is called a wilderness program, wilderness
19 is a term that was used in order to describe the
20 land as an empty place. Indigenous peoples in
21 their own worldviews did not have a concept of
22 wilderness.

23 The land, aski, is a storied place, a
24 travelled place, a land of, you know, gathering
25 places and spiritual places. It is not an empty

1 land as connoted by the term wilderness. So
2 already, in terms of a cultural program, by
3 calling it a wilderness camp, you are taking steps
4 away from your culture. So it is a small
5 recommendation, but don't call it a wilderness
6 camp.

7 These programs are not going to
8 produce the kind of land-based elders that our
9 generation has the privilege to learn from. This
10 is an extraordinary thing, you know, for the
11 Province of Manitoba and Canada to have. We have
12 these people, many of whom were born in the bush,
13 who grew up in the bush. They don't speak well in
14 a public forum like this, they don't know our
15 protocols of speech. But you take them out on the
16 land, or you have them in a setting where they are
17 talking in a circle with others, and you have the
18 privilege of listening to them, as we do at the
19 university and as many schools do, and more often
20 than not you come away with something
21 extraordinary. And you can't put a number on it
22 and you can't pile enough papers on top of it to
23 cover it over. It is there. We know it is there.
24 We know when we are in the presence of it.

25 And it is fair to ask the question,

1 where will that come from? We are not going to
2 see elders in Tataskweyak and Fox Lake if the
3 land-based economy, the hunting economy from which
4 many of the elders are produced, if that's
5 destroyed, if it is eroded to the point of
6 non-recognition, if the children have to take
7 five-day long journeys to have a wilderness
8 experience, they are not being prepared in that
9 way that little Pierre is being prepared, where
10 every day he is being encouraged to set up his own
11 little snares, and he is encouraged to watch what
12 his parents are doing and see his parents as they
13 butcher caribou, and all of the different untold
14 and unquantifiable things that go on in his life.

15 I see children in Pangnirtung that I
16 know will be elders, you can just see it. I see
17 children in Lac Brochet, I was in Lac Brochet and
18 I took a photograph of some teenagers who were
19 goofing around in front of me. And a year later I
20 looked at that photograph, and two of those four
21 teenagers, the way they were standing on the
22 ground was something that we don't see very often,
23 they stood on the ground like they knew the ground
24 they were standing on, like they owned the ground
25 that they were standing on. And I could tell that

1 they had come from hunting based families, just by
2 the way they were standing.

3 That's what intangible cultural
4 heritage, or that is what intangible cultural
5 heritage leads to. It leads to a way of standing
6 on the ground. None of these reports and the
7 mountains of papers we have seen acknowledges
8 that. Nothing says, this is how we believe our
9 elders will be produced in the next 30 and 40
10 years. With this project we lose, we start losing
11 a generational resource to all of us as well as to
12 the community.

13 You know, this project will
14 environmentally affect the nearby region of the
15 Fox Lake people, and will make it much harder for
16 them to sustain a land based way of life. And
17 there are fewer of them doing it. And I think we
18 should treat them as all the more precious. They
19 become the last resources of their people to have
20 a connection with the culture that they have
21 practiced for a long, long time. We have that on
22 the one hand.

23 We have I think the loss of an
24 invaluable heritage. Ms. Pawlowska says in Japan
25 they actually pay living -- people with

1 traditional skills as living heritage. I think we
2 should be looking at something like that in
3 Manitoba so that there will be some recognition
4 that elders like Mr. Massan and the other elders
5 who were involved who are on the other side of
6 this process, I think we need some way of
7 officially recognizing the contribution they make
8 to their own communities and the contribution they
9 make to Manitoba and the contribution they make to
10 humanity.

11 Again that takes us outside of the
12 parameters, and I want to spend a second on that.
13 This is really in a sense our only chance. The
14 Aboriginal rights consultation will determine
15 whether the communities have been consulted, and I
16 can tell you given the current Federal government,
17 they will be happy enough to say that because the
18 band councils have been involved and signed an
19 agreement, there has been adequate consultation.
20 I doubt if they will engage in a meaningful public
21 process, or will see a necessity for additional
22 consultation on Aboriginal rights. They will
23 argue that the First Nations governments are the
24 appropriate venue for that, and that's where the
25 consultation of Aboriginal and Treaty rights has

1 already taken place to their satisfaction.

2 I don't know if we will get an
3 opportunity to speak to these issues around what
4 happened with the Treaty signing in Tataskweyak
5 and the importance of Aboriginal rights, and so
6 occasionally I go outside of the parameters that I
7 know you are to look at, but at least we get some
8 of the material on the record and I think that's
9 important.

10 And so I wanted to finish off a little
11 bit the Treaty discussion that we had yesterday,
12 and just note that the article that was presented
13 to you does not in substance disagree with the
14 article that I presented to you, when I had the
15 chance to actually look at it closely, it
16 basically also says the right document was not
17 signed and they cut and stitched signatures on to
18 the Treaty 5 adhesion that was supposed to be
19 signed. So that in my mind -- myself and Mr.
20 Roddick I guess disagree about the significance of
21 that. He believes it is not of significance. I
22 believe it is potentially of great significance.

23 And I worked in communities that
24 negotiated modern treaties, comprehensive land
25 claims in the magnitude of \$80 million where

1 previous treaties existed, in part because the
2 signatures on those treaties were determined to be
3 inaccurate. It is not an issue that I don't have
4 any experience with. And I think that changes in
5 a sense some of the negotiating parameters, I
6 suppose, at least for the community of
7 Tataskweyak, in these matters.

8 You asked the question of Manitoba
9 Hydro and of the Partnership, you know, could the
10 construction camps be re-purposed so that they
11 could be used for the community; which was a
12 question that I was asking and I appreciated your
13 asking that. And the answer of Manitoba Hydro I
14 thought was really very revealing. They said in
15 the original request for proposals, they put that
16 in. None of the proposals that came forward, you
17 know, had anything to do with it, and that in
18 terms of cost effectiveness, re-purposing those
19 units with electricity, plumbing, all of those
20 sorts of stuff, would be more expensive than
21 preparing more modular units and buying brand new
22 modular units. I assume modular units is a nice
23 way of saying trailers. I assume what this means
24 is what we are getting in Fox Lake and what we are
25 getting in Tataskweyak are more trailers. At the

1 same time as I speak, land is being cleared for
2 another Manitoba Hydro suburb.

3 So I want to talk a little bit about
4 the cost of doing business. The cost of doing
5 business for Manitoba Hydro is if they have
6 workers who are going to be staying for a long
7 time in Northern Manitoba, they feel it is part of
8 the cost of doing business to provide for those
9 workers, and to provide for them in an adequate
10 way. So they build them lovely houses with all of
11 the modern amenities. And according to their
12 answer, the heating in those houses is not free,
13 but it is certainly subsidized. That's why they
14 have two hydroelectric boxes, so they subsidize
15 the heating and they provide them with nice,
16 modern houses.

17 The cost of doing business is not to
18 provide First Nations people who are their
19 partners who they care about so much with similar
20 houses. They don't provide similar houses. In
21 fact they are quite happy if they get modular
22 units to solve their housing problems. It is not
23 a part of the cost of doing business. I submit to
24 you it should be part of the cost of doing
25 business, and that until Manitoba Hydro comes

1 forward with a recognition that part of the cost
2 of doing business in northern Manitoba is to do
3 their best, can't do everything, but do their best
4 to ensure that the quality of life of the people
5 in these communities is somewhat on par with the
6 quality of life of their own workers, then I don't
7 believe they deserve to build another dam. They
8 should factor in the cost of building those homes.
9 And if that means that a dam would not be cost
10 effective, then they shouldn't build a dam because
11 it is not cost effective. It doesn't meet the
12 cost of doing business.

13 Manitoba Hydro for all of its
14 partnership and all of its lovely words is
15 basically telling us First Nations people can live
16 in trailers. Hydro employees can live in houses.
17 That's the result of 40 years, and there is
18 nothing in this agreement, nothing in these plans,
19 nothing in anything that I have heard and nothing
20 in the mountain of papers that is going to change
21 that.

22 So why I say I'm looking at a social
23 train wreck in advance, it doesn't make me happy
24 to be able to say that in Wuskwatim there were
25 people protesting the lack of jobs and protesting

1 the fact that it was basically a racially
2 stratified work force. People would go and work
3 there for a day and felt so badly treated that
4 they left. It doesn't make me happy that the
5 Nisichawayasihk Nation had to borrow more money on
6 completion of the dam because the dam cost so much
7 more to build and because the market was so much
8 softer than people anticipated.

9 I wish I was wrong and that agreement
10 worked, and that there was the light of prosperity
11 shining in the community of Nisichawayasihk today.
12 But there is not, and it not going to be shining
13 there 10 years from now. There will be a place
14 called the Bronx in Nisichawayasihk. I feel I
15 should put on an astrologist's hat and tell you,
16 but these predictions are grounded on reality.
17 The reality is Manitoba Hydro is saying that
18 people in Fox Lake can live in trailers, they will
19 get more trailers. People in Tataskweyak who are
20 living in cockroach infested, mold infested
21 buildings that have a shelf life of ten years
22 should continue to live that way of life.

23 I think that Manitoba Hydro should
24 prove to us all that it really respects the people
25 of Northern Manitoba, it respects their Aboriginal

1 rights and it should use its energies, its
2 capabilities and some of its resources to at least
3 start saying the housing situation in places like
4 Pimicikamak and Norway House and Tataskweyak and
5 Fox Lake should be on par with the housing
6 situation, and Grand Rapids, should be on par with
7 the housing situation of the workers of Manitoba
8 Hydro. There should be at least a plan to say we
9 have a partnership agreement with these four
10 communities. We will now start doing our best to
11 ensure that those communities are getting housing
12 at the standard that we give our own workers.

13 And that should be the cost of doing
14 business. And anything less than that, anything
15 less than that, we are basically saying we in
16 Manitoba are satisfied with a two tiered society.
17 We are satisfied with Manitoba Hydro workers
18 living at one standard and local First Nations
19 living at another standard. I don't think that's
20 acceptable now and I don't think it should be seen
21 as an open, acceptable plan, and I don't think it
22 is an acceptable future, and I don't think it is
23 an acceptable past. We have to move beyond that.

24 I think that housing is not an
25 innocent question here, I think it is very

1 important, and effectively the proof is in the
2 pudding, and the pudding is look at what has been
3 done over the past 20 years, walk around
4 Tataskweyak, you read the suppressed Schiff
5 report. You get one report that tells the truth
6 and you do your best to hide it, to keep anyone
7 from having access to it because you don't want
8 people to see the truth. And the truth is you
9 built lovely communities -- Gillam is not the only
10 example, Grand Rapids is another example, you
11 built lovely communities for your own workers, and
12 you are quite happy to turn your back on the
13 suffering of Aboriginal people in their own
14 communities. I don't think that is acceptable. I
15 think nothing in this mountain of words tells us
16 that that's not going to continue to happen. And
17 we should go back to the drawing board. We should
18 say we want to see a plan that will start to
19 improve the social and public infrastructures in
20 these communities to make them on par.

21 I would be the first person to
22 celebrate Manitoba Hydro if I could say the Hydro
23 affected communities are now better off than the
24 non-hydro affected communities. And maybe they
25 have lost a lot of their culture, and that

1 particularly pains me, and all of the things I
2 said previously, but at least out of that they are
3 getting a material improvement in their quality of
4 life. I think in fact we are getting the worst of
5 both worlds. We are losing the culture and we are
6 not improving the quality of life. We are
7 basically allowing a steady state for the quality
8 of life at best.

9 The other issue I want to touch on
10 here is the question of women. Again you asked in
11 your final questions what plans they had in place
12 to protect Aboriginal women in the communities.
13 And the answer was basically what they had said
14 previously. They will have recreation facilities
15 in the camps, they will consult with the local
16 RCMP officers and a few other measures. And, you
17 know, with great respect, I don't think that's
18 good enough. I think that we are also setting
19 ourselves up not just to be able to predict 20
20 years from now we will still have a social
21 disaster in these communities. 20 years from now,
22 those beautiful young women who came with the
23 young delegation that spoke from Fox Lake, is one
24 of those women going to have a Nancy Beardy like
25 story 20 years from now? I don't know. I don't

1 see anything there that to me improves upon past
2 situations.

3 So all I can say is maybe I would urge
4 the communities, if any of the communities are
5 listening to me, from the moment the workers start
6 arriving in the camp, develop your own walk home
7 programs. We do that in universities.
8 Universities will have late night walk to the bus
9 stop or walk programs so that young female
10 students are protected on isolated campuses late
11 in the evenings, and campuses all across Canada
12 now have walk home programs. Nancy Beardy was
13 attacked because she was vulnerable, because she
14 was walking home alone as a teenager. At least
15 one thing that can be done is to have a walk home
16 program.

17 The only other thing that I'm going to
18 suggest here, I know a lot of colleagues, feminist
19 colleagues who work on labour issues, I would be
20 quite happy to convene at no cost a meeting of
21 some scholars in the field to try and make some
22 recommendations if Manitoba Hydro and people from
23 the Partnership want to come and listen and take
24 them seriously and make it worth our time to do
25 so. I offer that freely.

1 Because I don't know the answers to
2 the situation, I can suggest a few things, we will
3 suggest them in our report. What bothers me is
4 not that Manitoba Hydro doesn't have a solution to
5 this, but it is the kind of arrogance with which
6 they say we have got this covered, we have this
7 covered; they don't have it covered. There will
8 be bad apples in that deck of however many
9 thousand of workers show up in the camp. I come
10 from a working family, I have great respect, most
11 of those workers will be respectful people but
12 there will be some bad apples, and no cultural
13 workshop in the world is going to change their
14 attitude. And they will go driving around looking
15 for a good time, and the good time will involve
16 young Aboriginal women. And that's the only way
17 they are going to see those women. The RCMP can
18 tell us after the fact that something desperately
19 terrible happened. And I think that we have to do
20 our best to make sure that something desperately
21 terrible doesn't happen in the first place. We
22 have to make sure that we are not leaving any
23 young Nancy Beardy alone on the streets of Gillam,
24 Bird, Fox Lake or Tataskweyak, and that they are
25 protected and that we have done everything

1 possible to try and make sure that we are not
2 recreating another whole generation of historical
3 trauma on the part of more than Nancy Beardy that
4 happened in Fox Lake. So I specifically wanted to
5 say a few things about that.

6 I guess maybe one of the other things
7 I want to say is I know it would be a difficult
8 thing, and I suppose in my heart I know it is an
9 unlikely thing, my words feel weak actually, but I
10 still have to urge you not to grant this licence.
11 And I have to ask Manitoba Hydro what the hurry
12 is. Why are we in such a hurry to do this? If we
13 have contracts -- if people in south need power,
14 they are going to need power in the future. If
15 they don't need that power in the future, then all
16 the better for all of us, because that will mean
17 that maybe we are slowing the rate of growth and
18 slowing the path of global warming, and we have
19 been able to protect the river. We seem to be in
20 a rush to destroy the river. What we really want
21 to do is grab these contracts, sell this power as
22 quickly as possible, and wreck the river as
23 quickly as we can. Well maybe we are in a time
24 where it is time to slow all of that down.

25 You say if your buyers, well suddenly

1 if you don't go ahead with the dams they will be
2 all upset and maybe they won't sign another
3 contract, then that tells us this process was a
4 farce from the beginning, and I don't believe it
5 was a farce from the beginning. The other thing
6 is if they do need the power, they will need it 20
7 years from now as much as they need it now. We
8 would have time to take a step back, to take a
9 good look at what we have done in Northern
10 Manitoba; to properly apologize for what we have
11 done in Northern Manitoba; to make some first
12 efforts towards materially redressing the
13 situation in terms of the community
14 infrastructures; to put in place much more
15 innovative and better plans for the women of the
16 communities, the young women of the communities
17 who by many will just be seen as prey; to decide
18 actually whether the environmental costs are worth
19 the capital costs.

20 I think the only reason why we rush
21 into this, and I believe we are rushing into this,
22 we have announced a start date now for the
23 Conawapa dam, and start signing contracts off on
24 the Conawapa dam, and say those contracts will be
25 in danger if the dam doesn't get built, you know,

1 we are looking at the profit picture of a
2 corporation, Manitoba Hydro. And that profit
3 picture apparently comes before all other things.
4 It comes before the well-being of the people, it
5 comes before the well-being of the land. You can
6 pile up your paper as high as you want to pile it,
7 but I don't think that you escape those realities
8 of life.

9 The reality of life is the conditions
10 in those communities right now is very, very bad.
11 They should not be asked to spend whatever little
12 resources they have in investing in a project in
13 the hope that they may get some return from it,
14 and the hope that eventually some of that return
15 will be able to be put towards alleviating the
16 serious problems in the community.

17 I should say there is another
18 technical issue here that I want to address around
19 what is happening with those returns, around what
20 is happening with the money that's flowing into
21 the communities now. This comes from something
22 that the now chief Michael Garson Junior told me
23 before he was elected chief. He said that he
24 thought with the money that Tataskweyak received
25 from the implementation agreement that they had

1 proper transparency and community reporting. Once
2 they signed into the Partnership agreement, when
3 they signed their agreement with War Lake to
4 create the Cree Nation partners and signed on to
5 the Partnership agreement they got bound by
6 confidentiality, and the transparency that existed
7 previously at the community level disappeared.
8 This was a long presentation that he made to the
9 community that I sat in on, and then I spoke to
10 him one on one on it as well. He said that
11 problems with what was happening to the money, the
12 many questions that Solange Garson and others from
13 the community are asking for when they ask for a
14 forensic audit and they are asking what is
15 happening to all this money coming into our
16 community. For Michael Garson Junior at least,
17 the problem started to emerge after 2009 when the
18 confidentiality agreements associated with the
19 partnership agreements came into effect.

20 I certainly have a concern that
21 whatever resources may come from these projects
22 reach the community level, that they reach the
23 community level, and that means that a degree of
24 transparency and accountability to the communities
25 is somehow structured into this process. I don't

1 think that you can wash your hands of it and say
2 that the communities know what is in their best
3 interest, the communities are working with
4 advisors.

5 The leaders now I have great respect
6 for, but those leaders may change. We can't allow
7 a certain group of leaders to lock in a different
8 regime that involves much less transparency, and
9 communities will have the right to know where
10 their financial resources are going, if they start
11 getting those resources. So generally speaking, I
12 don't see enough flowing from these agreements, if
13 anything, to in any way start meeting the serious
14 conditions that these communities are living with
15 today. And -- but if we go ahead, I think we need
16 better processes of accountability. So that's
17 something that has to happen.

18 I think I have covered, and I have 12
19 minutes left so I will see what else I can get to
20 in the brief time that I have got.

21 I guess probably the other most
22 serious thing that comes to me in watching this
23 process is particularly around mercury poisoning.
24 And we had Ms. Da Silva here, who would consider
25 herself too young to be called an elder now, but I

1 think you know what I'm talking about, both in
2 Mr. Massan's presence and Ms. Da Silva's presence
3 when I am talking about elders, she herself has
4 been affected by mercury.

5 And she has travelled to Japan now a
6 couple of times to talk to people there, and one
7 of those trips I travelled with her. To me --
8 especially, you know, I shook the hand of someone
9 who had been affected by Minamata disease. That
10 was very important for them. In Japan when the
11 effects first started showing, there was a fear
12 that it was some kind of contagious disease. So
13 the people who were showing the symptoms of it
14 were actually stigmatized. The Japanese
15 government didn't want to recognize Minamata
16 poisoning. Like any government around the world,
17 they don't want to say that something wrong has
18 happened. It took a long and very intense
19 struggle on the part of Japanese activists and the
20 people involved to get the government to change
21 its policy to recognize that Minamata disease was
22 actually a disease, that it was created by
23 mercury, and that the people deserved
24 compensation.

25 That happened about 40 years ago. But

1 it was still important for some of those people,
2 you know when I met them, they were elders, their
3 hands shook, they always walk with a tremble, and
4 when I shook their hands it was touching to them
5 that people were willing to shake their hands.

6 I also worry that we are creating a
7 generation of people who may be affected by
8 mercury poisoning. We are not contemplating
9 testing the people, we are not contemplating
10 testing the birds that live off the fishes. We
11 are relying on controversial assumptions of what
12 happens to the mercury when it is in the system,
13 about how it will disappear. We are telling the
14 people not to eat fish, which is further reducing
15 their ability to engage in subsistence activities.
16 There are so many things bound up with this, that
17 again its seriousness to me, it seems like being
18 systematically downplayed. It would not be
19 downplayed if we had a program of allowing people
20 to be voluntarily tested.

21 When Dr. Harada first went into White
22 Dog and first went into Grassy Narrows, he posted
23 a little sign saying anyone who wants to be tested
24 for mercury, come and see me. He didn't know what
25 kind of response he would get. He thought maybe

1 over the course of the day five people might
2 wander into his office. He had a line-up outside
3 of his door. Many, many people wanted to be
4 tested.

5 I suspect there are many people in Fox
6 Lake and Tataskweyak who would be curious about
7 the past impacts of mercury on their own bodies,
8 and would like to be monitored. I understand the
9 cost is not enormous, and I think that the public
10 health risks are enormous. The public health risk
11 are extraordinary. I can't even find the words to
12 express how appalling it is.

13 If Noah, who has been diagnosed with
14 Kennedy's disease, is also showing the symptoms of
15 Minamata disease, when Dr. Harada shows up this
16 summer, we will get Noah tested. But I think
17 other people in the community, if they wanted to,
18 should have the right to be tested and I think
19 that should be monitored.

20 The direct impact of potential mercury
21 poisoning on humans in the affected area should be
22 a number one priority on our list, not number 10
23 priority. Maybe by the time we get to talking
24 about the Conawapa dam, we would have results, and
25 we wouldn't be talking from speculation. And if

1 those results are bad, maybe we would take that
2 into consideration. I think by not looking at
3 that we are just sweeping something under the
4 table, quite frankly, that doesn't need to be
5 swept under the table.

6 So in closing I'm going to say all of
7 the things that I have seen, the paid
8 environmentalists who come up and tell us the
9 impacts will be neutral, the hidden reports on the
10 social costs of the past projects on Fox Lake, the
11 current conditions that prevail in those
12 communities, the kind of deals that seem to have
13 been a part of doing business in Quebec that seem
14 adequate there and don't seem to be appropriate
15 here, the present actions of Manitoba Hydro; they
16 boast about their work force but they don't boast
17 about their executive. And there are many
18 Aboriginal people who are working who might be
19 competent to start taking more executive positions
20 in the organization. The fact that the training
21 for -- the money for training has run out and they
22 hope their new application for Conawapa might
23 overlap. All of the hopes that the sturgeon
24 reintroduction program will work; we are resting a
25 lot here on faith, and on the arrogance of

1 Manitoba Hydro. And I think it is arrogance.

2 I think if people spend time in the
3 communities, it is a humbling experience, and you
4 realize how much damage we as a society can do. I
5 don't think it is acceptable for us to continue to
6 plan to have a divided society in Northern
7 Manitoba and between Hydro affected communities in
8 Manitoba and southern Manitoba. I don't think
9 that we can enjoy a lower cost of electricity and
10 the great profit structure of Manitoba Hydro
11 through selling power to the United States if
12 that's being created on the backs of misery, and
13 if that will continue to be created on the backs
14 of misery. It is my submission, it is our
15 submission, that it will continue to be created on
16 the backs of misery.

17 That Manitoba Hydro -- that you need
18 to take the very courageous step and say no, this
19 licence has not been deserved. We should go back
20 to the drawing board, we should pause, we should
21 look at what we are doing, we should reconsider
22 it. And I will tell you, if any of that kind of
23 reconsideration goes on, myself, my colleague Mr.
24 McLachlan, the people we work with, there are
25 many, many people, in my case at no cost, I will

1 be happy to sit down in good faith with people and
2 try and figure out a better way to do things and a
3 way to move forward.

4 That may eventually lead to dams, I am
5 not absolutely against every dam being built, but
6 if it going to be built, I think it should be
7 built under much better circumstances than these.

8 In my written report I will focus a
9 lot more on conditions and recommendations, but I
10 don't want that to minimize it is our view
11 absolutely, strenuously and it is our conviction
12 that this project should not be granted a licence,
13 first and foremost. That you should do something
14 that will surprise the decision-makers of the
15 province, but that needs to be done. This train
16 needs to be slowed down. We need to look at what
17 is going on and figure out a better way. I
18 believe we can do that. I believe in Manitoba we
19 can do something better than the Peace of the
20 Braves. But the first thing is to stop the train,
21 and I urge you to do that. Thank you very much
22 for your time. I didn't use my very last minute.

23 MS. PAWLOWSKA: I will use those
24 minutes up. I wanted to thank the panel
25 personally. I was the coordinator and I applied

1 for the CEC funding with Noah, so we both are
2 really grateful for allowing us to use that
3 funding to bring in Dr. Kulchyski, and also the
4 other community members who really were excited to
5 finally have their voices heard through this
6 process. And thank you for accommodating our
7 sometimes clumsy experience here. We really
8 appreciate it.

9 THE CHAIRMAN: Thank you very much. I
10 would like to join you in thanking you and your
11 panel. It is always nice to reconnect with people
12 that you met in the past, like Ivan Moose, and
13 particularly Noah Massan that I met more than 40
14 years ago, and see that they continue to
15 contribute positively to their communities.

16 Dr. Kulchyski, it is nice to see you
17 before our panel and involved in our hearings
18 again, as you were in the Wuskwatim process.

19 And Ms. Pawlowska-Mainville, I would
20 like to thank you very much. I think you have
21 done an admirable job. I'm sure when you signed
22 on for this process last spring you weren't quite
23 sure what you were getting into, but you have made
24 a good contribution to our process.

25 So thank you all. We will -- Dr.

1 Kulchyski, you mentioned more than once your
2 written report, written submissions on final
3 summaries will be due Monday, December 13th, I
4 believe it is -- January, right, next Monday at
5 noon sharp in our office, preferably
6 electronically, but paper as well, definitely at
7 least one electronic copy.

8 That brings today's proceedings to a
9 conclusion. Tomorrow we will have three final
10 arguments. Manitoba Wildlands will be up first.
11 Consumers Association of Canada will be second,
12 and Pimicikamak will be the final one.

13 Given time allowances, 90 minutes plus
14 some breaks, our schedule might look a little
15 wonky, we may not break exactly at 12:30, more
16 than likely 12:50. Tomorrow we won't go overtime,
17 but we may on Thursday when we have four final
18 arguments. Madam secretary.

19 MS. JOHNSON: Just a couple of
20 documents for today. KHLP104 is the rebuttal
21 regarding the flycatcher. And 105 is the beaver
22 rebuttal.

23 (EXHIBIT KHLP104: Rebuttal regarding
24 the flycatcher)

25 (EXHIBIT KHLP105: Beaver rebuttal)

1 THE CHAIRMAN: Anything else we need
2 to deal with this afternoon? Okay, thank you, in
3 particular to the Fox Lake Concerned -- Concerned
4 Fox Lake Grassroots Citizens. I can never quite
5 get all of the letters straight.

6 MS. PAWLOWSKA: We will come up with
7 an easier name next time.

8 THE CHAIRMAN: Please do. We are
9 adjourned then until 9:30 tomorrow morning.

10 (Adjourned at 2:59 p.m.)

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Cecelia Reid and Debra Kot, duly appointed
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hereby certify the foregoing pages are a true and
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