

MANITOBA CLEAN ENVIRONMENT COMMISSION

LAKE WINNIPEG REGULATION REVIEW

UNDER THE WATER POWER ACT

VOLUME 13

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Transcript of Proceedings
Held at RBC Convention Centre
Winnipeg, Manitoba
WEDNESDAY, APRIL 8, 2015

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Beverly Suek - Commissioner
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1 Wednesday, April 8, 2015

2 Upon commencing at 9:30 a.m.

3 THE CHAIRMAN: Good morning. We'll
4 resume our proceedings. Today we have two
5 participants making their presentations. First up
6 this morning is the Consumers Association of
7 Canada, Manitoba branch, represented by the Public
8 Interest Law Centre. And this afternoon we'll
9 hear from Black River First Nation.

10 Madam secretary, will you swear in the
11 witnesses, please?

12 MS. JOHNSON: Could you please state
13 your name for the record?

14 MR. WILLIAMS: Byron Williams.

15 MS. PASTORA SALA: Joelle Pastora Sala
16 Byron Williams: Sworn.

17 Joelle Pastora Sala: Sworn

18 THE CHAIRMAN: Mr. Williams, you may
19 proceed.

20 MR. WILLIAMS: Thank you, and good
21 morning members of the panel. Just a few
22 introductions to start up with. Ms. Barbara
23 Nielsen from the Consumers Association board is
24 here. Behind us you'll see Dr. Patricia
25 Fitzpatrick, who has been a witness before these

1 proceedings in the past. We have never had a back
2 row, she's our back row. With her is Mr. Mark
3 Regehr from Canadian Mennonite University. And in
4 the massive crowd here today, my colleague,
5 Professor Aimee Craft from Robson Hall, Ms. Amanda
6 Holland from the Public Interest Law Centre, and
7 Ms. Heather Fast, who is a barrister and solicitor
8 who has been of immense value to this process.

9 Ms. Pastora Sala insists I give you an
10 overview of our presentation, so just in terms of
11 where we are going to go, we want to talk about
12 law reform for a couple of seconds and how we
13 think it fits within the terms of reference for
14 this proceeding. We want to talk about what is a
15 surprising facet of this hearing to our client and
16 to ourselves, which is the breadth of support for
17 reform that we have certainly gleaned from our
18 reading of the record.

19 For just a couple moments we will talk
20 about our research approach, and then we'll talk
21 about a few findings we have made based upon what
22 we have read and what we have heard. And
23 interspersed with those major themes that we have
24 identified in the hearing, we'll look at how some
25 other jurisdictions, whether legislators,

1 tribunals, or regulators have tried to respond to
2 those themes or incorporate them into their
3 legislation or their processes.

4 Finally, my last piece is I'll come
5 back to the question of whether this is a case for
6 law reform. And then Ms. Pastora Sala will take
7 us home, she will highlight a few of our
8 recommendations and key principles, and offer some
9 concluding comments.

10 We are obliged by our bosses to do
11 some advertising, so here it is. The Public
12 Interest Law Centre has been in existence since
13 1982. I have not been around all that time. We
14 have a law reform mandate to represent groups or
15 individual on matters that will make a broad
16 impact. Interestingly, if you go to our statute,
17 public interest is open ended, but the two
18 specific elements of the public interest that are
19 set out in the statute are consumers and
20 environmental issues.

21 In reviewing our brief that we filed
22 on April 1st, we noticed that we used the term law
23 reform but we didn't define it. And we will just
24 wait until we get to -- we'll try and create a
25 little suspense in the hearing, and you'll note

1 that I'm not allowed within 45 feet of the
2 powerpoint controls.

3 In terms of law reform, our working
4 definition, and we want to highlight the fact that
5 law reform transcends legislation, it includes
6 that but it's more than that. It relates to the
7 improvement, modernization, reform of law,
8 addressing outdated pieces of legislation,
9 improvement of the administration, underscoring
10 those words, administration of justice. It
11 involves, according to the Law Reform Commission
12 Act, the review of judicial or quasi-judicial
13 proceedings and the development of new approaches
14 and new concepts of law. And of course, a central
15 theme in this hearing has been about changing
16 values, also about a change in environment, and
17 law reform is intended to respond to changing
18 values.

19 We have looked at a lot of literature
20 in this proceeding. I can't count the number of
21 definitions of water governance that we have seen.
22 Here's one that I like perhaps more than my
23 colleague, Ms. Pastora Sala. The range of
24 political, social, economic, administrative
25 systems to develop and manage water resources and

1 the delivery of those resources and at a different
2 levels of society. And that's an important point,
3 and it's sometimes lost in the discussion or the
4 literature. There are important equity themes in
5 water governance. Canadian and American
6 literature highlight the fact that environmental
7 risk is not equitably shared. Certainly
8 disproportionately it's borne by low income
9 people, it's certainly racialized in some context,
10 and that's certainly an important theme from our
11 client's perspective and our perspective in this
12 proceeding.

13 Always start out with some wise words
14 from the Supreme Court of Canada. Changing values
15 is a key theme of this hearing, and in its 2004
16 decision, the Canfor decision, Mr. Justice Binnie,
17 speaking for the majority, but I think for the
18 whole court on this point, made the point of our
19 collective responsibility towards a healthy
20 environment, a responsibility to preserve the
21 natural environment, and that that is a
22 fundamental value. And really from our
23 perspective, when we looked at this hearing from a
24 law reform perspective, the core questions for our
25 research were, A, one, are we living up to that

1 collective responsibility? If not, are there
2 water governance approaches from other
3 jurisdictions, or in Manitoba, that might help us
4 to do a better job? And is there a case for law
5 reform? Those are really the three questions that
6 we asked ourself.

7 How does law reform fit within the
8 terms of reference set out by the province way
9 back in 2011? We think it all boils down to that
10 final point in the terms of reference. The
11 Commission was asked to summarize and make comment
12 on the concerns raised pertaining to the issue of
13 a final licence, certainly not limited to, but
14 inclusive of monitoring and research. And we
15 think if we look at the dialogue and the concerns
16 relating to that final licence, that underscores
17 the importance of law reform in this context.

18 A major theme in this hearing has been
19 stewardship, or a failure of stewardship.
20 Upstream of the Lake Winnipeg Regulation, it's
21 graphically evoked in terms of Netley Marsh. It's
22 hardly there anymore. We heard from the
23 Tataskweyak Cree Nation, Elder Spence described
24 the question of islands as a loaded question.
25 Islands which have existed for as long as people

1 can remember are starting to disappear. This
2 panel heard it up north in terms of the forest
3 falling into the rivers and into the lakes. And
4 again, Elder Spence, Elder Martha Spence, Martha
5 Spence from Tataskweyak talked about not just
6 water, land, but about the animals and the people,
7 a spirit being destroyed. And so certainly from
8 our perspective, warning bells are being rung.
9 The concern about these powerful impacts, these
10 ongoing impacts suggests that there's a problem
11 that our current licensing regime isn't handling
12 as well as we would like.

13 Another central theme in this hearing
14 is risk. And again, certainly downstream of the
15 Nelson River watershed, some very powerful
16 language in terms of things getting worse, a
17 constantly changing environment, neither the
18 people or the culture or the river stabilizing
19 continuing to experience significant effects.
20 Victor Spence describes it the development is so
21 foreign that the communities have not been able to
22 adapt to it. And this raises a central governance
23 issue, a central law reform issue. Is the system
24 in place capable of responding and adjusting to
25 that change?

1 Another central theme in this hearing
2 has been a lack of confidence in the licensing and
3 regulatory process. We have politely worded this
4 as hesitant licensing is a major concern. I
5 didn't know what a ruby anniversary was, but
6 that's the 40th anniversary. And Lake Winnipeg
7 Regulation, the interim licence is approaching its
8 ruby anniversary, and that's certainly been a
9 major theme we have picked up in this hearing. So
10 under the Water Power Act, there's concerns, but
11 there's also concerns as expressed by Mr. Beardy
12 in terms of where is the environmental licence? I
13 wonder why there was no environmental licence in
14 place?

15 So here we have an issue in terms of
16 reform, in terms of governance. And my colleague,
17 Ms. Pastora Sala, will talk about it, where, in
18 numerous occasions on the record, there is an
19 expressed lack of confidence in our current
20 structures and our ability to protect what people
21 hold most dear. And we certainly think that
22 raises law reform issues.

23 And brought out by another speaker in
24 Winnipeg is a concern with our society's response,
25 our province's response to the commentary of this

1 Commission. Roughly a decade ago in the Wuskwatim
2 proceeding, recommendation 7.6 and 7.7, I think I
3 have them memorized, talked very powerfully about
4 the expectations and the hopes over the next few
5 years. And some of those have been realized. But
6 if you look at those recommendations, you'll see
7 that we're not talking about licences under the
8 Environment Act. Certainly to our client's
9 understanding of the meaning of operational
10 review, it would be fair to say there has not been
11 an environmental review undertaken. And certainly
12 by no stretch of the word has there been an
13 environmental impact assessment. So that again
14 raises concerns in terms of our society, our
15 governing structure's ability to respond. And
16 that's why we think that law reform is an
17 important issue.

18 As I said in my opening remarks, what
19 has struck us about this hearing perhaps most
20 notably is the broad support for reform. There
21 may be a dispute between Hydro and others in terms
22 of the timing of reform, but the fact that there
23 are gaps, that there are silos, has been
24 articulated by many. And here you'll see support
25 for reform from some southern and northern

1 speakers. The request for an impartial
2 environmental impact study by one person in
3 Selkirk, the request from someone who is concerned
4 that we're not looking at an integrated system,
5 for a full-blown audit.

6 Dr. Luttermann, who you had the
7 benefit of hearing yesterday from, spoke very
8 powerfully about the need for a better balance and
9 the opportunity for a better balance. So those
10 are powerful calls for reform we have identified
11 in this hearing.

12 We have also seen calls for reform for
13 inclusion by those who feel left out. Chief
14 Henderson from Sagkeeng, why aren't we part of
15 those boards? Terry Ross from Cross Lake, we
16 should have more say because these dams are
17 impacting us everyday, a call for a multi-party
18 decision-making body so that there can be a
19 meaningful say in LWR operations.

20 That call for reform has not been
21 restricted to those who might be seen as being
22 adverse in interest to that of Manitoba Hydro.
23 Perhaps one of the most powerful voices for a call
24 for reform, in our view in this hearing, has been
25 Manitoba Hydro. And it's rare that I quote

1 Mr. Cormie so favourably in a hearing but he's
2 done a pretty good job in this one, I've got to
3 give him credit. And he's talked about that
4 theme, that theme of values changing, that the
5 social licence is involved, spoken about the need
6 for a modern balance between upstream and
7 downstream. And he has spoken, importantly, about
8 the need for guidance. What are the rules of the
9 road? Mr. Harden had a big discussion with him
10 about a road map. There is a lot of guidance
11 required. So it's striking to us that one of the
12 most powerful voices for reform in this hearing
13 has been that of Manitoba Hydro. And that is to
14 their credit.

15 So within the room, a strong sense for
16 reform. We want to articulate the broader climate
17 for reform, that the timing is propitious, and
18 perhaps unprecedented. There are a lot of
19 parallel processes to this which make this a
20 powerful opportunity. The regional cumulative
21 effects assessment, which we hope will give us a
22 better analytical foundation in terms of looking
23 at the watershed, is ongoing. Two, reviews of the
24 Environment Act are underway. The Law Reform
25 Commission has done some really fabulous work in

1 this regard. The province has also undertaken a
2 parallel project. So this context of governance
3 and law reform within this dialogue is certainly,
4 in our view, part of a broader theme.

5 Our public utilities board in the NFAT
6 also articulated parallel themes to this
7 proceeding. We have heard a lot in this
8 proceeding about climate change, future
9 uncertainty. This language from the Public
10 Utilities Board references a climate change, but
11 it also references a market-place in upheaval with
12 a lot of uncertainty, and about the need for
13 integrated resource management. And one of the
14 examples we're going to talk about a bit later
15 today is from the northwest United States, where
16 there is some very interesting work being
17 undertaken, trying to balance within a planning
18 process, power planning, energy efficiency
19 planning, and preservation and enhancement of the
20 environment. And that's a very interesting
21 example. And certainly, as legal counsel who
22 appear both before the Public Utilities Board and
23 the Clean Environment Commission, we see a lot of
24 parallels between what the bodies are dealing
25 with.

1 We also see some silos. Dr. McMahon,
2 who is an outstanding independent witness in this
3 hearing, would have benefited a lot from having
4 access to some of the discussion in the PUB
5 process, about some of those complicated operating
6 systems of Manitoba Hydro, SPLASH and PRISM.

7 Finally, within the broader context of
8 change, and we note the language of Dr. Luttermann
9 about the PCN province process agreement, and the
10 opportunity at least to establish a new
11 relationship.

12 So our conclusion is that there is
13 substantial common ground about the need for
14 reform. Whether you take the Hydro call for a
15 modern balance, you take the perspectives of those
16 who think the hearing process needs to be more
17 inclusive and more holistic, or those who feel
18 that the current system is underperforming,
19 underinclusive and biased, all those voices, in
20 our view, are joined at least in one point, which
21 is the need for reform.

22 Both Dr. Fitzpatrick and
23 Ms. Pastora Sala insist I talk about methodology,
24 perhaps not my strongest point. But we brought to
25 this law reform analysis the typical Public

1 Interest Law Centre approach. First, we assembled
2 an interdisciplinary team, in terms of integrated
3 water resource management, Dr. Isabelle Heathcote;
4 who wrote the textbook in terms of water
5 governance, Dr. Robert Patrick; under natural
6 resources management we have benefited both from
7 Dr. Robson and Dr. Fitzpatrick; environmental law,
8 we have had lawyers both from the public sector
9 and the private sector who have given generously
10 of their time; and certainly Professor Craft, in
11 terms of indigenous legal traditions and the
12 ground breaking work she has done with Anishinaabe
13 water log have been all valuable. I hasten to
14 add, lest you think I'm splurging money, most of
15 this assistance has been voluntary. And we'd be
16 remiss if we didn't note the contribution from a
17 whole group of students of Robson Hall on the
18 concept of public trust.

19 You hopefully can tell from our
20 written brief, the subject matters, the research
21 areas that we addressed, the matters we engaged
22 our mind to. I won't spend a lot of time in terms
23 of the basis for what we heard and what we read,
24 the record, literature review, legislative review,
25 selected review of legislation and policy and

1 licences.

2 I do want to just speak about
3 engagement for a couple of moments. You won't see
4 any quotes from our client, and Ms. Pastora Sala's
5 engagement process, direct quotes in our report.
6 We have relied upon the record of this proceeding.
7 But we had an extensive engagement process that
8 helped to inform our opinions. And perhaps the
9 best example of that was in developing our final
10 menu of recommendations, we hosted a workshop
11 about nine days before that April 1st report was
12 filed; 14 participants from four different
13 provinces, many joining by phone obviously. And
14 those recommendations we certainly think have been
15 enhanced and continue to be enhanced. And I just
16 want to underline that we have always seen this as
17 an ongoing and iterative process. We have seen
18 our job to provide a menu of options, that menu
19 continues to evolve, and certainly we're getting
20 feedback as the proceeding continues.

21 Every expert we have spoken to, much
22 of the literature we have read emphasizes the
23 point that there is no one size fits all. You
24 can't take the learnings of the Pacific Northwest
25 and simply plunk them down in Manitoba or the

1 Northwest Territories or B.C. You certainly need
2 to adapt to our unique culture, our unique
3 circumstances. But certainly there are valuable
4 lessons we certainly believe can be pulled from
5 those jurisdictions and from our own experience,
6 and much of what we did in our report was trying
7 to do so.

8 For the bulk of my presentation, I
9 want to talk a little bit about some of the major
10 messages we have taken from both the record of
11 this proceeding, the review of legislation, the
12 review of literature, and our review of the common
13 law. And I'm going to highlight eight of those
14 messages or themes in just the next two slides.
15 And then what I propose to do for the next 15 or
16 20 minutes is elaborate a little bit on each of
17 them. And then for a number of them, pull an
18 example from a different jurisdiction of how they
19 have responded to this. In essence I am
20 conflating chapters 2, 3 and 4 of our written
21 brief, a lot of pages, into about 20 minutes.

22 So one of the important messages we
23 have taken from the literature, from the evidence
24 of Dr. Goldsborough, the evidence of
25 Dr. Luttermann, there are certainly a couple of

1 major risk factors apart from climate change that
2 need to be addressed. One is flow alterations in
3 the river system, and another one is compressed
4 variations in lake levels. And we'll talk about
5 that in a couple of moments.

6 Another message that comes through in
7 much of the literature, and certainly from
8 Pimicikamak's evidence yesterday, or the
9 Tataskweyak Cree Nation earlier, the importance of
10 a holistic and inclusive approach.

11 Bullet three speaks to early and
12 meaningful participation, and whether that was
13 Dr. McMahon, or many of the participants in this
14 hearing, that's been a dominant message.

15 And one that caught me at least a
16 little bit by surprise is the idea of a careful
17 consideration of how we measure value. And we'll
18 talk about that, and certainly even amongst our
19 team, even amongst the two presenters today, it's
20 a matter of some controversy. So we will spend a
21 couple of moments on that.

22 On slide 24, you may wonder what is
23 that picture to the right? I was trying to figure
24 out what water structure that was.

25 Ms. Pastora Sala tells the farm boy that that's a

1 silo. And so the theme, an important issue
2 flagged by Hydro, by a number of witnesses is
3 addressing knowledge gaps and silos. And so thank
4 you Ms. Pastora Sala for that.

5 A couple other themes we have
6 certainly seen from good examples out of other
7 jurisdictions is the importance of looking at a
8 robust series of alternatives. And I'll also take
9 you to an open adaptive approach to risk.

10 And a final theme that we wanted to
11 underscore relates to promoting diligence. And
12 that goes back to a commentary we have seen on a
13 number of occasions in this hearing, a lack of
14 confidence expressed in how we govern water power
15 decisions in Manitoba. And certainly we have
16 looked to some case law in terms of promoting
17 diligence, and also how legislators have attempted
18 to entrench our obligation in terms of protecting
19 the environment into legislation.

20 Flow alteration risk, this is a quote
21 from the Canadian Science Advisory Secretariat.
22 It speaks about an increasing threat to river
23 ecosystems, both from sources such as irrigation
24 and sources such as Hydro, and saying that there's
25 been substantial flow alterations and that these

1 flow alterations can be directly linked to adverse
2 physical attributes of rivers. It's a very
3 interesting report.

4 Dr. Luttermann, in her written report,
5 talked about it as well, and she noted it's not
6 just the level of flow, but it's the seasonal
7 patterns that can be such an important factor in
8 influencing ecosystem processes.

9 Again, we can't do justice to the
10 variety of approaches we have seen to this issue
11 of flow, but one approach that caught our eye was
12 out of British Columbia, out of the New Water
13 Sustainability Act, which will be coming into
14 effect sometime in 2016, and really legislation
15 that was developed after a very time consuming
16 four to five year consultative process. With new
17 projects, they have expressly articulated the
18 importance of addressing environmental flow needs,
19 both the volume and timing and looking at what is
20 required for the proper functioning of the aquatic
21 ecosystem.

22 And section 15 of the WSA, Water
23 Sustainability Act, speaks about in reviewing an
24 exempt application, the need to consider the
25 environmental flow needs of the stream. And this

1 is an important theme in terms of what we have
2 read. Because if you go to, I think it's appendix
3 3 of our document, you'll see some examples from
4 the State of Washington where they talk about
5 minimum flow requirements. And our understanding
6 is that is a bit of a more dated concept. Whereas
7 environmental flow needs, or sometimes you see the
8 term ecological, or actually we'll stick with
9 environmental flow needs, but speaking both to the
10 volume and the timing. And I think in part going
11 to Dr. Luttermann's point, I hope, of the
12 importance of addressing seasonal patterns, and
13 it's not just the absolute level of flow, it's the
14 timing of that flow. So you have seen an
15 evolution in the legislation from the Washington
16 example, speaking of minimum flow, to an example
17 here from the state, or from the province, it's
18 not a state yet, of British Columbia.

19 More controversial in this hearing, we
20 think, based on what we have seen and what we have
21 read, is the idea of what are the impacts of the
22 compression of lake levels? And you have
23 certainly seen a dialogue between Dr. Goldsborough
24 and Manitoba Hydro in terms of the health of
25 Netley Marsh and other wetlands, Hydro pointing to

1 a number of other factors, Dr. Goldsborough
2 acknowledging those factors, but also pointing to
3 a risk factor associated with compression of lake
4 levels.

5 Based upon what we have read of the
6 literature, and certainly what we have heard from
7 Dr. Goldsborough, this issue is not that
8 controversial in Ontario, and in the Laurentian
9 Great Lakes, and that's probably because it's been
10 exhaustively studied. The IJC, International
11 Joint Commission, undertook a lot of work starting
12 in around 2000, looking at the effects of the
13 compression of lake levels in that environment.
14 And certainly you see a powerful message coming
15 from Lake Ontario, St. Lawrence River plan 2014.
16 You see bullet, the first bullet talking about the
17 compression of the range of Lake Ontario water
18 levels, I think from about two metres to one
19 metre, compared to what would have happened
20 without regulation. And the conclusion by the
21 IJC, that while this may have benefited property
22 development, it caused substantial harm to coastal
23 ecosystems. And even the title of that report is
24 telling, protecting against extreme water levels,
25 restoring wetlands and preparing for climate

1 change. This is a major thrust of this hearing,
2 was to try and start to restore the health of
3 those wetlands. And there are a number of reports
4 on the record, or reference on the record in terms
5 of that. We used one in the cross-examination of
6 Dr. Goldsborough by Wilcox and Wu Dong.(ph)

7 How did one commission respond to the
8 issue of lake level compression? Certainly plan
9 2014 was designed to provide for more natural
10 variations of water level on the basis that they
11 were needed to restore ecosystem health. Now,
12 we're not suggesting that you have a robust record
13 here to make any operational changes based upon
14 that, we're simply highlighting that this is a
15 risk fact acknowledged in another jurisdiction, to
16 which a commission has responded by recommending
17 changes in flow levels. Again, this is a choice
18 of options that certainly on a more robust record
19 or in the future might be something to consider.

20 We talk a fair bit in our report, and
21 you have heard it and seen it on the record of
22 this hearing, language about the need for a
23 holistic and inclusive approach. I have perhaps
24 shortened it too much to talk about a different
25 balance. One of the most powerful expressions of

1 that came from the Tataskweyak Cree Nation. They
2 said, thanks Clean Environment Commission, thanks
3 province for doing the hearing, but you don't
4 have -- this isn't an appropriate venue for an
5 inclusive holistic assessment for a final licence.
6 Certainly, we see in the literature highlighting
7 the need for a better balance, a more holistic
8 assessment. And there is a quote from Jager about
9 future holistic management strategies designed to
10 maximize both ecological benefits and those
11 associated with energy production. So when we
12 speak of a better balance, we're speaking both in
13 terms of process and in terms of how we weigh and
14 make decisions. And there is a couple of
15 interesting American examples that we want to draw
16 to your attention.

17 We cite first of all from U.S. Federal
18 legislation relating to the FERC, the Federal
19 Energy Regulatory Commission. And what is their
20 decision-making criteria? Well, they are to
21 consider, in addition to power and development
22 purposes, give equal consideration, purposes of
23 energy conservation, protection, mitigation and
24 enhancement of fish and wildlife habitat,
25 protection of recreational opportunities, and the

1 preservation of other aspects of environmental
2 quality. And certainly you have heard in this
3 proceeding, and you have seen a major criticism of
4 Hydro operations related to Lake Winnipeg
5 Regulation is that they are focused on primarily
6 two criteria, economics and reliability, certainly
7 with some environmental consideration. And we
8 offer no criticism of Hydro for that, that's their
9 mandate. But other jurisdictions have sought to
10 address this by expressly articulating the other
11 values that should be given weight.

12 We also see this in licensing, and I
13 think it's section 803 that we reference here, a
14 condition in that licence conditions shall include
15 measures for the protection, mitigation and
16 enhancement of fish and wildlife, of habitat
17 affected by the development, operation and
18 management of the project. So, expressly, in the
19 licensing conditions, but also in the legislative
20 mandate is to direct the mind to protection of
21 that habitat.

22 More from a process perspective, we
23 also look at legislative efforts of greater
24 balance in the Northwest Territories, efforts to
25 articulate the importance of the way of life and

1 the well-being of Aboriginal people, and to give
2 weight to different methods of knowledge,
3 including traditional knowledge. And there is
4 some interesting examples from the Northwest
5 Territories.

6 I'll perhaps spend less time on
7 meaningful participation than I should. It's been
8 such a dominant theme in this hearing, but our Law
9 Reform Commission tells us not to be afraid of
10 meaningful participation, not to be afraid of what
11 may appear initially to be conflicting views, but
12 to provide meaningful opportunities early. And
13 Dr. McMahon offered some similar advice,
14 suggesting that you can solve a lot of issues by
15 integrating stakeholder issues earlier, at the
16 start, rather than after when the process has been
17 scoped. And so there's some powerful messages in
18 terms of meaningful participation.

19 I spoke just a minute ago about a
20 message in terms of restoring balance. On the
21 next slide, being slide 33, we talk about some
22 criticisms of how hydro utilities are
23 traditionally operated, an argument that
24 ecological values and indigenous values fall to a
25 certain degree to the wayside and are dominated by

1 concerns in terms of economics and power. And
2 here is again a commentary from Jager and Smith
3 telling us that when economic and power values are
4 contrasted with ecological benefits, they're
5 devalued, because we simply don't have a single
6 currency by which to measure them. And you see
7 some of that message coming through from the ISD
8 when they talk about ecological services and the
9 need to value them. So that's a theme that we
10 have heard in this hearing, a criticism of current
11 decision-making because it's unbalanced and a
12 suggestion that developing ecosystem services
13 valuation might be a way to remedy that.

14 There's also another critique of
15 current status quo in terms of how we make
16 decisions, often from an indigenous perspective,
17 articulating that you can't put a price on the
18 loss of a way of life. We have heard that from
19 Elder Spence from Tataskweyak, we hear it from
20 Councillor Saunders who presented on behalf of the
21 Interlake Tribal Council. Both criticisms of the
22 current status quo in terms of decisions, but
23 actually competing in terms of how do you resolve
24 them. One saying, put a value on some of these
25 items; another saying, it's priceless, how do we

1 do that?

2 Whoever has to make that decision, we
3 certainly wish them the best of luck.

4 What we have put here are a couple of
5 examples from approaches that we have seen, one
6 from the IJC with regard to Lake Ontario where
7 there is a lot of quantitative approaches there.
8 Economic performance indicators were developed for
9 the value of hydro power, and then quantitative
10 environmental performance indicators were also
11 developed, i.e. the reproductive success for the
12 black tern. And if you get a chance to look at
13 that report, I think it's pages 26 and 27,
14 Mr. Regehr will remind me if I'm wrong. They
15 actually articulate on those pages a comparison of
16 some of the different alternatives using some of
17 those criteria, so it's an interesting
18 illustration.

19 Glen Canyon Dam, an American example
20 from Colorado, is also a very important approach
21 but a very different approach, where they did
22 multi criterion decision-making analysis. And it
23 is a different approach, I've got a really good
24 footnote at footnote 141, so rather than trying to
25 torture you with the definition, but it's an

1 effort I think to do a little bit less focus on
2 pure economics, but to have some sort of objective
3 decision-making criteria. And it is an
4 interesting approach.

5 So we simply point out that there are
6 different responses to this. The first one I
7 think would be more, from the IJC would be more
8 analogous to what we understand the ISD is talking
9 about. The second one might be responding more to
10 some of the arguments that you can't put a price
11 on some of these losses.

12 A major concern we have heard and read
13 in this proceeding relates to gaps in silos.
14 Certainly, Manitoba Hydro, Mr. Cormie in
15 responding to board member Harden, talked about
16 knowledge gaps. Dr. Goldsborough was particularly
17 eloquent on this point. I think he characterized
18 our state of knowledge in terms of the wetlands as
19 trivial. And he says here, in comparison to the
20 Laurentian Great Lakes, we know very little about
21 the coastal wetlands of Lake Winnipeg, an
22 important knowledge gap.

23 Hydro, in terms of gaps in silos, we
24 thought was very persuasive. They talked about
25 challenges with the administration of the Water

1 Power Act, not in a judgmental way, but the fact
2 that environmental issues aren't addressed there.
3 So clearly highlighting a potential gap in our
4 governance system in terms of environmental
5 regulation of existing projects. They also made a
6 major point about integration, I think a very
7 powerful one. It's hard to separate LWR, Lake
8 Winnipeg Regulation, from the Churchill River
9 Diversion effects, from the Kelsey Effects. Why
10 are we trying? Why aren't we looking, we
11 interpret Hydro to be arguing, at an integrated
12 assessment? Pretty powerful argument in terms of
13 the challenges of a silo for good decision-making
14 and the need for reform and to do better.

15 We offer in the next couple of slides
16 one interesting approach to silos. And we
17 recognize that the American system is different,
18 the Federal Government plays a much bigger role.
19 But the legislation setting up the Northwest
20 Electric Power and Conservation Planning Council
21 is very intriguing. First of all, I have just
22 stolen one little section from it, talking about
23 the Congressional declaration of purpose,
24 providing for participation and consultation in
25 the northwest, a variety of organizations,

1 governments, consumers, customers, agencies,
2 appropriate indigenous people. To what purpose?
3 The development of regional plans.

4 And there's three major areas that
5 they are looking at there, as you can see in that
6 statement of purpose. One relates to energy
7 conservation, something we might see being more in
8 the Public Utilities Board framework; another to
9 enhancing fish and wildlife resources, more we
10 might think in our environmental silo; and the
11 third, the orderly planning of the regional power
12 system. Again, we're not recommending this, but
13 we think this is an intriguing approach to some of
14 the silos that we have seen in Manitoba.

15 Again, you can see, going to section
16 839 B of this portion of the code, you see here in
17 the first bullet, again, emphasis on a regional
18 conservation electric power plan, as well as a
19 plan to enhance fish and wildlife, and also to
20 take advantage of scientific and statistical
21 advisory committees. And if you actually get a
22 chance to work through this legislation, section
23 839 A and B are very interesting. I didn't put in
24 all the sections about the scientific advisory
25 groups that are in place, but in the statute there

1 is expressed provision for peer reviews in a
2 couple of different provisions. And we think
3 that's an important response, in part to the lack
4 of confidence that some have expressed in terms of
5 our decision-making processes and the independence
6 and quality of the advice that are input into
7 those decision-making processes.

8 Turning to the next slide, one
9 question we have struggled with from the very
10 start of this hearing is the absence of an
11 Environment Act dialogue. And we have certainly
12 highlighted the calls from certain participants in
13 this hearing for an environmental impact
14 statement.

15 You see certainly in the terms of
16 reference, the statement or allegation that the
17 Environment Act does not apply to Lake Winnipeg
18 Regulation as it was completed before this
19 legislation came into effect. And certainly we
20 proceeded on that assumption when we started our
21 initial review. And the Minister may indeed have
22 been correct in making that allegation. But as we
23 read more about grandfather clauses, how they are
24 articulated, when we looked at examples in the
25 Northwest Territories, or British Columbia, or in

1 the United States, grandfather clauses generally
2 are expressed. They say it does not apply. And
3 so that's certainly at least common, whether it's
4 general, that's certainly been our experience. No
5 such language in the Environment Act. Indeed,
6 section 12 sub 2(b) of the Environment Act, it is
7 certainly arguable, robustly arguable that it
8 applies. It's certainly robustly arguable that it
9 contemplates the exact situation we have today, a
10 situation where there is no existing limits, terms
11 or conditions on an existing class 3 development.

12 Now, the meaning of the word existing
13 is open to interpretation. When I look at this
14 issue, I try and imagine the very first day that
15 this legislation came into effect, what would have
16 been in contemplation at that point in time?
17 Certainly from our perspective, it is robustly
18 arguable that projects like LWR, ones that were in
19 existence which were clearly class 3, with no
20 limits, that is certainly strongly arguable.

21 In our appendices, I think it's
22 appendices 8, we provided a legal opinion on a
23 number of these issues. We tried to express both
24 positions. We thought that was our role in our
25 discussion with the panel today, but certainly we

1 lean to the view that the Minister has
2 jurisdiction to initiate an environmental
3 proceeding, and that his discretion was
4 unreasonably and incorrectly fettered in the terms
5 of reference.

6 Going back to equity issues, one
7 factor in support of a more robust interpretation
8 of the legislation, the Environment Act, goes back
9 to the statement I made near the start that
10 certainly there's a fair body of literature
11 suggesting that disproportionately, environmental
12 risk and environmental costs are borne by more
13 marginalized populations. And in the literature,
14 we have read a proposal and certainly a suggestion
15 that one way to address historic inequity is to
16 reduce or eliminate the benefits of grandfathering
17 for older protected projects. And we think that's
18 a strong equity argument in terms of removing that
19 exclusion, if it indeed exists.

20 Just for a couple of moments I want to
21 talk about how we respond to risk and adaptively
22 manage. Dr. Luttermann certainly highlighted the
23 need to go beyond the record of this hearing,
24 which is quite modest, in terms of both flow
25 variations, but I think her point was -- or excuse

1 me, lake level variations, but I think her point
2 was on flow variations, and the need to examine
3 very carefully any modifications in operating
4 regimes, because there will be effects both
5 positive and negative for various people. And
6 certainly she highlighted the importance of a
7 collaborative process, with careful research,
8 carefully designed, and perhaps the need for
9 experimentation.

10 And in terms of looking at how other
11 jurisdictions have attempted to address this, both
12 in our brief -- in our brief we talk both about
13 the Glen Canyon example from the United States, as
14 well as in a footnote we talk a little bit about
15 the Lake Ontario plan. And those were in our
16 brief, but we note this discussion from page 12 of
17 the IJC report. They developed a number of
18 alternatives to test under a range of water supply
19 conditions, four climate change scenarios, and
20 developed a process to look at literally hundreds
21 of alternatives before making their alternate
22 recommendation.

23 I want to draw your attention to the
24 very last line of that quote, though. Because
25 this robust, analytically robust collaborative

1 process wasn't important just not only for the
2 initial decision, but it created a framework for
3 the adaptive governance in the future, both in
4 terms of developing collaborations, but also in
5 terms of a robust systems analysis. And we think
6 this fits very nicely with Dr. McMahon's point, in
7 his expert evidence, in terms of the need to have
8 system support decision-making tools that were
9 robust, allowing to respond to climate change in
10 an open and transparent matter.

11 A different approach was taken in Glen
12 Canyon. I think they only looked at nine
13 alternatives, but there was a collaborative effort
14 to do so. There was a fairly rich analysis of it.
15 What has been very neat out of the Glen Canyon
16 process, though, is the adaptive management
17 process that has come out of it, and certainly in
18 support of Dr. Luttermann's perspective. You can
19 certainly Google Glen Canyon and see their
20 evaluative reports. I think major ones were done
21 in 2004, 2008, and perhaps one earlier. And that
22 has been the basis for ongoing amendments to the
23 plan. And the point that we draw from the bolded
24 text here is, there is a new organizational
25 structure that came out of the adaptive management

1 program, which assisted not only in good adaptive
2 management outcomes, but also in good
3 collaboration. It built a foundation for, if not
4 consensus, more supported decisions, which we
5 think is important when we think of the issue of
6 confidence as it exists in this hearing.

7 Finally, we come to our last point
8 that we wanted to highlight in terms of diligence
9 and responsibility. And with Professor Craft
10 here, I certainly would be remiss if I didn't pull
11 a little bit from some of her outstanding work in
12 indigenous legal traditions. But certainly Elder
13 Atkinson talks about the sense of responsibility
14 flowing from Anishinaabe law, and we have heard
15 echos of that in certainly some of the discussion
16 yesterday.

17 One reason we turned with interest to
18 the concept of the public trust, the common law
19 concept is it's evolved in the English tradition,
20 and certainly robustly in the American tradition,
21 because we saw it as a way to try and get at that
22 message of diligence, the need to exercise ongoing
23 supervision. And we saw it as a potential
24 mechanism to address concerns that have been
25 expressed in this hearing in terms of hesitant

1 licensing.

2 You see this powerful language from
3 the Hawaiian, I think it's the Supreme Court,
4 Hawaiian Supreme Court, the obligation of the
5 Commission in that case, to take the initiative in
6 considering, protecting and advancing. And then
7 you see in the last bullet from the Seminole
8 Audubon decision back in the early 1990s, the
9 public trust imposing a duty of continuing
10 supervision and responding to changes in current
11 knowledge and current needs. A very powerful
12 message. The jury is still out in terms of the
13 public trust, whether that doctrine will be
14 accepted in the Canadian common law. The Yukon,
15 as noted in our brief, has in their Environment
16 Act a recognition of the public trust. We see
17 legislative efforts in Quebec as well along those
18 lines, and there are a number of American
19 jurisdictions.

20 So we flag the public trust, both as a
21 risk factor in terms of potential common law
22 challenges to a failure to exercise one's
23 authority in a diligent matter, but also as a
24 potential legislative example. And that's
25 something, certainly going back to the language of

1 the Supreme Court, and I know my colleague,
2 Ms. Pastora Sala, will talk a little bit more
3 about it.

4 I should finally note before we leave
5 this page, we are not offering a legal conclusion
6 here, but the concept of the honour of the Crown,
7 as identified by our Supreme Court, again, speaks
8 in terms of the recognition and affirmation of
9 Treaty rights. And the Metis decision, the land
10 claims decision of our Supreme Court in that
11 context certainly highlighted a duty of diligence
12 in dealing with decisions that may affect rights,
13 Aboriginal and Treaty rights.

14 So I'll conclude, and then we'll leave
15 it to my colleague, Ms. Pastora Sala. Going back,
16 we asked at the start, is there a case for law
17 reform? Certainly from our perspective there is a
18 compelling case. We see it in the data gaps, the
19 trivial state of research about wetlands, the
20 absence to our knowledge of ecological flow
21 analysis that Dr. Luttermann certainly talked
22 about yesterday, both in her evidence and her
23 conversation with panel member Yee, and certainly
24 from a number -- where is the compilation of ATK,
25 and the support for an inclusive holistic process

1 that makes room for the Cree worldview, that makes
2 room for the Anishinaabe world view.

3 We see a compelling case for law
4 reform in the public process. Given the admitted
5 and undoubted compounding effects of LWR and CRD,
6 why is there no integrated assessment? Given the
7 alleged non-applicability of the Environment Act,
8 why has this unusual review been undertaken by the
9 Clean Environment Commission? What is the public
10 process associated with the Water Power Act? What
11 body is there to undertake such a process?

12 In terms of legislation, we see again
13 a compelling case for law reform. Where are the
14 criteria for determining or articulating whether a
15 project is exempted from environmental oversight?
16 Why have no remedial steps been taken to address
17 the alleged non-applicability of the Environment
18 Act to structures already in existence? Where is
19 the recognition of the importance of environmental
20 or ecological flow in the legislative scheme?
21 Where is the recognition of the importance of
22 balance, of balancing environmental social power
23 and economic factors in water power governance?
24 Where is the legislative recognition of the need
25 to look at the watershed as a whole in terms of

1 these governments' decisions? With regard to
2 licensing and assessment, where is the licensing
3 protection for habitat?

4 And I think right on time, I will turn
5 it over to my colleague, Ms. Pastora Sala.

6 MS. PASTORA SALA: Thank you,
7 Mr. Williams, and good morning. With your
8 permission, Mr. Chair, I'd like to continue on
9 with our section on equity and balance in the
10 watershed.

11 A menu of options. We have drawn from
12 our review of the literature selective
13 jurisdictions and what we have heard to propose a
14 menu of options, including key principles,
15 immediate and long-term recommendations. We
16 stress that this is a menu of options. We are not
17 policy, science, or indigenous knowledge experts.
18 Rather, as lawyers at the Public Interest Law
19 Centre, we speak from the perspective of a legal
20 centre with significant law reform experience.

21 We also point out that additional
22 menus and options will likely be added, or the
23 existing ones may change as more feedback is
24 received. This is an iterative process.

25 An opportunity for reform. Lake

1 Winnipeg is a capstone feature of Manitoba's
2 hydrological system. The Lake Winnipeg Regulation
3 hearing offers an important opportunity to review
4 the successes and failures of one of 16 legacy
5 projects in Manitoba. As the first review of its
6 kind, this hearing is unique and offers Manitobans
7 a chance not only to examine Manitoba Hydro's
8 performance under the Lake Winnipeg Regulation
9 interim licence, but also to review our water
10 governance regime and determine whether it's
11 really as good as it should be.

12 Through what we have heard and what we
13 have read, we have compiled existing elements and
14 activities relating to water governance, to
15 illustrate what can be done here in Manitoba.
16 This is a watershed moment.

17 The end goal of this examination is to
18 create a systematic approach to water governance
19 surrounding existing projects such as Lake
20 Winnipeg and future developments. Recognizing
21 there is no one-size-fits-all model, water
22 governance in Manitoba must be capable of linking
23 developments, impacts, research and traditional
24 knowledge. It must also be capable of promoting
25 adaptive management with an ideal goal of

1 ecosystem health.

2 Although we are nearing the end of the
3 hearing, there are many outstanding questions
4 relating to Lake Winnipeg Regulation which lead us
5 to our recommendations. And you have already
6 heard some of those questions outlined by
7 Mr. Williams. In fact, the Clean Environment
8 Commission Lake Winnipeg Regulation hearing and
9 our review of Manitoba's water governance regime
10 has lead us to a series of additional questions.
11 For example, what is the appropriate balance in
12 Manitoba? What, if any, duties and
13 responsibilities does the province have towards
14 the stewardship of the lake? Why is there no
15 systematic approach to incorporating traditional
16 knowledge and indigenous legal traditions? What
17 is the role and impact of the voices heard
18 throughout this process?

19 If you look to the quotes on this
20 screen, you will read some powerful words, some of
21 which you may have already heard or be familiar
22 with. Those quotes reflect some of what we have
23 heard from policy communities around the lake.
24 And if I can just pause here for a moment to
25 mention, we mention policy communities throughout

1 our report and I'm going to be using it in our
2 presentation. And we use this term to mean all
3 the groups that may be interested in the lake,
4 Lake Winnipeg in this case, including governments,
5 and those are federal, provincial, local, First
6 Nation and Metis governments, business interests,
7 industry, industrial associations and unions,
8 societal groups, so that could be non-governmental
9 organizations, cottage owners, fishers, farmers,
10 indigenous people, as well as the general public,
11 affected by Lake Winnipeg Regulation.

12 Although members of the policy
13 communities disagree on the implications of Lake
14 Winnipeg Regulation, some prominent concerns have
15 emerged. Many of those living around the lake
16 lack confidence and trust in the province. Based
17 on their past and present experiences, they are
18 not convinced that Manitoba Hydro or the province
19 has our best interest at heart.

20 We have also heard that individuals
21 and governments around the lake feel excluded from
22 Lake Winnipeg Regulation; one, because they have
23 not been directly engaged. And we can see here on
24 the screen, Chief Henderson from Sagkeeng say, it
25 has taken 40 years to finally come here and say,

1 look, what do you guys think about the lake?
2 Secondly, they are not reflected in governance or
3 Lake Winnipeg Regulation and they do not feel
4 listened to.

5 Many members of the policy communities
6 expressed during the community hearings that the
7 Manitoba government must fulfill certain duties
8 and responsibilities relating to the lake. And we
9 see this in Mr. Brian Keeper's quote on the
10 screen.

11 Preliminary key principles. Our
12 preliminary key principles have both substantive
13 and procedural elements. They aim to address some
14 of the concerns identified by members of the
15 policy communities, as well as to put in practice
16 some of the key elements of effective water
17 governance outlined in our report. You will see
18 on the screen a list of 13 key principles we have
19 identified in our report.

20 For the purposes of this presentation,
21 we will focus on three of these principles: A
22 public duty to protect the environment, equitable
23 distribution of environmental risk, and meaningful
24 ongoing engagement.

25 A public duty to protect the

1 environment. The public duty to protect the
2 environment refers to the provincial and federal
3 governments' ongoing obligation to act as
4 environmental stewards by protecting and
5 monitoring our heritage of streams, lakes,
6 wetlands, plants and animal habitats. Part four
7 of our report discussed the potential powerful
8 legal ramifications of the public trust doctrine,
9 coupled with the honour of the Crown and
10 indigenous legal traditions. And Mr. Williams
11 also spoke of that earlier.

12 An equitable distribution of
13 environmental risk. As stated by the World
14 Commission on Dams, it is the poor and other
15 vulnerable groups who are likely to bear the
16 disproportionate shares of social and
17 environmental cost of dams without gaining fair
18 share of economic benefits. The equitable
19 distribution of environmental risk refers to the
20 recognition that achieving equity among and
21 between all the members of the policy communities
22 is important. This requires an acknowledgment
23 that all Manitobans, regardless of income, race,
24 geographical location, should be subject to the
25 same level of environmental protection. It also

1 requires an acknowledgment that if and when that
2 is not possible, criteria should be in place to
3 identify and respond to the discrepancies.

4 Meaningful ongoing engagement.

5 Policy, legislative, administrative and
6 operational decisions should be based upon ongoing
7 meaningful engagement with all interested parties.
8 Information must be transparent, accessible and
9 understandable for the general public. According
10 to Sinclair and Doelle, the term meaningful
11 participation or engagement refers to the
12 participation process that incorporates all of the
13 essential components of participation. And you
14 heard earlier Mr. Williams' quote from
15 Mr. McMahon, who refers to the importance of early
16 and meaningful engagement as key.

17 So what? After hearing these
18 principles, some of you may be left to think, so
19 what? Why am I talking about this? What do these
20 principles actually mean in practice?

21 Many reports and articles, as well as
22 indigenous legal traditions, refer to our
23 preliminary principles in one way, shape or form.
24 Based on what we have heard and read, we must
25 integrate these principles in our discussion of

1 the menu of options for Manitoba's water
2 governance regime.

3 In part six of our report we identify
4 six potential immediate recommendations, three
5 potential long-term recommendations, and for the
6 purposes of this presentation, we focus on one of
7 each. Otherwise you might be here for a little
8 bit too long this morning.

9 The first, immediate recommendation
10 one, multi party Lake Winnipeg task force. Under
11 section 5 of the Environment Act, the Minister has
12 the authority to establish and appoint members to
13 advisory committees. It is recommended that the
14 Minister of Conservation and Water Stewardship
15 establish a multi-party Lake Winnipeg task force
16 within the next six months. This task force
17 should have representation from both northern
18 indigenous and southern indigenous communities,
19 the Metis Nation, a water scientist, a
20 Conservation and Water Stewardship representative,
21 as well as an individual who has an understanding
22 of water governance and management and is familiar
23 with bridging the gap between western and
24 traditional knowledge.

25 The purpose of this task force is

1 twofold. First, to bring the proposed
2 recommendations from the Clean Environment
3 Commission hearing on Lake Winnipeg Regulation for
4 meaningful public engagement throughout Manitoba,
5 to create a meaningful public strategy. The goal
6 of this process would be to build, rebuild, trust
7 and foster productive working relationships among
8 policy communities surrounding the lake. This is
9 not to diminish the important work of listening
10 that the Clean Environment Commission has already
11 undertaken, but to build.

12 To identify knowledge, secondly, to
13 identify knowledge gaps and uncertainties based
14 upon public engagement.

15 In preparation for its work, the task
16 force would consider questions such as, what do
17 policy communities around Lake Winnipeg want the
18 system to look like in the future, and what do we
19 need to get us there? How can we best integrate a
20 broad range of criteria to create a more inclusive
21 process? Should benchmarks and operating rules be
22 developed to measure different systems, such as
23 the Netley-Libau Marsh, or fisheries? How, if at
24 all, should natural capital be valued, including
25 ecosystem and cultural services, while considering

1 the spiritual and cultural importance of the
2 water?

3 The work of the multi-party task force
4 should be completed on an urgent basis for a
5 duration of approximately two months. Together,
6 the task force would decide a plan for meaningful
7 ongoing engagement on an ongoing basis.

8 And now to move to long-term
9 recommendations. So the first long-term
10 recommendation identified in our report is to
11 modernize Manitoba's regulatory framework for
12 water management. Overall, based on what we have
13 heard and read, there is a sense that Manitoba's
14 legislative regime is not well suited to address
15 water governance issues. Just as one example, the
16 Manitoba Law Reform Commission project examining
17 the Environment Act highlights the need for a
18 review of the environmental assessment regime in
19 Manitoba. Manitoba's water governance regime is
20 outdated compared to practices elsewhere in Canada
21 and the world. Our report highlights the need for
22 the government to modernize Manitoba's governance
23 regime by considering such things as, first, the
24 need for greater coordination and clarity of the
25 roles in its water governance and legislative

1 schemes. For example, the Federal Power Act in
2 the U.S. requires for it to consult with
3 conservation agencies in setting licensing
4 conditions. B.C.'s new Water Sustainability Act
5 will create water objectives that set out goals
6 relating to water quality and quantity that must
7 be considered by public officials. Secondly, an
8 integrated watershed approach to cumulative
9 effects, monitoring and follow up. Integrated
10 water management on a watershed basis is now the
11 foundation of water policy and regulatory systems
12 throughout the world, from local watershed plans
13 to legislation, such as the Ontario Lake Simcoe
14 Protection Act.

15 Third, a clear and well-coordinated
16 process for scrutinizing licence applications,
17 including criteria to assess, criteria to assess
18 previously unlicensed existing projects and to
19 assess open licences for review and amendments
20 prior to 50 years. Licences in other
21 jurisdictions, for example in B.C., are reviewed
22 every 30 years, not 50.

23 Fourth, the incorporation of the
24 public trust doctrine in Manitoba's environmental
25 legislation, including an obligation to actively

1 protect, exercise ongoing supervisory control, and
2 revisit previous decisions in the face of change.

3 These four parts of this
4 recommendation are only selective pieces which are
5 elaborated upon in our report. The review of
6 Manitoba's regulatory framework should be
7 completed within five to seven years.

8 Some concluding remarks. Based on
9 what we have heard and read, the need for reform
10 of Manitoba's water governance regime is clear.
11 There is a need to build institutional and social
12 capacity to make decisions about water resources
13 under uncertain conditions. Our climate is
14 changing, our population is growing, and our
15 pressures on water resources are continually
16 increasing. Strengthening Manitoba's capacity to
17 make good water management decisions is
18 fundamental to the protection of our water
19 resources for our own and future generations.

20 Uncertainty is not an excuse for
21 inaction. Key principles such as adaptive
22 management recognize that uncertainty is a reality
23 and encourage regular and ongoing review. The
24 menu of options outlined in our report points to
25 practical examples from other water governance

1 regimes to illustrate that a more coordinated and
2 adaptive water quality regime in Manitoba is
3 possible.

4 Thank you.

5 THE CHAIRMAN: Thank you,
6 Ms. Pastora Sala. Thank you, Mr. Williams. Does
7 that conclude your presentation? Okay, let's take
8 a 15 minute break and we'll come back and see what
9 kind of questions you have elicited.

10 (Proceedings recessed at 10:50 a.m.
11 and reconvened at 11:05 a.m.)

12 THE CHAIRMAN: Okay, let's come back
13 to order. We're now available for questions.
14 Manitoba Hydro.

15 MR. BEDFORD: Mr. Williams and
16 Ms. Pastora Sala, we, of course, know one another
17 reasonably well. For the record, my name is Doug
18 Bedford and I am here representing Manitoba Hydro.

19 Several weeks ago I found myself
20 asking a professional engineer who was testifying
21 at this hearing whether or not, in his opinion,
22 operating hydro dams and control structures was
23 too serious a business for politicians. And he
24 readily agreed with me, not to my surprise. So on
25 behalf of the engineers with whom I work, I feel

1 compelled to ask the two of you, lawyers, whether
2 or not you think that operating dams in control
3 structures is really too serious a business to be
4 left to lawyers?

5 MR. WILLIAMS: There are many things,
6 Mr. Bedford, that I would suggest are too serious
7 to be left to lawyers. But I wouldn't say that
8 was the purpose of our report. We were trying to
9 highlight the dialogue and mechanisms to respond
10 to the need for law reform. And I don't see any
11 recommendations that suggest that either
12 Ms. Pastora Sala or myself should be seeking to
13 replace either Mr. Gawne or Mr. Cormie. I have a
14 great deal of respect for both those individuals.

15 MR. BEDFORD: Sometimes I think we
16 lawyers, perhaps because of our training, tend to
17 overlook evidence and theories that don't fit well
18 with the case that we're advocating on behalf of
19 the client. For example, can either of you tell
20 me why it is that I don't recall seeing in the
21 presentation this morning any quotations from any
22 of the cottage owners or reeves of the
23 municipalities who did come forward and testify at
24 the hearing from around Lake Winnipeg?

25 MR. WILLIAMS: I can't tell you why

1 you don't recall seeing those, but I can tell you
2 that to my knowledge there weren't any of those
3 quotes there. We, in appendix A, I think we have
4 an extensive discussion of what we heard in the
5 hearing, and I think you will find a number of
6 references there. We did, in our presentation
7 this morning, try and highlight both a downstream
8 issue related to altered flows, as well as an
9 upstream issue related to the health of wetlands.
10 If we had focused more on erosion, you might have
11 seen some of the dialogue that you are looking
12 for, Mr. Bedford.

13 MR. BEDFORD: Turning to the key
14 principles that you present to us, I noticed that
15 absent from the list of key principles was the
16 principal of economic equity. Who do you suggest
17 should pay for the various things that you are
18 recommending? Task forces, revisions to laws that
19 will require more hearings, more studies, who
20 pays.

21 MR. WILLIAMS: First of all,
22 Mr. Bedford, I think we presented this as a menu
23 of recommendations. We're mindful of our roles,
24 as typically in law reform initiatives, we seek to
25 address the issue that the group or client has

1 identified, we analyze it legally, and then try
2 and provide a spectrum of options.

3 Ultimately in terms of who would pay,
4 provided that some of these decisions are made,
5 one would suspect that it would likely be Manitoba
6 Hydro, and ultimately its ratepayers.

7 MR. BEDFORD: One of the motivations
8 for building Lake Winnipeg Regulation many years
9 ago was to try and reduce flood damage around Lake
10 Winnipeg. And we have heard from many people who
11 have lived downstream of Lake Winnipeg that they
12 believe they have unfairly borne the brunt of Lake
13 Winnipeg Regulation as a consequence of the flood
14 damage done downstream of the control structures
15 and Jenpeg. Do you have any advice for us as to
16 where is the equitable balance in flood control
17 with respect to Lake Winnipeg and downstream?

18 MR. WILLIAMS: Mr. Bedford, I think
19 the thrust of our advice is that balance comes
20 from a robust decision-making process, from an
21 inclusive dialogue, and I think it would be
22 acutely presumptuous of Ms. Pastora Sala or myself
23 to tell you how to achieve that balance today.

24 The menu of options that are presented
25 are aimed at providing legislative guidance and

1 enabling a dialogue that seeks to answer these.

2 And just to go back to your previous
3 question, you are quite right to ask who would
4 pay, but I would point out that people are paying
5 already. I don't think there's any dispute in
6 this hearing that downstream there are material
7 impacts. Many people around the lake would argue
8 that they and/or their wetlands are paying as
9 well. So we certainly think the dialogue has
10 flagged a pressing social, cultural, economic and
11 reliability issue that deserves some answers.
12 There are costs ongoing and there will be costs in
13 resolving.

14 MR. BEDFORD: I'd like to look at the
15 six immediate recommendations, and they came to my
16 knowledge through reading the paper you filed. So
17 that's what I have in front of me. If it helps
18 you, you may wish to turn to your paper. And I
19 note that the six immediate recommendations are
20 first described on page 62 of your paper.

21 The first one, as you have reiterated
22 in the presentation, is a recommendation that a
23 task force be set up immediately. Given the
24 answer that you provided to me moments ago in
25 response to who pays, that it should be Manitoba

1 Hydro and its ratepayers who pay. If this idea of
2 a task force is endorsed, should not a task force
3 also include a representative of Manitoba Hydro
4 and a representative of the ratepayers of Manitoba
5 Hydro?

6 MR. WILLIAMS: I'll let
7 Ms. Pastora Sala answer that. I'm not sure I said
8 that Hydro should pay, I said I suspect that Hydro
9 would pay. Another option is ratepayers. But
10 I'll let Ms. Pastora Sala provide an initial
11 response, and I may chime in or indeed disagree
12 with her.

13 MS. PASTORA SALA: I can only point to
14 other examples where, for example, in Ontario,
15 IPAT, the Industrial Pollution Action Team which
16 was created as a result of chemical spills in
17 Sarnia, Ontario. And the Ontario Minister of the
18 Environment struck this team to respond to the
19 series of chemical pollution spills to the air and
20 water. And as non-policy makers, or as lawyers,
21 we can only point to previous examples. And this
22 is one that was struck as a multi-party emergency
23 style advisory committee that did not include the
24 industry at that point. And that goes to perhaps
25 what we have read and what we have heard about the

1 importance of the multi-party Lake Winnipeg style
2 task force would also be to go to credibility and
3 bias and address that, as well as to bring voices
4 together.

5 MR. WILLIAMS: And Mr. Bedford, I'll
6 just add, and I thank Ms. Pastora Sala for that
7 answer, you may hear my client take a different
8 perspective next April 15th. But I'll also
9 indicate that my understanding is some of these
10 organizations, there may be a leadership team and
11 then technical advisory or other roles such as
12 that. So certainly, we would contemplate that
13 Hydro would be intimately involved.

14 One of the issues I think
15 Ms. Pastora Sala is flagging is, how do we get the
16 expertise and insight from Manitoba Hydro while
17 recognizing, and this is not meant pejoratively,
18 but the suspicion that relates to Manitoba Hydro?
19 So there are mechanisms to make sure that Hydro's
20 perspectives are articulated and their technical
21 expertise is there. Thank you.

22 MR. BEDFORD: If one were sincere in a
23 desire to have a multi-force multi-representative,
24 why wouldn't you also advocate for a
25 representative of the cottage and home-owners who

1 live on the shores of Lake Winnipeg?

2 MR. WILLIAMS: Fair statement.

3 MR. BEDFORD: You state that one of
4 the purposes of this task force would be:

5 "...to create a meaningful public
6 strategy."

7 I have always thought that when it comes to these
8 topics, that the actual creation of the strategy,
9 the plans to be followed, is the obligation of
10 government, and that what task forces and
11 inquiries are intended to do is to provide advice
12 and/or recommendations to government, which
13 government is at liberty to adopt or to reject.

14 Why, or have I got it wrong, would you
15 now advocate to remove that obligation from
16 government and to place it in the hands of a task
17 force? Perhaps I have misunderstood what you have
18 written?

19 MS. PASTORA SALA: I think, as we
20 state in the report, the government would be a
21 part of this task force. So what we're proposing
22 as one of the options is creation of a multi-party
23 task force to promote engagement, including the
24 government as one of the members of the task
25 force.

1 MR. BEDFORD: You write, and I quote:
2 "The task force would identify
3 knowledge gaps and uncertainties based
4 upon public engagement."

5 I can't help but observe to you that we have all
6 been, for weeks now, involved in a process which
7 is clearly focused on public engagement about Lake
8 Winnipeg Regulation. And I'll readily confess to
9 the two of you that I can certainly identify some
10 serious knowledge gaps about Lake Winnipeg
11 Regulation in the skulls of some members of the
12 public who have come forward and spoken here.

13 Do you have any advice for us as to
14 how to address the fact that the Lake Winnipeg
15 Regulation is so sadly misunderstood by so many
16 members of the public in this province?

17 MR. WILLIAMS: Mr. Bedford, I'm not
18 going to accept or disagree with your
19 characterization of it being sadly misunderstood.
20 I think that part of the engagement process is
21 presumably a two-way learning process, and
22 knowledge gaps go both ways. So I'm not going to
23 give you public relations advice, maybe I've been
24 doing too much of that already in my day job, but
25 certainly we think going forward that the dialogue

1 will be two ways. The community certainly will be
2 articulating concerns, but presumably learning
3 more about it.

4 I'm going way beyond the lawyer hat
5 there. But one thing certainly we have discussed,
6 as a team, are dealing with the different
7 communities, you might seek to ask them to
8 articulate, you know, two or three issues they
9 would like to tell others, and also two or three
10 issues that they would like to know. So we are
11 way beyond our field here. I don't know if
12 Ms. Pastora Sala has anything to add beyond that.

13 MS. PASTORA SALA: Only that based
14 upon our review of the literature, as well as what
15 we have heard, the purpose of engagement is to go
16 directly to those, to exactly what you are
17 speaking to, Mr. Bedford, to identify and discuss
18 in a meaningful way together those
19 misunderstandings, and perhaps discover that they
20 are not misunderstandings after all, or maybe they
21 are, but the purpose is to come together and
22 discuss those and identify them together.

23 MR. WILLIAMS: And I appreciate your
24 courtesy in letting us articulate. Some of what
25 we have read and heard tells us that there's

1 numerous examples where the first six months are a
2 real struggle, whether it's effluent management in
3 Ontario in the 1980s or otherwise. But that
4 engagement process over time, the ones that work,
5 those barriers and those knowledge gaps, as you
6 phrase it, are reduced. There are ones that work
7 and ones that don't, at least we have read and
8 been told.

9 MR. BEDFORD: When I came to work at
10 Manitoba Hydro in the autumn of 2002, I found that
11 the company and many of its employees were working
12 on the environmental studies for the Keeyask
13 project. Ten years later in the summer of 2012,
14 an environmental impact statement for Keeyask was
15 filed.

16 Your second immediate recommendation
17 is that Manitoba Hydro be directed to file,
18 firstly, an environmental act proposal, to be
19 followed by an environmental impact statement.
20 And you recommend that that be done in three to
21 five years.

22 Now, assuming your recommendation was
23 endorsed and my client was directed to file for
24 Lake Winnipeg Regulation an environmental impact
25 statement within three to five years, is not the

1 inevitable consequence of that going to be
2 abbreviated environmental studies, a hastily
3 written environmental impact statement, and any
4 subsequent hearing before the Clean Environment
5 Commission, I suggest to you, would then just
6 dissolve into a lot of criticism about inadequate
7 environmental studies and a poorly written
8 environmental impact statement?

9 MR. WILLIAMS: Surely not from me,
10 Mr. Bedford. That's a very good question and we
11 struggled with the time frame. I think at one
12 point in time we had a five to seven, and then it
13 was amended.

14 One of the things, and one of what we
15 have heard and read in other proceedings,
16 including from Dr. Noble, Dr. Gunn, and others who
17 have appeared before this Clean Environment
18 Commission, whether on Bipole III or Keeyask there
19 are robust ways to address it. I know Hydro has
20 its traditional approach with its traditional
21 consultants, and certainly they have done good
22 work. I think we have heard from Drs. Noble and
23 Gunn in other proceedings that there are other
24 mechanisms or other approaches that might be taken
25 that are still credible.

1 Mr. Bedford, we'll freely accept that
2 three to five years is ambitious, and I believe
3 that we said that actually in our recommendations.

4 Weighing against that, though, sir, is
5 the fact, some pretty powerful testimony in this
6 hearing about the rapidly, or I think I'm
7 characterizing it correctly, the evolving,
8 unstable, risky environment and also some pressing
9 challenges, we fully concede that three to five
10 years is aggressive.

11 MR. BEDFORD: On page 11 of your
12 report, near the top of the page, in an effort to
13 summarize your anticipation of arguments parties
14 might make at the end of this hearing, you write
15 and I quote:

16 "While Hydro has significant
17 discretion under its interim licence,
18 it may wish to argue that it has
19 exercised this discretion honourably
20 and in good faith."

21 Well, let me dispel any mystery or
22 speculation. The employees of Manitoba Hydro,
23 certainly the ones who have testified before the
24 four Commissioners at this hearing, indeed believe
25 that they have exercised whatever amount of

1 discretion they have in operating Lake Winnipeg
2 Regulation "honourably and in good faith".

3 I assume, correct me if I'm wrong,
4 that you would agree from what you have heard that
5 they have indeed exercised that discretion
6 honourably and in good faith?

7 MR. WILLIAMS: Mr. Bedford, I think we
8 have, in footnote, Mr. Cormie speaking of Hydro's
9 commitment to do the right thing, and we certainly
10 expect that they would respond appropriately to
11 any licensing conditions they would have. So I
12 hope that satisfies your request.

13 MR. BEDFORD: Your third immediate
14 recommendation is that the Minister of Water
15 Stewardship and Conservation in this province
16 should publicly make a statement following this
17 hearing as to whether or not Manitoba Hydro has
18 complied with the terms of the interim licence.
19 Would you accordingly agree with me that Manitoba
20 Hydro has indeed shown that it has complied with
21 the terms of the interim licence for Lake Winnipeg
22 Regulation?

23 MR. WILLIAMS: Mr. Bedford, I'm not
24 going to go that far and I'm not, I don't think
25 that was our role in this report. My client may

1 have some conclusions about that. If memory
2 serves me right, there have been some violations
3 with approvals, there's been some improvements
4 over time. But I think that's up to the Minister
5 to make those conclusions and I'm not going to
6 venture down that path, sir.

7 MR. BEDFORD: When projects are
8 proposed in Manitoba that require licensing under
9 the Environment Act, and one proceeds through the
10 steps of Environment Act proposal, writing an
11 environment impact statement when the projects are
12 large in nature, as my client's projects sometimes
13 are, there's frequently a hearing before the Clean
14 Environment Commission. When it's a proposed
15 project, there's always the knowledge on the part
16 of the proponent, is there not, and of all
17 citizens who are engaged in reviewing the project,
18 that there might be denial of a licence for the
19 project and the project therefore will not
20 proceed.

21 Accordingly, when I look at your
22 recommendations for a review under the Environment
23 Act of Lake Winnipeg Regulation, and one assumes
24 that that recommendation is adopted and Lake
25 Winnipeg Regulation is sent to a review before the

1 Clean Environment Commission with the purpose of
2 determining whether or not it should be licensed
3 under the Environment Act, can you tell us all how
4 would we cope in the case of Lake Winnipeg
5 Regulation if a licence under the Environment Act
6 following that process was denied a licence, but
7 it already has a licence under the Water Power
8 Act, and it already exists and it's not going to
9 disappear.

10 MR. WILLIAMS: So as I understand your
11 question, you're asking us to speculate about what
12 would happen if there was some future proceeding
13 in which the future tribunal recommended, or the
14 Minister chose not to accept the licence?

15 I suspect we're moving into the realm
16 of science fiction with that hypothesis,
17 Mr. Bedford. I certainly know that colleagues of
18 mine have looked at the licensing acceptance rate
19 under the Environment Act, and it is robust. And
20 I don't think that anyone in this room seriously
21 accepts that premise. There would be many
22 positive outcomes that could flow from a robust
23 environmental assessment apart from that, a robust
24 analysis of environmental flows, a robust analysis
25 of lake variations and its impacts. And those are

1 good outcomes that I think would flow.

2 So I understand your point. I think
3 it's a theoretically valuable point, but I think
4 it is a hypothesis in the realm of science
5 fiction.

6 MR. BEDFORD: But it would, in effect,
7 would be a process that everyone understood at the
8 outset. It's not a process to determine whether
9 or not this pre-existing project is entitled to an
10 Environment Act licence, it would really be a
11 process to determine what conditions ought to be
12 attached to the Environment Act licence to which a
13 pre-existing project is necessarily entitled when
14 it is a project of the nature of Lake Winnipeg
15 Regulation.

16 MR. WILLIAMS: I understand your
17 point, Mr. Bedford. If my client was asking for
18 my advice, I would say that would be my
19 understanding going into something like that. I
20 think that's reasonable.

21 MR. BEDFORD: In your fifth
22 recommendation you recommend that my client be
23 directed to develop a "hydrological model". Can
24 you tell us, perhaps using other words, what
25 exactly do you mean about a hydrological model

1 that, as you say, would support the evaluation of
2 alternative operating scenarios?

3 MR. WILLIAMS: If the words were
4 imprecise, I apologize for that. We are certainly
5 building upon the advice of Dr. McMahon. And we
6 understand that already Manitoba Hydro has some
7 significant and some robust decision-making tools,
8 both at the planning horizon, whether that's PRISM
9 and SPLASH or at the more operational level. An
10 important recommendation we observe from
11 Dr. McMahon was the example that he suggested from
12 the collaborative effort in the States of, I
13 believe, Georgia, Alabama and Florida, in terms of
14 that. And one of the points that he made from
15 that was that it was a tool that was, I think it's
16 public and accessible and transparent. And we
17 thought that certainly was good advice and would
18 be an important step towards both good public
19 policy, but also getting by and addressing some of
20 the confidence issues. So that was, we were
21 trying to articulate what we understood to be
22 Dr. McMahon's advice, Mr. Bedford.

23 MR. BEDFORD: So, to clarify my
24 puzzlement, in an earlier answer you gave me this
25 morning, you alluded to the theme of the distrust

1 of some citizens of Manitoba about my client. We
2 reviewed your first immediate recommendation of a
3 multi-party task force, which at least in your
4 paper didn't include Manitoba Hydro, nor
5 ratepayer, but it could, of course, but it didn't
6 initially. And I gathered from your answers, one
7 of your concerns was this theme of general
8 distrust in some quarters about my client. We
9 have heard from a number of parties, and it's
10 covered in your paper in your presentation, about
11 a desire for a lot more citizens and organizations
12 to be involved in water governance and so forth.
13 So why would you have a recommendation on this
14 important theme that this task be left to Manitoba
15 Hydro to come forward with a model?

16 MR. WILLIAMS: If the concern is
17 Manitoba Hydro, Mr. Bedford, I don't think we
18 would have a problem if the language was more
19 robust. This is something that Hydro clearly
20 would have to play a lead role in, sir.

21 I don't actually think that the two
22 recommendations are mutually inconsistent, though,
23 but I guess that's a matter of interpretation. If
24 you want to strike out Manitoba Hydro, that's
25 fine. But clearly in something that technical,

1 Hydro will be a driving force of that dialogue, no
2 one else could do it.

3 MR. BEDFORD: Your last immediate
4 recommendation is a recommendation that the
5 Minister of Conservation and Water Stewardship in
6 this province:

7 "Reaffirm Treaty and Aboriginal rights
8 set out in section 35 of the
9 Constitution Act 1982."

10 And I'd suggest to you that, would not a Minister
11 have a concern that in doing that some people
12 would see an implication, an admission, the faint
13 odour of acknowledgment that the present
14 government has in some way not been honouring its
15 obligations with respect to Treaty and Aboriginal
16 rights? Is it your view that the present
17 government has somehow not been honouring its
18 obligations?

19 MS. PASTORA SALA: Again, Mr. Bedford,
20 I don't think that that's up to us to determine
21 whether or not the government has been honouring
22 or not its obligations. Again, we can only point
23 to other jurisdictions where, for example, in the
24 Yukon, the environmental and socio-economic
25 assessment board carries out a consultation

1 process, and not only looks at the impacts, but it
2 also looks at significant potential effects of
3 projects, and recommends mitigative terms and
4 conditions. And they also have the authority to
5 determine whether or not compensation should be
6 given to First Nations and other indigenous
7 groups.

8 MR. BEDFORD: On the same, or with
9 respect to the same recommendation, you proceed to
10 suggest that perhaps the Water Power Act and the
11 regulations passed pursuant to it in this province
12 should contain specific provisions requiring
13 consultation with indigenous peoples. And I would
14 suggest to you, is it not far more preferable for
15 something as serious as Aboriginal and Treaty
16 rights that they be embedded, as they are in this
17 country, in our Constitution, as opposed to trying
18 to place them in statutes or regulations?

19 Regulations, of course, can easily be changed and
20 amended, and statutes much more easily repealed
21 and changed than what a Constitution can.

22 MR. WILLIAMS: Ms. Pastora Sala may
23 wish to chime in. Mr. Bedford, I'll draw on my
24 experience in different contexts in terms of the
25 mining industry. And I'll just say that while the

1 obligation was recognizing the Constitution, our
2 professional experience has been that it wasn't
3 always recognized in activities, specifically in
4 exploration licences. So certainly we have seen
5 in other examples where that is expressed in the
6 legislation. Knowing public servants as I do, I
7 suspect that many of them are more likely to read
8 their governing act than they are the
9 Constitution.

10 MR. BEDFORD: Turning to the long-term
11 recommendations, as I read them, they are all
12 really recommendations directed ultimately to the
13 legislature of this province, because they relate
14 to passing new laws, amending existing statutes,
15 and that obviously is the work of the people that
16 we elect to sit in the legislature of Manitoba.
17 Have I summarized that fairly?

18 MS. PASTORA SALA: Yes.

19 MR. BEDFORD: I think as Mr. Williams
20 quickly outlined for us at the outset, and as I
21 well know, with respect to the Environment Act in
22 particular there has been a detailed and lengthy
23 review by the Law Reform Commission of this
24 province. And secondly, I now gather the province
25 itself has taken in hand recommendations and a

1 report from the Law Reform Commission and is
2 conducting its own public consultation about
3 proposed changes to the Environment Act. So we
4 have those two processes, one behind us, one
5 underway? Have I got that correct?

6 MR. WILLIAMS: To our understanding,
7 yes. I do believe that there is a further
8 commentary coming from the Law Reform Commission
9 perhaps in May, but I understand there is
10 something more yet to come.

11 MR. BEDFORD: Do I conclude correctly
12 that you are here today now recommending that a
13 third party, a third body, namely the Clean
14 Environment Commission of Manitoba, weigh into
15 recommending changes to the Environment Act by
16 passing on recommendations and advocacy that you
17 have provided here?

18 MR. WILLIAMS: I don't think these
19 recommendations are aimed at the Environment Act
20 per se, Mr. Bedford. I think if you go to the end
21 of our report, there is a section called lingering
22 questions. And in that section we, at page 73, at
23 least in our printed version, just above
24 concluding remarks we flag a lingering question
25 that we have, which is what is the appropriate

1 legislative vehicle to achieve change? And we
2 outline four potential approaches.

3 One might be an approach such as
4 British Columbia overtook, which was the Water
5 Sustainability Act. Another might be
6 environmental legislation. Another which might
7 give Mr. Matthews heart palpitations, might be the
8 Water Powers Act, or some combination. So we were
9 diagnosing what seemed to us a legislative vacuum
10 in terms of the environmental regulation legacy or
11 existing projects. We weren't opining in our
12 options in terms of where that should go. So it
13 is possible, I guess, the Clean Environment
14 Commission might go so far as to say these should
15 be changes to the Environment Act. Who knows?

16 I will acknowledge, though, sir, that
17 in terms of recommendation one, there are some
18 specific ones that are aimed right at the
19 Environment Act. One of them would be this
20 existing operations, clarifying existing
21 operations which we think would be important
22 clarification for that department.

23 MR. BEDFORD: So am I to understand
24 from that answer that, indeed, you are inviting
25 these four commissioners to weigh in to making

1 recommendations with respect to changes to the
2 Environment Act?

3 MR. WILLIAMS: We have said that
4 there's a law reform problem. One of those
5 vehicles is the Environment Act. And certainly
6 the voice of the Clean Environment Commission,
7 from our perspective, on that point would be
8 welcome. And I doubt very much that the Law
9 Reform Commission or the province would find that
10 objectionable.

11 MS. PASTORA SALA: And just to add to
12 that quickly, just go back to one of the main
13 findings of what we have heard and what we have
14 learned is that there is a need for a more
15 coordinated approach to water governance in
16 Manitoba. So, what that might look has yet to be
17 seen. However, we have heard that there is a need
18 for guidance.

19 MR. BEDFORD: Is one on the path to
20 better coordination when you start to ad hoc ask
21 important bodies like the Clean Environment
22 Commission to weigh in on law reform processes
23 that are already understood and outlined and
24 underway, or are you perhaps being
25 counterproductive when you do that?

1 MR. WILLIAMS: I guess that's a matter
2 of judgment. We see certainly in our experience
3 legislative development is iterative. I don't see
4 anything ad hoc in the two months of thought our
5 interdisciplinary team put into this. And I think
6 the fact that the Clean Environment Commission, to
7 its credit, has been profoundly engaged with
8 Manitobans on an issue that has perhaps been
9 understudied, would be an important valuable
10 additional resource to these deliberative
11 processes.

12 MR. BEDFORD: One final question that
13 you may or may not have any comments on. We have
14 been here in the City of Winnipeg for about four
15 weeks now. We all began with the understanding
16 that Lake Winnipeg is vital to Manitoba, that Lake
17 Winnipeg Regulation is a serious, often
18 controversial project, and yet I find myself
19 sitting here for four weeks in a city where half
20 the population of the province lives, with respect
21 to a lake and a project, and with respect to the
22 lake I am told and I believe that a good half of
23 the population of Manitoba has some personal
24 connections to the lake, people keep telling us
25 that. And yet the room is virtually empty at this

1 hearing in Winnipeg day after day. Do I draw the
2 conclusion that, in fact, it's not entirely
3 accurate to say that Manitobans care a lot about
4 the lake and that they are seriously interested in
5 Lake Winnipeg Regulation, when they don't bother
6 to come, when the local media seems to ignore this
7 hearing for four entire weeks? Do I draw any
8 conclusion from the relative absence, other than
9 12 citizens out of 1.1, or out of five or 600,000
10 that live in Winnipeg who bother to come forward
11 and speak?

12 MR. WILLIAMS: Way outside our scope,
13 but I'll happily take this one, and I think my
14 colleague -- it's a very interesting question.
15 I'll answer it in a three-fold way, I guess.

16 First of all, reading the manner in
17 which certain Manitoba policy communities have
18 engaged in this, we would draw a different
19 inference. We think people have been very
20 engaged, including in the Winnipeg discussions.
21 We'll accept your point that there haven't been a
22 lot of people show up at the hearings. Certainly,
23 there is a cynical attitude towards government
24 generally, and perhaps in particular on this
25 issue. The level of interest in this issue, by

1 anecdote, I would suggest is quite high. But
2 that's a personal observation. Ms. Pastora Sala
3 may have different views.

4 MS. PASTORA SALA: No. The only thing
5 I might add to that would just be to point to some
6 of the literature on effective engagement, which
7 states that effective engagement means offering a
8 variety of tools for engagement. So whether that
9 may be going to the communities, sitting in
10 kitchens and listening to people, such as the
11 Berger Inquiry, for example, or bringing the
12 hearing to the people, which in part the Clean
13 Environment Commission has already done by going
14 to the various communities around the lake. Just
15 pointing to the importance of effective engagement
16 and bringing forward a wide variety of ways, I
17 think is key to answering your question,
18 Mr. Bedford.

19 MR. BEDFORD: Thank you both. I'm
20 finished.

21 MR. WILLIAMS: Thank you.

22 THE CHAIRMAN: Thank you, Mr. Bedford.

23 I'll turn to the participants and ask
24 if they have any questions, with the usual caveat
25 that only if these witnesses have presented

1 anything that might pose a problem for your
2 presentations. Mr. Shefman?

3 MR. SHEFMAN: Thank you for your
4 excellent presentation. We certainly agree with
5 much of it. I just wanted to clarify a number of,
6 a few points, I shouldn't be very long.

7 Your recommendations with respect to
8 revisiting governance of Lake Winnipeg and, well,
9 all of your recommendations really, we have had
10 some disagreement at these hearings as to the
11 impact Lake Winnipeg Regulation has had on
12 communities, resource users and others living
13 upstream of Lake Winnipeg Regulation, or of the
14 facilities in any event. Do your recommendations
15 anticipate incorporating people and communities
16 upstream as well as downstream?

17 MR. WILLIAMS: Absolutely. And if
18 that wasn't clear, I apologize. And one of the
19 reasons we chose to focus on the wetlands issue is
20 because in terms of at least research and
21 analogous jurisdictions, and the impact of
22 compression of lake variability, there seems to be
23 an important body of research that's been done, at
24 least in the Laurentian Great Lakes context, that
25 has articulated that. So that's the one we picked

1 for that point. So, certainly we anticipated that
2 there are important ramifications of Lake Winnipeg
3 Regulation upstream and downstream.

4 MR. SHEFMAN: Thank you.

5 Mr. Chairman, I can note that my client agrees
6 with and adopts much of CAC's evidence. Thank
7 you.

8 THE CHAIRMAN: Their position is
9 hardly adverse to your position.

10 MR. WILLIAMS: Mr. Chair, if I might,
11 I'll just say that we're retained by CAC Manitoba.
12 They have not adopted the recommendations that we
13 have presented at this point in time.

14 THE CHAIRMAN: Thank you,
15 Mr. Williams.

16 Are there any other questions, again
17 with that caveat? Mr. Sutherland? I'm sorry, I
18 keep making that mistake, you are much better
19 looking than Mr. Sutherland.

20 MR. STEVENSON: He's my cousin. In
21 Anishinaabe, we're all here.

22 I want to get back to page 61, the
23 bottom of your recommendation, it has to deal with
24 Treaty and Aboriginal rights. I just want to ask,
25 are you aware of any consultation and

1 accommodation projects that are underway with
2 respect to the Lake Winnipeg Regulations around
3 Lake Winnipeg? Are you aware where the Crown has
4 involved First Nations in the consultation
5 process?

6 MR. WILLIAMS: Mr. Stevenson, I'm not
7 personally aware of whether they have or not. I'm
8 not sure if Ms. Pastora Sala -- she's shaking her
9 head, so we're not personally aware of the state
10 of consultation.

11 MR. STEVENSON: Okay, that's fine.
12 Thank you.

13 THE CHAIRMAN: Thank you,
14 Mr. Stevenson. Any other participant questions,
15 again with that caveat? Okay, thank you.

16 Some panel questions, Mr. Yee?

17 MR. YEE: Yes, thank you. I'd like to
18 ask a follow-up question that was asked by
19 Mr. Bedford regarding the short-term
20 recommendation two, and the requirement for the
21 EIS. I was just wondering, what will you envision
22 the study area for the EIS to be?

23 MR. WILLIAMS: I'm not sure we're
24 there yet, but as a starting point we thought that
25 Mr. Cormie had some good advice when he

1 highlighted the fact that it's very challenging to
2 disaggregate Lake Winnipeg Regulation from Kelsey
3 from CRD. So more learned persons than I could
4 probably scope that out. But when we wrote the
5 recommendation, that's in essence what we were
6 thinking of.

7 MR. YEE: Thank you, Mr. Williams.
8 This is sort of, rather than set you up I'm going
9 to read this whole thing out here. Who would be
10 the proponent of the EIS?

11 Now, given that we have heard
12 throughout the hearing that the decision-making
13 process for Lake Winnipeg Regulation is not open
14 enough, not transparent and not participatory,
15 wouldn't it make sense to have some sort of
16 cooperative body or board comprising of key
17 stakeholders that would work jointly together to
18 develop mutually acceptable options and develop an
19 EIS on a water management plan together? Do you
20 have any comments on this?

21 MS. PASTORA SALA: Thank you for the
22 question, Commissioner Yee.

23 Based upon what we have read and heard
24 and certainly on the advice of some of the experts
25 we have been working with, it's too soon to make a

1 determination of whether or not that is something
2 that is needed. This would be perhaps something
3 that the multi-party Lake Winnipeg task force
4 could examine.

5 We would like to note, however, and
6 this was something that was pointed to in both the
7 Wuskwatim and Bipole III reports by Drs.
8 Fitzpatrick, Diduck, as well as Robson, is that
9 whether or not we have a board, whatever that may
10 look like, the board must have a clear mandate,
11 clear authority to implement the mandate, as well
12 as it must be adequately funded. And this board,
13 if we go back to one of the questions we heard
14 earlier by Mr. Bedford, this board may also need
15 steering committees with technical expertise.
16 However, I go back to my first line which was,
17 it's too soon to tell.

18 MR. YEE: Thank you. One last
19 question.

20 In our session yesterday with
21 Pimicikamak, Dr. Luttermann indicated that during
22 the question period, setting objectives for water
23 management regime should be one of the central
24 issues that needs to be resolved in discussion of
25 a new operating regime for Lake Winnipeg

1 Regulation. I wonder, would you agree with that?
2 Do you have any thoughts on that setting process,
3 objective setting process?

4 MR. WILLIAMS: How could we disagree
5 with Dr. Luttermann?

6 I think we have tried to get at that
7 in a different way when we talked about holistic
8 and inclusion and an effort to achieve balance.
9 And we weren't there for her evidence, so I'm not
10 sure. So at a global scale, we think there should
11 be an articulated, or at least in the menu of
12 options there should be an articulated way,
13 acknowledgment that we're trying to balance some
14 of these objectives.

15 We have seen in some of the processes,
16 whether it's certainly Glen Canyon or the Grand
17 River in Ontario, where articulated water
18 objectives I think have been very valuable. And I
19 am not sure I understand the context of her quote,
20 but there is an excellent report just out in terms
21 of the Grand River process in Ontario, where they
22 talk about how they literally disaggregate the
23 river into certain sections. They have water
24 management quality objectives and habitat
25 objectives for each part. And if that's what

1 Dr. Luttermann was getting at, that would be very
2 consistent with what we have seen and read.

3 MR. YEE: Thank you very much. Those
4 are my questions, Mr. Chairman.

5 THE CHAIRMAN: Mr. Harden?

6 MR. HARDEN: Thank you.

7 I'm going to focus initially on your
8 recommendation three. We have, you know, two --
9 well, a number of different things going on. We
10 have the immediate issue of what happens with the
11 interim licence, you know, what we have been asked
12 to review and comment on, and that sort of thing.
13 This has been done in the context of, you know,
14 the next licensing period being not really that
15 far away in terms of the future. And also hearing
16 from Manitoba Hydro that they want a road map as
17 to proceed for the future licensing.

18 Now, you state, you know, first of
19 all, if under your recommendation, if the Minister
20 does make the conclusion that Manitoba Hydro has
21 complied with their licence, would you foresee
22 then a recommendation coming forward to give them
23 the final licence?

24 MR. WILLIAMS: As we understand the
25 legislation, if the Minister concludes that they

1 have fulfilled their obligations, there's an
2 obligation to provide the licence. He can impose
3 terms and conditions, but certainly if the
4 Minister applying the statute reaches that
5 conclusion, our understanding of how the
6 legislation works is that they are entitled to
7 that licence.

8 MR. HARDEN: Okay. Now, we have also
9 heard from a number of people, a number of
10 deficiencies, not only from Manitoba Hydro but
11 from many of the other participants, deficiencies
12 in terms of the understanding of the impacts on
13 the environment and all that sort of thing. And
14 those sort of studies would take presumably some
15 period of time to do.

16 Now, you state that, you know, clear
17 expectations, responsibilities and timelines for
18 the future licensing process should be set out,
19 but you are also making perhaps an even longer
20 range recommendation of change in the legislative
21 environment, renewal of that. Would you not think
22 that the legislative environment should be
23 renewed, reformed, before the next licensing
24 period begins?

25 MR. WILLIAMS: Well, if you buy the

1 thrust of the argument, I think that's fair. I
2 want to make sure I'm being responsive to your
3 question. I just want to note at page 63, we
4 actually walk through some of the elements that we
5 thought might be clarified. And one of the points
6 I would just make is, while the term could go out
7 to 2026, our reading of the legislation doesn't
8 suggest it has to. And so one of the things we
9 have been just mulling around is, given the sense
10 of concern being articulated, certainly both
11 upstream and downstream, whether one should make
12 the licence returnable to 2026, or perhaps choose
13 a shorter duration which might give some incentive
14 to move things along to the degree possible. We
15 accept your point that the road map, we may not be
16 able to immediately sketch out the road map if
17 there's a legislative process involved, but we
18 presume that some of the items, like developing a
19 transparent, open, hydrological model, some of
20 those might be things that could certainly, tools
21 to assist in the deliberations. Certainly
22 research that might assist in the deliberations,
23 Dr. Luttermann has talked about ecological flows
24 and how important those are, some of that insight.
25 There's a lot of work that could be done. So we

1 do accept your point that there will be
2 imperfections in the road map, because we don't
3 know what will happen in terms of the legislative
4 review. But we looked at what happened in B.C.,
5 five years to develop that legislation.
6 Certainly, we think that the Minister might be
7 advised to give some guidance for the road map, at
8 least in the interim.

9 MR. HARDEN: Okay. That would depend
10 then, any legislative change would depend upon
11 political will. And, you know, who knows if that
12 would be in place? Certainly with the election
13 almost already starting, one can predict perhaps
14 paralysis in the next few months until that is
15 settled one way or another. I'm just concerned
16 that there might not be the political will in the
17 future to tread in those murky waters, so to
18 speak.

19 MR. WILLIAMS: I think what we have
20 read and heard is that political will is a
21 critical component in all these processes. I
22 think we quote Rogers and Hall to that effect.

23 I'll simply note, we have seen robust
24 responses, at least from what we have read, in a
25 variety of jurisdictions, British Columbia, the

1 Yukon in an earlier time, the Northwest
2 Territories. There have been robust responses
3 from a variety of political perspectives
4 suggesting how important these issues are. Your
5 point of political will is well taken, but I'm not
6 saying it's a non-partisan issue, but
7 modernization efforts have proceeded from a
8 variety of political perspectives.

9 MR. HARDEN: Okay. And would you see
10 that, we have heard from the Baird & Associates
11 that Manitoba has perhaps one of the weakest
12 regulatory climates in terms of restricting
13 development in hazard prone areas and that sort of
14 thing. Would you see that sort of reform
15 extending down to that level?

16 MR. WILLIAMS: Yeah. We were retained
17 on water governance, and I think it was Baird &
18 Associates who, Mr. Cizek I think talked very much
19 about the shortcoming. We didn't address the
20 recommendation, but that was in the same vein as
21 we have been. Certainly, I think it's very
22 analogous to what we're suggesting. You may hear
23 more from our client on that next week in terms of
24 Baird, in terms of shoreline protection and the
25 more robust approaches. But I think that's very

1 sympathetic to what we're arguing in terms of
2 water governance.

3 MR. HARDEN: Okay. A couple more
4 questions on the legislative regimes. You examine
5 three Canadian jurisdictions, B.C., Northwest
6 Territories and Yukon. Did the Acts in each
7 jurisdiction address hydroelectric grandfathered
8 projects?

9 MR. WILLIAMS: We actually looked at
10 five jurisdictions in Canada. We looked at
11 Saskatchewan and Alberta. And I think in some of
12 our recommendations you may see a few, but we
13 reported on three of them because we thought they
14 were of most interest.

15 I'm going off of memory here, but I
16 think section 23 of the Water Sustainability Act
17 in British Columbia does speak to legacy projects
18 at least to some degree. I could pull it up for
19 you, you know, as an undertaking, if that would be
20 of assistance. We do refer to it briefly in our
21 report.

22 My recollection of that section, and
23 I'm going off of memory, I think it only applies
24 to projects licensed either before or after 2003,
25 you know, I'm going off of memory here. But it

1 does provide for a 30-year review. So it does
2 truncate the time frame. I think we call it the
3 30-year review clause. So that's the one that
4 comes immediately to mind in terms of attempting
5 to address a legacy project, which is what you
6 would expect given B.C.'s heavy reliance upon
7 hydro power.

8 By way of undertaking, we'd be happy
9 to do this, we could review our notes and see if
10 there are other reference to legacy projects, we'd
11 be happy to do that. But I think the one that I'm
12 thinking of is section 23 of the Water
13 Sustainability Act in B.C. But I would make an
14 undertaking to review our notes and see if there
15 are other examples, and also to articulate that
16 particular section a bit better than I have
17 ineloquently done right now.

18 MR. HARDEN: Thank you.

19 Now, on page 24 you mentioned that,
20 with respect to Northwest Territories, in the
21 Waters Act there is expressed protection for
22 Aboriginal water rights. Can you explain how
23 Aboriginal water rights are defined in this Act?

24 MR. WILLIAMS: We're going to try and
25 dig up that specific reference, page 24.

1 Ms. Pastora Sala, I don't know if you have
2 anything to comment. I think I have my notes on
3 that section right here.

4 MS. PASTORA SALA: Sorry, can I ask
5 you to repeat the question?

6 MR. HARDEN: Okay. The Northwest
7 Territories Waters Act, how do they define
8 Aboriginal water rights? Is it defined in the
9 Act?

10 MR. WILLIAMS: We're looking that up
11 as we speak. We have that reference here. So
12 with your forbearance, if you wanted to proceed to
13 the next question, then we'll see if we can pull
14 it up.

15 MS. JOHNSON: When we have our little
16 break here, did you want an undertaking of that
17 information or not?

18 MR. HARDEN: Yes, I do.

19 MS. JOHNSON: Okay, we'll just record
20 that as undertaking number one. Thank you.

21 (UNDERTAKING # CAC 1: Review notes and provide
22 further examples of legacy projects)

23 THE CHAIRMAN: We'll see if they can
24 supply it. We'll see.

25 Mr. Williams, would you prefer to do

1 it as an undertaking?

2 MR. WILLIAMS: Yeah, and I apologize
3 for that. I have it right here, but I'm
4 struggling with my rapidly deteriorating eyesight.
5 So we'll articulate how the rights are spelled out
6 in the NWT. And if I might suggest, it's up to
7 panel member Harden, but I think there's some
8 analogous provisions in the Yukon, whether under
9 the umbrella framework agreement or final
10 agreement or not, that might be useful. So if
11 that would be helpful, we would try and capture
12 from both of those jurisdictions.

13 MR. HARDEN: Certainly, yes.

14 (UNDERTAKING # CAC 2: Advise how Aboriginal water
15 rights are defined in NWT and Yukon)

16 MR. WILLIAMS: I apologize for not
17 having it right at hand.

18 MR. HARDEN: Okay. Those conclude my
19 questions.

20 THE CHAIRMAN: Ms. Suek?

21 MS. SUEK: I'd just like to follow up
22 on a couple of Mr. Harden's questions, just to
23 make sure that I am understanding it.

24 On your slide number 39, these
25 hearings are under the Water Act and not the

1 Environmental Act, as you have said on that. But
2 you are implying in here that, even though it's
3 not under the Environment Act, that there could
4 be, as one of the recommendations to government
5 that an environmental assessment be done under the
6 Environment Act. Is that what you're saying in
7 that slide?

8 MR. WILLIAMS: I'm going a little bit
9 further, just so I'm clear. In the terms of
10 reference there is an assertion that this is not
11 under the Environment Act.

12 MS. SUEK: Right.

13 MR. WILLIAMS: We have looked for a
14 statutory basis for that assertion and have not
15 found it, unlike what we have seen under NWT
16 legislation or B.C. legislation. So in terms of
17 your premise, we think it's robustly arguable that
18 the Minister does have jurisdiction under section
19 12.2.

20 How I would frame the recommendation
21 as part of the options, I guess that might be up
22 to our client, but there might be two ways to
23 address it. The Minister might be asked to
24 revisit the question of whether they have
25 jurisdiction under section 12.2, otherwise going

1 perhaps to Mr. Bedford's point, it seems to us
2 arguably that this is a pretty significant hole in
3 the legislation and is part of the current
4 Environment Act review. So I guess I'm suggesting
5 there's two ways to try and address it. We
6 personally believe that, professionally, I guess
7 we believe that the Minister would be advised to
8 revisit that earlier determination and perhaps it
9 was made in haste.

10 MS. SUEK: Okay, thank you. In terms
11 of this multi, what was it, multi-group,
12 multi-faceted whatever, task force, I think it's
13 kind of early days to figure out how that's going
14 to be governed and reporting and all that. So I
15 would just like your opinion on how broad you see
16 this in terms of the mandate, just what you would
17 think? Are you including, you know, in some of
18 your slides you talk about water in relation to
19 dams, and some you talk a little bit broader than
20 that. Are you thinking of a group that would
21 regulate -- not regulate, that would oversee sort
22 of water in relation to the dams, the erosion, the
23 pollution? Like, are you talking about a very
24 broad sort of mandate?

25 You know, we heard quite a bit of

1 information from people about the pollution in the
2 lake, and algae, and it's not part of our mandate
3 to really address that. Are you seeing this in
4 relation to the development of dams in Manitoba,
5 or are you seeing it as water generally and the
6 interest of Manitobans in maintaining the water?

7 MR. WILLIAMS: I just want to clarify
8 first. So I don't know if you have a paper
9 version of our report, but if you pulled up page
10 60, as well as put a finger on appendix 4.

11 MS. SUEK: On page 60 you said?

12 MR. WILLIAMS: Sixty, which should
13 have the intermediate recommendations, because I
14 think we're talking about two different things.

15 First of all, on page 60, we are
16 articulating recommendation 1 and a multi-party
17 Lake Winnipeg task force. And Ms. Pastora Sala
18 may embellish the discussion a bit. But that's to
19 really build on the sense of exclusion, and to
20 take the no doubt robust recommendations of the
21 commission and start engaging with the public. So
22 that's really a short-term action item.

23 MS. SUEK: Okay.

24 MR. WILLIAMS: So that's part one. If
25 you go to appendix 4, we're talking about

1 governance structure in this appendices, and there
2 are different models of governance structure. And
3 what we have heard and what we have been advised
4 is it's too early, and we're talking more to folks
5 and to the government and to Hydro to figure out
6 what the next step is. But what we have set out
7 in this appendices are four examples of different
8 ways to go at good governance over the longer
9 term. And that goes to governance structure.

10 The other question you were asking, at
11 least as I understand it, is how wide is the
12 mandate? And that I think is a really important
13 question that I am not going to be bold enough in
14 this role to go to. I'll just point out a couple
15 of examples and then I think my colleague,
16 Ms. Pastora Sala, may have something more to say.

17 The mandate of the Northwest Power,
18 the NWPCC or whatever the acronym is, is very
19 robust. Wildlife and habitat, energy efficiency,
20 power planning, there are others that are more
21 limited or in different directions. She probably
22 has something more thoughtful to say than I do.

23 MS. PASTORA SALA: I just want to add
24 to what Mr. Williams is saying. With regard
25 specifically to the multi-party Lake Winnipeg task

1 force, it's a long name, my apologies, I think
2 it's important, and I'm glad Mr. Williams divided
3 the two from the urgent immediate task force that
4 need to be done, and then the more long-term water
5 board or whatever we're going to call it,
6 long-term. The multi-party Lake Winnipeg task
7 force, when we're thinking about its mandate,
8 based on what we have read, it's important that
9 that mandate is very specific, particularly given
10 we have recommended that this emergency type work
11 be undertaken within a short period of time, and
12 be undertaken within six months. So it must be
13 specific enough so that work can actually be done.
14 So this is why we have proposed, not that the task
15 force try to establish a whole new plan of action,
16 or even to go back to the multitude of reports
17 that have already been done on Lake Winnipeg, but
18 to bring the specific recommendations of the Clean
19 Environment Commission, and to hear what those
20 around the lake have to say about those
21 recommendations, and as well identify the
22 knowledge gaps and uncertainties. So this
23 specific task force --

24 THE CHAIRMAN: Could we not have any
25 conversations in the back of the room, please?

1 Proceed, please.

2 MS. PASTORA SALA: Just to finish up
3 on that, just to say that the task force would
4 need, what we're proposing is a very specific
5 mandate for the task force. However, it may be
6 different for the water board -- or I hesitate to
7 call it a water board, but whatever it is, a more
8 long-term plan.

9 MR. WILLIAMS: And finally, I referred
10 you to appendix 4. In the main body of the brief
11 at page 41, approximately, right towards the end
12 of chapter 3, we do articulate different
13 institutional structures, different models that
14 have been taken. One of them is a basin, or
15 problem based commission, and we see some examples
16 of that in Europe. Model two is more tailored,
17 it's like the Glen Canyon Dam in Colorado, really
18 focused on one specific area, and the health of
19 that downstream in particular. We have also, we
20 have heard already in this hearing about
21 stand-alone basin commissions, like the Murray
22 Darling Basin authority, the Fraser Basin. And
23 finally, there's a couple of examples of Crown
24 corporations that we have identified.

25 The more successful arguably is the

1 Tennessee Valley Authority in terms of its
2 approach to governance. And so we thought, based
3 upon what we have heard, that it was premature to
4 make a recommendation. We wanted to articulate
5 some different approaches. And we have a lot
6 written in our notes about that, but that's
7 basically as far as we have gone.

8 MS. SUEK: So these examples that you
9 referred to, do they have a limited mandate, or
10 are you talking about ones that have an overall
11 mandate on water quality?

12 MR. WILLIAMS: There are both. Like,
13 for example, I think Lake Simcoe, which is not on
14 this list is focused on the whole lake, you know.
15 And so that is open for deliberation. And those
16 are beyond my pay grade in this hearing in terms
17 of what's the best approach. And I think what we
18 had been told is these are the types of issues we
19 need to engage with, the policy community,
20 including Hydro, and with government on it, it's
21 beyond what we can go this week.

22 MS. SUEK: Okay, this week. Let me
23 just check my notes here.

24 When you talk about a multi-party,
25 you're talking upstream and downstream. You know,

1 there are some communities which have been
2 adversely, significantly adversely affected by the
3 Lake Winnipeg Regulations, you know, the
4 downstream people. You know, I guess there's
5 another way of dealing with that. I mean, if they
6 are a member of a multi-party group, those
7 concerns, I wonder if they can be addressed or if
8 they need to be addressed in a different kind of
9 manner. I mean, there's some people who have been
10 particularly affected by Lake Winnipeg Regulation.
11 I guess, you know, being part of a group of, you
12 know, 20 people, I'm just wondering how you
13 particularly address those issues, or do you see
14 that as being done in another kind of forum?

15 MR. WILLIAMS: I think we'll both take
16 a shot at this.

17 First of all, I think the conception
18 of this group, and we accept Mr. Bedford's advice
19 that we probably may have excluded some, but there
20 is a trade-off between inclusion and getting
21 things done in a tight group. I don't think we
22 ever conceived of this being 20 folks. I think
23 what we were thinking of was a smaller adequately
24 supported organization that was hard hitting,
25 tight mandate.

1 I understand your point that perhaps
2 the voices downstream might be subsumed. But it's
3 a complex issue, and addressing downstream issues
4 has implications for upstream and vice versa. And
5 certainly, based on what we have seen and heard,
6 we don't think that you're going to get there by
7 segregating these -- I'm not suggesting you meant
8 that. But I think if I recall Dr. Luttermann's
9 written evidence, she spoke of a collaborative
10 process. And I certainly understood her to
11 envision upstream and downstream. And there may
12 be some occasions, again, we're probably going
13 beyond our expertise, but some of the ecological
14 flow objectives downstream may be, there may be
15 some surprising compatibility in certain cases
16 where it might work out. And you know, who knows
17 until you try? Certainly that was the thrust of
18 getting both communities together.

19 And Ms. Pastora Sala has done a lot
20 more thinking on this than me.

21 MS. PASTORA SALA: Well, what I might
22 just add would be that when you include people in
23 the decision-making body, then you are directly
24 involving them and, therefore, they are reflected
25 in the process itself. So the recommendations

1 that would come from this task force would be a
2 reflection of both upstream and downstream
3 individuals, and governments and non-government
4 organizations, given that they would be part of
5 the decision-making authority itself, rather than
6 an external body going and engaging with all of
7 these individuals.

8 MS. SUEK: Yeah, I certainly hear that
9 and, you know, perhaps there's another sort of
10 process to deal with the adverse effects. And
11 this is more of a communication monitoring role
12 that this task force might have.

13 MR. WILLIAMS: I'm not sure it's a
14 monitoring, because, again, this is on a tight
15 time frame.

16 MS. SUEK: Right.

17 MR. WILLIAMS: I think we saw this,
18 and Ms. Pastora Sala can elaborate, but as a hard
19 hitting, let's take the CEC report, let's get out
20 there and let's start to work through that report
21 and some of those important issues. How do we
22 value, you know, as we move forward, how are we
23 going to value, if we are going to look at value
24 of ecological services, how do we balance a more
25 holistic indigenous perspective? Some of those

1 tough questions that I think may flow from where
2 the CEC goes.

3 MS. PASTORA SALA: Yeah. And
4 recognizing too that, one of my favourite quotes
5 in the report is at footnote 200, recognizing that
6 conflicting views, or supposedly conflicting views
7 are sometimes not necessarily conflicting, rather
8 they are coming from different perspectives or
9 different worldviews. And so this task force
10 would be including those different worldviews and
11 addressing the issues inclusively.

12 MS. SUEK: Okay, thank you.

13 THE CHAIRMAN: Thank you. Ms. Suek
14 scooped a big part of my questions, so...

15 MR. WILLIAMS: Good.

16 THE CHAIRMAN: Well, I'm going to
17 challenge you a little bit more on the same topic.
18 I am just going to test to see if in your research
19 you came across anything in relationship to Lake
20 Winnipeg Management Boards? And in 1972, in this
21 document, Program for Regulation of Lake Winnipeg,
22 it states that Manitoba Hydro would not control
23 management of the lake, but it would be left to
24 something called Lake Winnipeg Management Board
25 which consisted of a handful of public servants, a

1 couple of senior Manitoba Hydro officials, as well
2 as a university professor who is also chair of the
3 Manitoba Water Commission. And I think it existed
4 until about 1975 and I haven't come across any
5 reason why it ended or what it did during those
6 years. I'm just wondering if you came across any
7 of that?

8 MR. WILLIAMS: Nothing is springing
9 right to mind, although I remember seeing a
10 reference to it. Now, we did a fair bit of
11 archival work back last spring, and I haven't, in
12 honesty, gone back through that. So I don't have
13 any answers to what happened. We may have come
14 across it in our research from last spring, but I
15 didn't review it.

16 THE CHAIRMAN: In the Lake
17 Winnipeg/Churchill and Nelson River Study Board
18 report, they recommended establishment of a
19 management board for Lake Winnipeg to do much the
20 same I think as this earlier board. Did you come
21 across anything that suggested it was ever
22 established?

23 MR. WILLIAMS: Ms. Pastora Sala is
24 diligently Googling something. I'm not sure.
25 Perhaps if we can move on to other questions and

1 then we'll see what, if anything, she digs up.

2 THE CHAIRMAN: Sure.

3 MR. WILLIAMS: You're seeing a blank
4 expression on my face, if that helps. Not
5 unusual.

6 THE CHAIRMAN: I have a gap in my
7 knowledge about that, so I thought maybe you may
8 have come across it because you have done some
9 work on a management board of some sort.

10 In your report and in your
11 presentation today, you talked about a balance
12 between economic and power values, and ecological
13 values or benefits. In talking about that, you
14 talked about the NFAT process and the
15 environmental assessment process. Are you
16 suggesting, or do you think it would be a good
17 idea to have both of those reviews done by one
18 board, if you're looking for a balance between the
19 two? Could you achieve a fair balance under two
20 separate review processes?

21 MR. WILLIAMS: I don't think we're
22 going so far as to recommend that right now. But
23 we're struggling a lot with this issue in the
24 sense that, certainly based upon our professional
25 experience we're seeing parallel, very

1 sophisticated processes, and we see some
2 intersection and overlap. Whether it would be too
3 cumbersome to address them in one is a question.
4 We would say this, certainly on the consumers'
5 side, we see the achievements in the Pacific
6 Northwest in terms of energy efficiency being
7 flagged as notable, a kind of integrated planning
8 approach there. And we note that that's an area
9 where there's also an ecological, a wildlife
10 approach as well.

11 And the numbers, Dr. Fitzpatrick --
12 well, I'll back up. The numbers that had been
13 invested out of the Pacific Northwest are quite
14 notable. Putting on the consumer hat, you know,
15 you always have to have that balance, but
16 jurisdictionally they have among the lowest
17 American rates. And sometimes good environmental
18 investments may have payoffs for consumers as
19 well.

20 THE CHAIRMAN: A few of us in this
21 room, including you, Mr. Williams, will recall the
22 Wuskwatim process where we did both NFAT and EIS
23 review. And my feeling about that, it was not a
24 very good process, it didn't work well, perhaps
25 because it was just too hastily done and not

1 properly mandated. There are other jurisdictions
2 under CEA or under the NEB, or I am thinking of
3 one of the Alberta review boards does both.

4 MR. WILLIAMS: Yeah, I guess I would
5 say in terms of Wuskwatim, I can't speak for the
6 panel, but a lot of us in that room were rookies,
7 both on the need for, on the economic side and the
8 environmental side. And certainly when we had
9 been thinking about it, one way to look at it is
10 how we do assessments. But the other issue that
11 we are flagging just for consideration at this
12 point in time is how we do it for planning. And
13 that's why we think some of these different
14 examples are useful to at least promote thought.
15 And at the very least, I think in exchange, or a
16 working meeting between the Clean Environment
17 Commission and the Public Utilities Board might be
18 useful. And if recommendation five of the
19 intermediate recommendations, the modeling
20 project, for example, was proceeded with, you
21 would think that that would be a very useful tool
22 both on the Public Utilities side and on the
23 environmental side. So we see, perhaps being
24 incrementalists, some ways to experiment with
25 this.

1 Ms. Pastora Sala is keeping you in
2 suspense, but she still hasn't found your
3 reference. Oh, apparently she has.

4 THE CHAIRMAN: You think you were a
5 rookie in the Wuskwatim process. I was appointed
6 to the Commission one day, and the next day I had
7 my first panel hearing, a motion hearing.

8 MR. WILLIAMS: We couldn't tell,
9 honest.

10 MS. PASTORA SALA: If I could,
11 Mr. Chair, just go back to your question earlier?
12 The Province of Manitoba established the Lake
13 Winnipeg Management Board in 1971, and that was
14 active until 1975. And then in 1972, there was
15 the Manitoba Water Commission. But that Water
16 Commission was, it was established by the Water
17 Commission Act, which was actually repealed in
18 2006. So, to our understanding, since 2006, this
19 commission no longer exists.

20 THE CHAIRMAN: Thank you.

21 Mr. Williams, in your dialogue between
22 you and Mr. Bedford earlier, Mr. Bedford noted the
23 difficulties of requiring two separate licences,
24 one under the Water Power Act, one under the
25 Environment Act. In an ideal law reform

1 situation, perhaps they might all be subsumed into
2 one act, or the Water Power Act might have
3 environmental assessment requirements attached to
4 it. Would something like that work or --

5 MR. WILLIAMS: Whether it would work,
6 good luck with that. I think we have seen
7 examples of attempts to achieve efficiency by
8 agglomerating, you know, combining those
9 functions. And so I think it's potentially
10 useful, at the risk of sounding wishy-washy.

11 The Water Power Act, as it currently
12 is constructed, you know, I think we all know it
13 goes back to 1903 through the Dominion Water Power
14 Act, it would have a lot of growing to do to be an
15 effective vehicle. That's certainly my view. We
16 have struggled -- that's why we left that almost
17 as a lingering question -- what's the best
18 mechanism? Probably trade-offs both ways. But I
19 think you are seeing efforts to either better
20 integrate these approaches or to combine them.

21 THE CHAIRMAN: Thank you. I think I
22 have just one more question and it's a short
23 snapper.

24 You referred to gaps and silos in
25 Manitoba, and you made a crack about being a farm

1 boy and not knowing what a silo was, at least in
2 this context. Perhaps you might explain a little
3 bit more. Is silo just another term for gap?

4 MR. WILLIAMS: No. I think by gaps,
5 we were referring to knowledge shortfalls,
6 ecological flow, that whole area, the wetlands of
7 Lake Winnipeg.

8 By silos we were referring to a
9 variety of things. I think Mr. Cormie was
10 referring to having Hydro projects whose effects
11 are so intimately intertwined that you can't
12 divide them, and the inefficiencies of looking at
13 them in a silo type approach. I don't think he
14 used those words, but he certainly seemed to infer
15 that.

16 We were also referring with that
17 headline to silos that we might see between, for
18 example, the Public Utilities Board and the Clean
19 Environment Commission would be another example.
20 And at least in terms of these existing
21 structures, the section we have on licensing is
22 kind of, in the appendices is kind of heavy. But
23 you'll see in a licence out of the Northwest
24 Territories reference to having to meet dam safety
25 requirements.

1 So you see, certainly from our
2 perspective, a closer integration between
3 different pieces of legislation. So silos
4 referred to integrated operations, it referred to
5 tribunals, but it also referred to integrating
6 different legislations, perhaps going back to your
7 earlier question.

8 THE CHAIRMAN: Silos could even be on
9 a much bigger scale, I mean, you might consider
10 one silo Manitoba Hydro system, in another scale,
11 the agricultural run-off system, and then on
12 another silo, Southern Manitoba flood fighting.
13 How do you bring all of those together? I mean,
14 they all have some impact on each other, or do you
15 even try?

16 MS. PASTORA SALA: I don't know if I'm
17 going to answer your question directly, but I do
18 want to just point out that integrated water
19 management, effective water governance, all of
20 these frameworks which are heavily written about,
21 and there are many books written on these, these
22 look at different systems and how they are
23 integrated together. So in and of itself, these
24 approaches that we have identified in our report
25 are contrary to silos. And so they cannot operate

1 in different silos.

2 And so the way I see the difference,
3 because I'm a very visual person and I speak with
4 my hands because I'm French, I guess, the silos
5 would be the different pieces operating
6 separately, whereas the gap would be sort of the
7 space between. I'm not sure if I answered your
8 second piece of your question.

9 MR. WILLIAMS: In terms of, do you try
10 to bring them all together, I think the thrust of
11 the ISD was that was an effort. There's some real
12 challenges, like holy cow, it's hard enough with
13 Hydro itself getting a handle on that. Perhaps a
14 starting point is to acknowledge them, but let us
15 just confer with our colleague here for a moment.

16 I should have been much more assertive
17 on that answer, clearly. The dialogue, I think
18 for 20 years has been about pulling these systems
19 together. The Mackenzie Valley Resource Board is
20 one real robust effort at doing that. And I think
21 there was just an agreement reached between the
22 NWT and Alberta which hasn't come up. So there
23 are some very robust efforts out of the Northwest
24 Territories in that realm. So certainly there's
25 been some progressive efforts, and that might be

1 an approach to look towards.

2 THE CHAIRMAN: I don't think there are
3 any major hydro systems in the NWT, are there?

4 MR. WILLIAMS: Not of the scale here.

5 THE CHAIRMAN: No.

6 MR. WILLIAMS: But they are downstream
7 of the tar sands, so there is a different source,
8 but some very challenging issues.

9 THE CHAIRMAN: Okay. Well, that
10 concludes my questions. Any others?

11 Well, Mr. Williams, Ms. Pastora Sala,
12 thank you to you and your back bench, and the rest
13 of your team not present, for all of your work in
14 today's presentation, as well as the documentation
15 that you filed with us. So thank you very much.

16 We'll break until quarter to 2:00.
17 We'll come back with Black River at that time.

18 (Proceedings recessed at 12:44 p.m.
19 and reconvened at 1:45 p.m.)

20 THE CHAIRMAN: We will reconvene the
21 proceedings in one minute. Are we ready to go?

22 Under our procedural guidelines,
23 anybody who is giving testimony in these meetings
24 is required to swear an oath, so I will ask the
25 Commission secretary to swear you all in.

1 Ryan Duplassie, Myrtle Abraham, April Kent,
2 Patricia Mitchell, Ernest McPherson, Frank
3 Abraham: Sworn

4 THE CHAIRMAN: Mr. Duplassie, are you
5 leading the presentation?

6 MR. DUPLASSIE: Yes, I am.

7 THE CHAIRMAN: You may proceed.

8 MR. DUPLASSIE: Thank you. It is a
9 pleasure to be able to speak with you members of
10 Manitoba Hydro and the Clean Environment
11 Commission. Today we have five presentations that
12 are brought to you from Black River First Nation.
13 We have presentations by two of our elders, by a
14 youth representative, by Patricia Mitchell, who is
15 representing the women of Black River, and Chief
16 Frank Abraham, representing leadership, and
17 myself, who will be bringing some comments as part
18 of the process of putting this presentation
19 together. So we will begin with our two elders,
20 Myrtle Abraham and Ernest McPherson.

21 THE CHAIRMAN: Could I just say that
22 you need to bring the mic quite close to your
23 mouth so that we can hear you.

24 ELDER MYRTLE ABRAHAM: Good enough.
25 We are going to say a prayer first.

1 THE CHAIRMAN: Yes.

2 ELDER MCPHERSON: I want to say an
3 opening prayer before we start speaking, because
4 all creation that's in the world is very important
5 to me as a preacher, but the way it has been
6 damaged, it hurts me quite a bit. So that's what
7 I'm going to speak about. With that, do I go
8 ahead and speak now?

9 THE CHAIRMAN: Yes.

10 ELDER MCPHERSON: I wanted to say an
11 opening prayer in my language.
12 (Opening prayer)

13 ELDER MYRTLE ABRAHAM: I guess I will
14 start with meeting the concerns that we have in
15 our reserve, on our waters and whatever else that
16 is being spoiled and not the same anymore.

17 We elders provide insights into the
18 impacts of Lake Winnipeg Regulation, (LWR), that
19 came through decades of observation and direct
20 experience and engagement. In order to understand
21 the impacts of Lake Winnipeg Regulation, it is
22 necessary to provide an oral accounting of life at
23 Little Black River First Nation before 1976 Lake
24 Winnipeg Regulation and compare that to other --
25 to after 1976.

1 Primarily, we Anishinaabeg of Black
2 River were historically self-sufficient and living
3 at the mouth of the Black River. There was
4 gainful employment in commercial fishing, logging,
5 and cutting pulp. In the late '40's, early '40's,
6 our families had cattle and we made our own cream
7 and had our own meat. We had horses and hay
8 fields. There was no welfare, no one dependent on
9 government relief.

10 Dependence on the government began
11 around the late 1950s or early '60s. Yet after
12 the reserve relocated in 1959, between 1959, 1960,
13 we continued to hunt, fish, and trap far afield,
14 as we were trapping beaver and muskrats from the
15 creeks around the community, and snaring rabbits.
16 We would pick wild rice and medicines like whitke,
17 wild ginger, and other abundant medical plants,
18 and an assortment of wild fruits were picked and
19 canned. Virtually every household had a garden.

20 And this is where I'm done, the next
21 elder will speak.

22 ELDER MCPHERSON: I will continue on
23 with the impacts that we have around Lake
24 Winnipeg, especially with us in Black River here
25 at the south end of Lake Winnipeg.

1 These activities were not merely
2 carried out for subsistence, but were part of
3 spiritual connections to the land. Their very
4 acts made up our culture, including language,
5 spirituality, production skills, and recreation,
6 that were passed on inter-generationally. The
7 serious impacts on these activities are not of the
8 will of BRFN, not of the consequences of our own
9 actions. The impacts have had lasting cultural
10 economic consequence. It is impossible to know to
11 what degree Lake Winnipeg Regulation has played a
12 role in the continued impacts on our culture,
13 economic, because the economic and cultural
14 disruptions began prior to 1976, but the
15 consistently high water levels of Lake Winnipeg,
16 as well as Black River and O'Hanley River, and
17 associated shoreline erosions, certainly concern
18 the community. Floating shoreline debris,
19 submerged rock formations, and island reefs make
20 lake excursions increasingly dangerous to access
21 the sacred ancestral lake.

22 Environmental impacts. Where the
23 local beach was clean, it is now often full of
24 debris, like fallen trees that wash up from the
25 high water. The water has been darkening, become

1 less clear in the last 10 to 15 years. Sacred
2 sites and ceremonial grounds used to be far away
3 from the beach, but now close and in danger. The
4 water seems deeper, swifter, and entities once
5 visible are now submerged making travel dangerous
6 and difficult. The shorelines are unsustainable
7 and we have to be careful choosing where to dock.

8 Impacts on wildlife due to consistent
9 high water levels, associated habitat, erosions
10 are obvious. There used to be a lot of pelicans
11 and cranes in the area, a variety of birds, there
12 are not anymore. Local beaver, muskrat have all
13 but disappeared. And few people can afford the
14 equipment, supplies, and fuel to travel afar to
15 continue to trap and maintain those important
16 relationships and cultural activities. Fish used
17 to spawn up Black River and O'Hanley River, they
18 are no longer able to. There is no more local
19 rice picking, and local medicine plants like
20 whitke, have been found with arsenic. Historical
21 shoreline garden areas, the best gardens in the
22 local region, are all under water.

23 ELDER MYRTLE ABRAHAM: Holistic health
24 impacts. We used to drink the lake water, it was
25 clear, now it is full of debris and pollution.

1 After moving inland, the community members could
2 still drink the water from the rivers until the
3 late '60's. There was no treatment plant at that
4 time, water was used for bathing, washing clothes
5 and items, drinking, cooking. It is now dangerous
6 to drink due to pollution primarily, and also
7 sedimentation. Inability to engage traditionally
8 with the rivers and associated ecologies see the
9 the once healthy and active people of Black River
10 are now largely dependent on cheap, unhealthy,
11 store bought foods. The effects on the health are
12 profound, with devastating rates of diabetes,
13 cancer, obesity. The impacts on the emotional
14 health of the people are difficult to measure, but
15 cannot be underestimated or ignored.

16 For example, the local beaches were
17 once hubs for swimming and enjoyment, and no one
18 is able to swim anymore. The fact that we can't
19 hunt and fish and trap also affects us
20 emotionally.

21 Recommendations to the CEC. One
22 principle proposal that we elders make is that the
23 Clean Environment Commission make a recommendation
24 to the Province of Manitoba Hydro for
25 compensation. That money would be spent on more

1 houses on higher levels, a pool and recreation
2 centre for the young people. The community also
3 requires better health care. There are no
4 children's doctor or obstetrician or family
5 doctors in the community. And the aging
6 population is particularly vulnerable due to the
7 lack of health services.

8 A second proposal is to have the Clean
9 Environment Commission understand that our
10 community does not have the resources to gather
11 the scientific data to bring our observations to
12 the proper authorities. We should be given the
13 chance to do so.

14 That is the end of my -- do you want
15 to say something?

16 ELDER MCPHERSON: I'm glad to be here
17 today to hear our voice heard. We, as elders, we
18 have a lot to think about. I grew up on Lake
19 Winnipeg, I started fishing when I was 14. And we
20 did everything on our own. Today, most of those
21 points, those long points that we had there is all
22 disappeared into the lake, and more, and all of
23 the time, because water is being controlled by
24 somebody that doesn't know anything about Lake
25 Winnipeg, no experience whatsoever.

1 I was brought up on Lake Winnipeg, and
2 my grandfather and my grandparents teach me how to
3 look after, to try and protect what -- we are
4 helpless, we are still helpless today, but we are
5 not going to let that go, and saying no from now
6 on. I'm not going to let our lake disappear.
7 Those that don't respect the lake shouldn't look
8 after it. And we want the lake level that used to
9 be, its own flowing, nobody controlling it. How
10 beautiful it was. Now it is being dammed up north
11 there, controlled by somebody else. That has to
12 stop. With that, that's all I'm going to say for
13 now, but we will have lots to says from now on.
14 Miigwech, thank you.

15 ELDER MYRTLE ABRAHAM: I just wanted
16 to -- what I just read, I lived through all of
17 that, all the changes that took place in Black
18 River. I wasn't born there, but I was raised in
19 Black River. And right from day one when I began
20 to understand things were so good, you can go to
21 the river, and then go and have a swim, nothing
22 happened. And we had gardens, you name it, we had
23 it, moose meat, deer meat, everything. And a lot
24 of times people would really help one another.
25 But all of the changes that are taking place are

1 even spoiling that part of our life where we used
2 to help each other. And there is so many changes.
3 They are starting to really take a
4 look at the lake, because now families are not
5 really allowing their kids to swim there anymore.
6 Some kids that went swimming there at the lake,
7 they had rashes appear on their bodies, and a lot
8 of this is happening. Even the fish nowadays, the
9 guys that fish are saying that a lot of that fish
10 has bubbles or something on them. So it is scary.
11 Like you don't want to go and start and fix that
12 and eat it. Because when I was younger, I was
13 brought up eating fish and it was good fish, there
14 was nothing wrong with it. But now, everything
15 you do with wildlife, you have to be careful.
16 Because even the beavers and that, they are
17 different now, it is different. They were good
18 meat before. And I firmly believe it is because
19 of the erosion on the river. It is either too
20 high or too low. You can't really depend on it.
21 It is so high sometimes it just washes close --
22 where I live, the water comes up very close to my
23 house, that's how bad it is now. It never was
24 like that before. So I just wanted to make that
25 clear, to be understood what we are saying and why

1 we need all of the help.

2 So with that I would like to say thank
3 you for allowing me to speak.

4 MR. DUPLASSIE: Thank you. Next will
5 be Patricia Mitchell, representing the women of
6 Black River, and you will find her presentation on
7 page number 5 at the bottom.

8 MS. MITCHELL: Good afternoon. Like I
9 said, my name is Patricia Mitchell and I'm from
10 Black River First Nation. And I was asked by some
11 of our women in our community to come and speak on
12 their behalf.

13 As an Anishinaabe person, water is
14 very sacred to us. We are the life givers for
15 future generations, the life that grows within us
16 is carried in water. In us, I mean by all human
17 beings. Growing up we were taught to protect the
18 water, to treat the water, as with all living
19 things, including ourselves, with respect. Today
20 this teaching has been greatly impacted. The
21 water is being taken for granted and is being
22 polluted at alarming rates. Even though as human
23 beings we consist mostly of water and water covers
24 70 per cent of the earth, it is essential to all
25 living things, it appears as though it is now seen

1 as an asset, as a commodity, something that can be
2 contained and be used to generate profit.

3 Over the last several years the water
4 has changed and the landscape has changed around
5 it. Our community once was home to magnificent,
6 clean beaches providing sustenance to our members
7 is now getting polluted with green algae and other
8 chemicals and our shorelines are eroding at
9 alarming rates.

10 In Black River our people were once
11 highly independent. Everyone had a role and a
12 responsibility, and the water was the basis for
13 our culture, our economy, and our way of life.
14 However, in modern day, others outside of our
15 community had decided that the water has a
16 different use, and we are forced to accept it.

17 In the late 1950s, our community was
18 forced to relocate from the mouth of Lake
19 Winnipeg, from our river front properties, to an
20 area that the government of the day thought was
21 more sufficient for our people. We left an area
22 that offered land that was tilled and was
23 producing gardens, fields that were used for
24 grazing for cattle, waterfront properties that
25 offered fishing right from the shoreline, the

1 traditional teachings on the basic necessities for
2 living in a community, in our environment was
3 left. We were told that this change was
4 necessary. If we wanted to get hooked up to the
5 power lines to get hydro, people would have to
6 move. Not once were the true reasons ever
7 mentioned, that our pristine shorelines would
8 become susceptible to the government that
9 supported harnessing water and regulating the lake
10 for the mere purpose of generating profit and
11 supporting a lifestyle for its new settlers.

12 So today for the first time Black
13 River First Nation is able to present our issues.
14 We were asked today, how has the regulation of
15 Lake Winnipeg impacted us? This is how it impacts
16 us. There is rampant diabetes rates among our
17 young and old, food consumption that is not
18 natural to our body systems, reliance on external
19 food sources, white sugar, white flour, salt, and
20 foreign animal byproducts such as pork, all of
21 which are said to be the main contributors to
22 diabetes, and reliance on welfare.

23 We live on lands, our new lands are
24 not good for gardening, but rather cause modern
25 day homes to get moldy. The land base used to be

1 a muskeg area or a swamp area. And there are no
2 longer cattle and horses because of the lack of
3 land. Our move resulted in a high dependency on
4 drugs, alcohol, medication, due to loss of
5 independence, livelihood, and a sense of being and
6 responsibility.

7 The traditional teachings that were
8 once taught to children, young adults on how to be
9 independent and respect for oneself and respect
10 for others around us is lost. The spirit of
11 cooperation and community is diminished, because
12 the need to work together on the land is
13 diminished.

14 Land erosion and flooding means less
15 land for our growing population. Several of our
16 homeowners that can not insure homes because they
17 are located on a reserve, therefore, are forced to
18 watch the water get closer and closer to their
19 homes.

20 If the government continues to support
21 the regulation of Lake Winnipeg by granting the
22 licence to Hydro, our issues at Black River First
23 Nation should be addressed first.

24 Some of the recommendations that we
25 were asked to put forward include: There needs to

1 be a map of the entire historical and present
2 shoreline on Lake Winnipeg. There needs to be a
3 monitoring body that is external from Manitoba
4 Hydro and the Federal and Provincial Governments
5 that would monitor Lake Winnipeg. Studies to
6 monitor the aquatic species that are being
7 released into the Lake Winnipeg by the various
8 tributaries that are part of the overall system
9 that flows into Lake Winnipeg. A proper system
10 that monitor lake levels to ensure that it remains
11 at a consistent level. That surrounding
12 communities become part of the solution, to
13 utilize, to monitor, and be compensated for their
14 services. That the lake levels, if any work is
15 done, it is to be discussed with all communities
16 prior to developing or constructing any further
17 channels to draw out lake levels. That the
18 Federal and Provincial Governments teach
19 Manitobans about the importance of monitoring
20 water levels and develop ideas on how to prevent
21 further erosion. There needs to be some teaching
22 about the phosphorous and sediments and gases that
23 come from unnatural water flows, what gases or
24 impacts does this result in. How much of the
25 results in higher mercury levels are in the water

1 that get into the fish, and how does that impact
2 humans, or those of us living around the lake?
3 What maps are available to show the differences
4 from past, from the past before the regulation of
5 Lake Winnipeg? Over a dozen lakes flow into the
6 lake and only one outlet.

7 We, the women, along with other
8 community members from Black River, disagree with
9 Hydro getting that licence. If it does, which, if
10 it does get approved, that the licence be shorter,
11 ten years or less. And lastly and most
12 importantly, that the government, governments
13 including Manitoba Hydro, deal with the direct
14 infringement on the Aboriginal Treaty rights of
15 the Black River First Nation people. Thank you.

16 I'm just going to make a couple of
17 personal comments outside of what was written.
18 The erosion of land that is caused by the
19 fluctuating water levels around the lake, we know
20 that it goes higher than 711, or 715. We know
21 that. Who is going to replace that land that we
22 lose? Who is going to be held accountable for
23 that? Not once has Manitoba Hydro said, yep, you
24 know what, we are going to give you more land.
25 Instead we get charged higher rates to pay for

1 hydro to our homes.

2 We have seen the damage that flooding
3 does to other First Nations. They are displaced.
4 They have had numerous suicides amongst their
5 young and their old. Some of them are still
6 living in hotels. Is that what is going to be
7 expected to happen in Black River? I say no, no.

8 I know that there are different water
9 systems that go into Lake Winnipeg. I think we
10 should be told what is in that water. We drink
11 from there. That water gets clogged -- we have a
12 brand new system that has to be changed earlier
13 than the developer said it had to be changed. If
14 I left my water in my bathtub and didn't drain it,
15 of course it is going to get -- it doesn't have a
16 natural flow. And to me, I think that Manitoba
17 Hydro is acting like God by deciding when and
18 where they can release that water. Thank you.

19 MR. DUPLASSIE: Thank you, Patricia.
20 So next we will have a presentation by the youth
21 representative, April Kent, and she will start off
22 by speaking briefly to some photos from a
23 powerpoint slide.

24 MS. KENT: Hi, my name is April Kent,
25 I am from the Black River First Nation. My photos

1 slides are taken from before and after. So the
2 first photo slide is taken early '80s, or the
3 early '90s, shows at a time that the area had a
4 healthy and livelier look.

5 The second picture was taken last
6 year. The water levels have risen.

7 And the third photo, this was taken in
8 the early '80s, the early '90s, the water levels
9 are low.

10 In this photo we notice more black
11 sediment along the shore. As you can see compared
12 to the first photo, the water has flooded over
13 most of the area it used to be. As you can see,
14 the beach water is much cleaner and healthier. In
15 this photo we notice more black sediment along the
16 shore. People that live near the river bank state
17 that their backyards are getting smaller and
18 smaller as the years go by, like the land is
19 sinking into the river due to the high water
20 levels. There was more berries and medicinal
21 plants, fish and animals that live near.

22 And in this photo is the Black
23 River -- I already said that one, that was the
24 photo taken for the people that live near the
25 banks.

1 Okay. And this photo is the Black
2 River Bridge, as how it used to look before the
3 water levels started rising as opposed to now.

4 And this photo shows us where this
5 lovely woman stands, the water levels rise higher
6 than that. Most of the time no one can go sit and
7 watch the rapids and endure their peace due to the
8 high water levels nowadays.

9 And this one shows how narrow and
10 healthy the Black River looked at a time. Now, we
11 have less fish, very rare of any spawning for the
12 fish due to the high water levels and eroded
13 water.

14 This photo was taken last year and it
15 shows how high the water levels have risen.

16 This photo was taken in the late '80s,
17 the bedrock in the background is no longer in
18 sight due to the high water levels.

19 Okay, my presentation. I would like
20 to start my presentation with a quote from the
21 Inconvenient Indian by Thomas King.

22 "Land has always been a defining
23 element of Aboriginal culture. Land
24 contains the languages, the stories
25 and the histories of a people. It

1 provides water, air, shelter and food.
2 Land participates in the ceremonies
3 and songs, and land is home. Not in
4 an abstract way. The Blackfoot in
5 Alberta live in the shadow of
6 Ninastiko or Chief Mountain. The
7 mountain is a special place for the
8 Blackfoot, and friends on the reserve
9 at Standoff have told me more than
10 once that as long they can see the
11 mountain, they know they are home."

12 The youth of today and the leaders of
13 the future and the next generation to come after
14 form the basis of Anishinaabe culture, all
15 functions and considerations traditionally were
16 attuned to their needs. When Anishinaabe speak of
17 concern for the future generations, they don't
18 just mean the unborn, but also the young people
19 who are learning to be future community leaders.

20 The young people in Black River First
21 Nation are increasingly without the means to enjoy
22 and become reacquainted with their traditional
23 land base. Traditional education was all land
24 based, and life on Lake Winnipeg had many
25 educational opportunities. Now that the beach is

1 compromised and the river, the local river is
2 unfit, the young people are without recreational
3 and traditional educational opportunities.
4 Furthermore, teens and young adults in the
5 community must travel outside of the community for
6 high school, college and other training
7 opportunities, and which there is little provided
8 within the community in regards to programs for
9 the youth.

10 Compensation. I asked numerous youth
11 of Black River First Nation their opinion and
12 input, how they feel that Manitoba Hydro should
13 provide? What are the changes they see having a
14 better future for the community? More funding for
15 the youth as in the means of traditional
16 educational programs, this includes fishing,
17 trapping, hunting and the traditional teachings
18 that go along with these means, natural planting
19 for berries and medicinal plants and so on that we
20 are losing. Recreational facilities; as this will
21 open up employment opportunities for the
22 unemployed. Funding for summer jobs and training
23 for the junior high school. A swimming pool
24 splash pad for a cleaner swimming environment due
25 to the fact that the beach water is too dirty and

1 causes skin irritation. Decrease the amount of
2 our Hydro bills. Our community is growing, we are
3 in need of more land. The youth of the future
4 needs land to keep our traditional culture alive,
5 and the next generations to come. Due to the land
6 being eroded, there should also be training and
7 employment opportunities provided in the process
8 of shoring up the riverbanks and coastlines,
9 either with Manitoba Hydro or the Province of
10 Manitoba, or both. Though, this is unfortunate
11 for the community, it nonetheless provides an
12 opportunity for the Province to engage the energy,
13 strengths and creativities of the youth of Black
14 River First Nation.

15 People that live near the riverbanks
16 will soon have to be moved due to the high and
17 rising water levels. They will be forced to leave
18 lifelong and loving memories. More homes will be
19 required and should be built on higher ground.
20 Though this is unfortunate for the community, it
21 does provide training and employment opportunities
22 for the youth, for the young people of Black River
23 First Nation.

24 Much construction and reconstruction
25 must happen on the reserve. It is recommended

1 that serious strategies be put in place to ensure
2 that the potential of the communities' young
3 people are put first and centre when considering
4 all possibilities.

5 I would like to conclude with another
6 quote from Thomas King, *The Inconvenient Indian*:

7 "No matter how you frame native
8 history, the one inescapable constant
9 is that native people in North America
10 have lost much. We've given away a
11 great deal, we will continue to lose
12 parts of ourselves as Anishinaabe, as
13 Cree, as Blackfoot, as Inuit, as any
14 Native Nation, with each generation.
15 But this does not need to happen."

16 Thank you.

17 MR. DUPLASSIE: Thank you. Next we
18 will have Chief Frank Abraham speak. He will also
19 have some slides to show you, and then he will
20 give a talk.

21 CHIEF ABRAHAM: Thank you. Good
22 afternoon everyone.

23 First of all I want to talk about, not
24 so much the three-headed serpent, it is just the
25 front page of our presentation which, where it

1 says when our land is gone, where will we be? And
2 the reason that I want to bring that one up first
3 is we need to take into consideration, this is one
4 of two of the -- one of the two tracts of land
5 that was basically was pulled away from our
6 reserve section. And a person has to question
7 themselves, how does a tract of land like this
8 float away from a community? How does it break
9 away from the mainland systems?

10 And a lot of it has to do with
11 phosphorous, phosphorous that keeps the land
12 intact, the roots intact so that they can flourish
13 and basically be used as a cleaning system for the
14 lake, for the water systems. We have two pieces
15 of land that floated away from our community. And
16 before I go to the three-headed serpent, I want to
17 show you a map, or a picture of 1959, which is
18 right after the three-headed serpent.

19 Now, this tract of land basically
20 shows how Black River was like before, and this
21 was before the move of 1958, early '60s. This map
22 was taken back in 1959. And you can see that
23 there is an island up there, just almost, if you
24 look at the E section, there was a tract or a
25 piece of land that was connected there. Now, if

1 you go to the next frame of the picture, this is
2 basically how it looks like today. The little
3 lake that you see there was part of the hayfields
4 that we had in our community. And when our elders
5 talk about the growing hayfields, the gardens that
6 used to be, it was within those areas that it used
7 to be.

8 Today there will be a wider lake in
9 that little area now. And that's basically, that
10 island that you see on the north side of the
11 bigger point of the lake, that was the tract of
12 land that was connected to Black River prior. And
13 that's how much land that we have been losing over
14 the period of years. And now the water is
15 increasing, and eventually the -- we have -- Black
16 River has been situated with or the people of
17 Black River have been situated, or the people of
18 Black River have been situated there probably
19 since in 1750s.

20 There was four families that were
21 asked -- because of the ceremonial grounds, the
22 sacredness of the area that we have, that they, it
23 was mentioned in the earlier presentations by the
24 elders about the sacred ceremonial grounds that
25 were in our area. Now those sacred ceremonial

1 grounds in our area are within the territory of
2 Black River, and they were the ones that were
3 basically given the -- told to protect that land,
4 so there would be no intruders coming into our
5 territory. And as you know that Black River,
6 there is no other settlement within Black River
7 other than just the community members of Black
8 River. If you go 30 kilometres, or 50 kilometres
9 to the north, then you have the Manigotagan
10 community settlements. And if you go 50 to the
11 south, you have the Powerview, Pine Falls area.
12 But within Black River there is just Black River.
13 And the purpose of that was so that we would
14 protect the land within our area, and to protect
15 the ceremonial grounds of the Anishinaabe peoples.
16 Because Anishinaabe peoples, it talked about their
17 history, the intruders that were coming into our
18 territory. All of that is going to be lost, it is
19 going to be going under water. And a lot of it,
20 as has been talked about, it is slowly starting to
21 go under water.

22 And our teachings are embedded in
23 those rocks. Like we mentioned that time
24 immemorial, we have been in existence and have
25 always utilized those sacred ceremonial grounds as

1 our teaching grounds for who we are as a people,
2 Anishinaabe people. A lot of you probably don't
3 really understand what Anishinaabe people mean,
4 and that's something that's very sacred to us.
5 Even today our generations of people that have
6 come in because of the residential schools, the
7 implementations, the truth systems, our people
8 have taken a different identity, which is we are
9 making reference to Indians, which is basically
10 what the Europeans wanted to refer to us as who we
11 are as a people. But if you understand our
12 language, our Anishinaabe language, which is
13 something that I hold very sacred to myself, it
14 defines who I am as a person. It defines me as
15 who we were prior to the intrusion, the Europeans
16 coming into our territory. From there it defines
17 me as to who I work for, which is our Creator.
18 Because he is the one that has given us the breath
19 of life in order for us to survive.

20 Now, I want to go into the
21 presentation in regards to the three-headed
22 serpent.

23 MR. DUPLASSIE: If I could interject?
24 Chief Abraham's presentation begins on the bottom
25 of page 2, for your reference.

1 CHIEF ABRAHAM: And the part I spoke
2 about is not in the presentation. When we talk
3 about the three-headed serpent, we know that we
4 are dealing with the Province of Manitoba. The
5 entities that belong to the Province of Manitoba
6 are Manitoba Hydro, Manitoba Conservation, and
7 including the Clean Environment Commission. All
8 of these entities report to the Province of
9 Manitoba, and those are the things that we are
10 fighting amongst themselves. It's not to say to
11 one head or the other head that Mr. Friesen, or
12 Ferguson -- we are not pointing fingers at the
13 individual people that represent the Commission,
14 or the Manitoba Conservation, Gord Mackintosh, or
15 Scott Thomson. It is just to let you know that
16 this is what we are up against. The three heads,
17 all basically the entity of one, which is the
18 Province of Manitoba. Each one, yes, thinks
19 independently, but all together you report to one,
20 which is the province, the government. And that's
21 why we are putting this picture up there.

22 Now, I want to go to doing my
23 presentation. And I really don't like reading
24 from points to point, but I will make points from
25 the things.

1 Over the last period of, I would say
2 probably within -- I built my house where it is
3 situated, where these two young girls are, my
4 daughters are, we built our house there in 2000,
5 the year 2000. We had not experienced any high
6 waters or levels like this until probably 2009.
7 2009, basically, we were facing more and more,
8 after 2009 we were facing more and more high water
9 levels within our communities.

10 And it shows you from this picture
11 here, and also the other pictures that are coming
12 up, this is from probably 2009, earlier. We have
13 had several complaints in regards to erosion of
14 land. Members that have resided next to the river
15 where they used to have fire pits, those fire pits
16 now are basically in the water.

17 Our bridge, where the young lady
18 showed the bridge, not this one, where there was a
19 lady standing on the bridge, that water has
20 increased to the point where the rapids was there
21 at one point in time, sometimes those rapids don't
22 even exist. It is like you could pretty well
23 drive a boat in through that area. That's how
24 high the water is going.

25 And we are agreed that as time goes

1 along, there is going to be more impacts towards
2 houses being lost within our area, that we are
3 going to have to move anywhere from about 15 to 20
4 units, 20 houses from our area.

5 And that's where you see the church --
6 well, you can't really tell the church. If you
7 look on the river side, on the west side of the
8 river, and also on the tip of the east side of the
9 river where the road ends, both sides where the
10 road -- I wish I had a red pointer, I would circle
11 it for you -- but we are going to notice that
12 there is going to be several houses that are going
13 to be lost because of the high waters coming up
14 from the lake. And there is going to be about 15
15 houses that are going to be impacted. And we are
16 going to have to look for higher ground. And
17 that's why we say, the higher water levels that
18 are coming up, yes, you might agree that you are
19 keeping the water levels at a level state, but
20 what is not being done is measuring the width of
21 the lake that is growing, and that's what we keep
22 making reference to.

23 Yes, you are raising the water levels,
24 but there is more sediments going into the water
25 systems. The water systems, basically, if you

1 take a tub and you fill it up with a foot of -- a
2 cup of water, for example, if you put water like
3 this and you put the same water in a tub, it is
4 not going to be much. In order to get the same
5 level of water level as this in a tub, you are
6 going to use more water than you would in a cup.
7 And we keep making that reference, because all of
8 the sediments are basically sinking to the bottom,
9 and the water level keeps going up and getting
10 wider and wider, and it is impacting our
11 communities a lot.

12 We don't have the financial resources
13 to back up our scientific statements or statements
14 that we are making. Those are the things that we
15 keep asking for. We need to get the financial
16 resources so that we have an independent scientist
17 basically tell us that, yes, Manitoba Hydro is not
18 really addressing the issues of First Nations. We
19 keep asking for those resources, and this is where
20 we -- I talked about the three-headed serpent, the
21 Government of Manitoba, the Government of Manitoba
22 sides with Manitoba Hydro's statement that there
23 is very little impact to the First Nations on the
24 southern basin, which is untrue. It is an untrue
25 statement. Because we live it, we see it. Even

1 our graveyard is going to be impacted pretty soon.
2 The water is getting that high where it is going
3 to start -- we are going to have floating bodies
4 coming out of the lake or the river systems pretty
5 soon.

6 And we need to address those problems
7 as we move ahead. We need to basically look at
8 ways, how do we protect the water systems from
9 rising, as opposed to looking at ways of how to
10 generate more monies for the Hydro. If you can
11 honestly tell us that our lands would be
12 protected, we would not have a problem with the
13 issuing of the licence. But not once have we ever
14 been consulted to discuss our issues. And those
15 are the things that we keep talking about. We
16 need to be heard. We need an independent
17 scientist to basically understand what it is that
18 we are saying, so the Province of Manitoba and
19 also Hydro listens to us. We understand that
20 Hydro says they hired scientists, but you hired
21 people to give you the answers that you are
22 looking for, not really to give you the basic
23 knowledge of the real impacts that it has on the
24 land.

25 Because when you -- the reason why the

1 water systems were the way they were is so that
2 water would come and go. It cleans itself out.
3 Today it doesn't do that. The water system, the
4 lake is just becoming a reservoir for Manitoba
5 Hydro. As a reservoir, it contaminates everything
6 within the system because it doesn't have an
7 opportunity to clean itself out. And that's our
8 argument, we keep making that argument that we
9 need a better system that's going to protect the
10 environment. And if we can't do that, then we are
11 not going to be able to really address the issues
12 that the First Nations are faced with.

13 Like it says on page 2, the impacts on
14 the water sanitation filtration system. The
15 wetlands around the lake are being destroyed.
16 That's a statement that I have been making. The
17 wetlands throughout the province are being
18 impacted by that. Cottagers are complaining about
19 that, we complain about that, but nobody does
20 anything. What is it going to take for us to be
21 heard?

22 Our Treaty and Aboriginal rights are
23 being affected by this whole process. You have
24 heard our elders talk about the livelihood that
25 they used to enjoy, eating the wild game. As I

1 mentioned earlier, when we talk about some of the
2 animals that are impacted by it, the beaver, the
3 muskrats. I used to remember a time when muskrats
4 were abundant within our area. Muskrats were used
5 for different reasons, for pelts, and also for
6 eating. Lots of people might think that eating a
7 muskrat is not good, but it is. As a child I used
8 to eat muskrats. That's not long ago. But they
9 were good, not only just for the meat, but also
10 for the pelts for -- well, people used to have
11 muskrat fur coats. Today, there is none. You
12 don't see any muskrats within our area. And
13 that's what was being mentioned by elders, you
14 have to go for miles and miles and miles away in
15 order to get them, where there used to be an
16 abundance of them within our territory.

17 We have developed -- and we have
18 mentioned even when Elder Ernest McPherson was a
19 chief, he talked about the rising lake water way
20 back in the '70s when he was chief, and he has
21 made resolutions and presentations to Manitoba
22 Hydro in regards to the impacts that the water has
23 on our communities. And again, it fell on deaf
24 ears. And I welcome this opportunity that we have
25 in order to speak to the Commission, to point, and

1 hear what we have been talking about. And we have
2 been making those statements from one leadership
3 to the next leadership, and it has been
4 continuous, the same arguments over and over
5 again.

6 We don't oppose development, but we
7 want to do it in such a way that protects the
8 interest of the people, protects the interest of
9 the environment. And we can't do that if we are
10 just going to shut our ears and not listen to the
11 other sides of it. That's why we welcome this
12 opportunity.

13 I hope that even though that you all
14 report to one body, that each and every one of
15 these heads on the serpent hear us loud and clear
16 as to what we are saying, that is the best
17 interest of everybody that lives on Lake Winnipeg
18 area within the Province of Manitoba. And that's
19 what we are after.

20 We also have lost land and we also --
21 you have heard from our youth, our women, and our
22 elders in regards to compensation. Because how do
23 you replace something that's lost?

24 And I remember as a kid, when we talk
25 about the recreational activity of the land, when

1 you used to go out to the lake, that it would be
2 so clear you would see the ripple of the waters
3 and you would think it was so shallow, and you
4 would jump in and it went way over your head.
5 That's how clear the lake used to be at one point
6 in time. Today, you can't walk an inch past the
7 shore to -- you can't even see the bottom anymore
8 within that inch. And that's only a short period
9 of time that this has happened.

10 So one of the things that we are
11 recommending is that the width of the lake should
12 be measured on an annual basis, that it is not
13 just -- we are not just saying that -- it is our
14 imagination that's running wild and saying that
15 the lake is widening, because it is, it is
16 widening. And as a result of that there is a lot
17 of erosion throughout the lake, and not just
18 within our territory. I know that south of us
19 there is erosion, west of us, east of us, there is
20 erosion.

21 We also recommend that Hydro follows
22 up a written promise to engage the community in
23 revenue sharing or long term compensation for the
24 community of Black River. And it shouldn't be
25 just our community, it should be all of the

1 communities within the First Nation.

2 When you change the water, you change
3 everything. And that's basically what I stated is
4 that everything is slowly changing. The
5 socio-economic, cultural, and health impacts will
6 be interconnected. When one loses some of the
7 shoreline, there is a loss of plants and animals
8 there. That affects people's ability and the need
9 to go there. To lose those resources, this leads
10 to loss of culture and social purpose of
11 harvesting and prospering and sharing. And that's
12 been talked about in regards to the loss of the
13 wildlife harvesting that we used to enjoy on the
14 rivers of Black River.

15 And also we used to be able to go to
16 Hecla Island before that causeway was built.
17 There used to be wild rice harvesting that we used
18 to enjoy in that area. Today because of the
19 causeway it has basically killed wild rice
20 harvesting in that area. So you have to go to
21 other sources, other places. Winnipeg River used
22 to be another source area where we used to do wild
23 rice harvesting. And again, because of all of
24 those dams, that has taken that away.

25 And that's where the dependency comes

1 into effect for the community of Black River. We
2 used to enjoy those territories. Black River used
3 to be very independent, up until probably the
4 1950s, late '60s. Then the dependency took over.
5 Once they moved our community from the mouth of
6 the river to where it is situated today, the
7 dependency started taking effect. And it is
8 getting so bad that our youth are starting to
9 think that to get a social cheque is the thing
10 that they live for, and it shouldn't be. What
11 should be happening is our youth should be
12 enjoying the lifestyle that I had before, which is
13 basically being self-sufficient, independent, that
14 you could do things on your own.

15 Those are the statements I wanted to
16 make. I know that all of the stuff is not in
17 here, but the majority of it basically relates to
18 what I have talked about. So I wanted to say
19 miigwech to each and every one of you. I hope
20 that everybody has heard us loud and clear as to
21 what we are making in regards to our statements.
22 Miigwech.

23 MR. DUPLASSIE: Thank you, Chief.

24 Our presentations will conclude with a
25 statement by myself, which starts near the bottom

1 of 10. And my statement will be brief.
2 Essentially I will just offer some of my
3 understanding as to what I have learned throughout
4 this process.

5 We did host the Clean Environment
6 Commission in Black River First Nation on
7 February 10th, and we had a chance to speak then,
8 and we have a chance to address you today.

9 Through the research, through
10 conversations that I have had with elders, women
11 and youth, present and former chiefs and council,
12 other community members who are, some who are
13 present today and some who are not, I have come to
14 learn a lot I think about, well, the Lake Winnipeg
15 watershed itself, the regulation of Lake Winnipeg,
16 as well as some of the political processes that
17 are involved.

18 So these are just a few of my
19 observations, and mostly they consist of possible
20 recommendations to the Clean Environment
21 Commission.

22 So, first it must be stated that
23 although Manitoba Hydro has ostensibly satisfied
24 all of the requirements for a final licence as set
25 out by the province, the terms of reference for

1 both the 1976 interim licence process and,
2 therefore, this final licence, in my opinion, are
3 flawed, because neither consider in any meaningful
4 or impactful way Treaty or Aboriginal rights, or
5 riparian land claims, which there are many and
6 ongoing. It is suggested then that if Manitoba
7 Hydro were granted this final licence at this
8 time, that significant resources are put toward
9 resolving the outstanding issues in advance of
10 Hydro's application for a permanent licence prior
11 to 2026.

12 On February 17, Baird & Associates
13 produced for the Clean Environment Commission its
14 report entitled "Lake Winnipeg Erosion and
15 Accretion Processes." And the report states that:

16 "Large storm surges and wave heights
17 in the southern basin of Lake Winnipeg
18 lead to damaging erosion events. The
19 impacts of these storms are magnified
20 if the lake level is near or above the
21 upper limit of the operating range
22 which is 715 feet."

23 It is also known that Lake Winnipeg
24 levels have been consistently at or near the upper
25 limit of the operating range in recent years. It

1 is proposed that the CEC make the recommendation
2 such that Lake Winnipeg levels need to be lowered
3 on a consistent basis. This is imperative not
4 only to mitigate the effects of storm surge, but
5 erosion more generally. Lower levels will not
6 only benefit Black River First Nation, but all
7 other communities around the lake.

8 Baird & Associates report,
9 "Provides a brief overview of
10 technical investigations completed to
11 quantify the role of fluctuating water
12 levels on shoreline evolution,
13 including those fluctuations due to
14 water level regulation. While general
15 conclusions can be drawn on the
16 relevance of these previous technical
17 studies for Lake Winnipeg, a
18 definitive answer on whether water
19 regulation from 1976 to present has
20 increased or decreased erosion rates
21 will require a detailed technical
22 investigation. The first component
23 involves measuring rates of shoreline
24 change from 1976 to present using
25 historical beach profile data land

1 surveys and aerial photographs."

2 Furthermore the report acknowledges that:

3 "A comprehensive technical study of
4 shoreline evolution at a variety of
5 locations around the lake for the pre
6 and post regulation era is required to
7 further evaluate possible linkages
8 between water level regulation and
9 sandy shore evolution."

10 It is proposed that the Clean
11 Environment Commission recommend such detailed
12 technical investigations be undertaken prior to or
13 as part of Manitoba Hydro's application for its
14 permanent licence in advance of 2026. As part of
15 this investigation, significant funds should be
16 allocated to communities such as Black River First
17 Nation to conduct their own technical research, as
18 well as traditional knowledge and oral history
19 studies.

20 The Clean Environment Commission
21 should be commended for traveling to several
22 communities to hear the voices of the people
23 affected by Lake Winnipeg. It can be assumed that
24 the Commission heard the same two general concerns
25 in virtually every community, pollution and

1 erosion. Though pollution, at least within the
2 southern basin of Lake Winnipeg, is unlikely to be
3 the consequence of Lake Winnipeg regulation, it is
4 the Black River community's observation that Lake
5 Winnipeg Regulation plays a role in erosion.
6 Climate change, and the increased volumes of water
7 entering the lake are also major factors.

8 However, Manitoba Hydro, as a major
9 stakeholder in matters relating to Lake Winnipeg,
10 must enter into comprehensive and ongoing dialogue
11 with those responsible for upstream pollution, as
12 well as the myriad of entities operating with
13 capacities to control the amount of water that
14 eventually makes its way to the lake. These
15 include irrigation technicians throughout the
16 watershed, as well as the entities controlling the
17 90 provincial dams not connected to Manitoba
18 Hydro, of which many are slated to be
19 decommissioned.

20 The Clean Environment Commission no
21 doubt understands that everything in the watershed
22 is connected, and this includes the levels of Lake
23 Winnipeg. It is proposed that the CEC recommend a
24 total Lake Winnipeg Watershed Monitoring and
25 Amelioration Committee, with First Nations

1 recognized as principal stakeholders and with
2 their Treaty and Aboriginal rights recognized and
3 open on the table.

4 It is assumed that the Clean
5 Environment Commission has come to recognize that
6 many communities, including Black River First
7 Nation, have long-standing historical grievances
8 with Manitoba Hydro, that in many cases far
9 pre-date 1976 Lake Winnipeg Regulation. For
10 example, Black River First Nation's traditional
11 harvesting territories on the Winnipeg River had
12 been severely compromised by Manitoba Hydro
13 activities since the early 20th century.

14 The Winnipeg River is a major source
15 of water for Lake Winnipeg. It is proposed that
16 the Clean Environment Commission recommend in
17 advance of the permanent licence application that
18 Manitoba Hydro recognize its historic violations
19 of Treaty and Aboriginal rights, and to recognize
20 the damage it has caused on the Winnipeg River, to
21 recognize that connection to Lake Winnipeg
22 Regulation, and to enter into meaningful
23 compensation and assistance talks with Black River
24 First Nation in advance of its application for its
25 permanent licence.

1 Part of the frustration on the part of
2 Black River First Nation with this current Lake
3 Winnipeg Regulation process was with the lack of
4 funding for research. Black River First Nation
5 understands that the CEC was under pressure to be
6 fair to all parties and had to work within a
7 limited budget. It is proposed that the CEC
8 recommend a budget several times higher for the
9 purpose of research in advance of Manitoba Hydro's
10 application for its permanent licence.

11 Black River First Nation and other
12 First Nations do not hold the independent
13 resources to conduct their own comprehensive
14 studies, which are necessary for the ethical and
15 constitutionally viable consideration of a
16 permanent licence. Might it also be said that the
17 Federal Government has always failed to come
18 forward in its fiduciary duty to help forward the
19 interests of the First Nation.

20 Regardless, it is my observation that
21 Manitoba Hydro should not be granted this final
22 licence for the reasons stated. The initial
23 phases in the early 1970s did not have
24 consultation and amelioration plans built into it
25 and was, therefore, inherently flawed. To grant a

1 final licence as part of an incomplete and
2 unethical terms of reference is to perpetuate
3 historical wrongs. It is 2015, and we can and
4 should do better.

5 Part of my responsibility within this
6 process was to conduct a consultation that
7 Manitoba Hydro has never done. In interviewing
8 the elders and witnessing documentary videos, one
9 observation stands out as clear to me. It never
10 used to be this way. Manitoba Hydro sees the
11 water as a resource for power, because it carries
12 a lot of weight. The elders agree, the water
13 holds power, it carries much weight, it is
14 massive. But for the Anishinaabe, the power it
15 holds is of a generative and generous nature, it
16 carries life, it gives life, it is the very basis
17 of life. As Patricia Mitchell said, the earth is
18 approximately 70 per cent water, and so is the
19 human body, we have evolved in balance. And as
20 Chief Abraham quoted, when you change the water,
21 you change everything.

22 What has changed for the community of
23 Black River, for the elders, the leadership, and
24 women and youth is everything. What used to be
25 predictable is now a liability. What used to be a

1 livelihood is now a danger to health. What used
2 to be sacred is now a curse. The life balance has
3 been upset. It never used to be this way.

4 Lake Winnipeg is the basin for the
5 watershed. Since the last ice retreated, Lake
6 Winnipeg evolved to be the end source of
7 nourishment for this part of the planet.
8 Nutrients amassed here, in balance, fish were
9 abundant and healthy, birds were abundant and
10 healthy. There were storms, yes, and occasional
11 floods, and some sporadic erosion. This is
12 natural for any large aquatic system. But the
13 shorelines were intact for centuries, beaches and
14 homesteads and cottages were stable. The lake was
15 a source of life and attracted new life. The fact
16 that so many communities exist along its shores
17 and along its tributaries is testament to it
18 having been a stable home, a productive and
19 nourishing home. Now the lake is a source of
20 disappoint, trepidation and fear. It has become
21 dark. The fish are fewer and are not as healthy.
22 Flooding is more frequent and severe. Water
23 levels are high, and people fear for their very
24 homes.

25 For Manitoba Hydro to profess that its

1 regulation of lake levels has had no impact runs
2 counter to virtually every testimony heard in
3 these hearings and, therefore, it must be taken
4 with several grains of salt. Its PR reads that
5 Lake Winnipeg Regulation has in fact stabilized
6 lake levels and has mitigated flooding. Yet not
7 one community consulted in this process has
8 corroborated Manitoba Hydro's observation.

9 When the CEC takes a step back to
10 consider the totality of testimony, there will be
11 an overall impression, no doubt, people around the
12 lake are unhappy with Lake Winnipeg Regulation.

13 What to do about it? I look forward
14 to reading the full and final recommendations put
15 forward by this Clean Environment Commission.
16 Thank you very much for your efforts and patient
17 listening over the last several weeks.

18 THE CHAIRMAN: Thank you,
19 Mr. Duplassie. Does that conclude your
20 presentations from all of your participants?
21 Thank you.

22 The party status that Black River has
23 as a presenter, they are not subject to any
24 cross-examination, although questions of
25 clarification can come from the proponent, if any,

1 or from members of the panel. No questions from
2 Manitoba Hydro? Any of the panel members have any
3 questions of clarification?

4 MS. SUEK: Can I just ask one
5 question?

6 THE CHAIRMAN: Certainly.

7 MS. SUEK: This question is for the
8 women's representative. Patricia, what is your
9 last name? Mitchell. I wrote it down so I
10 wouldn't forget it, now I can't find it.

11 Ms. Mitchell, you mentioned that the
12 community was moved at one point. How big is the
13 community of Black River, about how many people?

14 MS. MITCHELL: Are you talking in land
15 size or are you talking in population?

16 MS. SUEK: Population, sorry, people?

17 CHIEF ABRAHAM: On reserve we have a
18 population of close to 980 at this point in time.
19 When the move took place it impacted, I would say
20 close to about 30 families.

21 MS. SUEK: I was just wondering when
22 and why, did it have anything to do with lake
23 levels or flooding or anything like that?

24 CHIEF ABRAHAM: This was back in
25 1958 -- sorry, this is not Patricia Mitchell

1 answering, it is me.

2 MS. SUEK: She brought it up.

3 CHIEF ABRAHAM: The move took place in
4 the late 1950s, from '58, '59, right around that
5 area. And we were never really given a real
6 reason as to why the community was moved. Some
7 say because of the road system, some say because
8 of Hydro development that's going to be taking
9 place. We have asked for information from the
10 Department of Indian Affairs. At those times the
11 Indian agents were present and they were the ones
12 that basically controlled the communities, and we
13 have asked for their information and to date we
14 haven't received anything.

15 MS. SUEK: You mentioned Hydro as
16 being one of the --

17 MS. MITCHELL: I just want to make a
18 comment. You asked about the population. We have
19 a population of just over 1,200, and when we were
20 relocated we were moving from river front property
21 to swamp land. I think anybody in this room is
22 not going to voluntarily leave a river front
23 property to go live in a swamp, put a house in a
24 swamp, and know that it is going to get moldy.
25 Everybody knows that if you have water near your

1 house, it gets moldy. I don't think that our
2 people voluntarily moved. We are still actually
3 researching as to why we were forced to move.

4 MS. SUEK: It didn't have anything to
5 do with the lake levels or that you know, anyways,
6 it was some unknown reason?

7 CHIEF ABRAHAM: We have a strong
8 belief that it had to do with Hydro development.
9 And I know for a fact, when you read the history
10 of Hydro developments that have been taking place,
11 they do long-range planning system. I know at the
12 last hearing that we had with them, they said they
13 probably started planning this in the late '60s,
14 or early '60s. So if they were planning that,
15 that means that there was some communities that
16 they ended up having to move out of the current
17 basin, watershed basin, because of the impact it
18 might have on them. Like I said, we don't have
19 the full documentation from the Indian agent at
20 the time that was representing Black River. They
21 are not present here today to make those answers,
22 but we believe that that was a result of the
23 damming systems that were coming up at the Nelson
24 River area.

25 MS. SUEK: Thank you very much.

1 MS. MITCHELL: One last comment. We
2 can't really give you a firm answer on that
3 because even we don't know. Maybe if Hydro
4 coughed up some dollars for us to do some
5 research, then we would have a good answer for
6 you. Right now we don't know and we are just
7 investigating it.

8 MS. SUEK: Okay. Thank you.

9 THE CHAIRMAN: Thank you. That brings
10 this presentation to a close. I would like to
11 thanks, Elders Abraham and McPherson, Chief
12 Abraham, Ms. Mitchell, Ms. Kent and Mr. Duplassie,
13 as well as other members of your community who are
14 with us today. Thank you for the work that you
15 put into preparing this presentation. Thank you
16 for hosting us in your community a couple months
17 ago. Thanks again for everything.

18 We have a couple of business matters
19 to take care of, and then if one of the elders
20 would like to say a closing prayer, we will do
21 that at that time.

22 First I will ask the Commission
23 secretary, any documents to be registered?

24 MS. JOHNSON: Yes, Mr. Chairman. CAC
25 number 4 is their presentation outline of

1 February 24. Number 5 is the CAC submission.
2 Number 6 is the presentation that we saw today.
3 BRFN number 1 is the outline for Black River First
4 Nation. And BFN number 2 is the presentation that
5 we saw today.

6 (EXHIBIT CAC 4: Presentation outline
7 of February 24)

8 (EXHIBIT CAC 5: CAC submission)

9 (EXHIBIT CAC 6: CAC presentation)

10 (EXHIBIT BRFN 1: Outline for Black
11 River First Nation)

12 (EXHIBIT BRFN 2: BRFN presentation)

13 THE CHAIRMAN: Thank you. We will
14 resume here tomorrow morning at 9:30 with Manitoba
15 Wildlands

16 Mr. Shefman, did you have something?

17 MR. SHEFMAN: Thank you, Mr. Chairman.

18 On March 11 there was an undertaking taken by
19 Manitoba Hydro, and I'm just wondering if we have
20 an estimated time for that to be fulfilled, as we
21 are approaching the time for closing statements?

22 MS. MAYOR: This was an undertaking
23 with respect to the meeting minutes?

24 MR. SHEFMAN: Yes.

25 MS. MAYOR: Mr. Hutchison sent out

1 letters, or communications to all of those
2 communities that were not visited by the CEC. We
3 received a number of them back. It was our plan,
4 in fact, on Friday to take stock and produce them
5 early next week, the ones that we have received
6 permission to provide.

7 MR. SHEFMAN: Okay, thank you.

8 THE CHAIRMAN: Thank you, Mr. Shefman.
9 Any other matters, business matters to take care
10 of Okay, thank you.

11 Did you wish to have somebody close
12 the session?

13 (Closing prayer)

14 (Adjourned at 3:15 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

Cecelia Reid and Debra Kot, duly appointed
Official Examiners in the Province of Manitoba, do
hereby certify the foregoing pages are a true and
correct transcript of my Stenotype notes as taken
by us at the time and place hereinbefore stated to
the best of our skill and ability.

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Official Examiner, Q.B.

Debra Kot
Official Examiner Q.B.

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