

MANITOBA CLEAN ENVIRONMENT COMMISSION

LAKE WINNIPEG REGULATION REVIEW

UNDER THE WATER POWER ACT

VOLUME 12

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Transcript of Proceedings
Held at RBC Convention Centre
Winnipeg, Manitoba
TUESDAY, APRIL 7, 2015

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APPEARANCES

CLEAN ENVIRONMENT COMMISSION

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Edwin Yee - Commissioner
Neil Harden - Commissioner
Beverly Suek - Commissioner
Bill Bowles - Counsel to Commission
Cathy Johnson - Commission Secretary
Joyce Mueller - Administrative Assistant
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Phil Shantz - Advisor
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Bob Adkins - Counsel

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Byron Williams - Counsel
Joella Pastora Sala - Counsel

MANITOBA METIS FEDERATION

Marci Riel
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MANITOBA WILDLANDS

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PEGUIS FIRST NATION

Lloyd Stevenson

PIMICIKAMAK OKIMAWIN

Annette Luttermann
Jeremiah Raining Bird

KEWATINOOK FISHERS

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Keith Lenton

APPEARANCES

TATASKWEYAK CREE NATION
Sean Keating

INTERLAKE RESERVES TRIBAL COUNCIL
Corey Shefman

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1 TUESDAY, APRIL 7, 2015

2 UPON COMMENCING AT 9:30 A.M.

3 THE CHAIRMAN: Good morning. We'll
4 resume the hearings. Today, if my mathematics is
5 correct, is day 12 of our Winnipeg hearings. And
6 I'm not even sure how much it is if I count the
7 rural hearings, the community hearings we held
8 before we started in the city.

9 In a few minutes, Pimicikamak will be
10 beginning their presentation. They will be the
11 only presenter today. We anticipate that their
12 presentation may take most of the morning, and it
13 will be followed by questions.

14 Just before we move to that, I'd just
15 like to note that -- I'll put this on the record
16 although there are very few participants in the
17 room. The commission secretary will be contacting
18 all parties in the next day or two about the
19 closing argument process. Closing arguments will
20 be made, we anticipate, next Wednesday and
21 Thursday, April 15th and 16th. The commission
22 secretary will be contacting the parties about the
23 nature of their closing argument, the time slot
24 and the length. Arguments will be limited to 60
25 minutes each.

1 I don't believe there's any other
2 business. I understand that Pimicikamak wishes to
3 start with a traditional ceremony or prayer, and
4 following that we will swear in the witnesses.
5 So, Chief Merrick?

6 CHIEF MERRICK: (Opening prayer)

7 THE CHAIRMAN: Under our process
8 guidelines, anyone giving evidence is required to
9 be sworn in at these hearings, so I'll ask the
10 commission secretary to swear in the parties.

11 MS. JOHNSON: If you could each state
12 your name for the record, please?

13 MS. JOHNSON:

14 DR. LUTTERMANN: Annette Luttermann.

15 MS. ROBINSON: Margaret Robinson.

16 MR. MUSWAGGON: David Muswaggon.

17 CHIEF MERRICK: Chief Cathy Merrick.

18 MR. SETTEE: Darrell Settee.

19 MR. HALCROW: Nick Halcrow, elder.

20 MS. HAMILTON: Helga Hamilton.

21 (Witnesses: Affirmed)

22 THE CHAIRMAN: Mr. Bedford?

23 MR. BEDFORD: One preliminary matter
24 to deal with. We are not clear whether
25 Ms. Hamilton is going to testify as a member of

1 the community, or based on a single sentence in
2 the materials that were provided in February, she
3 is going to give you opinion evidence based on
4 some expertise. If it's the latter, we are
5 without a CV to know what the level of expertise
6 is and what the background is, and we are also
7 without any even synopsis due seven days ago as to
8 what the gist of the evidence will be, aside from
9 a statement given in February.

10 So to repeat, if Ms. Hamilton is
11 simply going to give some observations, personal,
12 as a member of the community, that's not an issue.
13 If she's here to give opinion evidence based on
14 expertise, then there is an issue.

15 THE CHAIRMAN: Thank you, Mr. Bedford.
16 Ms. Luttermann?

17 DR. LUTTERMANN: I think I can confirm
18 that Ms. Hamilton will be speaking as a community
19 member. Thank you.

20 THE CHAIRMAN: Thank you.

21 Chief Merrick, are you taking the
22 lead? Go ahead then, the floor is yours.

23 CHIEF MERRICK: Thank you. Good
24 morning (Cree spoken). Good morning to the panel,
25 to the participants that are here today. I bring

1 greetings to you from Pimicikamak territory, my
2 homeland, a place where I grew up all my life, I
3 have lived there. I am the Chief of Pimicikamak
4 Nation. I was elected to that position in 2013.
5 I am the first, second woman chief in 39 years for
6 Pimicikamak.

7 There is a purpose as to how things
8 come about to be when your territory, when your
9 people are in need of a person that's been chosen
10 to speak on their behalf.

11 Previously I was on the executive
12 council for 10 years. Prior to that, I was in
13 management and in health were my background. I am
14 here today as a wife, I am here today as a mother,
15 and I'm here today as a (Cree spoken), to my (Cree
16 spoken), to my grandchildren, their future. That
17 is why I'm here today.

18 I am the daughter of a trapper from
19 Sipiwesk Lake. My father roamed the lands and
20 provided for us during the time when there was a
21 multitude, that he was able to provide for the
22 family. And I want to share the story before I go
23 into my presentation. He was gone in the winter
24 time, he would leave. He would kiss us good-bye
25 and then he would go to his trapline. He would be

1 gone for a couple of months, and then we'd
2 anticipate him to come home because we knew that
3 he would have a good kill to be able to provide
4 for his family. And he did that every year. That
5 one year he had a stack of pelts and off he went
6 to the Northern Store, the Hudson Bay as it was
7 called previously. He went there and he took in
8 his furs. And he came home that evening, later on
9 that afternoon, after he had done all his
10 business, he came home and you could hear this
11 rumble. And we were wondering what it was, what
12 was this noise that was coming? And we all looked
13 out the window and it was my dad. He bought a
14 brand new skidoo from his trapping. And it was a
15 very proud moment for him to be able to do that,
16 to be able to sustain and to be able to provide
17 for his family.

18 So I share that with you today,
19 because things have changed since we were young
20 people, our families have changed. So I leave
21 that with you when I speak. And when I speak to
22 my community, my territory, Pimicikamak, Annette
23 will provide basic context for the rest of our
24 presenters today.

25 The Nelson River, the Kichi Sipi (ph),

1 the River, runs through the heart of our nation.

2 Our people remember Kichi Sipi as a very rich

3 place to live. We remember a diversity, an

4 abundance of fish, wildlife, plants and beauty.

5 We remember wholeness and balance. We remember a

6 healthy place. It was home, a home entrusted to

7 us by the Creator.

8 It had also become home to hydro power

9 projects. The Kelsey Dam was constructed in our

10 territory in 1961. It has devastated Sipiwesk

11 Lake, which I mentioned when I speak about my dad,

12 one of our main lakes ever since. Then Jenpeg and

13 Lake Winnipeg Regulation came to our homelands.

14 These projects have had profound, lasting impacts

15 on our nation. My colleagues will speak more

16 about these impacts later.

17 I am here today because I hope that

18 our participation in this process will lead to

19 change. Our people need change. Our lands and

20 waters need change. My hope is that this process

21 will lead to Lake Winnipeg Regulation licence

22 conditions that will improve the environmental

23 conditions and lives of my people.

24 I want to make it very clear that

25 Jenpeg and LWR were imposed on us against our

1 wishes.

2 In 1974, two years after construction
3 has started, we joined four other affected nations
4 in forming the Northern Flood Committee. Together
5 we worked to defend our rights and interests. The
6 view of the NFC was simple. In the 1975
7 presentation to an Interchurch public inquiry, the
8 NFC made the following statement. Our submission
9 can have no other theme than to object to the
10 project in the strongest terms possible. Neither
11 Cree culture, Cree values, nor the Native
12 communities affected are against change, but we
13 cannot and do not condone a project which changes
14 50,000 miles of life-creating and life-supporting
15 shorelines and which floods some 415,000 acres of
16 ancestral lands. The simple fact is that if the
17 communities affected would have a choice in the
18 matter, they would not trade this choice for any
19 amount of compensation. They would veto the Lake
20 Winnipeg Regulation. It was forced on us, and the
21 Northern Flood Agreement was signed only after the
22 concrete had dried and the water has gone up.
23 This is the profound injustice that Pimicikamak
24 will always live with. Our most basic rights were
25 fundamentally violated. This was done knowingly

1 and intentionally. There was no excuse for
2 blatantly overriding the rights and wishes of our
3 people.

4 There is little credibility in
5 officials saying now that back in the '70s, Hydro
6 and government didn't have the advantage of
7 present day environmental knowledge. By the time
8 LWR was being built, the Kelsey Dam has been in
9 place for over a decade. The Grand Rapids dam has
10 been in operation since 1968. Manitoba had over a
11 decade of experience with large dams and
12 officials knew of the devastation they caused. In
13 short, there was absolutely no excuse for what was
14 done to us.

15 Similarly, we have no input into the
16 licence under which LWR operates. It was written
17 and issued without us. Not surprisingly, it
18 focused primarily on flood control upstream of
19 Jenpeg and power production downstream. Little
20 regard is given to our rights and interests. The
21 licence largely ignores us.

22 We cannot change the fact that LWR was
23 built against our wishes, but we can change the
24 fact that the licence under which it operates
25 makes no provision for input.

1 Manitoba Hydro has applied for a final
2 licence for LWR and Jenpeg under the same
3 conditions that has been in place for the past 39
4 years. They propose no change. The past 39 years
5 has given Pimicikamak time to observe and
6 experience the effects of LWR and the relative
7 success of mitigation measures to date.

8 We are experts in hydro power impacts.
9 We can provide to a better licence and we have a
10 right to be part of this process. We cannot wait
11 until licence renewal in 2026. We cannot simply
12 endure more of the same for another 11 years.
13 There is a great deal of work to be done before
14 then. We anticipate that an environment
15 assessment will be required for licence renewal.
16 Steps must be taken to prepare for that. My
17 colleagues will speak to that more later.

18 I want to speak about the licensing
19 process from a Pimicikamak perspective. The
20 process is inadequate. A major shortcoming is the
21 failure to recognize interconnective nature of the
22 hydro power system. Each element is treated
23 separately. There is a general acknowledgment
24 that the hydro power system operates as a single
25 integrated whole. For instance, the federal

1 ecological monitoring program which issued its
2 report in 1992 referred to the Lake Winnipeg
3 Churchill Nelson project as a single unit. In
4 fact, the licensing process seemed to be about the
5 only instance in which the project is separated
6 into its individual components as if they were
7 isolated and independent. But there is no way to
8 properly understand the operation of LWR apart
9 from CRD and the rest of the system.

10 I'd also note the lack of a public
11 hearing process for Churchill River Diversion and
12 the Kelsey Dam. In addition, there is a great
13 deal of uncertainty in the process. We don't
14 really know what the process is for renewing a
15 licence. It is not spelled out anywhere. From
16 the very start, the licensing process has been
17 inadequate for us.

18 The Manitoba Government has formally
19 recognized the need to seek reconciliation with
20 peoples affected by the hydro power system. This
21 hearing provides a prime opportunity to explore
22 what exactly such reconciliation can look like.
23 Reconciliation requires that Pimicikamak have a
24 direct and meaningful say in licensing of the
25 projects that dominate our lands and our waters.

1 Reconciliation requires licence requirements that
2 improve the health of our lands, our waters and
3 our people of Pimicikamak.

4 Last year our people occupied the
5 Jenpeg grounds for six weeks. Our point was that
6 it is our home, it has always been our home. The
7 Creator has given us a responsibility to care for
8 our lands and our waters. We intend to fulfill
9 that responsibility. We're not asking that Jenpeg
10 be dismantled. We recognize that it is of
11 importance to Manitobans. We simply ask that it
12 be operated in a way that does not sacrifice our
13 rights and well-being of our people.

14 To conclude, Lake Winnipeg Regulation
15 was forced on us against our will. The licence
16 was part of this imposition. The effects has been
17 disastrous for us. What is needed now is a
18 licensing process that corrects, includes us, and
19 addresses our rights and our interests. That
20 process needs to start now.

21 Again, I am here in the hopes that
22 this process will lead to the improvements that my
23 people and land so badly need. I am here because
24 I believe in reconciliation. I am here as a chief
25 of Pimicikamak to speak on behalf of the 8,300

1 people that I represent. I am here today to speak
2 to what the NFA contains, that my people should
3 not be a poor people if the NFA was implemented to
4 the spirit and intent of that document. So today
5 I speak to it in the hopes that a decision to be
6 made is hopeful for my people.

7 Until I get direction from my people,
8 this is where we are at, at this point in time.
9 And I thank you for listening to me, for being
10 able to speak to an important thing that I carry
11 everyday in my heart, and that is for my people.
12 I thank you.

13 THE CHAIRMAN: Thank you, Chief
14 Merrick.

15 Ms. Luttermann, are you taking the
16 lead now or --

17 DR. LUTTERMANN: No, (inaudible)

18 THE CHAIRMAN: Okay, thank you.

19 MR. MUSWAGGON: (Cree spoken). Good
20 morning to the panel and all the participants at
21 the hearing this morning. (Cree spoken). I am
22 thankful I am able to be before the panel one more
23 time in addressing our position as a Pimicikamak
24 people.

25 And to get to the point of my

1 presentation, my name is David Leroy Muswaggon,
2 M-U-S-W-A-G-G-O-N, and I serve as a member of the
3 executive council of the Pimicikamak Okimawin. My
4 responsibilities include the Northern Flood
5 Agreement, lands, natural resources and
6 consultations.

7 I was most recently re-elected into
8 Pimicikamak Government in August of 2013. Prior
9 to that, I was a band councillor from 1997 to 1999
10 and I was elected as an executive council member
11 under Pimicikamak Okimawin's first ever
12 traditional government election from 1999 to 2004.

13 My comments today will focus on the
14 Northern Flood Agreement. The hearing is about
15 the impacts of Lake Winnipeg Regulation. Manitoba
16 Hydro maintained that the LWR impacts are
17 addressed to a significant extent by an NFA
18 related agreement. Hydro has said that
19 finalization of the interim licence of Lake
20 Winnipeg Regulation had to wait until issues of
21 affected communities were resolved. Hydro
22 believes that the past is largely complete.
23 Pimicikamak does not share that view.

24 The Northern Flood Agreement was
25 signed and concluded in 1977 between Manitoba

1 Hydro, Canada, Manitoba, and the Aboriginal
2 communities that are affected. At the time, it
3 was the elders who negotiated the Northern Flood
4 Agreement at the time, and based on their
5 recommendations had the band sign off the Northern
6 Flood Agreement at the time.

7 As Chief Merrick mentioned, the NFA
8 was signed only after the concrete was dry and the
9 water had gone up. At that point, we had little
10 choice but to get -- or to reach some sort of
11 arrangement. We had to try to make the best of a
12 disastrous situation, a process that was being
13 imposed on us without proper consultation and
14 under duress.

15 By the time the NFA was signed, Hydro
16 and Manitoba already had what they wanted, and
17 that was to have their dams in place. We had
18 devastated waterways and promises that came after
19 the fact.

20 Hydro and Manitoba have enjoyed full
21 and complete implementation of their NFA benefits
22 and the operation of their system, and we have
23 been left to fight a long, costly, dehumanizing
24 struggle to have our benefits realized, all the
25 while suffering the destruction and indignity of a

1 project imposed upon us.

2 The point I wish to make this morning
3 is that for us Pimicikamak people, NFA
4 implementation has been an onerous and unfair and
5 grossly inadequate process. The NFA was supposed
6 to provide fairness and equity. On the whole, it
7 has not.

8 While Hydro and government have spent
9 many millions of dollars and implemented some
10 programs that benefited Pimicikamak, the NFA
11 called for a planning process that would be
12 practicable, reasonable and rational, because the
13 NFA was the wishes of a people, with the exclusion
14 of article 3, which deals with Indian reserves.
15 But many of those wishes have not been met.

16 I have never heard a Pimicikamak
17 citizen express their view that we had been
18 treated fairly, all things considered, never. You
19 hear time and time again why my people keep taking
20 that stand and voicing the realities we have to
21 live with ever since this project has come on
22 board. The Crown parties have used their position
23 of powers to impose the Lake Winnipeg Regulation
24 on us in direct contradiction of our stated
25 wishes, and they have continued to use their

1 position of power to minimize and limit their
2 responsibilities to us and the lands entrusted to
3 us.

4 I just want to add, many of our elders
5 have passed on without seeing those Charter of
6 Rights and Benefits that have been promised to us.
7 Many of our people have died or have gotten very
8 ill in silence. Yet they still patiently await
9 for an honourable relationship to do the right
10 thing.

11 Our written submission provides
12 details about our experience of the Northern Flood
13 Agreement process. I just want to highlight a few
14 of the points here, but are not limited to these
15 examples. A few examples of the NFA
16 responsibilities are: A four to one replacement,
17 for every acre of land that's been destroyed,
18 four acres would be given back to our people.
19 This has not happened. Many of the reserves that
20 have been validly selected have not been
21 implemented. It's been caught up in bureaucratic
22 red tape.

23 Clearing of debris from project
24 affected waterways under article 5, I do
25 acknowledge some work has been done but much more

1 needs to be done to clean up the mess.

2 The Northern Flood Agreement calls for
3 a planning process under article 16 in schedule E,
4 to work towards the eradication of mass poverty
5 and mass unemployment. 40 years later, 80 percent
6 unemployment is not fairness and equity in my
7 people's eyes.

8 Maximizing training and employment
9 opportunities to the maximum possible extent under
10 article 18 of the Northern Flood Agreement has not
11 reached its full potential. And I'm not talking
12 about guidelines that have been imposed on us at
13 10 percent Aboriginal content, I am talking about
14 the responsibilities under the Northern Flood
15 Agreement.

16 As detailed in our written submission,
17 many of these responsibilities have not been
18 implemented in spirit and intent. Article 24 of
19 the Northern Flood Agreement provided for an
20 arbitration process by which a single arbitrator
21 will be given broad authority to adjudicate any
22 disputes under the NFA. We have been continually
23 forced to use that process. In our view, what's
24 supposed to be a planned process to work together,
25 sit down at a table, to roll up our sleeves and

1 get to work to address the adverse effects, to
2 remediate and replace what has been taken away
3 from us, a systematic form of genocide by
4 disconnecting us from our land, our way of life,
5 our culture, our language, our belief system, our
6 traditions, it hasn't happened.

7 Instead, by 1984 what became apparent,
8 145 claims had been filed at that time for the
9 arbitration provisions, to date approximately 650
10 claims have been brought to arbitration. This is
11 not supposed to be a process of litigation. We
12 don't have truckloads of money to deal with the
13 legal process and the legal wrangling.

14 My elders have already lived up and
15 agreed in 1977. They expect those
16 responsibilities to be implemented. This is not
17 our way, and this should not be the way of those
18 responsibilities from the signing parties. Too
19 often we have felt that Hydro and governments have
20 treated the NFA as a northern flood disagreement.
21 What's supposed to be a Treaty has been a
22 mistreaty, we have been mistreated.

23 Before settlers came here, this has
24 always been our home, our land. God put us here.
25 We didn't come from anywhere. We have welcomed

1 our brothers and sisters to work with us and live
2 with us in that relationship. That relationship
3 still stands today, it has not changed. We
4 continue to honour that relationship.

5 Instead of treating it as a
6 relationship of mutual respect and an opportunity
7 to realize benefits for our people, we have seen
8 forced delays and costly arbitration battles.
9 This has not been our choice. Our written
10 submission details some of the arbitration claims
11 we have been involved in, some of them still
12 outstanding, some claims that are 10, 20 years
13 old. Is that fair and equitable?

14 There have been many individual claims
15 by Pimicikamak people for damages suffered to them
16 personally on the regulated waterways, including
17 deaths, injuries, property damage in the
18 waterways, boats hitting debris over frozen but
19 unsafe waterways in winter, skidoos sinking
20 through ice.

21 Current claims involving Pimicikamak
22 includes claims for delay and failure to transfer
23 lands and parcels selected by the band under
24 articles of the NFA called claim 43; failure to
25 fulfill employment obligations under the NFA claim

1 34(a); interference with navigable waters, claim
2 131; adverse effects on social, physical,
3 psychological, spiritual and cultural health,
4 claim 164; debris cleanup in the Jenpeg forebay,
5 damages for failure to do that earlier, claim 183;
6 failure to build an all-weather road in 1977 as
7 the study report recommended; and damages for
8 social and economic losses for almost 25 years
9 before the road was built in 2002, the east side
10 road bridge, claim 109. These are just some
11 examples of some of the claims that we have before
12 the arbitration process.

13 It is our view that Manitoba Hydro,
14 Canada and Manitoba have deliberately engaged in a
15 process by undermining their responsibilities
16 under the NFA by fostering a culture of litigation
17 rather than good faith implementation. By forcing
18 us to divert our own resources towards costly and
19 protracted legal battles over the implementation
20 of the NFA and the interpretation of it, the Crown
21 parties hope to force us into a war of attribution
22 making us alternative to sign lump sum financial
23 agreements that will quantify and systematically
24 extinguish nearly all of NFA provisions, just like
25 the other Aboriginal communities that have signed

1 on.

2 In our view, that the process is
3 neither in accordance with the honour of the
4 Crown, nor with the legal principles surrounding
5 Treaty interpretation and implementation.

6 The NFA claims referenced above were
7 in litigation for years and years and many of them
8 are still not resolved. So rather than the NFA
9 article 24 arbitration process being used in a
10 just in case safety measure, the refusals by the
11 Crown parties to voluntarily implement the NFA
12 turn into an arbitration process, it is the only
13 means that we haven't tried to get most elements
14 of the NFA implemented.

15 The number and the vast scope of the
16 claims speak in many ways to the failure of NFA
17 implementation, rather than to the success of a
18 formal planning implementation process. The Crown
19 parties often blame the inadequacies in the
20 agreement itself, but there is simply nothing in
21 the agreement that prevented them from having to
22 address the impacts of the project and ensure a
23 flow of benefits to us. The continued pressures
24 by the Crown parties to get us to sign onto a
25 comprehensive implementation deal that's

1 extinguishing most of the provisions of the NFA
2 came to head, again, in 1998, when our people did
3 a partial barricade on Provincial Road 374, that
4 said enough is enough, you are not going to be
5 trespassing our territory. It was called a
6 blockade and a protest, which it wasn't. They
7 were just told, you cannot trespass on our
8 territory anymore.

9 What ended up happening after that was
10 the signing of the 1998 political accord, which
11 Pimicikamak views as a peace treaty to set aside
12 the concept of a comprehensive implementation
13 agreement and to stop the parties from pushing us
14 towards a lump sum financial deal to cap the
15 benefits. This promise was not kept for a long
16 time. Mind you, there was some good work that was
17 done after that peace treaty and working toward
18 implementation.

19 From 1998 to 2002, the parties did sit
20 down at the table and rolled up their sleeves, and
21 it was Pimicikamak that developed the plan for
22 implementation. It's always been Pimicikamak
23 taking the lead role in bringing a plan to the
24 table, to work every which way with the parties,
25 to implement our wishes, how we can work towards

1 eradicating mass poverty and mass unemployment.

2 The Crown party stopped supporting
3 this in around 2005, just after the election of a
4 new Chief and Council in 2004. The NFA
5 implementation office was closed and all
6 implementation officers were laid off, citing that
7 there was too much money being spent on lawyers
8 and consultants for Pimicikamak. Today you see we
9 have one lawyer sitting here. That's what we
10 have. The parties have an army of lawyers and
11 consultants and engineers. So fairness and
12 equity, accountability and transparency, a full
13 cost accounting of NFA implementation has to be
14 taken into account.

15 Hydro has unilaterally and arbitrarily
16 set a cap on how much it will spend on the
17 Northern Flood Agreement implementation each year,
18 a cap of less than \$6 million for the last many
19 years, which was in several years much less than
20 that due to the money Hydro claims that the band
21 owed it. The band got loans from Manitoba Hydro
22 to financial agreements, which the band is paying
23 back even to this day for projects it had to do
24 and it required funding to complete those housing
25 projects. Yet we are still asked to give credit

1 for NFA implementation.

2 Implementation of the NFA Treaty
3 should start by determining what the obligations
4 and responsibilities are and how they can best be
5 met in determining the cost in allocating
6 appropriate funds to it. Hydro's approach has
7 been the opposite.

8 In October of 2014, our people got fed
9 up and very dissatisfied about the
10 non-implementation of the NFA spirited intent.
11 They got very offended when they started receiving
12 red notices, disconnection notices for hydro bills
13 that were outrageous, expecting people that are
14 80 percent on welfare, most single people only get
15 \$300 a month on welfare, be expected to pay Hydro
16 bills at five, \$600 a month. And our people as a
17 landlord said (Cree spoken), that's enough. And
18 that's when they issued that eviction notice for
19 our treaty partner behaving so bad and forgetting
20 about their responsibilities. Conditions have
21 been put on that eviction notice. Until such time
22 those conditions are met, Pimicikamak's position
23 has not changed. But I can say that a process
24 agreement was signed between the governments of
25 Manitoba, the government of Pimicikamak and

1 Manitoba Hydro on November 15 and November 27

2 respectfully. It's a good first step.

3 So as you can see, that's why

4 Pimicikamak people occupied the Jenpeg dam,

5 peacefully evicting most staff, that a direct

6 result of this occupation was the signing of that

7 process agreement, the purpose of which was to

8 establish a new relationship between the parties,

9 not as a matter of healing Pimicikamak people, as

10 a matter of economics and as a matter of business.

11 Because if it wasn't for our homeland, our

12 waterways, those turbines would not be spinning to

13 generate electricity and to generate revenue. My

14 people continue to suffer while the south

15 continues to benefit.

16 Today some of the key terms of the

17 process agreement includes mutual development of

18 action plans of the NFA implementation on an

19 ongoing basis. Article 25 of the Northern Flood

20 Agreement says it's for the lifetime of the

21 project that the benefits are supposed to continue

22 to flow. That's how our people understand the

23 Northern Flood Agreement.

24 I am not here to debate the different

25 views of each party, because everybody has their

1 own perspective, we are here to share how we see
2 the Northern Flood Agreement.

3 The consideration of more measurable
4 and certain requirements for environmental
5 remediation and mitigation measures, much like the
6 NFA calls for, a planning process to remediate
7 first, and to mitigate, compensation being the
8 last resort.

9 There's many programs we have
10 developed through that Pimicikamak action plan to
11 rejuvenate many of our traditional economies that
12 have been decimated from the project. What can we
13 do to replace those? Even the traditional forms
14 of recreation, our ways of life, that's what needs
15 to happen, and other traditional pursuits that our
16 people continue to enjoy, even though it's always
17 a risk every time they go out on the land.

18 If there was true genuine effort to
19 implement the NFA, I believe that the employment
20 rate would be much higher today. There would be
21 much better infrastructure. There would be less
22 hopelessness.

23 Potential economic participation by
24 Pimicikamak and other affected peoples in the
25 project via revenue sharing and equity

1 participation. I just want to add emphasis to
2 this particular area. When my people get hired,
3 even through Manitoba Hydro, I expect them to
4 enjoy the same standards and benefits like any
5 other non-Aboriginal employee of Manitoba Hydro.
6 Every time my people protest, I don't expect my
7 people getting laid off and terminated right away
8 as a form of punishment. Whatever union members
9 get, my people deserve the same equality and
10 benefits. We're asking for fairness and equity.

11 Potential increased participation by
12 Pimicikamak in operational decisions with regard
13 to the project. Development and implementation
14 measures to improve financial and administrative
15 capabilities of Pimicikamak. Again, I want to
16 emphasize Pimicikamak, because they are the people
17 with Aboriginal and Treaty rights. Cross Lake
18 bands is a Federal municipality that's legislated
19 through the Indian Act. It does not have
20 Aboriginal and Treaty rights, therefore, it cannot
21 be the beneficiary of the NFA promises and
22 benefits. The only benefit they have is through
23 article 3. The rest of the articles and schedules
24 belong to my people.

25 The funding for the process costs of

1 the above has to be done in a macro scale. It
2 will be expensive at first, but maintenance will
3 bring down the cost. Unfortunately, 40 years of
4 waiting, delaying, has been the result of that.
5 Back then there was only about 1500 to 2000 of our
6 people. It's quadrupled. The longer we wait, the
7 longer we drag, the longer we play the game, the
8 more it's going to cost.

9 This agreement that's been signed
10 between the Government of Manitoba and Hydro and
11 Pimicikamak is important to us, and it's an
12 important first step toward a more productive
13 relationship between the parties, but it is also
14 evidence of the abject failure of the relationship
15 up to this point.

16 And I will say this again, since
17 November we have had at least two meetings per
18 month between the three parties. There has been
19 positive discussion, but we still feel it's being
20 done in a very micro managing way. We appreciate
21 the good first steps that have been done, but a
22 lot more can be done in an accelerated way, and
23 get serious about the full implementation.

24 Just recently the process agreement
25 budget that's been approved for February and

1 March, past costs from November to December have
2 been approved and paid for by Manitoba Hydro and
3 the Province. And they funded three full-time
4 positions initially, with three more positions on
5 an honorarium basis. We're at a stage where we're
6 talking about getting an implementation office so
7 the parties can work out of it together. But our
8 people take that position of, we'll believe it
9 when we see it. Too many times in the last so
10 many decades, talk has been cheap and very little
11 action. They had been betrayed too many times.
12 So I do not blame my people.

13 The words I bring to you are the words
14 of many people that see us everyday in our
15 offices, that hurt they feel. Many of my people
16 are looking forward to working. It's not by
17 choice that 80 percent are on welfare, it's by
18 design. It's not by choice that they can no
19 longer go out and exercise their expertise of
20 being professional trappers, professional
21 fishermen, traditional pursuit users. They have
22 been systematically forced out of their way of
23 life. Now they have to resort of new ways of
24 surviving, new employment opportunities that may
25 come. But we will see, we will see.

1 Pimicikamak has always taken that
2 position, we'll give credit where credit is due,
3 because that's what the relationship is about,
4 trust building.

5 So there's a lot of work that needs to
6 be done moving forward. Given the history
7 surrounding the Northern Flood Agreement,
8 Pimicikamak will not count on successful outcomes
9 in advance. Promises made in the past have been
10 broken. People come and go, and those
11 representing Hydro and Manitoba change over the
12 years, and we cannot know whether new people will
13 implement the process agreement in a serious way
14 at all.

15 Hydro has maintained that a full
16 licence for Lake Winnipeg Regulation could not be
17 sought until issues of affected peoples were
18 resolved. In other words, they have linked
19 licensing and the effects we experience.

20 On the other hand, they maintain the
21 two are not linked, saying water power licensing
22 is not the way in which to address environmental,
23 social, cultural impacts. Which way is it?
24 Pimicikamak's view is Mother Earth is one system.
25 You cannot compartmentalize her nor can you

1 disconnect my people as they are part of that
2 land. We are a part of Mother Earth, and it's our
3 sacred duty to speak for her and every living
4 being there, including my people. We believe
5 there is simply no way to separate the two.
6 Licences are the basic authorization for the
7 project and they set the water levels that cause
8 all the harm, the licences authorize what we
9 experience, and they should be altered to reduce
10 that harm.

11 For the reasons mentioned above,
12 Pimicikamak takes that position that seeking a
13 full licence should not be recommended until such
14 time the original peoples, whom their lands are
15 affected and their ways of life, are fully
16 satisfied that concrete remedial measures are
17 taken into account.

18 So I leave that in the panel's hands,
19 knowing the limited scope of authority that has
20 been given in your mandate, but we do know as
21 Pimicikamak people the process still has to come
22 to us for that consent, the legal consent, because
23 this is our land, this is our home.

24 (Cree spoken). I ask the Creator to
25 guide you and give you that wisdom you need to

1 make the proper decision, the appropriate
2 decision. Pimicikamak did not come here to fight
3 anyone, but to tell you our position, how we see
4 it. This is our world view because this is our
5 land. And we expect the parties to come to the
6 table in a very serious way to do the right thing
7 in working with us.

8 Thank you for listening. Have a good
9 morning.

10 THE CHAIRMAN: Thank you,
11 Mr. Muswaggon.

12 DR. LUTTERMANN: Good morning,
13 Mr. Chair and panel. Thank you for the
14 opportunity to speak to you this morning.

15 My name is Annette Luttermann. I work
16 as an independent consultant and I have been
17 working for Pimicikamak for about four years.
18 They asked me to assist them initially in the
19 review of the Keeyask Hydroelectric project, and I
20 participated in the environmental assessment for
21 that process.

22 And since then, we have been looking
23 at the Lake Winnipeg Regulation. I have spent
24 countless hours reading almost everything I could
25 find about these projects. And as you can

1 appreciate, there is a very, very long history
2 here. There is a great deal of documentation.
3 There's a lack of documentation in some areas as
4 well.

5 I have an interdisciplinary doctorate
6 from Dalhousie University. There I studied
7 ecology, also Environmental Law, Cultural
8 Anthropology. The focus of my research at that
9 time was on the impacts of hydroelectric
10 development on boreal river ecosystems.

11 I did my research in Labrador and I
12 worked very closely with the Innu nation for
13 several years on that project. I am interested in
14 developing collaborative research projects that
15 combine different disciplines, different ways of
16 knowing our environment, different types of
17 experience.

18 I have also worked in other river
19 systems, the Peace River more recently with the
20 Treaty 8 Tribal Association looking at the
21 cumulative impacts of multiple hydroelectric
22 projects in that river system as well. And I have
23 studied quite extensively the information that we
24 have from places such as Northern Scandinavia
25 where quite a lot of work has been done on the

1 various types of impacts of hydroelectric
2 development on river ecosystems and shorelines in
3 particular. So my expertise lies more looking a
4 riparian habitats.

5 With Pimicikamak, I have been asked to
6 look at quite a broad range of impacts, so I have
7 attempted to develop an understanding of what some
8 of the downstream impacts are of LWR in this case.

9 And some of the major questions that I
10 have looked at, basically, we started out looking
11 at what are the effects of the operating regimes
12 over the past many years downstream? And in this
13 case, have the licence conditions been met and are
14 these appropriate licence conditions?

15 We have considered these questions.
16 And this morning I'll just touch briefly on a
17 number of the points that I have included in the
18 written submission, which is fairly detailed and
19 we haven't got all day, so I will touch on a
20 number of points briefly.

21 I want to talk about what we can learn
22 about the daily hydrological data. Quite a lot of
23 the information that's been presented by Manitoba
24 Hydro looks at averages over a period of many
25 years. This is useful, but there's quite a lot

1 that we can learn from looking at the daily
2 patterns, because this is what is in fact
3 experienced by the people and experienced by the
4 wildlife in the system.

5 We're going to look briefly at the pre
6 LWR water level patterns at Cross Lake to get a
7 little bit of a sense of what that was looking
8 like before. And also then we'll look at the post
9 LWR water level patterns at Cross Lake.

10 And I'm focusing quite a bit on the
11 Cross Lake weir, because this was one of the most
12 major mitigation measures that has been put into
13 place to directly address the changes in the
14 hydrological regime, and what we can learn about
15 how that has, in fact, mitigated conditions
16 downstream.

17 I'll talk briefly about the LWR
18 effects on Sipiwesk and Duck Lakes, so these are
19 further downstream from Cross Lake, not directly
20 influenced by the weir. And there has been some
21 suggestion that it's quite difficult, if not
22 impossible to separate the effects of LWR from
23 other projects, in this case at Kelsey dam which
24 is further up Sipiwesk. And I want to address
25 that issue, what can we learn from the information

1 that we have and from further research?

2 And I want to touch also briefly on
3 the rate of flow change requirement in the
4 licences, in the interim licence and the record of
5 compliance. And I have a couple of questions
6 essentially about that that I'd like to raise.

7 So, environmental implications of the
8 changes in the seasonal water levels permitted by
9 the licence, we'll talk about that a little bit,
10 and specifically changes in water quality,
11 degradation of shoreline habitats, serious adverse
12 impacts on aquatic animals, beaver and muskrat,
13 decline in waterfowl habitat quality, and the
14 issue of climate change and the potential for
15 increased downstream flooding in the future.
16 These are impacts that are, in fact, permitted
17 essentially by the licence, if the licence
18 conditions are entirely followed.

19 Just to orient ourselves a little bit
20 here, we were talking about downstream impacts, we
21 mean everything essentially downstream from Lake
22 Winnipeg where the 2-Mile Channel was put through
23 that sand spit to increase the flow out of Lake
24 Winnipeg. Formerly, Warren Landing was the only
25 outflow and it was described as shallow and rocky.

1 And it impeded the rate of flow that was possible
2 out of the lake. So the entire downstream area
3 that we're talking about really of the upper
4 Nelson River going through Jenpeg is about here,
5 Cross Lake floods up to Walker Lake, Duck Lake,
6 Sipiwesk Lake, and all the way down to the Kelsey
7 dam here above Split Lake.

8 So this is a graph that is on the
9 Manitoba Hydro website and it gives us some very
10 useful information to look at the water levels
11 that have been occurring in Cross Lake over this
12 past year and the year before, and then it
13 provides a range over the period of record, and it
14 provides an average over that period of record.
15 For those of you who don't like looking at graphs,
16 I have to apologize, but I'd like you to look at
17 this and not think too much about the individual
18 numbers necessarily. Think about a year, think
19 about the seasons of the year and how we move
20 through the seasons.

21 We have the water levels on this side
22 in feet and in metres, and we have the months down
23 here. So in this case, we're starting in the
24 spring and we're moving along through the summer
25 time and into the fall and into the winter. So

1 these are just the water levels. It's fairly
2 simple.

3 And the average here in red gives us
4 little bit of a sense about what's been going on.
5 This is since 1991. So this is since the weir was
6 built, but it really doesn't give us a sense about
7 what is actually being experienced in the river
8 downstream, by the fish, by the muskrats, by the
9 people, and so on.

10 So in this last year here, you can see
11 how in the spring the water levels are very, very
12 high, then they drop back down, then they come
13 back up again and they go down. You can see a bit
14 of an indication of that increase over the winter
15 time in the average, but it doesn't really show
16 you what's happening that year, of course. And
17 then the year before, there's something almost
18 completely different at certain times of the year.

19 So we just want to keep this in mind
20 in terms of what this kind of data tells us. And
21 then we want to think about what the actual yearly
22 data can tell us.

23 So this is back in the 1950s, to give
24 us a little bit of a sense of the pre LWR, and you
25 can see very generally through the seasons. And

1 just to point out as well that these graphs that I
2 will show you start in January as opposed to
3 April, so they go from winter to winter basically.
4 And you can see that the lowest level during the
5 year, in every year, is in the spring, in the late
6 April when the ice begins to melt. You know,
7 that's a fairly common pattern there. The water
8 levels drop slowly in the winter. They are
9 relatively stable, and they go out in the spring
10 frechette flooding up the banks. And then they
11 very slowly decrease over the summer and into the
12 fall. That's a basic pattern.

13 And all these little fluctuations are
14 probably due to wind setup or maybe some local
15 precipitation events, but they are not too
16 significant changes.

17 And then we look in the 1960s. We can
18 see that there's a lot of natural variation from
19 year to year. We have some very dry years, lower
20 years and we have very high years. But again, the
21 pattern stays the same. It doesn't vary even --
22 it's higher and lower but the pattern is there.

23 And then you have the freeze-up in
24 November, mid to late November, and during a
25 typical spring frechette, the water can rise even

1 up to five feet, one and a half metres in May and
2 June. And this is the pattern that boreal species
3 are adapted to, and this is important to remember.
4 This is not a tropical ecosystem. This is not --
5 you know, we all maybe are familiar with
6 lakeshores -- or the shores of an ocean, the
7 intertidal zone is created by the rise and the
8 fall in the water. That is what those species in
9 the intertidal zone are adapted to. They don't
10 live in the middle of the ocean and they don't
11 live in areas that are not subject to tide. So
12 this is similar to the boreal riparian species
13 that are adapted to this natural pattern. And the
14 cultures who have evolved in a boreal ecosystem
15 are also adapted to these seasonal patterns.

16 And we can look even back in the
17 1930s. We've got some data from the 1930s, and
18 even during a drought year the waters are very
19 low, the spring frechette is not nearly as
20 significant, but the pattern is still there.

21 So this just gives you a little bit of
22 a sense of the type of riparian habitat that you
23 might expect in a boreal ecosystem in a part of
24 the river that might have more sediment
25 deposition, because sediment is always moving in a

1 river system, the shorelines are always changing
2 over time. And in this case, you'll see often a
3 natural zonation. So you have submerged aquatic
4 plants, plants under the water, ones that are
5 growing up out of the water, sedges and rushes,
6 you have all these early successional herbaceous
7 plants, great diversity. Many of these species
8 don't live up in the upper forest, in the spruce
9 lichen forest, for example. And then you have
10 large deciduous shrubs. This also, it's a very
11 high diversity, structural diversity of plants.
12 And these riparian areas also act as corridors in
13 the landscape that species disperse along those
14 corridors over time, over long periods of time.

15 And this is actually an embayment in
16 Cross Lake that is controlled. So the water
17 levels here are not following that seasonal
18 pattern but they are more stable. So that
19 actually provides a certain benefit for certain
20 plants and species that can thrive better in a
21 more stable environment.

22 As I mentioned, erosion is a natural
23 process in large rivers. It can be quite extreme
24 on the outer bends of shorelines where the river
25 has high velocity and the sediments are clay and

1 silt, very easily eroded. But when you alter the
2 flow patterns, especially in winter, you can have
3 more ice scouring. And when you have, if you
4 don't have the riparian vegetation growing as well
5 on the shorelines to anchor the sediments, you can
6 have extreme erosion. And this is an extreme case
7 in Stephen's reservoir in the lower Nelson River
8 downstream from where they are building the
9 Keeyask Dam.

10 So these patterns are complex. When
11 you start altering the water levels, it's not just
12 a simple change from one thing to another. In
13 this case, we have patterns that are all over the
14 place. So sometimes we've got high water levels
15 throughout the summer, which in here have killed
16 off a number of the willows that are actually very
17 resilient to flooding. They grow in flood zones.
18 But after a period of many dry years, the shrubs
19 grew up and then we start having wet years. And
20 the maximum flow is coming through past Jenpeg and
21 then these plants are being killed off. So it's a
22 little bit mixed up, the whole system.

23 And this is a mouth of a tributary
24 along Cross Lake. And you know, it looks nice and
25 green and so on, but there's actually not very

1 high diversity of plants there at all. It's
2 almost entirely one species of grass growing
3 there. This is an area that elders have said used
4 to have very healthy strong spawning runs of
5 pickerel and lake whitefish that are no longer
6 there. Beaver lodges are there, quite old ones
7 that are uninhabited. And the water has very high
8 turbidity. We haven't studied those systems so
9 we're not sure exactly what's going on.

10 In the 1970s, in the early '70s, you
11 can see that even by '73, the construction of LWR
12 started to be able to hold back the waters, and
13 you get the first year where the water levels are
14 low in the summer time rather than going up
15 higher -- lower than in the winter.

16 And then later in the 1970s, the water
17 levels began to fluctuate quite dramatically in
18 Cross Lake. And so you get this year here, 1978,
19 where the water levels just plummeted in the
20 summer time, an absolute reversal of the seasonal
21 pattern, and then right back up again, and you
22 have it drop here in 1979. So things were just
23 completely haywire back then.

24 Into the 1980s, we still see this
25 general pattern of seasonal reversals. We have

1 quite a few fairly lower water years in the 1980s.
2 1986 was a high water year. So the spring
3 frechette happened, but then the water dropped
4 right back down again. And then you can see it
5 peaks, and you can see that it peaks back up again
6 in the fall, in the early winter.

7 And this year here in 1988 was the
8 lowest year on record. And it was reported that
9 it was about 300 square kilometres of lake bottom
10 that were exposed in Cross Lake at that time. So
11 this was quite a very dramatic and radical change
12 to the ecosystem. And the animals must have been
13 entirely confused. This is actually from the
14 Jenpeg Forebay photo a couple of years ago of an
15 older, had been at one time quite a
16 well-established beaver lodge that is high and
17 dry. And I'm not sure from what period of time
18 that would have been. It's just an example.

19 So then the Cross Lake weir and outlet
20 was anticipated as an NFA commitment, and so it
21 was -- unfortunately, though, there was not a plan
22 put in place after the NFA was signed. It
23 appears, again, this is what I have been able to
24 gather, there was a claim that had to be put in
25 under arbitration in order to pursue the idea of

1 having a weir put in, in order to try to maintain,
2 to avoid those rock bottom water levels that were
3 occurring in Cross Lake.

4 So this is, basically this is three
5 of, the three channels at the main outlets of
6 Cross Lake, and the weir was put in the central
7 channel which is basically kind of a rock ledge
8 built up underneath the water, because this was
9 the deepest channel, to keep the water, minimum
10 water levels higher than they were otherwise. And
11 then here there were three rock, large outcrops
12 basically. It's hard to understand the scale of
13 this, but that were blasted away. And this is
14 more shallow. And so this helps to prevent the
15 water levels from going too high, because the
16 outflow in high years can get out of there more
17 easily. So that's the basic idea behind that. So
18 here are those three outlets that I talked about
19 here.

20 Again, this mitigation measure, this
21 would influence Cross Lake and Pipestone Lake and
22 up to Walker Lake, keeping those minimum water
23 levels up. But it, of course, doesn't affect the
24 actual pattern of water flow, so it doesn't affect
25 the downstream area here through the rapids and

1 into Duck Lake and all the way into Sipiwesk Lake,
2 which isn't on this here.

3 So the question is, has the Cross Lake
4 weir actually improved habitat and use of the
5 waterways? This was a major mitigation project
6 that cost \$9 million apparently.

7 Back in 1986, there was a Cross Lake
8 environmental impact assessment that was
9 conducted, and at that time the various proposals
10 for the weir and outlet control scheme and so on
11 were detailed. The weir was built about five
12 years after that. At the time there were
13 predictions about the recovery of aquatic
14 furbearers, fish and waterfowl populations that
15 would result from the proposed mitigation. But
16 the mitigation, the weir itself, the recovery of
17 these populations that was predicted didn't rely
18 only on the weir, but also on operation changes.
19 And there were a number of specific
20 recommendations for changing the operations of the
21 interim licence at that time.

22 There didn't appear to be any kind of
23 a comprehensive environmental assessment, or a
24 plan to do ecological monitoring, other than fish
25 studies, to look at whether or not the objectives

1 of this weir actually met the goals that they had
2 put into place. So there had been a number of
3 years of fish population studies that were done in
4 Cross Lake, as well as elsewhere. And one of the
5 things that those studies have shown is that the
6 lake whitefish, for example, are still very low,
7 very, very low. And we have some ideas about why
8 that may be the case, but there have been no
9 detailed study of it. There has been no study, no
10 other field study of any other environmental
11 changes, what has happened with the shoreline
12 habitats, with the muskrats, with the frogs, with
13 the song birds, anything, as far as I have been
14 able to gather.

15 So into the 1990s, then we can see
16 after the weir, these are two years with the pre
17 weir, and after the weir was built the water
18 levels did come up. So they were no longer going
19 nearly as low as they were before. But still in
20 many years since then, we still have a seasonal
21 reversal of the water level patterns throughout
22 the year. Except in high years when Manitoba
23 Hydro is compelled to go to maximum discharge,
24 when Lake Winnipeg is over 715 feet, then we can
25 see that the spring frechette will still happen in

1 Cross Lake in those years. But we have some quite
2 erratic patterns that are still happening
3 throughout the fall in those years and we have had
4 some record high water levels.

5 So this just gives you an example here
6 of, first of all, this very low year here in 2003,
7 that gives you an idea of -- under the licence
8 conditions the minimum total outflow of past --
9 the total outflow from Lake Winnipeg essentially
10 cannot go below 25,000 cubic feet per second,
11 that's a licence condition. It appears that that
12 licence condition was based on the record all time
13 low that was understood from Lake Winnipeg. This
14 is a record all time low, according to the licence
15 it can occur any time of the year. And as we saw
16 in the earlier slides, the lows, the lowest time
17 of the year was only ever in the late winter and
18 early spring before the frechette.

19 Now, under the licence conditions,
20 this kind of a low can happen any time of the
21 year, and that can have very serious adverse
22 downstream effects. There didn't appear to be
23 very much consideration for establishing that
24 minimum flow and when that could be permitted to
25 happen.

1 And then the licence conditions also
2 permit a rate of flow change that allows this
3 program that is referred to as the November
4 cutback to occur. And this is an important
5 operations procedure for Manitoba Hydro in order
6 to ensure the maximum or the -- the maximum
7 capability outflow in the winter, when the
8 downstream power generators need as much water as
9 possible. What it does is it helps -- they cut
10 back the water coming past Jenpeg to allow the ice
11 to form more smoothly in the Forebay. If the ice
12 is formed when the water is at higher velocity,
13 you can have a buildup of frazzel ice, so ice
14 crystals form in the water and they don't freeze
15 solid right away, they can build up and build up
16 and build up and build up, and you can get a huge
17 thick layer of ice. And this is not good for the
18 outflow capacity for Jenpeg, or for the spillway
19 for that matter. So that's why this is done. But
20 the result here in Cross Lake is that water levels
21 will drop during freeze-up, and then they will go
22 back up again after freeze-up. And this is one of
23 the major causes of the slush ice problem in Cross
24 Lake.

25 And so the more recent years I have on

1 here, we have a record high level in 2011. We
2 have these very rapid increases in June and July.
3 What kind of effects does that have on nesting
4 waterfowl, for example, if they establish their
5 nests and then the water levels go up? It's a
6 question. And then the November cutback here, is
7 that typical pattern? And these kinds of
8 fluctuations cause quite severe effects for
9 species such as muskrats. And Darrell is going to
10 talk about that a little bit more afterwards.

11 The shore marsh, this is just one
12 example of a shore marsh in Cross Lake that was
13 flooded throughout the summer. You know, we have
14 vegetation that's growing in there but some of
15 it's dying. What's happening with the species
16 that live in there with the water quality and so
17 on, these are all kinds of unknowns. Pimicikamak
18 have many, many observations over the years of how
19 these marshes have degraded, but because there's
20 been no formal study, those types of observations
21 tend to be relegated to, you know, to the status
22 of anecdotal. And this is a serious problem,
23 because we don't have -- if we rely on formal
24 scientific data to help our understanding of what
25 happens in this ecosystem, we haven't got it in

1 this case.

2 And we know that riparian habitats are
3 some of the most biologically rich, the most
4 directly affected by water level regulations, and
5 yet we haven't studied them at all since Lake
6 Winnipeg Regulation was put into place. And that
7 actually astounds me.

8 This is an armoured shoreline at Cross
9 Lake. So following those record highs in 2011,
10 there were unanticipated threats to the
11 shoreline's erosion and so on, and there was some
12 armouring done of shorelines in Cross Lake and
13 near some of the causeways and so on. It doesn't
14 appear that there was very much consideration put
15 to repairing the long-term riparian habitat
16 diversity in the systems. Rock is just kind of
17 dumped there. And it's not a very healthy looking
18 shoreline.

19 So, briefly, the question about
20 Sipiwesk Lake downstream, and it's been suggested
21 by Manitoba Hydro that we really can't discern
22 what the effects are of LWR on Sipiwesk because
23 there is the overlap with Kelsey Dam.

24 Just to say, this is the southern end
25 of Sipiwesk Lake, and so it would be around the

1 area that would be the, sort of the upper extent
2 of the reach of the influence of Kelsey Dam and
3 the flooding for that dam. These shorelines are
4 clearly not very healthy shorelines.

5 But if we just look at the hydrographs
6 from Sipiwesk Lake, we can actually see -- this is
7 through the 1990s -- that the water level patterns
8 you see in Cross Lake are quite closely mirrored
9 in Sipiwesk Lake, especially in the upstream
10 reaches of Sipiwesk Lake. I don't know about the
11 downstream reaches, I haven't looked at that yet.
12 But this area absolutely is directly affected by
13 LWR and you can see the patterns very clearly.
14 And we should be taking that into consideration.
15 Again, through the years of the 2000 and 2009, I
16 haven't put the Cross Lake graphs on here, we
17 wouldn't understand that at all, but the pattern
18 definitely limits what's happening in Cross Lake,
19 because the weir doesn't change the outflow
20 patterns from Cross Lake. So the water levels at
21 Sipiwesk Lake, 2000 up to 2013 again.

22 So what is the riparian habitat
23 condition in these reaches further downstream? We
24 have no idea because there is no program of
25 ecological monitoring. That doesn't seem to me to

1 be -- well, again, I find it quite surprising how
2 little work has been done on this. If we want to
3 understand what the health of these, what amounts
4 to thousands of kilometres of shorelines, on every
5 piece of shoreline, every tributary mouth, every
6 shoreline around the islands, obviously we can't
7 study all of that, this is a massive area that's
8 been affected. To develop an ecological
9 monitoring program would require a lot of
10 collaboration, discussion, prioritizing, figuring
11 out, you know, where resources should be put.
12 Because you cannot even begin to address this in
13 kind of a haphazard way.

14 This is the same area of Sipiwesk that
15 I showed in the photograph, an air photo from 1946
16 and just a Google image from 2013, just to give
17 you an idea here. So this area has been flooded,
18 so you could see that. And the shorelines in this
19 air photo are quite diverse. If you do any air
20 photo interpretation, you can get a sense of the
21 vast variety of types of shoreline habitats you
22 have there, marshes and shrub swamps and emergent
23 aquatic vegetation areas and so on. And then you
24 see that there's quite a modulization of the
25 shorelines in here following the flooding and the

1 alterations in water levels from upstream. This
2 is just a cut block, a commercial forest cut
3 block.

4 And another issue that Pimicikamak are
5 quite concerned about is what are the effects of
6 climate change? So there are predictions in the
7 models that there will be increased precipitation
8 in the watershed, especially from the southern,
9 the rivers to the south of Lake Winnipeg, and that
10 possibly there would be more extreme events in the
11 future, which are a big concern for major erosion
12 events which Darrell will talk about a little bit.
13 And this is a concern that's in relation to the
14 licence condition which allows -- requires
15 Manitoba Hydro to go to maximum outflow above
16 715 feet under any circumstances. Back in 1986,
17 that Cross Lake environmental assessment
18 recommended that this interim licence condition be
19 changed and that there needs to be more
20 consideration for the overall picture and what are
21 the implications in a flood year of allowing that
22 maximum discharge, maybe through the whole summer
23 into the fall, sometimes longer than that.

24 This licence provision doesn't give
25 any specific consideration to the downstream

1 impacts. And if in the future we have increased
2 floods, those floods basically are getting passed
3 straight downstream for the benefit of flood
4 protection on Lake Winnipeg. This is a very
5 complex issue. We can't propose, let's just
6 change the level because it has upstream impacts.
7 And that's why we need to look at the bigger
8 picture here, and there needs to be, in my
9 opinion, quite a bit more understanding of what is
10 happening in the system, the variability in the
11 system, upstream and downstream impacts, and
12 really begin to talk about trying to balance the
13 ecosystem and the human needs, needs of
14 Pimicikamak, with the objectives of this project,
15 which are hydro production and flood and drought
16 control upstream.

17 So one point about the rate of flow
18 change licence condition. It's permitted under
19 the interim licence, the rate of flow can change
20 15,000 cubic feet per second in 24 hours. Now,
21 that's what it says, any increase, total increase
22 or decrease in the licence.

23 There isn't any objective in the
24 licence. We presume that the purpose of that is
25 to protect the downstream, to some extent, so that

1 the fluctuations are not too rapid.

2 I guess you can't read that.

3 The consequences of the flow changes
4 that do take place during times when the licence,
5 or the operations are in compliance, we haven't
6 looked at that. What are the consequences of
7 that? And how is the rate of change actually
8 measured? What's intent of the interim licence?

9 This is the chart that Manitoba Hydro
10 provided in their submission to the CEC, which
11 shows the rate, this is the maximum permitted rate
12 of flow change. And this is the instances and the
13 times when that rate of flow was exceeded.

14 So the explanation was that, first of
15 all, each time this licence condition was
16 exceeded, Manitoba Hydro obtained permits for
17 that, and that over the years these instances have
18 been decreasing. So that's a good thing. And
19 this is partly from operation, increase in the
20 operation staff understanding how to manage the
21 system and so on. So this is a good thing as
22 well. But this is nine times in the last four
23 years, according to this information. What does
24 that really look like if we look at it a little
25 bit closer?

1 So let's just take in, sorry, 2013
2 year, more recently here we have an exceedance of
3 that rate of flow change. So October, November,
4 and this is usually happening during the periods
5 of time when they want to do that November
6 cutback. And most of the time you're going to be
7 stepping the flow down in one direction. So they
8 are stepping it up, up, up, up, up. This is
9 15,000 cubic feet per second. This is the flow
10 rate rather than water level here that is shown in
11 the graph. So most of the time you're going up
12 over a period of days or down over a period of
13 days. But under this rate of flow change, it
14 actually can be quite significant. And there can
15 be periods of time where it actually goes up and
16 down during one day. Well, here is an example, so
17 over eight days you're stepping it up, up, up, up,
18 up. During this period we're all in licence
19 compliance, so that's a good thing. But the flow
20 is having that effect downstream. But that's
21 permitted.

22 The question I had about this, and it
23 really requires maybe a little more discussion, is
24 that the licence condition says that total
25 increase or decrease over a 24-hour period, it

1 doesn't say average. If the licence condition is
2 there to protect downstream environments or
3 somebody who might be travelling by boat not too
4 far from the base of the outflow, then we would
5 think that maybe we shouldn't be looking at an
6 average, we should be looking at the total
7 increases and decreases. So this is over a one
8 day period, we've got a decrease and then it goes
9 back up again. And then the actual reported rate
10 of flow change over 24 hours is an average. And
11 so the average that's reported is really about
12 half, in this case approximately half of the
13 decrease and then the increase.

14 And so I have a question about that in
15 terms of, again, the licence is very bare bones,
16 it doesn't state any objectives, it doesn't try to
17 help us to understand what happens if this
18 condition is exceeded or not, or what happens if
19 it's actually being complied with? I think that,
20 first of all, we should be reporting the actual
21 increases and decreases, it doesn't happen very
22 often, and whether or not the effects are apparent
23 further downstream at Cross Lake may not be an
24 issue, but if somebody was travelling fairly close
25 below the dam, it could be quite a bit more

1 drastic. I have certainly sat downstream of dams
2 in Labrador, for example, having a little fish
3 fry, and then all of a sudden the gates are open
4 at an incredibly fast rate, and holy mackerel, you
5 are happy you were not in the boat at that point
6 in time. So this I think is an issue that should
7 be looked at a little bit more closely.

8 So, overall there has been no habitat
9 assessment for waterbirds. We have an environment
10 that's not just changed from one thing to another,
11 but it's altered radically from year to year to
12 year to year. So you can't just do one survey in
13 five years or 10 years, you really need to be
14 looking at the system on an ongoing basis.

15 The water quality changes are a huge
16 issue for Pimicikamak. What is our level of
17 understanding of the water quality changes?
18 There's very limited pre LWR data. Some of the
19 data that, you know, Manitoba Hydro says that the
20 data are inconclusive. There doesn't seem to be
21 any discussion about what the influence of the
22 construction period on the pre LWR data were,
23 because some of the earliest water quality data
24 were collected when the northern flood, the
25 Northern Rivers study report was begun. And I

1 suspect that when they started to construct the
2 outflow, the bypass channels upstream, there must
3 have been massive amounts of sediment released
4 from that. So these issues need to be looked at
5 more closely, and as well as the cumulative
6 stressors on the water quality and aquatic
7 habitat. Carp, for example, are now in the Nelson
8 River. And we know that there are concerns for
9 increase in turbidity as well.

10 So just to finish up, this downstream
11 area is a huge region, it has very complex
12 alterations caused directly by LWR, and the
13 impacts vary among years.

14 The licensing process, as Chief
15 Merrick pointed out, is really not adequate to
16 consider the combined effects throughout the two
17 river systems, Churchill River and Nelson River
18 certainly. And they don't seem to be even
19 adequate to be looking at overlapping effects such
20 as with the Kelsey dam.

21 So I'd be happy to discuss any of
22 these issues later on this afternoon, but Darrell
23 is going to give a little bit more detail about
24 some of his observations in the downstream
25 probably after a break maybe.

1 THE CHAIRMAN: Thank you,
2 Ms. Luttermann. And you guessed right, I think we
3 will take a short break now and come back at
4 11:30.

5 (Proceedings recessed at 11:15 a.m.
6 and reconvened at 11:30 a.m.)

7 THE CHAIRMAN: Okay, we'll get back to
8 work. Mr. Settee, you're up next.

9 MR. SETTEE: Thank you. I greet
10 everyone. Thank you, panel, for the opportunity.
11 And my name is Darrell Settee from Pimicikamak. I
12 am going to be speaking in the Aboriginal
13 perspective. I grew up in the '60s and '70s
14 speaking my own language, and I grew up in a time
15 where -- well, before any changes occurred on our
16 lands. So the present generations will not see
17 what I experienced in the past where there were no
18 changes. So, also to provide you, the panel and
19 every one of the participants, an explanation of
20 the slides that you will see before you. So I
21 will now proceed.

22 The Pimicikamak experiences with
23 downstream environmental effects, but also you
24 will see the upstream effects also. Well,
25 monitoring impacts, I tried to get a sense of

1 comprehension of what has been occurring, and I
2 did visually visit many sites where the changes
3 have happened. And I got wind in my face and the
4 water splash also, wind in my hair to see
5 personally, get the elements in my face to visit
6 some of the areas personally. So I have seen a
7 lot of the same sort of impacts everywhere I've
8 been travelling throughout the last 10 years, with
9 the observations and personal accounts.

10 So this is, this slide shows Sipiwesk
11 trend, and this is the same thing I see year after
12 year. And I visited again last fall, and that's
13 the same sort of washout, debris washing up on the
14 shores. So that hasn't changed from my
15 experience.

16 There's our two slides right here.
17 The top part shows -- there is a, if I can get --
18 well, this is in our community, as indicated, and
19 this is about four or five years ago, the low
20 water. These are normally under water. But the
21 water went so low, even after the weir. And we
22 see the water intake right here, which is exposed,
23 and also what is not visible is the effluent, the
24 recycled water from the treatment plant that pumps
25 the water back into the lake after it's been

1 treated. And the bottom slide shows the former
2 productive forest above Jenpeg on the Forebay
3 area.

4 So what you see there is, in the
5 foreground, you see a bunch of tree stumps that
6 were cleared prior to the Jenpeg Generating System
7 itself was built, and water will recede -- will
8 advance all the way to the trees in the background
9 and then recede once again when the water
10 fluctuates, changes, and these particular stumps
11 that we see here enter the Forebay once again
12 every year, so that it's sort of a cycle if that
13 happens in that area. So to get to this area was
14 very -- well, we took some chances to go see some
15 of the land there, because there was rapids there
16 that disappeared due to flooding. But when I was
17 there, once more we had to go on a steep incline,
18 so we had to abort a few times as there were giant
19 whirlpools. So we spun around a few times, and
20 then we maneuvered the boats slowly over the
21 incline to climb the rapids to the other side to
22 see some of the impacts.

23 THE CHAIRMAN: Mr. Settee, what you're
24 showing us here, is that underwater at times?

25 MR. SETTEE: Yeah, at times, yes.

1 THE CHAIRMAN: At what times of the
2 year?

3 MR. SETTEE: In the fall, in the
4 spring, sometimes in the summer. So it changes.

5 THE CHAIRMAN: Thank you.

6 MR. SETTEE: So these are the eroded
7 banks at Duck Lake, the trees are leaning over,
8 which is very common now, or has been. And
9 camping sites here are now washed away, the
10 landing is very, very hard. And you're going to
11 spend a lot of time, like all day to look for a
12 good camping spot or a good landing area because
13 there's so many trees and debris there.

14 This is a slide which shows Duck Lake
15 to Sipiwesk. A new channel was created due to the
16 fluctuating waters that forced its way through a
17 body of land. And so, therefore, we see a new
18 channel there that just appeared a few years ago.

19 This is another slide which shows the
20 area. So I've got the arrow right where the
21 channel was created in this area. And this is a
22 very productive area for fishing and such in the
23 past here. The Pimicikamak people in the past
24 have set nets here and did fishing, hunting, all
25 these areas were good for fishing for sturgeon.

1 This is on the other side, on the
2 downstream side of the new channel that was
3 eroding. The currents were so strong that they
4 pushed right through and left some of the trees
5 floating downstream also. But someone -- I think
6 there was a boating accident there, I think it was
7 also fatal, so -- and it's very, pretty scary for
8 it, including myself. We respect the navigation
9 part, when I go there we, you know, we try to
10 dodge lots of debris. So when we find so much
11 debris collected, we don't bother, we just pass
12 by, we don't set a net because it will just be
13 washed out, taken out by debris.

14 This was taken a few years back in
15 Sipiwesk also. There is a piece of island left,
16 piece of the cake, or here, which was a much
17 larger island in the past. One of the elders from
18 Pimicikamak said, at one point there were over 300
19 island at Sipiwesk Lake, but many have been washed
20 away. While this area would have been
21 potentially, well, that island would have been
22 potential for a camp site or, you know, a place
23 where people gathered in the past to tell stories
24 and, you know, talk about the -- they used to talk
25 about access into different lakes, you know,

1 directions. So they would gather here. And these
2 islands, also probably many Pimicikamak ancestors
3 was buried in these locations, some of these
4 islands that are now gone.

5 This slide shows the pot from the fur
6 trade era at Walker River, Walker Lake. The fur
7 trade era goes back hundreds of years and some of
8 the erosion is starting to expose some of the
9 items. Like this was from a trading post at
10 Walker River about 40 miles northeast of our
11 community. And I think archeological studies will
12 determine what age, what era this pot came from
13 and where it originated.

14 What we see in front of us is the
15 remains of our ancestors. And this is a very
16 serious problem. You know, I have said that
17 ancestors of the Pimicikamak people do not rest in
18 peace. A lot of these grave sites everywhere, and
19 there's a lot also on Walker Lake, Walker River
20 that need attention, like we need to protect, and
21 I think we need to do some studies out there to
22 make sure no further damage occurs to our
23 ancestors. It's very, very -- well, it's not very
24 pretty to come across something like this out
25 there when we are out on our land.

1 This is an upstream slide from just a
2 few kilometres from the dam. It's a layered
3 beach. What I mean by that is this is part of,
4 used to be part of a forest and a beach, but
5 fluctuation causes all the debris and layering of
6 organics, mud, and there are some remains of tree
7 sumps there also. But this is not natural, it's
8 caused by unnatural flows. So that's the way it's
9 going to stay, and it's not going to ever change I
10 guess. It's pretty much a ruin.

11 These are the tree stumps here, some
12 are huge. It would be anywhere like 10 feet in
13 diameter, and we call them spiders because they
14 got the head part that was cut off, and the tree
15 trunk, but we are left with the roots. And these
16 spiders enter the water and they are very
17 treacherous, very dangerous for people on boats.
18 So it gets scary at times.

19 But when we're dealing with the rapids
20 in the area, we try and dismiss as much
21 nervousness as we can, so we can proceed without
22 making a mistake that will cost you your life or
23 something in that nature, that we endure every
24 summer, every year. I personally do not keep from
25 navigating waters because these hazards. Well, I

1 don't think they will ever go away, but I think we
2 could do something about them, clear most of them,
3 keep the effort in trying to remove these hazards
4 from entering into the water.

5 This is a slide which shows slushing
6 effects, well, everything, including recreation.
7 In the past, in the '60s, I witnessed the sled dog
8 era where they hauled mail by dog teams, and also
9 fish, and a successful caribou hunting from lakes,
10 like Utick (ph) Lake, which is about 90 miles
11 northeast of where we live. Even today it takes
12 five hours to six hours one way by snowmobile,
13 sometimes longer if you encounter such conditions
14 here. So, again, people don't -- they haven't
15 stopped accessing lakes for the good fish.

16 These next few slides will show you
17 what we have to deal with. And some of the water
18 that comes up on the ice after freeze-up, it backs
19 up into the creeks. There are some remote lakes
20 out, that's just to the, on both side of the Cross
21 Lake or Sipiwesk, there is back lakes, remote
22 lakes, interconnected by the tributaries and the
23 creeks, and the water backs up in there and just
24 easily breaches over all the beaver dams. There's
25 no stopping. So it affects the muskeg, which is

1 very low so it's not hard, it's easy for the slush
2 flood water to flow into muskeg and affect the
3 trapping in there, and also the habitat.

4 So it's almost impossible to get out
5 of this mess. So this was a few years ago in the
6 winter. This is an ongoing problem for us. It's
7 pretty widespread, it's not only like Sipiwesk,
8 Cross Lake, I'm sure. Like Tataskweyak, I think
9 probably Norway House also probably, it's a
10 widespread problem for everyone. And damage to
11 the machines occurs. And the slush will freeze so
12 you've got the crust over the slush that forms.
13 And then you can break through the top layer of
14 slush and you get into a serious accident, or you
15 damage your machine, which I still have an
16 outstanding claim about my snowmobile that was
17 damaged, and it happened about five years ago.
18 It's still ongoing. I was told that Hydro will
19 pay one-third of the costs. And well, they said,
20 they told me the reason it's still ongoing is
21 because, they told me at the office that Hydro is
22 settling all slush-related claims, they don't have
23 to but they will pay one-third of the costs. So I
24 turned around and walked outside. But it's still
25 ongoing, as I say, so the damage will still happen

1 in the future.

2 This is the leaning ice, so after --
3 so winter months, fluctuations happen and water
4 runs out because of the operations and
5 regulations, and it starts to lean over, break
6 apart. This spot here is not safe for, you can't
7 step on it, or you can no longer drive on this.
8 There's probably about, you know, six feet, eight
9 feet of water, which is still a problem. So it
10 splits through everywhere, and openings here.
11 Like in the past, in the '60's, there was no such
12 conditions.

13 In the summer, we are allowed to
14 operate our three horsepower motor anywhere
15 because it was too much to worry about. So I
16 tried to explain to the younger generations, you
17 know, you had to take your time and take no
18 chances, and just try to get advice from the
19 elders, get somebody who knows the conditions to
20 explain what hazards are there. Because every
21 year there is new youth and younger generations
22 are now participating in the hunting and
23 snowmobiling activities, so they will have to
24 learn about the hazards, you know, that could
25 still claim lives in the future.

1 Oh, this is a sketch here. Just to
2 show you an example of the dark line here shows
3 the bottom of the river bed, or lake bed, and you
4 have got the ice here leaning already, because the
5 water is running out and you see breakages, and
6 water now is mixed with snow here forming slush.
7 So that's what happens. But it takes on lots of
8 forms, like peaks, swells, laps, bowls, we get
9 blow outs here. Well, the rising water level will
10 cause this ice to form the other way like this.
11 And you've got blow outs here, you've got the reef
12 here, and you've got a bowl shape and then it
13 blows out. We had to fish out a young fellow one
14 time out of a bowl that had about three or four
15 feet of water. He was standing on the seat so we
16 were able to pull him out.

17 So some of the up bowls, I was
18 mentioning, and when the water recedes, it leaves
19 these openings and they look like caves. So I
20 went inside here and got a picture taken. So it
21 will collapse too. When the skis get caught in
22 there, you can really suffer a serious injury.

23 And leaning ice again, what happens
24 here is low water, well, the water runs out and
25 the ice starts to lean over, cracks right through

1 the muskrat house, and sometimes the ice is
2 already on the bottom of the lake. So there's no
3 breathing hole for the muskrats to take refuge, so
4 they get crushed in there.

5 This next slide was done by the help
6 of our adopted little girl, 9 year old Aiden
7 Settee. She coloured in and tried to show what,
8 show some of the muskrat habitat. Okay. This is
9 the muskrat lodge, and the muskrats enter through
10 here and they stay here, take some food in there.
11 And this part doesn't freeze because of the
12 vegetation and all of the soil and stuff they
13 bring up to make the lodge. You've got an
14 entrance and exit. And this is the breathing
15 hole. They also call them the push ups. So the
16 muskrat will use these, like a network of
17 breathing holes, there's access from here to
18 there. But also they have burrows, so they enter
19 through here. So when the water runs out in the
20 summer, we see a lot of trenches on the shoreline.
21 So they are not just in the lodges, they are also
22 in the burrows.

23 So what happens here is the water
24 drops and freezes up to this point, or it's so
25 high that the water floods in here and runs over

1 the animals, and even the kittens that are born.
2 They haven't bounced back at all. The elders told
3 me that it's a very rapid reproducing fur bearing
4 animal, but my brother Zach reported that he
5 hasn't caught a muskrat for 10 years.

6 So what also happens is that, the
7 other problem is that there are back lakes, remote
8 lakes as I mentioned earlier, that are the
9 breeding grounds for muskrats. But, again, the
10 water backs up into those breeding areas. So
11 there's no integration of moving into the lakes or
12 back and forth. So there is little chance for
13 them to reproduce. That's why the muskrat
14 population has not been very high, they haven't
15 recovered.

16 Okay. There's a drowned animal. Also
17 hanging ice forms ledges and those animals, they
18 take refuge under the ice from the birds of prey,
19 but the ice will collapse and crush the animals,
20 even though they are a very elusive animal. But
21 that's what happens throughout Sipiwesk, Cross
22 Lake, upstream, downstream, all throughout the
23 system, so it's not very good.

24 Okay. Traps here, the traps were put
25 in place after the holiday season in January. In

1 this particular area, we have our trap at Walker
2 River, and the flooding starts to happen so we
3 can't access until after the new year, because
4 there's hanging ice that you can walk ahead and
5 use a pole to see, you would hear the hollow sound
6 of that ice. A few times I broke through. But I
7 was so quick, I jumped out so fast that I didn't
8 get wet during that one time. But this is what
9 happened. The layering, there was a couple of
10 feet of water had flooded over the ice. The
11 trapper in front of us is trying to save the trap
12 and the animal that's there for fur bearing, which
13 will provide some income. And so usually they try
14 to go out to provide some income for the holidays,
15 buying of the gifts and stuff. In our area, we
16 have trouble to get access before Christmas.

17 Summer slide here which shows the
18 grebe nest, they attach it to willows. But as the
19 water starts to come up, it becomes more like
20 dislodged from the willows and the eggs are lost.
21 They fall off and they don't get to hatch. It's
22 very common to see this, even where we live there,
23 just out on the lake there. There's a bunch of
24 reefs there that the birds arrive themselves and
25 they start nesting on these shoals. But they

1 start flooding out. Some of the chicks, you know,
2 get hatched but, you know, they are also lost.

3 These are the spiders. They could be
4 small, they would be big, but there is a variety
5 of other debris that can get between the lower
6 unit and the back end of the motor, the stern or
7 the transom. And it causes the boat to be swamped
8 because it makes a sudden stop. Because for some
9 reason the prop loses -- the propeller loses the
10 drive, or something happens and then the boat will
11 sink.

12 This was taken about six or seven
13 years ago. Low water also will cause algae to
14 deteriorate and ends up on nets, and it's very
15 dirty. And some of those collected and sent out
16 for some form of study. And they said it was
17 algae that's very toxic.

18 So this is the other example of the
19 muskrat that is chopped out of ice. And there's
20 no value to this one. You can't sell it. Fur
21 prices are not good anyway. So these animals have
22 taken quite a serious beating to their breeding
23 areas, breeding back lakes and everything. So I'm
24 not very confident I will see very many again in
25 the future.

1 So, inside the muskrat lodge, this
2 muskrat had frozen in because the exit hole was
3 blocked off by ice or crushed in. So there's no
4 way of exit and no access to food, or it becomes
5 flooded so they freeze there and die.

6 The fish here are stranded quite
7 often. Some of the areas on our lake, most lakes,
8 the base are like three to four deep, which is,
9 very suitable for some of the fish species. And
10 also the waterfowl need that same level, like
11 three to four feet for diving down to get, and
12 feed on the snails and some of the vegetation, but
13 when there's too much water to pass by, they can't
14 access their food.

15 So this slide shows two gentlemen at
16 the top there working on the net, and the
17 fluctuation in that area. This is west,
18 downstream of where we live there in Pimicikamak
19 area, in our community. The water line was right
20 here a few days earlier but fluctuation in that
21 area is very, very rapid, like it runs out
22 overnight. So we had to get out of there
23 before -- well, this man here, who is the late
24 Alexander McKay senior, who lost his life in this
25 area, so his body was recovered just within

1 metres, not far from where I took the image a few
2 years ago. So he previously had approached
3 Manitoba Hydro to have an ATV allocated to another
4 location where we just have one portage to deal
5 with, to access a good fishing area, where
6 otherwise we have to go through a series of
7 rapids. First we go through Ebb and Flow, and
8 then you go to Whitemouth Falls, and then you go
9 through a series of bottlenecks which can change,
10 you know, the water flows are, you know, they
11 don't pass through very quickly or they become
12 violent. And then finally we access the fishing
13 area. So he was denied the allocation of the ATV
14 and the trailer. So he lost his life a year
15 later. But the following year, Manitoba Hydro
16 approached his son and said, could you go out
17 there and clear the old snowmobile trail or
18 portage so we can allocate an ATV in that area.
19 But it was after the fact, so he was not
20 interested. So it was done after the fact, so it
21 didn't really matter too much anymore for him.

22 This is another animated view of,
23 well, of a lake or river bed here. And we've got
24 some ice frozen over, somewhat normal I would say,
25 and the green dots here are showing that there's

1 lots of oxygen for fish and aquatic plants.

2 The sand here, it's a natural filter.

3 I did work for a number of years at the water
4 treatment plant under our filter media there, that
5 consists of different granular materials, some of
6 which are charcoal, but there's sand there mixed
7 too. This was supposed to be a natural
8 filtration, the way God had designed some of the
9 areas -- maybe not Lake Winnipeg. But now it's
10 really changed because of the channels. You know,
11 it's full of erosion now and the water is very,
12 very dirty. So the sand, which has stayed the way
13 it was for a long time, thousands of years before
14 any regulation existed -- well, this is the same
15 problem in our area, all the sand at sandy beaches
16 are now covered with growth deposits of organics
17 and other debris not suitable for swimming.

18 Well, some of the areas, you know, are
19 lacking silt now. Vegetation is no longer
20 present. The elders have also said that the
21 rivers were, the natural flows were very
22 consistent, they were constant, same level, so
23 nothing changed. And the same level of water,
24 same water pressure that flowed through the rivers
25 was the same so that the bottom didn't change.

1 The silt was there. Like in the biblical times
2 there was also known for the silt to be filled
3 with minerals, like it was mineral rich. Just
4 bathing in waist deep brought some healing because
5 of the silt with high mineral content, which we
6 are lacking now.

7 So it's pretty much the same thing in
8 North America before any developments were placed
9 on rivers. And then once they start damming and
10 damming and damming up the river systems in North
11 America, I think silt is no longer present.

12 There's so much, just the water is so violent, the
13 currents are so strong, and I think it has quite
14 an effect on the health of fish, and also humans
15 who drink the waters. You know, there's bubbling
16 of gases everywhere. So silt was very important
17 to provide nutrients and minerals and kept the
18 water level stable. So I think changes to the
19 river systems here has really had a definite
20 impact on wildlife and fish and human populations,
21 which require now some of the people who work at
22 the plant, at the water treatment plant say they
23 use twice as much chlorine in lower water levels
24 to treat the water, you know, try to kill the
25 bacteria.

1 So this is the last slide. Just
2 basically shows again the river bed here. So we
3 had the pre-determined compensation. Well, we got
4 some dots that I placed here. Whenever the water
5 reached, or breached this mark, that we were to
6 receive the compensation for the water overflowing
7 or breaching (inaudible), but we learned that they
8 were moved up to this point. So we didn't receive
9 the compensation until recently. So it's called
10 now, it's pre-determined compensation for high
11 water levels.

12 So that is the last of my slides. So
13 that concludes my presentation. So thank you once
14 again for the opportunity for our presentation.
15 Thank you.

16 THE CHAIRMAN: Thank you, Mr. Settee.
17 Ms. Robinson next?

18 MS ROBINSON: Hi, I'm from Cross Lake
19 as well, I mean Pimicikamak. I'd like to
20 acknowledge the panel, and I thank the opportunity
21 to be here. I'll be touching on adverse effects
22 on social and education problems that we're
23 facing. But I want to introduce myself. I was
24 born actually in 1977, when they actually signed
25 it, so I have seen the effects over time, I have

1 seen the fluctuations of the waters, and from my
2 family and how they discussed, you know, they used
3 to share with us how the land was so beautiful
4 before. And you know, today, my friend provided
5 me with a ribbon dress. And you know, I take
6 pride in it because during the signing, you know,
7 my grandparents were still alive. And it's an
8 honour to be here and speak on behalf, for them,
9 and what I have seen.

10 So, I am a grandmother as well and a
11 mother of three, and I work at the Cross Lake
12 education as a PRP, and I'm currently attending
13 Brandon University to update my Bachelor of
14 Education. So with that, I am going to go on with
15 my presentation.

16 So the adverse effects of LWR on our
17 way of life in reconciling 55 years of
18 environmental and human devastations, so that, you
19 know, symbolically that picture means a lot to me
20 because in those times, in our youth, back then
21 were more healthier. You know, they lived off the
22 land and they -- you don't see that from my
23 personal view, you don't really see that because
24 of the fluctuating waters. You know, you don't
25 see a lot of rinks on the ice anymore like back

1 then. Like we used to skate further down before,
2 you know, it got worse with the fluctuating
3 waters.

4 So Pimicikamak territory and its
5 people has endured systematic genocides from
6 Manitoba Hydro project. We have incrementally
7 lost our identity, language, ways of life,
8 tradition, culture, self-esteem and so forth. The
9 project has systematically robbed us from our
10 spiritual connections to our homeland we call
11 Mother Earth, resulting in hopelessness,
12 environmental, social and human catastrophe.

13 Pimicikamak social structure before
14 LWR and Jenpeg, our land was healthy and our
15 people thrived living off the land, animals,
16 natural medicines and pristine waters before the
17 Jenpeg came. Our ecosystem was clean and rich
18 with resources. Nobody depended solely on the
19 store bought foods as our current generation does.
20 And that's one of the things that I personally,
21 you know, it affects me, because even my boys,
22 with the way things are, they have to travel by
23 vehicle to go do their hunting, most likely in
24 other different regions of maybe Saskatchewan.
25 It's the common place hunters go now.

1 Family members play different roles,
2 hunting, trappers, fishers and gatherers. Some
3 maintain the household, storing wild foods that
4 were brought in. Some fetched water from the lake
5 for water was an important resource.

6 During the period, traditional and
7 cultural knowledge was used to pass down a history
8 and knowledge of the land, even though the term
9 ATK and Aboriginal traditional knowledge was not
10 even used then, as of yet, even before the term.

11 LWR has affected our culture. After
12 LWR and Jenpeg was built, people started noticing
13 the difference in water levels and then colour of
14 the water. The fluctuating water levels and
15 erosion of the land became our yearly problem for
16 Pimicikamak peoples. These occurrences threatened
17 species that were common to the environment. We
18 tried to keep the traditions of Aboriginal
19 traditional knowledge alive, but it's limited
20 because of the environmental damages that occurred
21 over the decade.

22 The fear of mercury in fish and the
23 quality of fish is general. The Pimicikamak
24 people who hunt and trap have noticed the decline
25 of species of various animals, and even the

1 migration of birds due to the destruction of
2 habitats.

3 So traditional teachers of respect,
4 you know, there was, at the University of British
5 Columbia, (inaudible) in 2000 stated: We were
6 taught to respect the animals as we respect
7 ourselves, we were taught too that animals you
8 kill, or that come to you is giving their life to
9 you and that we are only to take what we needed.

10 You know, Pimicikamak people also
11 agree with that statement, because we never took
12 more than what we needed. And that that's
13 changed. It's more so that we have less than what
14 we actually need.

15 So changing education of youth.
16 Pimicikamak people had their traditions of
17 hunting, fishing, trapping and gathering. They
18 were very active on a daily basis. Young children
19 had their share of work. The environmental
20 changes caused by hydro development have made the
21 Aboriginal traditional knowledge of the affected
22 areas less useful. Many young Pimicikamak people
23 who attend western schooling system believe that
24 the education system is a waste of time because
25 they see a lack of jobs for them, as promised in

1 the NFA, to eradicate mass poverty and mass
2 unemployment, to employ our people to the maximum
3 possible extent. And the youth and the education,
4 Pimicikamak youth who attend high school know that
5 the Northern Flood Agreement that promises many
6 things such as replacing traditional economies
7 with modern jobs, replacing traditional forms of
8 recreation and social structures with new forms of
9 infrastructures, trading and employment
10 opportunities. But it seems unrealistic for them
11 to get these jobs, as Hydro and governments have
12 not taken the responsibilities in the NFA
13 seriously.

14 Opportunities are important if the NFA
15 has a plan to remediate what has been taken away
16 from Pimicikamak people. To have a place of a
17 microscope of address -- to a microscope scale to
18 address the social and environmental disaster in
19 addressing the systematic denial of Charter of
20 Rights and Benefits of the NFA.

21 Aboriginal traditions taught in
22 school. Aboriginal traditional knowledge is
23 slowly being brought back into the Indian band of
24 educational system at Cross Lake. The Otter
25 education program is being offered to the high

1 school students at ONR, Otter Nelson River School.
2 It is designed to reintegrate traditional values
3 of the Pimicikamak peoples with their youth.
4 Since Hydro and the parties have failed to address
5 the responsibilities of the NFA article 15, it has
6 been Pimicikamak people's sacred responsibility to
7 continue to honour that tradition. The challenge
8 facing the program in the Manitoba Hydro project
9 has severely decimated the lands, waterways, and
10 our ecosystem which makes it difficult to promote
11 this program as a massive scale.

12 Hydro has done well manufacturing
13 risks throughout our territory. We are
14 approaching land use, and survival in that land
15 has changed drastically as navigations and
16 traditional use are not safe. Many people have
17 been hurt or died during the exercise of their
18 traditional pursuits of hunting, fishing and
19 trapping and gathering.

20 Using the land to teach ecological and
21 biological sciences gives the students a
22 tremendous opportunity to use and reinforce Native
23 language studies. Seasonal traditional activities
24 should be incorporated from kindergarten to grade
25 12. We understand Pimicikamak is working with

1 Manitoba Hydro to implement a program to address
2 (inaudible) or traditional pursuits for
3 Pimicikamak peoples.

4 Education for environmental
5 professions relevant to the problems in our land
6 and water. More educational programs for
7 Pimicikamak youth could be geared towards
8 physical, biological and social sciences, with a
9 focus on what is happening out on the land today.
10 One of the greatest benefits of land based science
11 education is that the outcomes from several grades
12 can be achieved in each activity. For example,
13 something as fundamental and fun as fishing from
14 the water, to the filleting table into the pan.

15 Education for the future, solving the
16 problems caused by damming the Nelson River.
17 Currently schools do not provide a holistic view
18 of science and social science, and fail to make a
19 strong connection between the disciplines of
20 chemistry, biology and physics. An important
21 curriculum from kindergarten to grade 12 would be
22 a strong focus on environmental science and the
23 impacts of dams on river systems and cultures.
24 This would prepare the youth to better study in
25 the environmental management and research

1 professions at the university level.

2 Another opportunity that could be
3 offered are university level programs that will
4 provide training in environmental fields relevant
5 to managing the specific impacts of hydroelectric
6 developments in Pimicikamak territory.

7 So I just want to state that, like
8 this has been ongoing. Like I am 38 and it's just
9 been -- like Roy said, there's been hope of loss
10 even for me. You know, if there were ever any
11 promises made on my behalf, I would obviously know
12 that it wasn't going to come, you know, that it
13 wasn't going to happen, as to what the promises
14 were made to the Pimicikamak people. So it was
15 always systematic denial of the NFA, starting now
16 and starting genuine -- okay. Let's stop the lies
17 and systematic denial of the NFA starting now and
18 start genuine reconciliations to address the
19 adverse effects in an assertive, accountable and
20 responsible way as we move forward with
21 Pimicikamak's renewed generation.

22 So there were some things with the LWR
23 final licensing. Any economic development on
24 Pimicikamak lands require consent from the
25 original peoples. Pimicikamak people, for the

1 record, say that the licence could not be approved
2 as a consultation is not done right in a holistic
3 way. This is Pimicikamak land and is governed by
4 Pimicikamak peoples. There is no proof of a bill
5 of sale stating we have sold, ceded, or
6 surrendered our territory. A regulatory or any
7 government does not speak for Pimicikamak. The
8 LWR Jenpeg final licensing could not be approved
9 as there are many outstanding issues in relation
10 to the adverse effects on the land. The ecosystem
11 and the peoples that are affected on these lands
12 have not been fully assessed or reviewed. Hydro
13 is primarily responsible for addressing the harms
14 caused by the project. Before the dams,
15 Pimicikamak lands and its people were healthy.
16 Hydro has come and turned our way of life upside
17 down and has caused hopelessness. Hydro has
18 robbed our spirits and connections to the land.
19 The project has caused systematic genocide, the
20 slowly killing of a tribe and a people. Issuing a
21 final release will be exactly that.

22 The CEC is asked by Pimicikamak to do
23 something, and pretend that is to go beyond our
24 mandate to review the compartmentalizations issued
25 and look at the big picture, the real picture

1 before you make your decision with your confined
2 rules of authority.

3 The NFA is more than a convenient
4 Treaty relationship, it is also a plan for -- plan
5 first before -- it calls for a plan before you can
6 issue a licence. You need to look at the past
7 damage caused by the project and you need to plan
8 better with much more conditions that are
9 acceptable to Pimicikamak before a relationship be
10 considered by Pimicikamak people.

11 That concludes my presentation. Thank
12 you.

13 THE CHAIRMAN: Thank you,
14 Ms. Robinson.

15 It's now about a minute or two until
16 we break for lunch. I would propose that we break
17 now for lunch and then we'll come back at 1:30. I
18 believe you have two more presenters as well as
19 addressing the recommendations. Okay. So thank
20 you very much and we'll come back at 1:30.

21

22 (Proceedings recessed at 12:27 p.m.
23 and reconvened at 1:30 p.m.)

24 THE CHAIRMAN: Okay, we are ready to
25 start. We will resume the hearings. I believe

1 that Ms. Hamilton is up.

2 MS. HAMILTON: Good afternoon to
3 everybody here today. My name is Helga Hamilton,
4 and my spirit name is (Cree spoken). I currently
5 reside in Pimicikamak territory with my son, his
6 wife and my grandchildren.

7 I have come here today to speak of my
8 knowledge in a kind and respectful manner, in my
9 role as a woman, a mother, a grandmother, and a
10 traditional keeper of our ceremonies. Today I
11 speak to you with respect and to educate you of
12 our sacred responsibilities as indigenous people,
13 as it relates to how we look after Mother Earth,
14 all of its Natural Resources and her water. Much
15 like a human mother, we bring life into this world
16 carrying that life in the womb of the mother for a
17 nine month period. As a mother and a caregiver,
18 that can correlate to the similarities of Mother
19 Earth from a traditional and cultural perspective.

20 In our own right, from a Pimicikamak
21 perspective, I may not be viewed as an expert in
22 Canadian law, however, we have looked after our
23 own health since time beyond memory. Today we are
24 not as healthy, as the water is manipulated by a
25 man-made dam by reversing the seasonal water flow

1 patterns from its natural flows. The fluctuating
2 water levels have lead to erosion that has
3 affected our plant life which we have depended on
4 for centuries in raising our children in our
5 homeland.

6 The land was our natural pharmacy,
7 which has limited access ever since the project.
8 Navigation and access to these plants are no
9 longer safe. Water is no longer clean.
10 Therefore, many of our women have experienced many
11 health related side effects, which we believe
12 results from our waters, our natural healthy foods
13 and healthy plants which are no longer clean and
14 accessible.

15 Disconnecting the spirit of the people
16 from the land has caused much hopelessness and
17 despair. The Pimicikamak people's health has been
18 affected spiritually, emotionally, physically and
19 mentally.

20 You heard today from many presenters
21 of this consistent message. We live and breathe
22 the adverse effects every day.

23 Our teachings have been carried on
24 through the generations. They are not something
25 that we have just invented. Indigenous people

1 have carried these ceremonies since time
2 immemorial. No matter which nation we belong to
3 or where we come from, there is an
4 interconnectedness to the ceremonies we honour.
5 And water is the most sacred and important
6 medicine there is to all indigenous people.

7 My presentation is focused on water
8 and the importance of water for life. As I
9 stated, I'm going to share my opinion and some of
10 my teachings from the elders that I have been
11 blessed with from learning through the years. I
12 will start with two memories of my youth which
13 related to the water. I remember as a little girl
14 going into the bush with my granny. I remember
15 her making this offering to the water. And yet I
16 was only four years old, and at this young age
17 learning the importance of caring for the spirit
18 of the water. My granny had told my mother back
19 then that I would be carrying the ceremony one day
20 when I was much older. Today I perform this water
21 ceremony in Pimicikamak waters, and have done it
22 with my three granddaughters who also carry the
23 ceremony on and pass it on to my future great
24 grandchildren. I'm thankful I was taught this
25 ceremony at an early age, and I'm fortunate enough

1 to be able to continue on with it. I will do my
2 part to protect Mother Earth and the water that
3 sustains all life, humans, the animals and the
4 environment. I pray I will be able to continue
5 this water ceremony into the future, and that they
6 will also be able to continue on.

7 Long ago I had listened to an elder
8 sharing some teachings with us, and one of those
9 teachings he passed on resonated deeply with me,
10 which I never forgot. But at that time I could
11 not fathom in my youthful mind back then the
12 seriousness of it. This elder spoke about the
13 importance of water and how we are to care for
14 this life sustaining medicine. And it was told to
15 us that a time is coming when water is going to be
16 bought from the stores as it will be too dirty to
17 drink from the rivers. A warning was given to be
18 prepared for hard times to come, when we have to
19 start buying our water in bottles. Back then this
20 elder said there are many people who do not
21 believe this time will come to pass and will
22 ignore the importance of caring for the water. We
23 were told our grandkids will be the most affected,
24 as it will be too late, if we ignore our
25 responsibility today to care for the water. I

1 wanted to share this teaching because I felt it
2 was important. And this time has come where we do
3 buy water from the stores. But then not too many
4 people believed this elder and thought his only
5 motive of sharing these teachings was to affect
6 progress. The waterways were too clean and pure
7 to foresee a time they would be destroyed by
8 development. Those very waterways we secured
9 clean water from have now become badly
10 contaminated. We will never again freely drink
11 that water that was once so clean and pure.

12 Women have become the keepers of the
13 water throughout history, because of the link
14 between how we create and carry our children in
15 water, and water being the veins of Mother Earth,
16 without water being provided by our own mothers or
17 being provided to Mother Earth, no human would
18 exist. Water has been here since the beginning of
19 the world, and it is with us at the beginning of
20 our own birth. We are carried in our mother's
21 wombs surrounded by water, and it is the water
22 that enters this world first before a baby is
23 born.

24 Water is the most important necessity
25 for all human survival, but with our indigenous

1 peoples it holds important spiritual and cultural
2 significance. Water is not just a necessity for
3 life, but we acknowledge it has a spirit that must
4 be cared for as well. I've been taught by my
5 elders that without water in our bodies, we would
6 die, not just because of dehydration that would
7 cause the physical being to desist, but because of
8 a lack of the spiritual energy which signifies
9 life.

10 Water is sacred to all indigenous
11 people because it gives life. Water is also
12 cleansing and purifying and is used in many
13 spiritual ceremonies. There is a correlation to
14 how water is so sacred and must be cared for, not
15 just by women, but it is our responsibility to do
16 so.

17 Keeping our waters pure and clean has
18 always been important to my people. Having the
19 waters impure causes imbalance in our spirits.
20 Viewing the damaging effects of the waters in the
21 Pimicikamak territory, it is clear there has been
22 detrimental effects on the Pimicikamak people's
23 lives. A people who were once strong in their
24 traditional rules on the land no longer practice
25 this way of life. We have had that connection to

1 the land severed. The people have become
2 dispossessed from the lands because of this
3 industry.

4 The Pimicikamak people used to eat an
5 abundance of wild food. Today consumption of wild
6 food are at low levels because the wildlife is
7 scarce compared to what it once was. I also
8 believe the change in our dietary needs has an
9 impact on our health. Today we have many
10 diseases, many that did not exist long ago. Our
11 elders tell us the natural food chain which we
12 rely on has been adversely affected and it affects
13 our physical and our spiritual and emotional
14 health as well.

15 There is a big cost to this direction.
16 Our people have been dispossessed from the lands
17 because of this industry. My elders have said
18 that the dispossessed people display actions like
19 survivors of war. The only way of life they knew
20 has been taken away from them. We are losing our
21 identities, we are losing a way of life which was
22 once the foundation to their being. They are left
23 with a sense of hopelessness, a void they can not
24 fill, a void that in many circumstances has become
25 filled with alcohol, drugs and violence.

1 As I stated earlier, there has been a
2 drastic decrease in the wildlife and aquatic life
3 as well. Families do not spend time on the land
4 as they once did. Today we have many idle youth
5 who have not been taught the way of the land and
6 are left with idle hands. The elders shared with
7 me that the youth are lost and are looking for
8 that feeling that used to come from living off the
9 land and the ceremonial ways of the people. What
10 has been shared by my elders as they speak of how
11 the project has come to our land and changed the
12 natural cycle that the Creator gave us to live off
13 the land.

14 The interim licence of 1972 gave Hydro
15 the right to manipulate the water levels and
16 reverse the seasonal water flow. It is clear from
17 historic evidence how clear and clean the water
18 was. Today the water is dirty and filthy with
19 erosion caused from fluctuating water levels. Our
20 elders say that our water is no longer healthy.
21 How many of you would come and drink the natural
22 waters that we have today? Today Pimicikamak
23 people are left with muddy waterways, eroded
24 banks, a lifestyle that once had families living
25 off the land, a diet filled with foods that are

1 foreign to their immune systems, beliefs, cultures
2 and traditions that once were strong.

3 I am by no means an expert in western
4 science, but I'm confident of the knowledge of my
5 culture and spiritual connection to the land.
6 Today I am a grandmother who fears for the future
7 of my grandchildren. The water is not a commodity
8 to me, but it is most importantly sacred life
9 sustenance that has been deeply and forever
10 affected by the project of Manitoba Hydro. What I
11 wonder is what the future holds in store for our
12 future grandchildren? How will these meetings
13 impact their future?

14 And I have taken to saying this quote:
15 "The earth is said to be a woman, she
16 is called Mother Earth because from
17 her she provided life for all living
18 things. Water is her life blood, it
19 flows through her, nourishes her and
20 purifies her."

21 If we all fail to do our part in
22 ensuring we preserve and care for water that
23 ensures life for Mother Earth and all of us, I
24 guarantee you it will be all of our children and
25 grandchildren to pay the consequences. We are all

1 responsible for doing the right thing. Look after
2 Mother Earth so Hydro genuinely says that
3 hydroelectricity itself is clean and green. Thank
4 you.

5 THE CHAIRMAN: Thank you,
6 Ms. Hamilton. Elder Halcrow?

7 MR. HALCROW: Good afternoon everyone.
8 Tansi. Hello, my name is Nick Halcrow. I'm an
9 elder. I live in Cross Lake Pimicikamak. I greet
10 you all in good health. I thank the Creator for
11 my life.

12 I didn't come claiming special
13 privileges, but in humility. I come with words
14 and actions and respect. I come to acknowledge
15 kindness to everyone.

16 First of all, I would like to quote
17 the words of Sitting Bull. I have advised my
18 people this way. When you find anything good in
19 the white man's road, pick it up. When you find
20 something that is bad or turns out bad, drop it
21 and leave it. And I say to you this, when the
22 first white man arrived on our land, he had a
23 Bible and we had the land. And today we hold the
24 Bible and they hold our land. We face criticism
25 and challenges during our life time.

1 As a very young child, I remember
2 vividly, we lived and worked in perfect harmony
3 with the land. When looking back to the way
4 things were in the past, we were very peaceful,
5 and now there are many mistakes. To make
6 amendments won't be easy to do. We need action
7 plan to correct the damages. The Jenpeg dam
8 caused many major changes in the Cree way of life.
9 What is there to sustain us for the future
10 generation when the dams continue to alter and
11 damage the environment? We have felt the impact,
12 the pain. We experience that pain every day from
13 this destruction, which is what the governments
14 let happen to our land. The weir itself is a
15 mitigation measure to try to lessen the impact of
16 the Jenpeg dam, when after 14 years it was built,
17 and to try to mitigate the effects of the water
18 level problems.

19 It doesn't eliminate other problems
20 like fish impacts, or the aquatic animals, or
21 wildlife impacts and other impacts. Weir is not a
22 sustainable development, nor Jenpeg dam project, I
23 need life to supply with food and provisions, et
24 cetera.

25 The ecosystem is affected. How can

1 sustained yield be managed, like fisheries,
2 trapping and wildlife?

3 Excuse me, my writing is getting too
4 small here, I can't see. And I look handsome this
5 way too.

6 So to maintain a good steady yield by
7 keeping the animal (inaudible), or to increase at
8 least as high as an annual output. Fishing,
9 trapping, and hunting sustained our livelihood
10 since time immemorial. We had an abundance of
11 muskrats, and fish and wildlife everywhere.

12 How can Manitoba Hydro clean up the
13 debris in a large flooded body of water? That's
14 the question. I have experiences and knowledge of
15 things from the past and of the future to come,
16 destruction is happening year after year.

17 We need to make needed changes. We
18 need more ongoing research done on how the local
19 people can control their own economic development
20 in Cross Lake, Pimicikamak. We want a viable
21 sustenance economy for our affected local people
22 and resource. Also, look and see what the
23 problems are, and remedial measures taken to
24 strengthen the employment.

25 How can we restore this habitat?

1 That's another question. How can we control
2 aquatic animals habitat? That's another question.
3 How can water levels be controlled? That's
4 another question.

5 Research needed on the vegetations in
6 the Nelson River and its tributaries and adjacent
7 lakes and creeks; that's another question.
8 Regulate the water flow to decrease churning the
9 fish spawning season; that's another question.
10 And ducks and geese nesting seasons. Regulate
11 water levels during freeze-up as hardships are
12 encountered when the slush are prevalent all along
13 the shoreline of the Nelson River, which make
14 Skidoo snow traveling very hard. That's another
15 question.

16 Every year the river raises its bank
17 and the trees keep falling off into the water, and
18 this is caused by erosion. We are greatly
19 perplexed, and this is a highly perplexed problem.
20 People feel persecuted, I guess I can say treated
21 badly, do harm to again and again. We are not
22 different people. We should not be debating the
23 matters in that Northern Flood Agreement. It
24 should be implemented. The way I understood what
25 the Manitoba Hydro Northern Flood Agreement means

1 is that the relationship between who you are and
2 where you come from -- I have a long, I have a
3 lifelong knowledge through hands of experience
4 because I grew up in the land.

5 We are human beings and we should all
6 try and get along and treat each other with
7 respect. I will only be contented if the
8 restoration is minimized in the water levels of
9 the Nelson River system.

10 Today I still have expectations of
11 beauty, quality and value of the land. All
12 creation, all creatures are an important part of
13 the ecosystem.

14 In conclusion, I want to thank you
15 people today. This is a very important day today.
16 I feel joy in my heart when I speak to you. I
17 want to say thank you all for listening to me.
18 Thank you very much.

19 THE CHAIRMAN: Thank you Elder
20 Halcrow. Are you going to present the
21 representations or...

22 DR. LUTTERMANN: Given that they are
23 written in the written submission, we are not
24 going to present them, but certainly we can
25 discuss them if people wish to ask questions.

1 THE CHAIRMAN: Thank you. So you are
2 ready for questions now?

3 DR. LUTTERMANN: Yes.

4 THE CHAIRMAN: Thank you. Manitoba
5 Hydro?

6 MR. ADKINS: Mr. Chairman, members of
7 the Commission, my name is Bob Adkins and I have a
8 few questions, actually a number of questions I
9 would like to follow up with in terms of the
10 presentations that we have heard. So I would like
11 to thank you for that. And also Elder Halcrow,
12 Chief, Councillors and Dr. Luttermann, members of
13 Pimicikamak, I appreciate everything that you have
14 had to say. And certainly some things which I
15 will comment on, I especially appreciated, so I
16 want to make sure I say those things. I do have a
17 number of questions, I will be trying to address
18 these as respectfully as I can. I think it is
19 mostly clarification, but I'm not certain, so we
20 can try.

21 Starting, I think really with the
22 Northern Flood Agreement where an awful lot of
23 effort was put, and I will refer to, and
24 Councillor Muswaggon is a correct reference? I
25 know you are a member of the executive council, so

1 I'm not sure whether I should call you a council
2 member, or councillor, but you are also the chief
3 councillor. Is Councillor Muswaggon an acceptable
4 address? Is that a proper way to address you?

5 MR. MUSWAGGON: I prefer council
6 member.

7 MR. ADKINS: Okay. Just with respect
8 to the Northern Flood Agreement, you talked about
9 the elders negotiated that agreement on behalf of
10 Pimicikamak, and I think you made the distinction
11 between what was related to the Cross Lake band
12 under the reserve land areas and what was related
13 to your group as the people. And I think I
14 understood what you were saying there. But there
15 were other people involved as well in negotiating
16 the Northern Flood Agreement and working for
17 Pimicikamak and the Cross Lake First Nation. You
18 had legal counsel, you also had consultants that
19 provided you with information. Am I correct on
20 that?

21 MR. MUSWAGGON: Can you clarify your
22 question in terms of, are you referring to who was
23 at the negotiations?

24 MR. ADKINS: Yes, in terms of the
25 Northern Flood Agreement?

1 MR. MUSWAGGON: There was --
2 Pimicikamak is a territory, and in the
3 presentation that we have, we have a map that goes
4 way back to the 1800s. When Treaty 5 was
5 negotiated between the British Crown and the
6 indigenous people, a map was signed off by the
7 Surveyor General of Canada outlining the territory
8 of the Pimicikamak tribe, which is a people, not
9 only that falls under our unwritten law, but
10 international constitution we are defined as
11 Aboriginal people under Section 35. And in this
12 territory there are a number of Federal
13 municipalities in this territory, one of them
14 being Cross Lake. And the majority of those
15 people that are band members under that Federal
16 legislation are Pimicikamak citizens. And there
17 is a number of other communities throughout the
18 territory, as you see in red, also of other
19 Federal municipalities, which somebody came along
20 and gave them labels, like Nelson House, Split
21 Lake, today they are called TCN. And a lot of
22 these people have tribal ancestry to the
23 Pimicikamak tribe, so they are Pimicikamak people,
24 they are citizens. They are not members per se
25 according to the Canadian language that's being

1 used to identify a group of people under the
2 Indian Act.

3 And what I was referencing to in the
4 negotiation at the time, several of these
5 communities got together at the time of
6 pre-project, and this is the information that the
7 elders were sharing. When they came down here in
8 the city at heightened times during the
9 negotiation, it was the elders from each of these
10 communities that came. And I cannot say all of
11 them were Pimicikamak people. They came from the
12 other communities as well. And I can only
13 reference what we know and what our elders have
14 told us. And it was, in fact, after two days or
15 two nights the elders said that it was the elders
16 who were part of the negotiation, who took part in
17 the give and take process back then, when they
18 finally, the give and take went back and forth
19 between the parties, it was them that went back
20 to -- they had a legal counsel by the name of
21 D'Arcy McCaffrey, and asked him to look at the
22 document. My grandfather was one of the elders
23 who was in council at the time, I think he was in
24 council for 18 years straight, who was very
25 instrumental in that process, along with the late

1 Sandy Beardy and a number of key elders like
2 Gideon McKay. So when they finally agreed to the
3 terms of the conditions, that's when the process
4 moved forward in concluding the Northern Flood
5 Agreement in 1977. And that's what I was
6 referring to at the time. But because it was an
7 Aboriginal people who didn't have any formal
8 structure to sign the document, according to the
9 elders, the Chief and Councils were already in
10 existence in these systems, that's why they ended
11 up signing the document on their behalf. That's
12 why when you see the Northern Flood Agreement, it
13 says Northern Flood Agreement Incorporated. It
14 wasn't the band per se that signed that document,
15 it was the incorporation of NFC.

16 MR. ADKINS: But in the negotiations
17 of that you indicated that you actually did have
18 representation, and it was D'Arcy McCaffrey I
19 think you referenced as counsel?

20 MR. MUSWAGGON: That's what the elders
21 told us.

22 MR. ADKINS: And you had other
23 consultants that were retained and actually
24 provided advice to Pimicikamak and Cross Lake in
25 connection with the Northern Flood Agreement?

1 MR. MUSWAGGON: Can you repeat that
2 question?

3 MR. ADKINS: You had other
4 consultants? I think there was other consultants,
5 Colin Gillespie, Dr. Gillespie?

6 MR. MUSWAGGON: That's correct.

7 MR. ADKINS: He provided advice to you
8 with respect to the Northern Flood Agreement?

9 MR. MUSWAGGON: That's fair. He was
10 part of a group of consultants that worked with
11 the elders at the time in the drafting of the
12 document.

13 MR. ADKINS: And there were other
14 experts that were retained, or acting, or working
15 for Pimicikamak as well during the negotiation of
16 the Northern Flood Agreement?

17 MR. MUSWAGGON: I cannot say that
18 because I wasn't there, I'm only going by the
19 relevant information that we were provided.

20 MR. ADKINS: All right. You put up,
21 this looks like it is page 4 from the document,
22 and you've got the area, which I believe the
23 Rupertsland study identified as Pimicikamak
24 territory, and they did that based on what they
25 proposed was an addition to the Treaty making

1 process. I think you were referring to that
2 initially when you talked about the Treaty. Am I
3 correct in that? Is that what that is showing?

4 MR. MUSWAGGON: That's what that is
5 showing, the Pimicikamak territory that was mapped
6 out by the Surveyor General of Canada.

7 MR. ADKINS: The actual mapping of the
8 treaty areas is Treaty number 5 that you are --
9 that you referenced that was signed on behalf of
10 Pimicikamak; that's correct?

11 MR. MUSWAGGON: That's correct.

12 MR. ADKINS: And there are maps of
13 that, they don't correspond to the area which you
14 show here. Like I do have copies of those maps,
15 they are attached to the treaties, there is
16 descriptions that doesn't correspond to the Treaty
17 5. In fact, I think that actually extends into
18 Ontario on the one side and into Saskatchewan on
19 the other side?

20 MR. MUSWAGGON: That's correct, yeah.
21 And Pimicikamak territory goes beyond the Treaty 5
22 area. And this is just what was given to us on
23 record based on historical findings from that
24 research that was done on the history of
25 Pimicikamak.

1 MR. ADKINS: Now, you've indicated
2 that there were other, I think you called them
3 communities, or Federal towns, or I can't remember
4 the words you used, but similar to Cross Lake,
5 that existed at that time. You referenced Split
6 Lake, you referenced Nelson House or
7 Nisichawayasihk, Split Lake being Tataskweyak.
8 And I look at it and it seems to me that the area
9 that you show as Pimicikamak territory includes
10 portions of areas that would be where the
11 community of Opaskwayak is located. I'm not sure
12 if it goes as far south as Grand Rapids area. And
13 on the other side we have communities in addition,
14 that are showing up in the area that you have
15 there. My eyes aren't so good, I should probably
16 borrow Elder Halcrow's glasses. But if you look
17 at the stretch that's going into Ontario, does it
18 take in any of the area of God's Lake?

19 MR. MUSWAGGON: Pardon me?

20 MR. ADKINS: Does it take in areas of
21 God's Lake communities?

22 MR. MUSWAGGON: We haven't gone that
23 far in terms of examining the total area and what
24 other communities are in there.

25 MR. ADKINS: Now, the people who live

1 in those communities, and there is actually quite
2 a few reserves located in those areas, and there
3 are some communities that exist today. Are they
4 Pimicikamak citizens? In other words, do they
5 vote for Pimicikamak executive council? Do they
6 have rights under Pimicikamak laws?

7 MR. MUSWAGGON: Well, most of them
8 would be relations to the Pimicikamak tribe. In
9 essence, under Pimicikamak law, they would be
10 Pimicikamak citizens. Under the citizenship law
11 all you need is one parent to be a Pimicikamak
12 citizen. But unfortunately, if we go back in
13 history before the treaty commissioners came to
14 this territory, there was no boundaries, there was
15 just land. There was just people that lived here.
16 And when the treaty commissioner came, it wasn't
17 us that took the treaty to the settler that came,
18 they came and asked if they could live with us in
19 our home. Our ancestors graciously took that and
20 embraced that peace and friendship treaty. After
21 that, the evolution came with the state of Canada,
22 then the provinces, and the NRTA, but I'm not
23 going to claim I'm an expert of those systems,
24 because that's not my -- but what we do know is
25 what the elders have been talking about, and this

1 research document and this map here confirms at
2 minimum where our area is, what we call our
3 traditional homeland.

4 MR. ADKINS: How does that compare
5 with the resource or the, it is called the
6 resource area under the Northern Flood Agreement,
7 it is quite a small portion of that territory that
8 you show there?

9 MR. MUSWAGGON: Pardon me?

10 MR. ADKINS: Under the Northern Flood
11 Agreement, do you recall that was signed back in
12 1977, it was ratified by the communities, was
13 negotiated, I agree there was an incorporated body
14 acting as agent that was the Northern Flood
15 Committee Inc. that I think you referenced as
16 well. But in it there is the section 15 dealing
17 with the resource areas, and there is a map
18 attached that shows the resource area of the Cross
19 Lake Band of Indians as it was referred to at that
20 time. It is just a small portion of what you show
21 up there as Pimicikamak territory.

22 Can you tell me how those two relate
23 to each other?

24 MR. MUSWAGGON: The resource
25 management areas that was drafted after the NRTA

1 of 1930 were designed to identify registered
2 trapline zones for the purpose of commercial
3 trapping. Those are not traditional territories,
4 those are provincially legislated regimes designed
5 to manage trapping. And that's what has happened
6 there. But our area goes much broader than that
7 and way beyond that registered trapline zone.

8 MR. ADKINS: Okay. The Northern Flood
9 Agreement, I know Pimicikamak refers to or
10 considers to be a treaty, and I think it has been
11 recognized in the Manitoba legislature as a
12 treaty, it has a much smaller area. So you are
13 saying that's just the registered trapline area?

14 MR. MUSWAGGON: Yeah. If you are
15 referring to the Cross Lake registered trapline
16 zone, that is what it is in accordance of that
17 system.

18 MR. ADKINS: And it is referred to as
19 a resource area under the Northern Flood
20 Agreement?

21 MR. MUSWAGGON: That's what they are
22 referring to.

23 MR. ADKINS: Okay. Now, you made a
24 review of a lot of things under the Northern Flood
25 Agreement where there were claims being brought.

1 And I was left with the impression that these
2 claims, like it seemed to be that Hydro was not
3 progressing with any of these claims or was
4 bringing claims. The claims that you are
5 referring to, they are basically all claims that
6 have been initiated by the Cross Lake Band of
7 Indians or the Northern Flood Committee or -- I
8 don't think there is any that were initiated by
9 Manitoba Hydro. Am I correct in that?

10 MR. MUSWAGGON: I believe the reason
11 why claims were initiated is because -- I wouldn't
12 say a refusal to act on addressing adverse
13 effects, but as a means to bring it to the
14 attention of the arbitrator to resolve the issues
15 that affected the people as a result of the
16 project.

17 MR. ADKINS: Okay. And that's
18 certainly an understandable thing. So, in other
19 words, where a claim would be brought by, under
20 the issue of the NFC on behalf of the five NFA
21 First Nations, some were brought by Cross Lake,
22 more recently Pimicikamak in a representative
23 capacity has brought some claims on behalf of the
24 Cross Lake First Nation. And I think that
25 Pimicikamak has proposed or is making claims in

1 its own name at this point in time. But those
2 claims have been, as you are indicating, were to
3 try to get some resolution, some implementation of
4 the Northern Flood Agreement. That's what you are
5 indicating?

6 MR. MUSWAGGON: Yes. And partly I
7 guess with respect to the claims process a number
8 of issues have arisen over that last several
9 decades in terms of trying to get the Northern
10 Flood Agreement implemented. And when you are
11 referring to some of the comments you are
12 referring to, there is even a claim here from the
13 Northern Flood Committee to get their funding
14 reimbursed as a result of lack of implementation,
15 at minimum. It has always been a fairly
16 challenging process for our people to get things
17 implemented properly.

18 MR. ADKINS: One of the things,
19 Councillor Muswaggon, which you did reference,
20 which I thought was very good, is that we have
21 started, we have embarked again on a process, and
22 we, rightly or wrongly, we have expectations and
23 hopes. And I think that was very positive that
24 you made that statement and, in fact, you made
25 that statement with respect to one of a few of the

1 issues that we are talking about. And one of the
2 issues that you raised was the claim in connection
3 with the four to one replacement for land that was
4 destroyed, and it was land that really, under the
5 Northern Flood Agreement, there would be an
6 easement put in place because there would be
7 potential effects along those areas, and it was
8 reserve land, and there was to be four acres of
9 additional land for reserve purposes. That's the
10 section that you are referring to?

11 MR. MUSWAGGON: Part and parcel. It
12 is not all about the easement issue per se, but as
13 a result of land that is being destroyed through
14 erosion, from the fluctuating water levels, over a
15 period of time we knew there was an easement issue
16 that was required here. But what happened, the
17 band started selecting additional lands in
18 exchange for what was taken away from them. But
19 what has happened in that claim process is we
20 haven't seen those lands were validly selected to
21 become formal reserves, and it is still
22 outstanding to this day.

23 MR. ADKINS: And I want to just
24 explore that with you a little bit, because it
25 leaves a very negative impression of Manitoba

1 Hydro, when you say there was a commitment made
2 and 15 years later it is still outstanding. So
3 can we just look at that issue for a second? And
4 again, I'm not even disagreeing with you, I would
5 like to have some of the history. Because if we
6 are going to be in a relationship, I'm very
7 hopeful, and we do need to see what each other is
8 saying.

9 So there actually were selections made
10 by the Cross Lake First Nation, because this was
11 reserve land, and have been some, I think it is
12 five parcels of land which in effect have been set
13 aside, that have been transferred to Canada. I'm
14 not sure if Canada set them aside as reserve yet,
15 but they certainly have been set aside by Manitoba
16 for those purposes. Does that accord with your
17 understanding as well?

18 MR. MUSWAGGON: There has been five
19 small parcels of land that's been validly
20 transferred. I can't give you the exact date, it
21 was around 2002 I think when the mapping got
22 signed off. But these are lands that we selected
23 way inland in remote lakes, a couple of islands,
24 just to show proof that land exchange can work.
25 And that's why that was done, to show that

1 evidence that if there was genuine effort to work
2 together at the table, to get the implementation
3 done, it is possible that we can achieve that.

4 MR. ADKINS: One of the things,
5 because I have been involved in some of this
6 history for quite a while, one of the interesting
7 things is that there are a number of other parcels
8 that are right on the project influenced waterways
9 that have been selected by the Cross Lake First
10 Nation, and there have been surveys done, there
11 has been, the easement areas have been identified
12 and surveyed and they are ready for transfer. The
13 one thing that was outstanding is there wasn't the
14 final easement agreement that was to be signed off
15 by Canada, Manitoba, Cross Lake First Nation and
16 Manitoba Hydro. So there is quite a few other
17 parcels ready to go, but that had to be done. Is
18 that fair?

19 MR. MUSWAGGON: I think the parties
20 have been working together to resolve those
21 issues.

22 MR. ADKINS: Correct. And there was a
23 period of time, my recollection is legal counsel
24 for Cross Lake First Nation retained a professor
25 from the University of Manitoba, Professor Irving,

1 or Irvine, and asked for advice. And he didn't
2 think that this was a legal easement, but we
3 weren't allowed to meet with him. Do you recall
4 that at all?

5 MR. MUSWAGGON: No, I don't.

6 MR. ADKINS: In any event, whether you
7 recall it or not, subsequently you had new legal
8 counsel, that meeting was set up, the
9 circumstances were explained, and he, Professor
10 Irvine said that's fine, that's a perfectly valid
11 easement. And since then we are very close to
12 having that final easement with Cross Lake. I
13 think Cross Lake has said this is okay, at least
14 from their legal counsel's perspective. I think
15 Manitoba Hydro said this is okay. And Manitoba
16 and Canada, who is not here, had a couple of
17 little things they wanted to talk about, but it is
18 very close to being concluded. Are you aware of
19 that?

20 MR. MUSWAGGON: Yes, I am aware of it.
21 As a matter of fact, we are patiently waiting for
22 the legal people from all parties to come to
23 agreement to the terms of that easement agreement.

24 MR. ADKINS: And that will be a very
25 important day. I agree with that.

1 MR. MUSWAGGON: Yes.

2 MR. ADKINS: There is another issue
3 that's created an awful lot of problems, and I
4 don't know how to deal with this except that there
5 is some land that is known as Cross Lake reserve
6 19D, and at the time that the project was
7 developed, and the Northern Flood Agreement was
8 negotiated, and all of these arrangements were in
9 place, it was not shown by Canada as reserve land.
10 It had been back in the early 1930s, and in 1940
11 Canada said, no, that's not reserve land, and it
12 was no longer shown as reserve land. Like that
13 history, you are aware of that history?

14 MR. MUSWAGGON: Yes, I am aware of
15 that issue.

16 MR. ADKINS: Okay. And again, I give
17 credit to both parties, I think, to try to resolve
18 this, because there was also a transmission line
19 built from Jenpeg, the distribution line from
20 Jenpeg to Cross Lake to provide electricity. And
21 it crossed 19D. At the point in time no one was
22 aware, at least certainly Hydro wasn't, that it
23 was going to be reserve land. I think you are
24 aware of that history too? Is that correct?

25 MR. MUSWAGGON: What we do know is 19D

1 is a reserve.

2 MR. ADKINS: That's been your position
3 and I acknowledge that. And it wasn't shown. But
4 in Canada, if you went to the Canada registries in
5 the 1970s and looked for 19D, it would not show up
6 as reserve land, it was not there as reserve land.
7 In any event, that is also something that we are,
8 I think, fairly close to resolving, hopefully,
9 when Canada proceeds or we get things concluded.
10 And again, I think that your comments that we've
11 started a new process, we are trying a new
12 approach is good. But I didn't want to leave this
13 long list out here without putting some
14 explanation, because it left the wrong impression,
15 I thought. So am I basically correct in what I'm
16 saying to you?

17 MR. MUSWAGGON: Well, one thing I want
18 to make clear about 19D is I'm not in a position
19 to speak for Canada on what their position is, all
20 I can tell you is what we know from the
21 Pimicikamak side.

22 MR. ADKINS: Article 5 relates to
23 debris, and that is an article that you
24 referenced. It talks about navigation and the
25 importance of navigation. It talks about, it

1 actually takes language out of the Navigable Water
2 Protection Act licences, and it repeats that right
3 in article 5. And there was an issue that arose,
4 it was a fatality, which is very unfortunate, but
5 it effectively gave rise to an understanding
6 between the Cross Lake First Nation, Pimicikamak,
7 and Manitoba Hydro about addressing the debris on
8 the Jenpeg forebay. And there was a large effort
9 undertaken for a number of years to deal with the
10 debris on the Jenpeg forebay; is that correct?

11 MR. MUSWAGGON: Yes. Unfortunately,
12 it had to go to arbitration to accept the reality
13 that the project is as a result of debris being
14 caused by the project from fluctuating water
15 levels and, unfortunately, has caused a death to
16 one of our people. And many of these things could
17 be preventible if the NFA was done in a timely way
18 to address many of these issues. And like I said,
19 some work has already started in cleaning up, but
20 it is not enough. There is a lot more, there are
21 thousands of kilometres of shoreline that needs
22 fixing.

23 MR. ADKINS: Okay. I appreciate your
24 comments, and certainly you've indicated areas
25 around Sipiwesk, and we are looking at some

1 discussions in terms of that. But there was a
2 major program undertaken on the Jenpeg forebay. I
3 think I'm just stating what happened.

4 MR. MUSWAGGON: Um-hum.

5 MR. ADKINS: Thank you. Part of the
6 material filed is the affidavit of Andrew Stobo
7 Sniderman, who I think is -- I think he is an
8 articling student, but he is with Olthuis Kleer
9 Townshend, and he sets out various claims. And
10 one of them, claim 1, which we just talked about.
11 Claim 3 was a claim for interest, and it arose out
12 of the payment provisions that were set out in the
13 Northern Flood Agreement for specific remedial
14 works that were to be undertaken. And there was
15 an issue that was resolved fairly quickly, in less
16 than a year I think, and Hydro was ordered,
17 because it was delayed, to pay interest. That
18 interest was paid, is that correct?

19 MR. MUSWAGGON: Based on the
20 information that our articling student found,
21 that's what the record shows.

22 MR. ADKINS: Okay. And on claim 11,
23 that was the recreation one, again, we have the
24 decision of arbitrator Ferg, which is a
25 well-written decision, dealing with the issue of

1 what the impacts would be, and then the parties
2 went away and tried to develop a plan to address
3 those impacts. One aspect of it was the Cross
4 Lake arena, and another aspect was the Cross Lake
5 weir. And the parties went away and discussed
6 trying to implement those projects, and have done
7 so successfully, and they have had the benefits.
8 And I recognize there may be differences of view
9 as to the degree of benefit from those, but there
10 certainly has been benefit from those, and that
11 was arrived at through negotiation, correct? The
12 original decision was a decision of the arbitrator
13 but the relief or the remedy was a negotiated
14 remedy?

15 MR. MUSWAGGON: In reference to claim
16 11, when the matter was negotiated, from the
17 record we have from 1982, I believe this was an
18 interim, the arena was an interim settlement.
19 That was just one minor step in addressing the
20 recreational issue.

21 MR. ADKINS: And we are proposing and,
22 in fact, I think there is already at the working
23 group discussions occurring with respect to
24 potentially gathering information about what else
25 might be done? Sorry, go ahead.

1 MR. MUSWAGGON: As of right now we are
2 gathering the data through a demographic study and
3 we are looking at other recreation opportunities
4 through that planning process right now.

5 MR. ADKINS: Good. There is the --
6 you reference the \$9,113,800 to be paid to the
7 Cross Lake First Nation. That was actually a
8 payment made of capitalization under article 12 of
9 the Northern Flood Agreement, with respect to the
10 ongoing operation, maintenance and replacement of
11 the arena. Is my recollection correct?

12 MR. MUSWAGGON: That is correct, and
13 that's actually a process that is being worked on
14 right now amongst the parties --

15 MR. ADKINS: Correct.

16 MR. MUSWAGGON: -- to address that.

17 MR. ADKINS: And that was actually a
18 consent order? It was a figure that was arrived
19 at by Manitoba Hydro that was different than the
20 figure that the Cross Lake First Nation,
21 Pimicikamak presented, but it was a figure that
22 was agreed to, and that was actually filed by
23 consent, that order? I don't know, I think you
24 are aware of that, but again it was not --

25 MR. MUSWAGGON: It is a more complex

1 process on this -- this particular consent order
2 that happened with the \$9.1 million in O&M, there
3 is also the trust conditions that came with that.
4 So it gets really complex and we can probably
5 spend a number of days here talking about it,
6 that's why it has been taken to a process amongst
7 the parties to address that issue.

8 MR. ADKINS: In any event, I don't
9 disagree. And there is processes to talk about a
10 budget, this is in relation to the arena, but to
11 talk about a budget and try to address those
12 issues. And we are starting a process to deal
13 with that, or an ongoing process to deal with
14 those issues.

15 Claim number 12 is the mercury
16 contamination issue. And I believe that that has
17 not progressed because there is -- but it has also
18 never been resolved, and that Hydro continues to
19 be responsible in the event that there is illness
20 or death as a consequence of methylmercury, that's
21 something that effectively would be such a
22 significant issue it would have to be addressed.
23 That's my understanding, that has not progressed,
24 that claim? Do you know anything about that claim
25 or just what you --

1 MR. MUSWAGGON: No, I think what needs
2 to happen with the specifics of this particular
3 document, we want to go back to the arbitrator to
4 see the current status of each claim. But for all
5 intents and purposes here for this hearing, it is
6 about presenting the issue about why the final
7 licence should be issued to Manitoba Hydro. And
8 for the specifics for each claim that's here in
9 this document, that is another process and an
10 issue on its own, at another time. Because there
11 is a complex of issues surrounding the legalities
12 of it, the technicalities of it, and I'm not going
13 to claim here sitting here to be an expert on it,
14 on those particular matters, because there is
15 science involved in this stuff, legal matters
16 involved in this stuff. We are going to need our
17 legal counsel to be present on that stuff. We are
18 going to have to get cost orders to get experts
19 involved in a lot of these things.

20 MR. ADKINS: I think that's fair
21 comment. And there are a couple of things that I
22 would like to specifically mention because you
23 did, I won't go through the list of claims. I do
24 want to say that you referenced 600 -- in excess
25 of 645 claims, more than 400 of those are claims

1 by the displaced residents of South Indian Lake.

2 Are you aware of that?

3 MR. MUSWAGGON: I would have to go
4 back to the arbitrator's office to get a list of
5 all of the claims.

6 MR. ADKINS: Certainly, you are not
7 suggesting that Pimicikamak is involved in that
8 many claims?

9 MR. MUSWAGGON: Again, I will tell
10 you, I will go back to the arbitrator's office to
11 give you the actual list of those claims.

12 MR. ADKINS: You referenced article
13 16, and you did this more materially than you did
14 some of the claims that we just were talking
15 about, and you talked about article 16 in schedule
16 E, and that's the -- article 16 relates to the
17 planning policy. In fact, I think that's the
18 actual title of that, it is called planning
19 policy. Again, I don't want to put you on the
20 spot in terms of if you are not certain of this,
21 don't answer it for sure, but my reading of this,
22 Manitoba Hydro is not actually even actually
23 referenced in article 16. It is an obligation of
24 Canada and Manitoba, the governments, not Manitoba
25 Hydro?

1 MR. MUSWAGGON: That is correct, it
2 deals with governmental planning. But what it
3 also says in the NFA, anything that's not related
4 to normal programming, anything that we get in the
5 NFA is over and above. But the simple fact that I
6 was referring to article 16 is the Northern Flood
7 Agreement is the wishes of a people, and it talks
8 about a planning process. It does not talk about
9 negotiating and settling claims. It talks about a
10 plan to redress the adverse effects of the
11 project, and that's what I was simply referring to
12 in terms of we need to sit down, plan, identify
13 the issues that has been plaguing my people.
14 Obviously we wouldn't be sitting here if there was
15 no problems in our homeland as a result of the
16 project. And what planners do is they collect the
17 facts, they put the evidence together in a plan
18 process. And we want to see what is reasonable,
19 fact based, rational. And that's what my people
20 are calling for in the implementation process.

21 MR. ADKINS: Councilman, just going
22 further, you also referenced the May 11th, 1998,
23 it was entitled an Agenda for Implementation of
24 the Northern Flood Agreement at Cross Lake, and it
25 was signed by Canada, Manitoba, and Manitoba

1 Hydro. It was signed following a meeting with
2 representatives of Cross Lake and Pimicikamak, it
3 was never actually signed by Cross Lake or
4 Pimicikamak. But in it there were a process that
5 was to be entered into in good faith to try to
6 implement the Northern Flood Agreement at Cross
7 Lake. Is that fair?

8 MR. MUSWAGGON: I believe that's
9 clear, and the intent was to bring the parties
10 that are responsible to carry out their
11 obligations and responsibilities in the NFA, that
12 is why they were signatories, we were supposed to
13 be the recipient of the Charter Rights and
14 Benefits that are contained in the various
15 articles and schedules of the Northern Flood
16 Agreement.

17 MR. ADKINS: And one of the things
18 that Pimicikamak did during the course of that is
19 produce your Pimicikamak Cree Nation book with
20 respect to the history of Pimicikamak. That was
21 effectively funding which was provided by the
22 three Crown parties, and this was produced by
23 Pimicikamak. And I think the Rupertsland study
24 might well have been produced at the same point in
25 time. I don't recall that specifically. But you

1 do recall this document coming out that period of
2 time?

3 MR. MUSWAGGON: Sorry, I didn't hear
4 the last comments?

5 MR. ADKINS: Sorry. You are familiar
6 with this red document?

7 MR. MUSWAGGON: The new relationship
8 document?

9 MR. ADKINS: Yeah. And it has
10 different coloured pages and different provisions,
11 and it basically talks about what is Pimicikamak
12 and how does that compare with the Cross Lake
13 First Nation, and a little bit about some of the
14 history that we talked about previously. And this
15 was funded and put together by Pimicikamak during
16 the course of those funded processes; am I correct
17 in that?

18 MR. MUSWAGGON: The new relationship
19 document speaks about the standards of behaviour
20 that's expected from the Crown parties towards our
21 people. What I cannot say is if this document was
22 funded from that previous process. It may have
23 been, it may not have been.

24 MR. ADKINS: My recollection --

25 THE CHAIRMAN: Mr. Adkins, if you are

1 going to use a document in these hearings, it
2 should be filed for the record. We have never
3 seen that document.

4 MR. ADKINS: Sorry, I can file this if
5 that's -- I should be careful because this is a
6 Pimicikamak document. Is it acceptable that I
7 file this?

8 MR. MUSWAGGON: That's fine, you can
9 file it with them.

10 MR. ADKINS: In any event, for a
11 period of four years, a little bit more than four
12 years, there was a four party process trying to
13 implement the Northern Flood Agreement at Cross
14 Lake. And one of the parties by the name of
15 Canada decided that it was concerned about all of
16 the costs and no benefits, and they wanted to go
17 to a different process. Do you recall that at
18 all?

19 MR. MUSWAGGON: Can you elaborate on
20 your question?

21 MR. ADKINS: Canada wanted to go to an
22 obligation based, proposal driven approach as
23 opposed to the general implementation approach,
24 and Manitoba Hydro was prepared to go with that,
25 and Manitoba I think as well, or continue with

1 what we were doing. Do you recall that or --
2 again, if you don't recall, that's fine.

3 MR. MUSWAGGON: I need you to clarify
4 your question.

5 MR. ADKINS: Do you recall that Canada
6 withdrew from that process in the fall of 2002?

7 MR. MUSWAGGON: I cannot recall.

8 MR. ADKINS: Okay. Do you recall the
9 15-month action plan that was introduced to the
10 Cross Lake First Nation Pimicikamak people in
11 December of 2002, which was the 25th anniversary
12 of the Northern Flood Agreement, do you recall
13 that, the discussions that occurred in the
14 community at that time?

15 MR. MUSWAGGON: It was actually
16 Pimicikamak who developed the plan and presented
17 it to Hydro. CLFN was not part of that planning
18 process at the time, when the planning process
19 started that lead to the 15-month action plan.

20 MR. ADKINS: When you say Pimicikamak
21 did that, I'm not disputing Cross Lake First
22 Nation Pimicikamak, but it was something arising
23 out of discussions between Manitoba, Manitoba
24 Hydro and Pimicikamak. That plan that was
25 introduced, the 15-month action plan was a product

1 of a process between the three parties now, with
2 the fourth party no longer engaged. Do you recall
3 that?

4 MR. MUSWAGGON: Yes, I do, yes.

5 MR. ADKINS: Canada didn't come to
6 Cross Lake community, reserve community, and it
7 wasn't part of that presentation of that plan. It
8 was gone at that point in time from the process?
9 Canada was no longer involved in the
10 implementation of the NFA at Cross Lake?

11 MR. MUSWAGGON: I cannot recall when
12 Canada walked away from the process. All I do
13 know is that the three parties have been
14 working -- were working on that plan.

15 MR. ADKINS: And Manitoba and Manitoba
16 Hydro continue to fund Pimicikamak and
17 Pimicikamak's representatives in terms of their
18 office and their appearance, coming to meetings
19 and doing their work for a period of years
20 following 2002. I think it fell apart in 2005?

21 MR. MUSWAGGON: Actually, what
22 happened was after the Government of Manitoba came
23 to Cross Lake on December 16, 2002, I believe it
24 was the late Oscar Lathlin, the Minister back
25 then, held up that plan to our people and said we

1 will implement the Northern Flood Agreement based
2 on your plan. And what ended up happening was a
3 very big event at the time. But what ended up
4 happening, there was a lot of good effort for that
5 one year in 2003, a lot of things happened then,
6 but after 2004 election, the plan got shelved and
7 collected dust. A different route went, where it
8 has just been this year where we've managed to
9 bring the plans back to the table with Hydro,
10 since 2004, so there is a gap of about ten years.
11 Why the plan never got implemented, I cannot speak
12 to that.

13 MR. ADKINS: Okay, that's certainly --
14 if you can't speak to it, that's fine.

15 And we've now started a process again,
16 looking at action plans as a way to try and
17 implement the Northern Flood Agreement. And
18 again, it is just Manitoba, Manitoba Hydro and
19 Pimicikamak in a role which is, again, we are
20 going to be discussing this, but where Cross Lake
21 First Nation is represented as far as its
22 interests are concerned by Pimicikamak, there is a
23 band council resolution referencing that?

24 MR. MUSWAGGON: Pardon me?

25 MR. ADKINS: There is a process

1 agreement, and the process agreement has a
2 provision in it that effectively says that
3 Pimicikamak, there is a band council resolution
4 supporting Pimicikamak to represent the Cross Lake
5 First Nation.

6 MR. MUSWAGGON: And your point?

7 MR. ADKINS: I just want to know, is
8 that correct?

9 MR. MUSWAGGON: The process agreement
10 got signed by the parties.

11 MR. ADKINS: You referenced article 18
12 of the Northern Flood Agreement, and you talked
13 about maximizing employment, and that's in your
14 paper. And I think, councilman, it was you who
15 specifically testified or spoke about article 18.
16 And I think the Northern Flood Agreement has been
17 filed as part of these proceedings.

18 So article 18.5 in particular deals
19 with employment on the project, and it talks about
20 it in a -- where it sets out a policy level
21 position, what would be beneficial. And I think
22 that that's correctly stated, that it will be in
23 the public interest to employ to the maximum
24 possible extent residents of the reserves in all
25 works and operations related to the project, and

1 to implement forthwith practical measures
2 necessary to achieve that objective, including
3 opportunities for education, training and
4 particularly on-the-job training. So that's an
5 obligation of all of the parties, is that correct?
6 That's Canada, Manitoba, Manitoba Hydro, and
7 Pimicikamak, we all have the obligation to try to
8 do that?

9 MR. MUSWAGGON: That is correct, yeah.

10 MR. ADKINS: And then there is another
11 section 21. Section 21 was an employment task
12 force, which is an opportunity for the parties to
13 work together as a task force, to try to work on
14 the implementation of that provision. You are
15 aware of section 21 on the employment task force?

16 MR. MUSWAGGON: Yes, sir.

17 MR. ADKINS: That's again something
18 that Pimicikamak, Manitoba, and Manitoba Hydro
19 have introduced again with Canada very recently to
20 work together under that provision?

21 MR. MUSWAGGON: That is correct, yes.

22 MR. ADKINS: Now, when it says
23 practical measures, I've always understood that to
24 mean measures that are consistent with the law.
25 So, for example, human rights legislation is

1 something that you couldn't breach, it is a
2 practical measure, you have to have that in mind.
3 I don't know if you want to just say I don't know
4 because I'm not a lawyer, or if you have a view on
5 that. And the other thing is basically labour law
6 and collective agreements that are entered into,
7 those are things that you would have to comply
8 with if you are going to have practical measures.

9 MR. MUSWAGGON: That's your system of
10 law.

11 MR. RAINING BIRD: Sorry, just to the
12 extent that he is asking Mr. Muswaggon to
13 interpret the NFA, I don't think this is the
14 appropriate venue and I don't think -- I think my
15 friend has recognized that he doesn't have the
16 requisite expertise to make a legal argument at
17 this point.

18 THE CHAIRMAN: Mr. Adkins, do you wish
19 to comment on where you are going with this?

20 MR. ADKINS: I was trying to deal
21 with some of the material or information that was
22 testified to. There was a discussion about why,
23 and I think councilman Muswaggon talked about his
24 people aren't treated the same when they are -- if
25 they are hired that they then can be fired and

1 they are not given -- that was an issue that was
2 suggested. And my point here was to raise the
3 issue about collective agreements. My
4 understanding is that every employee that's
5 employed by Manitoba Hydro on these jobs is, in
6 fact, required to be a member of a union. And
7 there are collective agreements that deal with who
8 is first hired, and if there is people laid off,
9 who gets laid off first. That's what my purpose
10 of those discussions were, but I'm happy to leave
11 it.

12 THE CHAIRMAN: I think you have just
13 made your point, so perhaps you can move on.

14 MR. ADKINS: Sure.

15 THE CHAIRMAN: Mr. Raining Bird,
16 perhaps you should stay at the table if there are
17 other objections.

18 MR. ADKINS: Now, I realize that there
19 is non-satisfaction with the Northern Flood
20 Agreement in terms of how it is implemented, but
21 you talked about how costly it is. My
22 recollection of the Northern Flood Agreement,
23 there are provisions for cost orders where there
24 is impecuniosity on the party who is bringing the
25 claim, and that there are a number of cost orders

1 that have been granted in favour of the NFC on
2 behalf of Cross Lake First Nation, or the Cross
3 Lake First Nation or Pimicikamak as a
4 representative of the Cross Lake First Nation, so
5 that the costs that would be incurred by those
6 parties in the arbitration process would actually
7 be covered by one or another of the Crown parties.
8 Is that consistent with your understanding as
9 well?

10 MR. MUSWAGGON: Well, that's what is
11 supposed to happen.

12 MR. ADKINS: You also spoke, and this
13 is not -- again, it is for clarification. The
14 power bills, the hydroelectric power bills for a
15 person who is on social assistance and resides in
16 Cross Lake on reserve, those are something that
17 the Federal Crown actually pays for, if a person
18 is on social assistance, it doesn't come out of
19 their social assistance allotment, it is paid for
20 by Canada through the First Nation, I believe, but
21 I'm not sure. Is that consistent with your
22 understanding?

23 MR. MUSWAGGON: They have a system in
24 place that covers some, but not all. They have a
25 formula and I'm not going to be a social expert on

1 that.

2 MR. ADKINS: I don't know if the Chief
3 maybe knows this, in any event, my understanding
4 is that for many years if a person was on social
5 assistance, and they were the principal occupant
6 of a house, a First Nation house in all
7 likelihood, but the occupant of the house, Canada
8 would reimburse the power charges for that house.
9 But subsequently, recently, Canada has changed
10 that position and says, if there is someone else
11 living there who is employed, then we will only
12 pay a proportionate share of that bill?

13 MR. MUSWAGGON: It is a system that
14 goes something like that. Again, that would have
15 to be another venue at another time, because it is
16 a more complex issue to bring the whole power bill
17 issue to be addressed in a proper setting.

18 THE CHAIRMAN: I would agree that
19 should be argued or discussed at a different venue
20 than this.

21 MR. ADKINS: I'm happy to. It was
22 raised in the evidence that was given so that's
23 why --

24 THE CHAIRMAN: We have heard it in
25 other places as well, but I think we can move on.

1 MR. ADKINS: You spoke about the
2 number of lawyers, and I recognize that today you
3 have one legal counsel here, but that's not the
4 only lawyers that are working for Pimicikamak and
5 are being funded under the Northern Flood
6 Agreement, or funded under the process agreement,
7 am I correct, I think there is more than seven?

8 MR. MUSWAGGON: That's one firm.

9 MR. ADKINS: Okay. I understand. So
10 one firm rather than one lawyer, I apologize, I
11 misunderstood your evidence.

12 Then you finished, and again I do want
13 to express my appreciation for your closing
14 comments with respect to the fact that we are
15 working together again, and I hope that we will
16 continue to do that, so I did want to express that
17 again.

18 Now, you closed your evidence at that
19 point in time and Dr. Luttermann began to speak
20 about some of the issues that she had identified,
21 as my notes are indicating.

22 And Dr. Luttermann, you have indicated
23 you are working for Cross Lake or Pimicikamak for
24 a period of about four years?

25 DR. LUTTERMANN: Yes, not full time

1 but, yes, about four years ago I started to do
2 some work with Pimicikamak.

3 MR. ADKINS: And some of that arose
4 out of the article 9 processes under the Northern
5 Flood Agreement?

6 DR. LUTTERMANN: To date most of that
7 has. I've also done some work under funding
8 agreements with the Canadian Environmental
9 Assessment Agency, for example, as well as some
10 work on the Crown Aboriginal consultation process.

11 MR. ADKINS: Okay. And you have also
12 done work now I think for Pimicikamak under the
13 process agreement that was entered into in
14 November of 2014?

15 DR. LUTTERMANN: About 15 hours of
16 work, yes.

17 MR. ADKINS: Okay. You, in your
18 presentation, took a fair amount of time to go
19 through sort of the various stages of the project.
20 And when I'm saying that I'm referring to the Lake
21 Winnipeg Regulation Project, and I recognize we
22 will have some discussions about Kelsey and the
23 Sipiwesk Lake issues and things like that. And
24 you talked about a pre-project condition and you
25 talked about a post-project condition and you

1 talked about a post weir condition. I think
2 that's an accurate reflection of what you
3 testified to?

4 DR. LUTTERMANN: Yes.

5 MR. ADKINS: Have you done an analysis
6 of the pre-project and post weir water levels on
7 Cross Lake?

8 DR. LUTTERMANN: I haven't done
9 detailed analysis. I've looked at the general
10 patterns, I have looked at maximums and minimums
11 and patterns over the season, yes.

12 MR. ADKINS: If I were to say to you,
13 I think with the exception perhaps of 2011, all of
14 the water levels that have occurred on the Cross
15 Lake water body, post weir, have fallen within the
16 range of water levels experienced pre-project?

17 DR. LUTTERMANN: Yes, that's correct.
18 And that's one of the things that I tried to
19 explain about the importance of understanding the
20 seasonal patterns as opposed to just looking at
21 the range. So Cross Lake is not a reservoir, it
22 hasn't been flooded as a reservoir, it is not used
23 as a storage in the system.

24 MR. ADKINS: Correct.

25 DR. LUTTERMANN: So the point there is

1 that even if the water levels -- well, they
2 actually haven't fallen except for 2011, which was
3 a record high year, they have fallen within the
4 historical record.

5 MR. ADKINS: Now, a lot of your
6 testimony related to a lack, or what you
7 perceived, to the extent you were able to find
8 information, was a lack of environmental study
9 post-project in terms of the downstream waterways
10 with respect to Lake Winnipeg Regulation?

11 DR. LUTTERMANN: Yes. On quite a
12 number of parameters, not all, there has been some
13 ongoing water quality monitoring. More recently
14 it has been standardized through the coordinated
15 aquatic monitoring program, which looks at water
16 quality, fish populations, benthic invertebrates,
17 and so on. That's just finished a pilot stage.
18 In terms of many other parameters, Manitoba
19 Hydro's submission to the CEC has referenced
20 regional waterfowl population estimates and so on.
21 There hasn't been any local research as far as I
22 can find on waterfowl, on aquatic fur bearers, on
23 riparian vegetation complexes, on amphibians, on
24 song birds, on many parameters of the environment
25 that one would expect at least some of that would

1 be looked at over the years.

2 MR. ADKINS: Have you had access to
3 the information that has been compiled with
4 respect to claims under the Northern Flood
5 Agreement?

6 DR. LUTTERMANN: No.

7 MR. ADKINS: So you wouldn't know if
8 there were studies that were undertaken about
9 those issues in relation to a claim that's
10 presented by the Cross Lake First Nation or the
11 Northern Flood Committee or Pimicikamak?

12 DR. LUTTERMANN: Well, if there was
13 basic research done on any of these parameters
14 that I'm mentioning, I would have expected that it
15 would have been referenced in Manitoba Hydro's
16 submission to the CEC, given that they are asked
17 to characterize downstream effects and upstream
18 effects. Given -- as I say, I haven't been
19 working full time for Pimicikamak by any means --
20 given the time that I have had, I have I believe
21 done a fair amount of leg work to try to locate
22 information on these questions. And if it isn't
23 available yet, I would be surprised that it had
24 been included in Manitoba Hydro's submission to
25 the panel.

1 MR. ADKINS: I'm not sure exactly the
2 right of Manitoba Hydro to introduce information
3 that is compiled on a claim by an opposing party.
4 But in any event, that may or may not, because I
5 have not gone through it in detail myself.

6 There is also something which is
7 referred to commonly as the RCEA, which is the
8 regional cumulative effects assessment. And my
9 understanding of the first step of that
10 assessment, and I realize that you don't
11 necessarily agree this is the first step that
12 should have been taken, but the first step is to
13 do a search of all of the existing studies and
14 analysis and things of that nature to get a better
15 understanding of what environmental information
16 has already been looked at. Are you aware of
17 that?

18 DR. LUTTERMANN: Yes, I've looked at
19 the terms of reference and understand the first
20 and second steps of that regional cumulative
21 effects assessment, the RCEA, that was begun just
22 this last year. That's the first step in any
23 research project, you look for data that exists
24 already, and then you determine what additional
25 data perhaps needs to be collected to address the

1 questions that you have. And our main contention,
2 our two main contentions with that process, we, I
3 have advocated I guess on behalf of Pimicikamak
4 over the past several years that there should be a
5 Regional Cumulative Effects Assessment done, and I
6 believe that the Clean Environment Commission
7 recommended that as well in their report on the
8 Wuskwatim environmental assessment and licensing
9 process, and there wasn't really any particular
10 detail. A regional cumulative effects assessment
11 for such a massive area with very, very complex
12 alterations is a complex undertaking. It requires
13 I believe a certain amount of prioritization to
14 understand where the resources for research would
15 be best put. I believe that, given that there is
16 so much environmental knowledge over the years
17 that's held by Pimicikamak and other people that
18 have lived in this environment, that there should
19 have been a process to develop the terms of
20 reference in collaboration with people who have
21 that kind of knowledge, which can really add an
22 incredible amount of understanding to the lack of
23 knowledge that we have on a scientific basis.

24 And the other problem with the terms
25 of reference is that it is fairly explicit that

1 during these two stages that are laid out, this
2 particular project, there will be no new research
3 conducted, no new field research, or basic
4 research, but that it will be, conclusions will be
5 based on existing data.

6 If we have a situation where there has
7 been no work done over the years on habitat
8 assessment, population dynamics of muskrats, and
9 we know for certain that there are direct and
10 severe adverse effects on that one species, why
11 should we limit a regional cumulative effects
12 assessment in such a way from the outset? Perhaps
13 down the road a third stage could be developed.
14 But honestly, this has been many, many years that
15 this kind of research hasn't been done, and we
16 should really be starting now as opposed to
17 saying, okay, let's do this first two steps,
18 collect information, come to some conclusions, and
19 then we are a few years down the road again.

20 So we felt that it was reasonable, it
21 is common sense to take a look at a project like
22 that and not exclude the idea that additional
23 research needed to be done in order to answer some
24 of the questions.

25 MR. ADKINS: I think it is excluded in

1 the first step, I don't think that it is
2 necessarily excluded -- because one of the things
3 that they are going to identify are gaps. Is that
4 not correct?

5 DR. LUTTERMANN: Yes, and I have asked
6 this question in meetings and it hasn't --
7 certainly I haven't received an answer that said,
8 yes, there is provision in these terms of
9 reference for additional research.

10 MR. ADKINS: I don't think there are,
11 is my understanding at this point in time.

12 DR. LUTTERMANN: There aren't, no.

13 MR. ADKINS: But certainly they are
14 identifying gaps, and so presumably there will
15 have to be a decision made as to whether or not
16 there will be additional research if there are
17 gaps identified, no one is at that point yet. We
18 are looking at the research. One of the things
19 I'm wondering, have you looked at our trapping
20 records?

21 DR. LUTTERMANN: I beg your pardon?

22 MR. ADKINS: Have you looked at
23 trapping records?

24 DR. LUTTERMANN: Trapping records?
25 No, I haven't.

1 MR. ADKINS: You did note that there
2 was a fair amount of work done by the Nelson River
3 group prior to the weir being agreed upon and
4 proceeding?

5 DR. LUTTERMANN: Yes, I have reviewed
6 those studies in detail and they, in fact, formed
7 the basis of some of my conclusions.

8 MR. ADKINS: And the weir that they
9 were looking at, there were two potential ones,
10 one was a fixed weir, which in fact is what was
11 developed, and another was an operational weir
12 which would have stop logs and be operational on
13 an annual basis. Is that basically; correct?

14 DR. LUTTERMANN: That's right.

15 MR. ADKINS: And the fixed weir has an
16 area that's excavated in the higher elevations to
17 pass flood waters, and also has a reduced outlet
18 when water levels are low?

19 DR. LUTTERMANN: That's right.

20 MR. ADKINS: And my understanding of
21 the weir that was built would actually prevent
22 water levels from going as low as they did
23 pre-project?

24 DR. LUTTERMANN: Yes, that's right.

25 MR. ADKINS: So any water levels that

1 we see today, pictures showing an area that is --
2 on Cross Lake that is showing an area that's not
3 flooded -- sorry, not covered with water, that
4 would be, that would have to either -- that would
5 be something that would have occurred as well in
6 low water years pre-project, because if it can
7 occur today, it had to be able to occur and did
8 occur before?

9 DR. LUTTERMANN: Not -- there are
10 still low waters at several times of the year that
11 did not occur before. So when we talked about low
12 waters, low waters, the lowest water levels tended
13 to be in the spring, in the late winter before ice
14 break up basically. But currently we have very
15 low waters at other times of the year if it is a
16 low water year, for example. And under the
17 licence conditions right now, as they stand, this
18 hasn't occurred, it may not occur in the future.
19 But if Lake Winnipeg goes below 711 feet, there is
20 no clear objective for the downstream either. The
21 weir is only going to hold so much water. It is
22 just a static structure, like you say. If Lake
23 Winnipeg, if we did experience severe drought and
24 Lake Winnipeg goes below 711 feet, and the
25 Minister decides to try to protect for drought

1 conditions on Lake Winnipeg, the downstream area
2 could have quite reduced flow. And then we don't
3 know what would happen. That's a concern of ours
4 with the licence conditions is that there is no
5 objective for how to manage low water years.

6 MR. ADKINS: The --

7 THE CHAIRMAN: Mr. Adkins, I'm just
8 looking to take an afternoon break, and I'm
9 wondering if you are just about done we will
10 continue. If you have a bit more to go, then we
11 will take a break.

12 MR. ADKINS: Sorry, I have some more
13 to go.

14 THE CHAIRMAN: Okay. Let's take a 15
15 minute break.

16 (Recessed at 3:15 p.m. and reconvened
17 at 3:30 p.m.)

18 THE CHAIRMAN: Mr. Adkins.

19 MR. ADKINS: Thank you, very much.

20 DR. LUTTERMANN: Would you like me to
21 answer the question that you asked at the end,
22 just before our break?

23 MR. ADKINS: Certainly, if you feel
24 that it would help explain things.

25 DR. LUTTERMANN: I think so. I could

1 talk about these graphs all day. And I have only
2 given them a cursory look. Part of my point
3 really is that we really need to understand what
4 is happening with the water levels from each year,
5 how they differ from seasonal patterns, and how
6 those differences affect various species and
7 habitat, right?

8 So my point about the weir, you asked
9 about the weir and about the minimum water levels,
10 so I pointed out that the weir, because they built
11 up one of the deeper outlet channels has
12 definitely made it -- has definitely increased the
13 average minimum water levels on Cross Lake, and so
14 that is an important thing. They are not going
15 down to as rock bottom as they did before the weir
16 was built, but that's from what I have been able
17 to determine about the only benefit to the
18 ecological benefit of that, that hasn't been
19 assessed.

20 But let's look at this briefly. This
21 is -- 2003 is the yellow line here, and this is an
22 example of what happens. And so this correlates
23 with the records of outflow, total outflow from
24 past Jenpeg. So this is kind of what happens when
25 you get down to about 25,000 cubic feet per second

1 which is allowable under the licence any time of
2 the year. And in 2003, the water levels then went
3 down close to 206 metres above sea level. I'm
4 kind of a product of the metric age here.

5 So let's pop back here to the 1930s.
6 This was obviously severe drought all across the
7 country and the prairies. So this is about -- we
8 don't have full records for all of the 1930s, and
9 I have only put in the records where we have a
10 fairly complete data set for those particular
11 years. And even in the 1930s when we had, you
12 know, extreme drought, the water levels in Cross
13 Lake did not go down to 206 metres above sea level
14 during the growing season. So that's my point
15 here, is in those years it was definitely down to
16 205.5 in the early spring when you expect low
17 water levels, but you actually still, even in a
18 drought year experience or Cross Lake experienced
19 a fairly natural hydrograph at the time. So there
20 was still a bit of a spring freshet, and still
21 fairly stable in the summer.

22 So some of the pictures that Darrell
23 showed from more recent years since the weir was
24 built when there were very low water levels, such
25 as in 2003 is the most extreme example, but this

1 was happening in the open water season. So those
2 pictures are accurate, and you didn't see water
3 levels that low in the open water season in the
4 past as far as the record indicates. And this is
5 our concern, is that the licence allows water
6 levels that low at any time of the year, which has
7 not just potentially, but pretty predictably a
8 severe environmental effect downstream, as well as
9 a land use effect.

10 So the weir has improved probably some
11 conditions to some extent, and our contention is
12 that there really needs to be a much more fulsome
13 assessment of what in fact has been improved in
14 terms of habitat conditions, and Pimicikamak use
15 of the land since the weir was built, before we
16 can simply state in very simple terms that the
17 weir has been a major mitigation measure that has
18 largely -- well, I think the language that was
19 used was that it has returned Cross Lake water
20 level patterns to near natural patterns. And
21 that's pretty vague language. And when we look at
22 the hydrographs that's not what I see. We
23 certainly see still seasonal reversals in dry
24 years and we see sometimes flooding, you know,
25 throughout the entire summer season in wet years.

1 That's my point.

2 MR. ADKINS: The reference you made to
3 2003, that is actually above 206 metres in that
4 period of time, at least as I read the chart.

5 DR. LUTTERMANN: Where did I put that?
6 Yeah, it is -- well, it is just above, um-hum.

7 MR. ADKINS: It is about the same
8 elevation as the low water levels in the open
9 water season in the '30s when you had droughts
10 across the prairies.

11 DR. LUTTERMANN: Yeah, just above that
12 2006, yes -- 206, yes.

13 MR. ADKINS: They are basically
14 according to each other. And that was the lowest
15 elevation that occurred on Cross Lake prior to the
16 project.

17 DR. LUTTERMANN: Um-hum.

18 MR. ADKINS: You had indicated that it
19 was consistent with the 25,000 CFS elevation.

20 DR. LUTTERMANN: And so again my point
21 is that the licence allows that type of low level
22 at any time of the year regardless of where the
23 water levels are prior to that as well. So we
24 really I believe need to be looking at the pattern
25 of the water levels through the seasons of that

1 particular year, and perhaps have some provisions
2 in the licence that consider that. Is it
3 acceptable to drop the water down that far if
4 that's what is maybe conducive to the operations
5 of Jenpeg or what is happening on Lake Winnipeg,
6 but perhaps the licence ought to be looking at the
7 whole picture and balancing the conditions
8 upstream and downstream a little bit more.

9 MR. ADKINS: Okay. Are you aware of
10 what the situation was on Lake Winnipeg in 2003?

11 DR. LUTTERMANN: No.

12 MR. ADKINS: Okay. That was a very
13 significant drought year, do you agree?

14 DR. LUTTERMANN: I haven't looked at
15 that in detail, no.

16 MR. ADKINS: You say this low could
17 happen at any point in time, but obviously that's
18 not correct, it could only happen when there was a
19 significant drought that was putting a lot of
20 pressure in terms of water levels on Lake
21 Winnipeg.

22 DR. LUTTERMANN: My point is the
23 licence sets a minimum total outflow, it doesn't
24 define any conditions on that minimum total
25 outflow. It simply -- it is just a very simple

1 parameter.

2 MR. ADKINS: But it is not a parameter
3 in isolation, its a parameter related to Lake
4 Winnipeg as well as to Cross Lake. There is an
5 upstream and a downstream that needs to be
6 balanced and looked at, and that licence condition
7 is in that context.

8 DR. LUTTERMANN: Yeah, but it is quite
9 vague I would suggest in terms of looking at what
10 exactly is going on in the system in that year,
11 what are the objectives that we are trying to
12 reach on Lake Winnipeg, and to what extent is that
13 going to compromise the downstream conditions.
14 There is no particular plan there or objective
15 that is identified in terms of an operation plan.

16 MR. ADKINS: And the issue you are
17 raising there is really relating to the issues of
18 floods and droughts, it is not related to Hydro
19 operations between 711 and 715.

20 DR. LUTTERMANN: Exactly, that's a
21 provision where when there are drought conditions
22 on Lake Winnipeg -- I don't believe that we have
23 come to the point when the water levels are below
24 711, that the Minister has had to intervene as a
25 decision-maker. I don't believe that we have met

1 that type of circumstance. Maybe we won't in the
2 future. So, absolutely, what we are looking at is
3 a balancing act and Manitoba Hydro, I'm not laying
4 the blame on you for this, this is a provision of
5 the licence which is not -- it also involves
6 government decision-making clearly, yeah.

7 MR. ADKINS: Dr. Luttermann, you
8 mentioned in the picture that was taken, and there
9 was one of the Jenpeg forebay that was put up on
10 the screen, and it showed a lot of the stumps that
11 were left over after the clearing.

12 DR. LUTTERMANN: That was a picture
13 that Darrell showed.

14 MR. ADKINS: I'm not sure if that's
15 the one you are referring to when you said there
16 was areas where there was very low water levels,
17 or were you talking about the one where there was
18 a little island in the middle that?

19 DR. LUTTERMANN: Well, the
20 hydrological data that I have shown, I have shown
21 some for Cross Lake and some for Sipiwesk Lake, I
22 haven't shown any for the forebay.

23 MR. ADKINS: There was a question
24 asked by the chair of Mr. Settee, there is two,
25 both of them when Mr. Settee testified he talked

1 about that being a very low water year, I think he
2 was saying on Cross Lake --

3 DR. LUTTERMANN: You can see the water
4 intake right there in the top picture. Sorry,
5 they are sort of squashed in there. That's on
6 Cross Lake and the lower one is from the Jenpeg
7 forebay. And Mr. Settee took that picture, so I'm
8 not familiar with that particular area.

9 MR. SETTEE: It is on -- thank you. I
10 took the picture on the upstream side of Jenpeg
11 and I said we went up to the rapids and we got
12 there, so it shows all the stumpage that was
13 cleared prior to the Jenpeg generation being
14 instituted.

15 MR. ADKINS: So that would be a period
16 of time when Lake Winnipeg was in very high water
17 levels and therefore Jenpeg would be open and
18 passing water as quickly as possible?

19 MR. SETTEE: For that period of time
20 was around June, I believe.

21 MR. ADKINS: Of --

22 MR. SETTEE: 2007, yeah.

23 MR. ADKINS: In any event, as I look
24 at that, and know how this operates, you end up
25 with seeing effectively the bottom of the forebay

1 when Jenpeg is open and passing water very
2 quickly. So that's when Lake Winnipeg is in high
3 water levels, you end up with this kind of reverse
4 situation at Jenpeg because it is passing those
5 water levels?

6 MR. SETTEE: That's right.

7 DR. LUTTERMANN: That doesn't actually
8 make that much sense to me. I would -- you would
9 guess that the forebay would be actually fairly
10 high if you are allowing maximum water level flow
11 to go through.

12 MR. ADKINS: When the maximum water
13 levels are going through your flow increases, you
14 are passing water quickly, you are not holding
15 water back so it is not acting as a dam, if you
16 want, it is acting as --

17 DR. LUTTERMANN: The storage capacity,
18 you are not utilizing any of the storage capacity,
19 okay. So this would be in one of the back bays of
20 the forebay. I haven't been to that area.

21 MR. ADKINS: Just one other thing, Dr.
22 Luttermann -- I appreciate that, Mr. Settee, just
23 to clarify. You talked about the 15,000 cubic
24 feet per second, the change in operations, and you
25 talked about that as being reported as an average.

1 And that is inconsistent with my understanding. I
2 just want to outline to you my understanding and
3 see if it accords with yours. My understanding of
4 the condition is that it is to effectively
5 increases or decreases not to exceed 15,000 in a
6 24 hour period, and that the way that is done is
7 by using effectively a sliding 24 hour period,
8 hour by hour, and then you check it. And so if
9 you were -- it is not an average, but it is also
10 not an aggregate cumulative amount of total ups
11 and downs, it basically is simply in that 24 hour
12 period the increase or decrease that's occurred.
13 That's not an average, but it is --

14 DR. LUTTERMANN: It is a running
15 average. Is that not correct?

16 MR. ADKINS: No, I don't think so. It
17 is a running measure for sure. But you are not
18 averaging it because effectively you are not
19 adding them and then dividing them by the number
20 of days. Effectively you are getting an amount,
21 so it is not a cumulative aggregate amount, so you
22 are not taking the ups and then adding them to the
23 downs and then adding them to the ups and --

24 DR. LUTTERMANN: No, that's not my
25 point. My point is that the licence states that

1 the total increase or decrease should not exceed
2 15,000 cubic feet per second, that's what the
3 licence states. We assume that the reason for
4 that is to try to protect downstream conditions,
5 right? It is not defined in the licence, but
6 that's a common kind of thing to put into a
7 licence for control structure operations.

8 Correct, yeah, so what I did was I -- Manitoba
9 Hydro kindly provided me with the raw, with the
10 data that we used to compile this graph. So when
11 I looked at this one I thought, you know, what is
12 kind of going on a little bit more in detail
13 day-to-day there, because that's an awful lot of
14 data points to put on one graph. So I looked at
15 the data, and while there is a formula for
16 compiling the running average to report the
17 compliance, whether it is over 15,000, or what
18 exactly it is in the data set, so then I looked at
19 some of the -- I looked at one 24 hour period.

20 And again, this is going down and going up, I
21 didn't write down the numbers here, but if you add
22 up the decrease and the increase in this
23 particular day, the corresponding reported total
24 outflow variation is about half of what you would
25 find if you added up the decrease and the

1 increase.

2 Now, if it said average total outflow
3 over 24 hour period in the licence, then that's
4 totally fine and totally acceptable. I looked at,
5 in this particular day, what was going on with the
6 water levels at Cross Lake. I'm not so sure that
7 within a 24 hour period it actually is necessarily
8 that significant or that serious further
9 downstream because the water kind of, you know, it
10 is going through a big complex system, so it kind
11 of catches up with itself, and whether or not
12 people or animals would experience sort of a deep
13 drop and increase within one day. But directly
14 downstream it could potentially be an issue, and
15 perhaps we need to look at those data again,
16 because certainly when I looked at them it didn't
17 actually add up the total decrease and the total
18 increase. Now that may be what is the intent of
19 the licence, maybe that should simply be
20 clarified. I think it is important to understand
21 what the intent of the provision is and then
22 whether or not the -- whether the provision is
23 then appropriate, you know, whether it is useful
24 and it is serving the purpose, or whether it needs
25 to be modified in the future.

1 But we, and I also, because most of
2 the time -- it is rare within the record for you
3 to have decreases and increases within a 24 hour
4 period, usually it is just stepping up and up over
5 several days, or it is stepping down, down, down
6 over several days, right? But there are some
7 instances where it steps up and down within a 24
8 hour period, and the corresponding figure that is
9 reported for these situations doesn't add up to
10 total increase and decrease. So if we mean an
11 average, average is fine, maybe that needs to be
12 clarified in the licence and to look at what the
13 objectives of that provision are.

14 MR. ADKINS: In any event, I wanted to
15 point out what you were saying, I didn't consider
16 that an average, but other people can speak to
17 that if it is required.

18 DR. LUTTERMANN: I can make an
19 undertaking to give you the numbers that I
20 collected if you are interested, the numbers that
21 I noted down if you would like. And I could speak
22 to one of your hydrological engineers directly
23 about that and we could clarify that position. As
24 I said, I posed that as a question, that's what
25 the data looked to me, and I would be happy to

1 discuss that further.

2 MR. ADKINS: Okay. I would like to
3 ask you a couple of questions, if I could, simply
4 because we have a comment about pristine waters
5 which actually wasn't your comment.

6 DR. LUTTERMANN: What comment, sorry?

7 MR. ADKINS: Pristine. And I don't
8 know -- effectively this was Ms. Robinson who
9 basically talked about sort of the education and
10 the changes in terms of the social structure --
11 and sorry, I'm probably too far away from here.
12 But there was a comment about fluctuating water
13 levels and the interference with skating and I --
14 are you aware, Ms. Robinson, about the skating,
15 the ice rinks that have been provided by Manitoba
16 Hydro in the community?

17 MS. ROBINSON: Yes, I'm aware of that.
18 I even have made one in my backyard just for my
19 boys to keep them safe from the lakes.

20 MR. ADKINS: But Hydro didn't provide
21 that one?

22 MS. ROBINSON: No, I covered it out of
23 my own cost.

24 MR. ADKINS: Okay. I just wanted to
25 check and see. And then you talked about pristine

1 waters, and I don't know who to direct this to or
2 not, but certainly the record, as I understand it,
3 is that the waters in the community, or running
4 through the community, were not potable prior to
5 the project, prior to even the beginning of some
6 of the work on the project, that there were
7 serious gastroenteritis problems at various times
8 of the year. There were all sorts of reports,
9 there were systems put in place but they served
10 only some of the non-aboriginal members of the
11 community. Are you aware of any of that
12 information?

13 DR. LUTTERMANN: I think what you are
14 probably referring to is water immediately
15 adjacent to the community of Cross Lake which was
16 experiencing problems with sewage. We were
17 talking about the area immediately adjacent to the
18 settlement, and I believe what Margaret was
19 speaking to was the condition of the water in the
20 territory as a whole. Not immediately -- I don't
21 think that many people would drink water close to
22 a very densely populated area, but when you are
23 out on the land, you are out hunting, you are out
24 fishing and traveling and you are away from the
25 community, so I believe that's -- is that correct,

1 Margaret? I'm asking you questions.

2 MR. ADKINS: It was the source of the
3 water supply untreated for Cross Lake prior to the
4 project was Cross Lake, and it had an awful lot of
5 problems that the Cross Lake chief and council had
6 complained about for a number of years, and there
7 were a lot of issues in terms of stomach problems
8 and more serious problems, particularly with the
9 elders and the youth, but I don't know if people
10 are aware of that situation.

11 DR. LUTTERMANN: I wouldn't be
12 surprised if there were problems with sewage close
13 to a community with higher bacteria levels. I
14 wouldn't be surprised about that, if there were,
15 yep. But I do believe from my understanding to
16 the NFA -- well, I don't know if I want to get
17 into that, but certainly water quality in the
18 river as a whole has most certainly declined since
19 this project was put into place due to increased
20 sedimentation, and possibly the increase in the
21 export of nutrients from Lake Winnipeg, possibly
22 through the fact that there are deeper bypass
23 channels. I don't believe that we have the answer
24 to that question at this point in time. I do
25 believe that the water quality data that are used,

1 that have been analyzed and used to try to get
2 some understanding of pre and post LWR conditions
3 are not adequate to do that. The data that were
4 collected by the Nelson River study -- no, it is
5 not the Nelson River Study Board, but by the
6 studies early in the 1970s, beginning in 1972,
7 1971/72, there was already construction beginning
8 upstream. You would expect that there would be
9 increased sedimentation from that kind of
10 construction project, so you would expect that
11 turbidity would have increased downstream during
12 the period of time that those data have been
13 collected. I think this has been recognized that
14 there is limitations, and that's part of the
15 reason why the conclusions are inconclusive.

16 But yeah, in terms of, you know, water
17 contamination in the local area around the
18 community, that's something that, yeah, needs to
19 be addressed in all communities.

20 MR. ADKINS: I'm not sure which
21 reports you have looked at but there are drinking
22 water reports that indicate that they had some
23 chlorination at Cross Lake. They had no treatment
24 and that they had problems with chlorination
25 because of the siltation in the water, the

1 turbidity in the water, that interfered with the
2 effect of the chlorination and had problems. So
3 I'm not sure, and again maybe the RCEA will help
4 us look at that.

5 DR. LUTTERMANN: I think there was
6 already increased nutrient loading in Lake
7 Winnipeg at that time over many years, and this is
8 a classic example of a cumulative effect, right?
9 And also the temporal context of water quality
10 problems, so in the spring in a large river such
11 as the Nelson River that does have a lot of silt
12 and clay shores in different areas, Playgreen Lake
13 was probably subject to a fair amount of erosion
14 previously, and you can tell that just from
15 looking at the geomorphology of these water
16 bodies. And Cross Lake is big, complex and has a
17 lot of bedrock in a lot of areas, so would not
18 have likely been subject to as much erosion and
19 still isn't in those bedrock areas. But the point
20 is that in the spring time when you have the
21 spring freshet that's part of the natural system
22 too, when you get a lot of sediment, nutrients
23 flushed down the river and the turbidity probably
24 would have been high in the spring under natural
25 conditions in the spring and in early summer.

1 I've looked at a few old air photos and I think
2 that confirms that as well. But then things tend
3 to settle out and people are out in the fall
4 hunting in these lake systems, and you would
5 expect in a boreal system like that, maybe not the
6 main channel, but in many of these, you know, huge
7 intricate areas that you wouldn't have so much
8 suspended sediment throughout the year.

9 So in terms of what time of the year
10 was excessive, whether it be sediment or bacteria
11 in the water, a problem so much, I don't know how
12 much data we have for that. I haven't had a
13 chance to look into that. In order to -- this is
14 a big question, and in order to try to get at that
15 question, maybe that's what we need to do is a
16 little bit more detailed analysis of what those
17 conditions were. I would not suggest that all
18 water quality problems are a direct result of
19 Hydro development. I would suggest that Hydro
20 development has exacerbated those problems
21 significantly.

22 And then the other issue is about this
23 pristine water and the beauty of the landscape
24 that Margaret referred to when she said pristine,
25 it is not just about the drinking water, it is

1 about the beauty of the water and the clarity of
2 the water. So, the esthetic values of the
3 landscape are compromised when the water is
4 looking like this in the slide pretty much year
5 round.

6 MR. ADKINS: Just, and this will be my
7 last question, I'm not sure, are you -- you are
8 aware that -- I guess it won't be my last
9 question, it will be two of them. You are aware
10 there is a west channel of the Nelson River and
11 the east channel of the Nelson River?

12 DR. LUTTERMANN: Yes.

13 MR. ADKINS: And are you aware of the
14 flows that go beside the community of Cross Lake,
15 are they from the east channel or the west
16 channel?

17 DR. LUTTERMANN: From both, the west
18 channel meets up to -- it flows into Pipestone
19 Lake and then flows into Cross Lake.

20 MR. ADKINS: All right. That is
21 contrary to my understanding, that's fine. I
22 accept. I asked the question, I got the answer.
23 I appreciate it. Thank you very much.

24 THE CHAIRMAN: Thank you, Mr. Adkins.
25 Mr. Lenton, I don't imagine you have any questions

1 that are adverse to you. Mr. Yee.

2 MR. YEE: Yes, thank you, Mr. Chair.

3 If I could ask on page 8 of your submission it is
4 indicated that, investigate the options for an
5 operational review of the entire northern Manitoba
6 hydroelectric system using an eco-hydrological
7 perspective. Can you sort of define what you mean
8 by eco-hydrological?

9 DR. LUTTERMANN: Yes. So
10 eco-hydrology or eco-hydraulics is kind of a new
11 field of study. There is quite a lot of work
12 being done on basically looking essentially at
13 these basic questions, how do the flow patterns in
14 a water body affect the ecosystem. So we have
15 raised many, many questions about that. It is
16 obviously the fundamental kind of alteration that
17 has happened in this system. So if we were to
18 then design studies -- don't just go out and count
19 muskrats, for example, but do a study which is
20 looking at the relationship between muskrat
21 population densities that exist now and the
22 habitat conditions as they relate to the hydrology
23 of the system and other factors as well. But
24 that's a very basic example of what I mean.

25 MR. YEE: So what would the study area

1 entail? What would you envision the study area
2 would be, and you also mentioned about the
3 operational review?

4 DR. LUTTERMANN: That's a good
5 question, million dollar question. I think we
6 need to, you know, common sense would dictate that
7 we would look at the entire system, because
8 operation decisions that are made at Jenpeg for
9 LWR are also, well, the extent to which actual
10 operation decisions have to kind of collaborate
11 with the decisions at the control structures for
12 CRD, I'm not even quite sure about that. Right?
13 Because we haven't, I don't see an analysis of how
14 those decisions correlate with one another. But
15 clearly, you know, letting maximum flow out
16 through Jenpeg is going to then affect the whole
17 river down to the mouth of the river. Yeah. And
18 including the Churchill River, in fact, the
19 Churchill River, it doesn't affect the Churchill
20 River directly, but it may affect in terms of the
21 amount of water that you have got in the lower
22 system, and what your generating objectives are
23 for that period of time. The whole thing is
24 interconnected. So the study area would have to
25 be the entire system which, you know, the Federal

1 aquatic monitoring program, as Chief Merrick
2 pointed out, referred to the system as the Lake
3 Winnipeg/Churchill/Nelson project. Right? So
4 this is really what we are talking about. We need
5 to really look at that on a broad level, and then
6 decide, okay, well, what is really feasible to do
7 within that study area within a period of time,
8 one year, five years, ten years, whatever we are
9 trying to do. Right?

10 But the very first step is to
11 establish some objectives, some questions to test,
12 and to design a study very carefully. And that
13 needs to be done in collaboration with the people
14 who are being affected by these projects in order
15 to, I think come to some kind of an understanding
16 of what is trying to be achieved in this study at
17 the end of the day, so we also have some
18 satisfaction that we are actually coming to some
19 answers and using those to make decisions in a
20 transparent way. So the study area needs to be
21 the whole system.

22 MR. YEE: Thank you, Dr. Luttermann.

23 On page 19 it is indicated that there
24 was limited evaluation of the effectiveness of
25 mitigation projects such as the Cross Lake weir.

1 What specific aspects are not known well enough in
2 terms of judging the effectiveness of the weir?

3 DR. LUTTERMANN: Well, the Manitoba
4 Hydro contends that habitat conditions were
5 improved. The only thing that's been studied is
6 fish populations, not fish habitat. Although I
7 believe there is a little bit of work beginning on
8 that. You know, again, one of the most obvious
9 effects of these water level alterations is the
10 effect on the shoreline habitat. As far as I'm
11 aware there has been no shoreline habitat
12 characterization done, and the shoreline habitat
13 also dictates -- the habitat quality assessment
14 maybe you could call it, would dictate the ability
15 for amphibians to live there, for song birds to
16 nest there, depending on what species of plants
17 live there and so on. The objectives of the Cross
18 Lake weir were to partly improve habitat, and
19 there is some fairly specific predictions made in
20 the 1986 Cross Lake environmental assessment that
21 fur bearers would return to former levels within
22 six years I think they predicted. Again, they
23 didn't -- that study was not based on the weir
24 alone, it was also based on some changes in the
25 operating objectives upstream, which some of them

1 could be achieved under the current licence
2 conditions. And as I said, when I looked at the
3 hydrographs, I thought, well, you know, it looks
4 like they are making a bigger effort to not make
5 the November cutback quite as severe as it was in
6 the past, or they are making an effort not to
7 allow water levels to drop quite as quickly as
8 they did in the past. But we need transparency
9 around that as well. We need to look at the
10 objectives of that project and do some assessment
11 on whether they were met.

12 Fish populations were predicted to
13 come back -- well, it's a bit vague what the
14 predictions were, but they said maybe within 10 to
15 12 years. And unfortunately, the population
16 surveys have shown that Lake Whitefish has not
17 recovered. Species such as Walleye seem to be in
18 better shape, for example, not Lake Whitefish
19 which were previously also a smaller component of
20 the community, but an extremely important species
21 for Pimicikamak and for sustenance fishing. So
22 they haven't come back, very low levels. In fact,
23 not even enough Lake Whitefish to even create a
24 population estimate in the studies. And there is
25 several reasons proposed for that. Water level

1 alterations are one of them. Eutrophication is
2 another one. Impacts from invasive species like
3 rainbow smelt may be eating the fish is another
4 one. But at the end of the day, we have many
5 observations from Pimicikamak and also from just
6 looking at the basic water level data that the
7 weir has improved, has brought up minimum water
8 levels in terms of habitat conditions. They don't
9 look very good to me.

10 I've been out poking around quite a
11 bit, and Darrell has taken me out to the weir and
12 Sipiwesk lake, and all of the pictures I have
13 shown have been on the trips that we have taken.
14 Again, I have only done bits and pieces of work
15 with Pimicikamak, certainly not enough to make any
16 broad conclusions about habitat conditions in the
17 area as a whole.

18 MR. YEE: Thank you, Dr. Luttermann.
19 Those are my questions, Mr. Chairman.

20 THE CHAIRMAN: Thank you. Ms. Suek?

21 MS. SUEK: Since you are already up I
22 will start with questions to you.

23 I would like to go back to that page
24 28 slide on the fluctuations, if you could? I'm
25 trying to understand that, you know, the range

1 isn't all that different, but it seems to me it is
2 the unpredictability that's the issue. That
3 sometimes it goes up and sometimes it goes down,
4 and it goes down in a reverse pattern than it used
5 to before Jenpeg. Is that the issue, is that the
6 pattern has reversed, which is hard on the animal
7 population and that the -- it fluctuates in an
8 unpredictable way? Is that correct?

9 DR. LUTTERMANN: Yeah, I think that
10 you have really hit the nail on the head there.
11 It is incredible unpredictability. From month to
12 month Manitoba Hydro has issued predictions of
13 what the water levels are going to be a few weeks
14 down the road. That is important and useful to
15 some extent. It certainly doesn't make any
16 difference to the wildlife. But, yeah, from year
17 to year you don't know what the heck is going to
18 happen. Because the whole project is based around
19 moderating water levels in Lake Winnipeg, and so
20 when you do that, you basically, you know, pass
21 all of the extremes downstream. And yeah, from
22 year to year, it is crazy. And this has a huge
23 effect on, you know, I'm a mother too, I wouldn't
24 want my child going out on the ice in the winter,
25 even if I had a piece of paper that said that the

1 water levels are going to stay low for the next
2 couple of weeks, when you have this kind of
3 experience, you think no way, I'm not going to let
4 my child go out on a boat. The uncertainty I
5 think is a huge impact here.

6 And yeah, I wanted to say one little
7 thing about this skating too. When I lived in
8 Nova Scotia, we used to go out on the lakes in the
9 winter, sometimes you would have years when there
10 was very little snow, you could go out and skate
11 and skate and skate all over the place. And I
12 have heard stories like that from Pimicikamak,
13 this is exactly the kind of system in some of
14 these back parts of Cross Lake that you might be
15 able to do that. And oh, what a wonderful thing,
16 what a wonderful gift to be able to do that in
17 your environment. And I think that's pretty sad
18 that there is no way that you can do that anymore.
19 Maybe once in a while, one year to the next, but
20 most of the time you have no idea what is going to
21 happen.

22 MS. SUEK: You mentioned the 25,000
23 CFS outflows, and you said there is no conditions
24 on it. Are you suggesting there should be
25 conditions on that, or are you saying --

1 DR. LUTTERMANN: Yes, I think concern
2 about that number and the way it is done, yeah,
3 I'm concerned about the number. I haven't seen
4 any other documentation other than in the Cross
5 Lake environmental assessment, where it says that
6 that number was arrived at based on historic lows.
7 So I haven't looked at that actual data, so
8 historic lows. This is kind of the minimum
9 ecological flow idea perhaps, you know, we will
10 look at the river system, the lowest water that
11 was ever there naturally, maybe it is okay if we
12 let that level be attained, that's okay. Because
13 if these systems are variable and the species that
14 live in boreal systems are resilient actually
15 compared to a more stable tropical system. So the
16 idea is minimum, that's allowable, that's
17 acceptable. But the minimum historical low, again
18 in relation to the rest of the season, would be in
19 the late winter, early spring, before break-up.
20 And so then you have waterfowl, migrating
21 waterfowl, they come and build their nests by the
22 water's edge depending on what species they are.
23 If they are building their nest in early summer
24 and water levels might rise a little bit for the
25 summer and gradually fall down, but if you then

1 get the water levels and you have muskrats
2 building lodges and waterfowl building nests --
3 I'm pointing at my screen here -- in the early
4 summer and then the water levels drop, we don't
5 see that kind of pattern in a natural system, so
6 that can wreak havoc with all kinds of things.
7 You get maybe fish spawning, and then the eggs are
8 decimated because the water level drops
9 afterwards. So it is complex, right?

10 One year may be more conducive to the
11 survival of certain types of species than others.
12 You might get three years in a row of high water,
13 which is actually quite good maybe in certain
14 areas for certain species, and then the next
15 several years -- they can't really adjust very
16 easily, and then you can get some population
17 recovery, and then it can plummet again.

18 And what I'm suggesting is that we
19 don't really have a very good understanding of
20 that. And that's another problem with the whole
21 ecological monitoring in a system like this, you
22 can't just go out and do some surveys once every
23 five years, and then get a picture of the trends
24 or the averages, because you have such variability
25 from one year to the next. So this kind of a

1 provision where you also have, you have this
2 minimum low, it really needs to be looked at from
3 an ecosystem hydrological perspective and
4 consider, okay, maybe that low is acceptable at
5 certain seasons but not at others.

6 MS. SUEK: Thank you. I would like to
7 ask some questions of Chief Merrick, if I could?

8 There have been some mitigation or
9 compensation measures that Manitoba Hydro has
10 taken on, for example, clearing some of the debris
11 and the ice, the safe ice roads, and there is a
12 complaint process if somebody loses a snowmobile
13 or whatever. Are those things that have been done
14 in conjunction with the community, saying this is
15 what we need? Is there a plan? Are these
16 occasional -- how did these things come about and
17 what involvement does the community have in terms
18 of -- because I heard you saying, we want to be
19 consulted and we want to have a plan, we want to
20 move forward. Is that what has happened in the
21 past, and what do you see about a consultation
22 process that would be meaningful to you?

23 CHIEF MERRICK: Thank you for your
24 question.

25 I can only speak since I became chief.

1 The history between the relationship in
2 establishing the working relationship between
3 Manitoba Hydro and the mitigation and whatnot that
4 affects our community is very minimal on the part
5 of Pimicikamak. We have identified the resources
6 that were needed to be able to present the winter
7 routes that are taken by our men when they go out
8 on the land. And the participation of Hydro is
9 that, of Manitoba Hydro, is that they hire our
10 men, our local men to be able to route out the
11 trails that are followed in the winter.

12 We would surely like to be able to
13 plan out more, and to be able to participate at
14 that level, because it is more or less, to my
15 feelings is that it is their way or the highway.
16 So we need to come to that table to be able to
17 talk about these things. And keeping in mind, it
18 is 39 years since Jenpeg and since upstream,
19 downstream, and all of this, so it has been 39
20 years in the making. So a lot of the things that
21 are being discussed, that are being brought out
22 could be maybe last week, maybe last month, maybe
23 last year. So I want to emphasize on the time
24 frame as of when the Northern Flood Agreement was
25 signed by all parties up to now. It is 2015, I

1 believe, this year, and it has been a long time.

2 And we need to be able to move collectively for
3 our people and for our men.

4 And I was thinking here, I was sitting
5 here and I was thinking why things happened the
6 way they happened. I was looking out the window
7 from my office, and it was welfare day for the
8 community, I was looking down and there was
9 line-ups of my young men waiting in line to get
10 their welfare cheques. And I said, this is not
11 right, these young men should be working, should
12 be able to provide for their families, should be
13 able to learn and live off the land. And that
14 came to mind when I was sitting here, 2015, 39
15 years ago. We stated time and time again the
16 employment rate in my community is 80 per cent,
17 and why is that? I question myself that as a
18 leader for my community, not as a politician, as a
19 leader, because there is a fine line between a
20 politician and a leader, and I am a leader.

21 MS. SUEK: Just one last question. If
22 there was more mitigation, more study, if some of
23 the fish could be brought back or some of the
24 animals, I'm looking at other ways of doing
25 economic development, whether you think there is a

1 need for something in addition to that. You know,
2 we spoke with the high school students when we
3 were there, and I was quite impressed with how
4 bright and active and interested they were. It
5 was quite -- but I thought, where are they going
6 to go? And what is in the community for them?

7 Do you have any ideas about, you know,
8 more that could be done? And I'm not necessarily
9 saying that Manitoba Hydro, maybe an assortment of
10 sources and looking at other options too? Sorry,
11 am I putting you on the spot here?

12 CHIEF MERRICK: Thank you for your
13 question. It is 2015, our kids, we have 1600
14 children in our school population up to grade 12.
15 We have entertained land based programs for our
16 children, that they be able to be taken out to the
17 land, to see the land, through the school system.
18 Because that was taken away, that responsibility
19 was taken away from the parents. It was the
20 parents that did that. It was my father that did
21 that, taken my brothers out to the trapline to
22 show them how to be good trappers, how to be, how
23 to learn to live off the land. It was the
24 fishermen that took out their families to teach
25 them, and they would be there for the spring and

1 for the fall. They would take out their families.
2 So it has a lot, not just specifically to the
3 teachings, but as the groups of families that
4 would go out on the land, where the women would go
5 pick the berries and teach the little girls about
6 our ceremonies, where they would go out and fish,
7 where they would go out and hunt to be able to
8 provide. And to be able to show our young men
9 their first kill, that too in itself was a
10 ceremony. So everything that we've done, we have
11 done, we have given back to the land. And we are
12 the protectors of Mother Earth and we keep saying
13 that, and we feel that every time we speak. And
14 it is our children that I'm worried about. The
15 generations that are going to be coming, what are
16 we going to leave them? We have to sustain, we
17 have to be able -- we don't want to be a part of
18 history where these things have happened and we
19 let it happen. So we want to be a part of that,
20 we want to be able to create that relationship, to
21 create -- to be able to better for our young
22 people, that they know who they are as Pimicikamak
23 people. History is important, the culture is
24 important. And if you are not able to do that, as
25 a community to be able to teach your young

1 children the land and the love of the land, then
2 you have taken a part of their heart that they
3 will never get back.

4 So that's the purpose of how we
5 educate. And it is unfortunate that we have to do
6 that through a system where it would have been the
7 responsibility of the parents. Now it is in the
8 schools, now we have to be able to accommodate
9 what we have planted in the schools for them.

10 MS. SUEK: Thank you. That's my last
11 question.

12 THE CHAIRMAN: Mr. Harden?

13 MR. HARDEN: Okay. I'm going to focus
14 a little bit on the recommendations, especially
15 recommendation number 2, on page 6, questions for
16 the licence for Lake Winnipeg Regulation should
17 require the establishment of a water governance
18 board for the basin as a whole. Are you referring
19 to the entire Nelson and Churchill River
20 watershed, or just the immediate Lake Winnipeg and
21 Nelson River areas, or what scope do you see this
22 board?

23 DR. LUTTERMANN: I think the way this
24 recommendation was written, and what I would like
25 maybe to preface is that these recommendations are

1 kind of evolving, I guess, depending on, I'm sure
2 that the panel is receiving all kinds of
3 recommendations, and it is important and necessary
4 for Pimicikamak to understand other
5 recommendations as well. When we are looking at
6 the operation of the system as a whole, any kind
7 of water governance board absolutely needs to
8 include representation from the whole basin,
9 including Lake Winnipeg, because every LWR
10 decision affects upstream and downstream. The
11 extent to which such a board would include Lake
12 Winnipeg, as well as CRD and downstream to the
13 lower Nelson, it makes sense to have
14 representation from the whole basin.

15 Now, I haven't been involved directly
16 in the process agreement, and what is being
17 suggested there in terms of decision-making, and
18 I'm guessing it is probably not quite as broad as
19 that. But in recognition of the fact that there
20 are competing interests in some cases, there is
21 overlapping interests and conflicting interests
22 that a water governance board needs to be basin
23 wide.

24 What the structure of that would
25 actually look like needs to be discussed and

1 determined with representation from throughout the
2 basin. I don't think it is appropriate for one
3 party to suggest this is the structure that it
4 needs to be. We have been in discussions with --
5 well, we have looked at a number of ideas from
6 other jurisdictions, but really the process needs
7 to be to bring people to the table and take a look
8 at that very carefully. And definitely, some kind
9 of a decision-making process that has a huge
10 learning, mutual learning component to it, and
11 much more transparent than anything that we have
12 in place right now.

13 MR. HARDEN: And would you see this
14 board as being the board that sort of operates
15 Lake Winnipeg Regulation, or is it just an
16 advisory board, or what sort of authority would
17 you see this board having?

18 DR. LUTTERMANN: Well, I would see it
19 as an advisory board and, again, a mutual
20 learning, you know, really huge component there.
21 Because sometimes you have advisory boards where
22 people simply don't have the resources and the
23 ability or opportunity to understand the situation
24 as well as possible to really make, provide good
25 advice. Technically operating Jenpeg, obviously

1 Manitoba Hydro needs to continue, I don't imagine,
2 I'm not going to go and start flipping switches,
3 it needs to be coordinated. And the licence just
4 for LWR also has decision-making authority for the
5 Minister for Manitoba as well. Manitoba Hydro
6 only has authority to regulate within the minimum
7 and maximum levels of Lake Winnipeg. So what was
8 your question again?

9 MR. HARDEN: Just on the scope of
10 authority, how you envision the authority of this
11 board?

12 DR. LUTTERMANN: Well, I'm not sure at
13 this stage in the game.

14 MR. RAINING BIRD: We have also
15 informally been working in conjunction with the
16 CAC, who will be presenting tomorrow and who we
17 anticipate will be providing a more thorough
18 review of possible alternate operating regimes,
19 with evidence as to what has been happening in
20 other jurisdictions. To the extent that we have
21 any sort of recommendations for operational
22 changes, those would be supplemented by evidence
23 provided by other parties, and we will explore
24 them further and more conclusively in our final
25 submission. That's something we will do tomorrow.

1 MR. HARDEN: I guess we are getting
2 spoilers for tomorrow's presentation then. I hate
3 spoilers.

4 Okay. I will turn to recommendation
5 4, which is to review the recommendation to go to
6 maximum discharge when the lake is above level
7 715. Now, speaking of competing interests, we
8 have heard through these hearings almost
9 universally from anybody around Lake Winnipeg that
10 715 is too high and that they should go the
11 maximum amount flow below 715, and a lot of people
12 said they should target 714, and that sort of
13 thing. How would you see being able to implement
14 such a recommendation? Presumably that would
15 result in somewhat higher lake levels during flood
16 times.

17 DR. LUTTERMANN: Well, again, I have
18 to emphasize that I think, you know, I think that
19 these hearings, this review process has been
20 tremendously valuable for all of us. The
21 arguments that I've been able to follow about
22 impacts on Lake Winnipeg, I believe there is still
23 quite a lot more to be learned there. And to the
24 extent that various people have perspectives that
25 might question whether or not the existing maximum

1 levels are a good thing or a bad thing, I think
2 that needs to be explored a little more. Because
3 historically, Lake Winnipeg did go above 715 by
4 quite a bit and there were floods.

5 Now there are positive and negative
6 aspects to floods. Floods are actually, depending
7 on how extreme they are, they can be quite
8 positive for repairing habitats. Obviously, I
9 think one of the major arguments that the
10 government has tried to make is that the
11 regulation of Lake Winnipeg is not the major cause
12 of erosion along the shorelines. I'm not sure we
13 have established that absolutely. And Pimicikamak
14 is not interested in trying to change conditions
15 which will then compromise people upstream either.
16 This is a very complicated and difficult decision.
17 The whole purpose of having that maximum there in
18 the first place is to try to provide flood relief
19 upstream. But the reality and the result of that
20 is that it is prejudicial in a major way to the
21 people downstream. And there isn't a balance
22 there in the licence. So we have very specific
23 conditions protecting some upstream, presumably
24 protecting certain upstream values, and then we
25 have some what I would suggest are fairly minor

1 provisions in terms of the outflow, rate of
2 outflow and the minimum outflow to protect
3 downstream conditions. And you know, the amount
4 of thought that was put into that at the time does
5 not really consider all of these conflicting
6 interests, and doesn't appear to be.

7 I mean, certainly early on when they
8 did those studies for the Churchill, Nelson River
9 study, they looked at a lot of these issues, but
10 basically it was a kind of a fait accompli by that
11 time, looking at mitigation measures. But all
12 along, from the very beginning of this process, it
13 seemed very clear to me in documentation that the
14 licence conditions were to be monitored and
15 reviewed over time to see how appropriate they
16 were. And if there is mitigation, let's see how
17 well it is working, and then let's reconsider and
18 look at it again.

19 So this is a very complex decision.
20 As soon as we start making major changes to a
21 system like this, there is going to be trade-offs.
22 And the licence parameters, as they stand, are
23 very biased against the downstream people, and
24 ecosystem. And so if we do have conditions in the
25 future where we have even more extreme events, it

1 might not happen, that would be good perhaps, but
2 we have a situation where this licence stands over
3 the next 11 years, we have extreme floods every
4 single time, you know, maximum flood passed
5 straight downstream. Whereas in the 1980s, it was
6 actually recommended that this provision be taken
7 out or revised because of the prejudicial effect
8 on the downstream, and that there be more
9 attention paid to what is going on in that
10 particular year. So there are floods in Lake
11 Winnipeg, what is the long term forecast? Should
12 we go to maximum flow right now? And going to
13 maximum flow, Manitoba Hydro also does that sort
14 of ahead of time sometimes, before it gets to 715
15 in anticipation. I think there is a certain
16 amount of operational decision-making that does
17 try to do a little bit of balance, at least that's
18 what appears to me if I look at the Hydro graphs.

19 But I think there should be more
20 transparency in that as well, and that there be
21 specific objectives developed for protection of
22 downstream habitats. And I'm not suggesting this
23 is a simple thing to do. But that it is not
24 acceptable to Pimicikamak that a final licence be
25 issued with no changes in the conditions for the

1 next 11 years with the threats of future increased
2 flooding.

3 MR. HARDEN: All right. Those were my
4 questions.

5 THE CHAIRMAN: Thank you, Mr. Harden.

6 Mr. Harden stole a couple of my
7 questions, but that's fine, I have a couple more,
8 one also that flows out of recommendations. And
9 recommendation 6 you talk about implementing the
10 NFA and maximizing Pimicikamak control. What do
11 you mean by maximizing Pimicikamak control?

12 MR. MUSWAGGON: The issue for this
13 intent and purposes here, when it comes to
14 licensing conditions of the Lake Winnipeg
15 Regulation, if it wasn't for the Northern Flood
16 Agreement which gave Hydro that right to be in our
17 territory and operate its system, one of the
18 things that is directly related to this process
19 here, the CEC, where it talks about the Northern
20 Flood Agreement, with respect to the
21 responsibilities to the land and relationship.
22 Because if we look back prior to the project when
23 we want to talk about esthetic values of our land,
24 the land was clean, the water was clean, the
25 people were healthy, and it was about clean

1 drinking water and everything was healthy in it.
2 A lot of things have changed over time. And what
3 we've come to learn about Jenpeg, being the major
4 strategical and critical infrastructure for Hydro,
5 it is the main tap that controls and regulates
6 Lake Winnipeg, basically one giant forebay that
7 controls what is the interests of the people
8 living around the lake.

9 One of the things that needs to
10 happen, because under the Northern Flood Agreement
11 there are responsibilities that need to be done in
12 terms of evaluating what can be done better from
13 lessons learned. And when we talk about
14 Pimicikamak control, before the project this has
15 been our home, and somebody has come and taken
16 that away from us. We no longer have direct
17 control in how we live, how we eat, how we
18 breathe. There are systems all around us that
19 affect us, and especially with the dam that is
20 there in our backyard. So we've never had that
21 opportunity in the last 40 years to really have
22 full control of our own economies the way we once
23 did. And many things got promised to my people
24 under the Northern Flood Agreement that never
25 materialized. Yes, there is no disagreement that

1 some things have been done, but there is a lot
2 more that can be done.

3 So for the issue on the interim
4 licence, which has been a very lengthy interim
5 licence, even before maybe my time, are the
6 conditions adequate? Is there a level playing
7 field for the current conditions? Is everybody
8 being treated equally and being looked at here in
9 terms of how this licence is being managed? What
10 are the accountable measures that need to happen
11 here to make the decisions transparent that affect
12 everybody?

13 Because Hydro has been told by my
14 people in the past, in this relationship that we
15 have, and the responsibilities that we have in
16 looking after the land and the resources, we can
17 do it the easy way or the hard way. You have
18 heard from various testimonies from blockades,
19 protest, evictions, obviously somebody hasn't been
20 behaving very well. That's in a nutshell
21 describing the situation.

22 I said it before, I don't come here to
23 be a scientist or a lawyer, but we have our law to
24 live by, unwritten. That's our area of expertise.
25 I believe the other side cannot come and interpret

1 for us. We live it and feel it and we suffer with
2 it.

3 So these are the issues why we keep
4 coming back to the table here, why as human beings
5 not only do I have human rights, but I have rights
6 as keepers of this land. I think it is time that
7 people start listening to what we are saying here.
8 Because there needs to be greater efforts and
9 trust building in working together here to
10 minimize the damage that's already been done here.
11 We realize it is not realistic to eliminate the
12 damage that's been caused already. So that's why
13 our people want to take back our sovereignty,
14 their right to determine, their own
15 self-determination. When I talk about
16 Pimicikamak, I'm talking about all of my people,
17 and our lands and our resources. We have never
18 gave it up, but we have agreed to share through
19 our ancestors. But I think it is time that we
20 want to start doing things right. And the secrecy
21 has to stop, documents have to flow both ways in
22 terms of if we are going to know the problem, if
23 we are going to understand the situation, all
24 documents should come here in trust. We have
25 lived up to our end of the bargain by allowing the

1 project to exist in our territory. We expect the
2 same courtesy on the other side, bringing the
3 information to the table so our experts can
4 evaluate that. Because our people are visual
5 people, a lot of literature like this don't make
6 sense to our people, but they can see and live it
7 every day.

8 I'm pretty certain if I brought a pail
9 of water here, would Bob drink it? Probably not.
10 Would you eat the fish? Probably not, because you
11 know it is not safe. The truth has to prevail.
12 And I apologize, sir, but this pain has been going
13 on for a couple of decades in our people. But
14 this is not the right time and place to debate, it
15 is about collecting the facts and making informed
16 decisions to do the right thing.

17 THE CHAIRMAN: Thank you. And you
18 don't need to apologize. You actually anticipated
19 my follow-up question and answered it very well.

20 I would like to turn in a bit of a
21 different direction. In your report you make
22 reference to the Nelson River Study Board, which
23 made a number of recommendations in the mid '80's,
24 some of which we know were implemented. Were
25 there any major implementations in that report

1 that Pimicikamak feels should be or still need to
2 be implemented?

3 MR. MUSWAGGON: One of the
4 recommendations, just to share a story here, was a
5 recommendation to build an all-weather road, just
6 to share the kind of process we have had to live
7 with. When our people went forward to say a
8 bridge constituted an all-weather road, we went
9 through extreme means, at least three appeals
10 before the arbitrator said, not only does the
11 bridge constitute an all-weather road, he said go
12 back and build a bridge, but don't come back here
13 or you will pay social and economic damages for
14 failing to build a bridge for 25 years. So that's
15 the kind of system we are up against here, which
16 has made it very difficult today, and it took part
17 of the protest in 1998 to get things moving. And
18 we finally seen that bridge in 2004. And we still
19 haven't even sat down to talk about the damages
20 relating to that bridge. I'm just giving that as
21 one example from the study report recommendations.

22 And things are possible that can be
23 done if there is a will to get them done, but I
24 think it needs total cooperation from all parties.

25 THE CHAIRMAN: Thank you.

1 I have one last question and it is a
2 little more specific. In your report, I mean, you
3 talk in the report about a number of issues with
4 lost resources, you know, and the failure of
5 endeavors to bring back whitefish and sturgeon.
6 But you also talk about muskrat and the
7 development of muskrat marshes. Can somebody
8 explain what that is and how that might be done
9 and where that might be done?

10 DR. LUTTERMANN: Yes, I just found one
11 section in the report that you referred to. Also
12 it says in conjunction with muskrat marshes, a
13 compensation program is recommended that a
14 population and habitat monitoring program be
15 implemented to assess habitat potential, provide
16 ongoing information for resource management and
17 enhancement, as well as to provide an assessment
18 of resource recovery. So that kind of pops back
19 to your first question, which is that's one
20 example of a recommendation in that 1986 report
21 that doesn't appear to have been followed up,
22 pursued.

23 In terms of the muskrat marshes, so
24 what they are talking about it is basically
25 putting some small control structures on some

1 embayments, little bays, to regulate the water
2 that would be in a pattern that is more conducive
3 to the survival of muskrats. And there is one
4 small embayment in Cross Lake which I haven't been
5 able to get any information about what is
6 happening with that. I think that it is actually
7 controlled by the Cross Lake municipality, or
8 whatever, or like the Northern Affairs community,
9 yeah. So it is just adjacent to that. And I have
10 gone and poked around in there, and I saw a couple
11 of muskrats. So it is -- I think it may have been
12 actually in response to this, I haven't been able
13 to track down information on that.

14 So if Pimicikamak had maybe a full
15 time person, and I'm not suggesting that be me,
16 because I don't even live in Manitoba, but who
17 could help them with this kind of thing too. So
18 muskrat -- I think I have a picture of it in here.
19 And so this is often recommended as a mitigation
20 measure for altered water levels. Unfortunately,
21 it can only really be feasibly done in very small
22 areas, but it is worthwhile looking at the
23 possibilities in perhaps more areas.

24 So this is the marsh I was talking
25 about, it's several hectares. This is better by

1 far habitat quality than you would see in the
2 areas that -- basically it is isolating this bay
3 from the direct influence of the upstream water
4 flow. And it is something that could be probably
5 done in quite a few more areas, but, yeah, I think
6 that it would have to be, you know, discussed in
7 detail with people about what would make sense.

8 THE CHAIRMAN: Just on that, am I
9 correct that when the weir was built there was an
10 expectation that it might help a resurgence of
11 muskrat, but that no study has been done in that
12 respect, or little study, is that correct?

13 DR. LUTTERMANN: That's my
14 interpretation of it, yes.

15 THE CHAIRMAN: Okay, thank you.

16 I think those are all of the questions
17 that I have for now. Your report is very
18 comprehensive and for the most part quite
19 self-explanatory. So we will conclude in a couple
20 of minutes, but before I do that I would like to
21 thank all of you for your time today, your very
22 good presentations, and your good responses to
23 questions. And I would like to thank those of you
24 who were involved in putting together all of the
25 materials that we've been provided over the last

1 few weeks and that have been reviewed today.

2 Before we conclude, a couple of things. Madam
3 secretary, documents to register?

4 MS. JOHNSON: Yes, we do. PIM number
5 1 is the Pimicikamak outline of February 24th.
6 Number 2 is the submission for April 7, today.
7 Number 3 is the Avian riparian paper. Number 4 is
8 the affidavit. Number 5 is the presentation from
9 today. And MH 10 is the NFA working group working
10 paper from Pimicikamak as filed by Manitoba Hydro.

11 (EXHIBIT PIM 1: Pimicikamak outline
12 of February 24th)

13 (EXHIBIT PIM 2: Submission for April
14 7)

15 (EXHIBIT PIM 3: Avian riparian paper)

16 (EXHIBIT PIM 4: Affidavit of S.
17 Sniderman)

18 (EXHIBIT PIM 5: Pimicikamak
19 presentation)

20 (EXHIBIT MH 10: NFA working group
21 working paper from Pimicikamak as
22 filed by Manitoba Hydro)

23 THE CHAIRMAN: Thank you. Tomorrow we
24 are back here at 9:30. We have, I believe it is
25 Consumers Association and Black River. Before we

1 close, Chief Merrick, do you wish to have your

2 elder close the ceremony for today?

3 (Closing prayer.)

4 (Adjourned at 5:00 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.

Cecelia Reid
Official Examiner, Q.B.

Debra Kot
Official Examiner Q.B.

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