

**BRITISH COLUMBIA UTILITIES COMMISSION**  
**IN THE MATTER OF THE UTILITIES COMMISSION ACT**  
**R.S.B.C. 1996, CHAPTER 473**

**And**

**Re: British Columbia Hydro and Power Authority**  
**Project No. 3698640/Order G-132-11**

**Certificate of Public Convenience and Necessity**  
**Application for the Dawson Creek/Chetwynd Area**  
**Transmission Project**

**Vancouver, B.C.**  
**July 9th, 2012**

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**PROCEEDINGS**

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**BEFORE:**

<b>L.A. O'Hara,</b>	<b>Panel Chair / Commissioner</b>
<b>C.A. Brown,</b>	<b>Commissioner</b>
<b>D. Morton,</b>	<b>Commissioner</b>

**VOLUME 1**

## APPEARANCES

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Commission Counsel

C.W. SANDERSON, Q.C.

BC Hydro & Power Authority

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A. HEFFORD

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Consumers' Association B.C. Branch, B.C. Old

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Age Pensioners' Organization, Counsel Of

A. WAUGH

Senior Citizens' Organizations, Federated Anti-Poverty Groups Of B.C., West End Seniors' Network

P. HILDEBRAND

City of Dawson Creek

M. CRUICKSHANK

A. RANA,

West Moberly First Nations

R. WILLSON

B. MUIR

J. LANDRY

Shell Canada

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**CAARS**

VANCOUVER, B.C.

July 9, 2012

**(PROCEEDINGS RESUMED AT 8:59 A.M.)**

THE CHAIRPERSON: Please be seated. Good morning, ladies and gentlemen. My name is Liisa O'Hara. With me are Commissioners Carol Brown and David Morton.

And welcome to this morning's proceeding to hear evidence related to the adequacy of First Nations consultation in B.C. Hydro's application for the CPCN for the Dawson Creek/Chetwynd area transmission project, which was filed on July 11<sup>th</sup>, 2011. In particular, this includes also evidence related to the impact of the project.

Following the second procedural conference held on May 2<sup>nd</sup>, 2012, the Commission panel issued Order number G-56-12, which determined the scope of the application and established a regulatory timetable to conclude the review process. The Commission ordered that the review of the application would proceed by way of a written hearing including an Information Request number 4, followed by an oral hearing limited to the adequacy of First Nations consultation, if so required. The review will then be concluded by way of written final submissions.

To accommodate the conflicting requirements

1 of B.C. Hydro for an early decision, and the West  
2 Moberly First Nation to have its community-based  
3 impact assessment study completed, the panel agreed to  
4 a very tight regulatory timetable. The West Moberly  
5 report and evidence was due last week on Thursday,  
6 July 5<sup>th</sup>, 2012 and the oral hearing regarding First  
7 Nation consultation was scheduled to start Monday,  
8 July 9<sup>th</sup>, which is today.

9 In its decision the panel expressed concern  
10 over this very tight timeline between the filing of  
11 the West Moberly evidence and the commencement of the  
12 oral phase of the hearing. The panel requested that  
13 West Moberly and B.C. Hydro agree on the proposal for  
14 early confidential filing of the draft report for  
15 review by the panel, and Commission Staff so that  
16 adequate pre-hearing preparation could be undertaken.  
17 Regrettably this never happened. However, West  
18 Moberly did file a draft evidence summary of oral  
19 evidence of Chief Roland Willson on June 6, 2012.  
20 That was filed as Exhibit C5-19 and that was helpful.

21 **Proceeding Time 9:04 a.m. T02**

22 On June 29<sup>th</sup>, 2012, the Commission issued a  
23 letter which confirmed this oral proceeding today, and  
24 the letter stated:

25 "Given that no parties had advised the  
26 Commission that it is not necessary to

1            proceed with an oral phase on First Nations  
2            consultation, the oral public hearing will  
3            commence on Monday, July 9<sup>th</sup>, with an  
4            expected duration of two days."

5            On July 5<sup>th</sup>, 2012, B.C. Hydro filed the  
6            First Nations consultation summary for the period  
7            March 8<sup>th</sup>, 2012 to July 3<sup>rd</sup>, 2012. This was marked as  
8            Exhibit B-32. B.C. Hydro also filed, on a  
9            confidential basis with the Commission and West  
10          Moberly First Nations only, the B.C. Hydro and West  
11          Moberly First Nations log and copies of all relevant  
12          materials for the period of March 8<sup>th</sup>, 2012 to July 3<sup>rd</sup>,  
13          2012, as it pertains to this DCAT project. This has  
14          been marked as Exhibit B-33.

15          As well on July 5<sup>th</sup>, 2012, which was  
16          Thursday, West Moberly First Nations delivered to the  
17          Commission the community-based environment assessment  
18          report which has been marked as Exhibit C5-20.

19          Finally, West Moberly filed on the same  
20          date a copy of the PowerPoint presentation to be made  
21          by Chief Roland Willson, which was marked as Exhibit  
22          C5-21. This exhibit also includes biographies of the  
23          witnesses appearing at the hearing today.

24          On July 6<sup>th</sup> which was Friday, B.C. Hydro  
25          filed an evidentiary update that, it states, responds  
26          to some of the issues raised by West Moberly in a

1 recent meeting and correspondence including the final  
2 impact assessment study. This has been marked as  
3 Exhibit B-34.

4 **Proceeding Time 9:07 a.m. T03**

5 With that background, it's my pleasure to  
6 acknowledge some of the individuals who will continue  
7 to play a key role in the review of this application.  
8 We have Alison Richter, who is the director of policy,  
9 planning and customer relations, and she is the lead  
10 staff on First Nations issues at the Commission. She  
11 is assisted by Alana Schroeder. Commission counsel  
12 for this proceeding is Mr. Paul Miller from Boughton  
13 Law Corporation, and our Hearing Officer is Hal  
14 Bemister.

15 To summarize, we are here this morning to  
16 address only the matters that relate to the adequacy  
17 of First Nations consultation. This hearing is  
18 followed by B.C. Hydro's final submission on July 16<sup>th</sup>,  
19 intervener final submissions on July 25<sup>th</sup>, and B.C.  
20 Hydro reply on July 31<sup>st</sup>. After that round is  
21 completed, the panel will commence its deliberations.

22 By way of housekeeping, the panel intends  
23 this morning to -- well, all day. We intend to sit  
24 from 9:00 in the morning to 4:30 in the afternoon. We  
25 will take mid-morning coffee break when we find a  
26 convenient spot, and we'll have a one and a half hour

1 lunch break.

2 I am now going to ask Mr. Miller to call  
3 for appearances. Mr. Miller, please.

4 MR. MILLER: Thank you, Madam Chair. B.C. Hydro and  
5 Power Authority.

6 MR. SANDERSON: Good morning, Madam Chair. Chris  
7 Sanderson for B.C. Hydro. With me today in addition  
8 to Mr. Hefford from B.C. Hydro is Michelle Jones from  
9 my office.

10 THE CHAIRPERSON: Thank you, Mr. Sanderson.

11 MR. MILLER: B.C. Old Age Pensioners' Organization *et al.*

12 MS. WORTH: Madam Chair, members of the panel, Leigha  
13 Worth, W-O-R-T-H, as counsel for BCOAPO. I am joined  
14 by colleagues Ms. Tannis Braithewaite, B-R-A-I-T-H-E-  
15 W-A-I-T-E, and Mr. Andrew Waugh, W-A-U-G-H. Thank  
16 you.

17 THE CHAIRPERSON: Thank you, Ms. Worth.

18 MR. MILLER: City of Dawson Creek.

19 MR. HILDEBRAND: Paul Hildebrand, and with me is Marisa  
20 Cruickshank. Thank you.

21 THE CHAIRPERSON: Thank you, Mr. Hildebrand.

22 MR. MILLER: West Moberly First Nation.

23 MS. RANA: Allisun Rana, R-A-N-A, and here with me today  
24 is Chief Roland Willson, the chief of the West Moberly  
25 First Nations, and Bruce Muir, the former lands  
26 manager.

1 THE CHAIRPERSON: Welcome. Thank you, Ms. Rana.

2 MR. MILLER: Shell Canada Limited.

3 MR. LANDRY: Madam Chair, John Landry appearing on behalf  
4 of Shell.

5 THE CHAIRPERSON: Thank you, Mr. Landry.

6 MR. MILLER: Is there any party that I have missed who  
7 wishes to appear?

8 That concludes the order of appearances,  
9 Madam Chair.

10 THE CHAIRPERSON: Thank you. So, next --

11 MR. MILLER: I believe the first item of business would  
12 be for the first West Moberly First Nations witness  
13 panel to be called.

14 **Proceeding Time 9:11 a.m. T04**

15 THE CHAIRPERSON: Ms. Rana?

16 MR. MILLER: Ms. Rana has indicated she'd like to make an  
17 opening statement, Madam Chair.

18 THE CHAIRPERSON: Please proceed, Ms. Rana.

19 **OPENING STATEMENT OF MS. RANA:**

20 Thank you, Madam Chair and Panel members.

21 The reason that I'd like to make an opening  
22 statement this morning is to put the evidence of the  
23 First Nation in context, and particularly in the  
24 context of the consultation process, which we're  
25 really here today to consider.

26 As you know, at the commencement of this

1 process almost a year ago, since that time you've  
2 heard a lot about the ongoing discussions and  
3 challenges between the First Nation and B.C. Hydro  
4 about the conduct of this impact assessment study.  
5 And if you recall last fall, the First Nation actually  
6 sought a stay of these proceedings in order to allow  
7 for more time for the discussions around the conduct  
8 of that study to take place, and hopefully for that  
9 study to actually occur before this hearing happened.  
10 That stay application was never heard because  
11 ultimately B.C. Hydro asked that the proceedings be  
12 adjourned on their own, and fortunately that period of  
13 time when the proceedings were not ongoing, the  
14 parties did reach agreement to conduct a study, and  
15 the study in fact did take place.

16 The Commission now has the outcome of that  
17 study, as Madam Chair noted, as Exhibit C5-20 in the  
18 record. And Bruce Muir, who was one of the  
19 facilitators of that study and one of the authors of  
20 the report, is here today to answer questions on  
21 cross-examination about the report, but he'll also  
22 speak very briefly before that about his role in the  
23 study and briefly about the methodology of the study.

24 The introduction to the report says that  
25 the primary goal of the study was to provide a tool  
26 for consultation. The introduction also says that the

1 results are to be used to inform project design and  
2 implementation in order to avoid or mitigate potential  
3 adverse impacts on West Moberly's rights. So in this  
4 regard, the First Nation sees this report as an  
5 important first step in the consultation process.

6 One of the concerns raised by West Moberly  
7 in the report is that B.C. Hydro did not use a  
8 cumulative effects approach in their application.  
9 Now, this relates directly to Chief Willson's  
10 evidence. West Moberly feels very strongly about  
11 cumulative effects of development in their territory.  
12 This development continues to take place right in  
13 their back yard, or as Chief Willson puts it in his  
14 evidence, in his neighbourhood. Importantly, West  
15 Moberly is of the view that B.C. Hydro's approach to  
16 consultation did not adequately take into account the  
17 context of this development. Chief Willson's  
18 evidence, which as you know will be presented orally  
19 in the form of a PowerPoint and a Google Earth  
20 presentation, it speaks directly to the context of the  
21 DCAT application, the context in which the Commission  
22 is being asked to consider whether or not the  
23 consultation has been adequate, and ultimately whether  
24 or not to approve this project.

25 West Moberly believes that this context has  
26 been missing from the evidence to date, both with



1 concerns raised, and ultimately an assessment of  
2 whether or not, in the circumstances taking into  
3 account the full context, whether reconciliation  
4 between the aboriginal interests and the Crown  
5 interests has been achieved. This is the balance.  
6 This is the critical balance that Chief Willson's  
7 evidence is all about. His presentation is called "A  
8 Critical Balance".

9 Thank you.

10 THE CHAIRPERSON: Thank you, Ms. Rana.

11 MS. RANA: Okay. I'd like to introduce Mr. Bruce Muir.  
12 He's the former lands manager from the West Moberly  
13 First Nation.

14 **BRUCE MUIR, Affirmed:**

15 **EXAMINATION IN CHIEF BY MS. RANA:**

16 MS. RANA: Q: Mr. Muir, your CV and biography are  
17 located at Exhibit C5-21 of the record on pages 31 to  
18 34. Is that correct?

19 MR. MUIR: A: Yeah.

20 MS. RANA: Q: And do you have a copy of that in front  
21 of you today?

22 MR. MUIR: A: Yes, I do.

23 MS. RANA: Q: Your CV states that you work now at CTQ  
24 Consultants. How long have you been in that position?

25 MR. MUIR: A: Nearly a month and a half.

26 MS. RANA: Q: And prior to that you were employed by

1 the First Nation?

2 MR. MUIR: A: Yes, I worked for West Moberly First  
3 Nations for roughly speaking about six and a half  
4 years.

5 MS. RANA: Q: And in what capacity?

6 MR. MUIR: A: I served as their senior environmental  
7 planner and land use manager.

8 MS. RANA: Q: And what is your educational background?

9 MR. MUIR: A: I have a degree, a master's degree, in  
10 environmental studies and natural resource management  
11 from the University of Northern British Columbia.

12 MS. RANA: Q: Can you describe for the panel briefly  
13 what your role was at West Moberly First Nations?

14 MR. MUIR: A: As a lands manager, you have quite a few  
15 responsibilities. You're community based but you're  
16 also doing a lot of external work with proponents as  
17 well as various levels of government. You deal with  
18 quite a few applications from wind farms, coal mines,  
19 forestry, in this case, power lines as well, private  
20 land. You do quite a bit. The full gambit, I guess,  
21 of environmental issues confronting land.

22 And you manage -- as a lands manager, you  
23 also manage your staff, as well as the referral  
24 process that is ongoing with the various processes.

25 MS. RANA: Q: And while you were employed for the First  
26 Nation, what was your involvement in the DCAT project?

1 MR. MUIR: A: My role in the DCAT project as for when I  
2 worked for West Moberly, was to kind of facilitate the  
3 process and manage it from a consultation perspective  
4 as best I could as best I could with all that we had  
5 going on, as well as to manage the project once it got  
6 going.

7 **Proceeding Time 9:19 a.m. T06**

8 MS. RANA: Q: And ultimately you had a role in the  
9 development of the impact assessment report?

10 MR. MUIR: A: Yes, so whenever we started this, part of  
11 that engagement was also with Wendy Aasen who is one  
12 of the researchers on this project as well. During my  
13 transition from working with West Moberly CDQ, my role  
14 changed a little bit from managing a project into co-  
15 authoring the report. So the role changed a little  
16 bit as originally designed when we started the  
17 process.

18 MS. RANA: And the report you're referring to is the  
19 report that's now been filed as Exhibit C5-20?

20 MR. MUIR: A: Yes.

21 MS. RANA: Q: And that's the report you have in front  
22 of you there?

23 MR. MUIR: A: Yes, I do.

24 MS. RANA: Q: Can you describe for us in a little more  
25 detail your role in the impact assessment study and  
26 the development of the report?

1 MR. MUIR: A: My role as facilitator within the  
2 community is to make sure they're informed, and that  
3 whatever we agreed to with the proponent in terms of  
4 deliverables, that we make sure we get it done to the  
5 best of our ability within what we have to work with.  
6 So in this case I worked with Wendy Aasen at the  
7 beginning, we put together a proposal for the project  
8 that was brought over to B.C. Hydro, and consultation  
9 kind of flew from there.

10 And I guess in terms of the report itself,  
11 as I mentioned earlier, my role changed a little bit.  
12 So originally I was kind of a facilitator from the  
13 managing side of it, and then I changed over into  
14 facilitating actually helping to develop the report  
15 itself along with Wendy. Ms. Aasen, pardon me.

16 MS. RANA: Q: And you're able to answer questions  
17 raised today about the drafting and the development of  
18 that report.

19 MR. MUIR: A: Yes, I am.

20 MS. RANA: Q: I just want to ask you one thing about  
21 the consultation record, and I recognize that today  
22 your evidence is really the report and you're here to  
23 speak to the report. But you did earlier bring to my  
24 attention a concern about the recent evidence summary  
25 that was filed by B.C. Hydro on July the 6<sup>th</sup> as Exhibit  
26 B-34, and I believe you have a copy of that exhibit in

1 front of you?

2 MR. MUIR: A: Yes.

3 MS. RANA: Q: I would like to draw your attention to  
4 page 2 of that evidence summary starting at line 3.  
5 And just for the ease of the record, I'm going to read  
6 the excerpt into the record and then ask you to  
7 provide your understanding of what transpired on the  
8 telephone call of March 29<sup>th</sup> that's referred to in that  
9 section of the summary.

10 So starting at line 3 it states:

11 "B.C. Hydro and West Moberly First Nations  
12 had a telephone call on March 29<sup>th</sup>, 2012, the  
13 purpose of which was for West Moberly First  
14 Nations to provide an update to B.C. Hydro  
15 on the status of the IAS, and to indicate if  
16 there were any showstopper issues that could  
17 potentially have significant impacts on the  
18 project. During that call, West Moberly  
19 First Nations' land use manager stated that  
20 community interviews concluded that the  
21 sacred site in the Pine River area was  
22 located south of Highway 97, and therefore  
23 the proposed DCAT Pine River crossing was  
24 not a show stopper as long as it remained  
25 north of Highway 97. West Moberly First  
26 Nations' land use manager also indicated

1           that there were no other show stoppers, and  
2           any other impacts that might be identified  
3           in the IAS could be mitigated with more  
4           typical measures.

5           General discussion of the community  
6           interviews then ensued, and West Moberly  
7           First Nations' land use manager mentioned to  
8           B.C. Hydro that during the initial  
9           interviews for the IAS, one of the West  
10          Moberly First Nations community members had  
11          mentioned that the proposed DCAT  
12          transmission line should cross the Pine  
13          River underground instead of overhead. West  
14          Moberly First Nations' land use manager  
15          further advised that this was only the  
16          suggestion of one community member and that  
17          it was not necessarily the position of West  
18          Moberly First Nations. There was no request  
19          for B.C. Hydro to consider this  
20          alternative."

21                 Mr. Muir, can you please the Panel with  
22          your understanding of what transpired on that  
23          telephone call on the 29<sup>th</sup>?

24   MR. MUIR:    A:    Yes. I recall this phone call because I  
25                  was in the airport, ten minutes away from jumping on a  
26                  plane.

**Proceeding Time 9:23 a.m. T07**

1  
2           It was something we committed to B.C. Hydro  
3 to kind of give them a very quick update on where we  
4 are in the project. The expression that some of the  
5 lands managers and myself use was the "Oh, my God"  
6 issue. Working in the community, especially as an  
7 outsider, you don't know the entire history,  
8 especially Dunne-za that goes back ten thousand or  
9 more years. The "Oh, my God" issue, and this is  
10 something you'll see, some of the pictures later on  
11 from Chief Willson's presentation, of where this idea  
12 came from, in that particular case was a wind farm and  
13 whenever they went out to do the assessment, they  
14 found some sacred rocks. Very large, the size of a  
15 wall sacred rocks. When that information was brought  
16 to the land managers, the first thing one of my  
17 colleagues said was, "Oh, my God. What do we do now?"

18           In a sacred issue, you can't mitigate  
19 sacredness. So, as land managers, we kind of said,  
20 well, we need to make sure as a first step we figure  
21 out, is there anything -- can we figure this out as  
22 fast as we can in order to proceed more strategically  
23 into the consultation process, so we can tell a  
24 proponent, "Here are the studies we need to do." If  
25 we don't know if there is a "Oh, my God" issue sitting  
26 there, it makes it very difficult to focus that

1           consultation on the things in front of people. So one  
2           of the first questions we ask is, "Is there an 'Oh, my  
3           God' issue on a project?" And because of location of  
4           the proposed DCAT project, I had some knowledge of a  
5           sacred site on the river. I wasn't too sure where it  
6           was.

7                         So, what I needed to do was have a very  
8           quick conversation with one individual that held that  
9           information. I'm not sure if you're aware, but within  
10          First Nation communities, certain individuals have  
11          certain knowledge. You might talk to one elder and  
12          then he or she would send you to another elder to  
13          finish the story. Well, in this particular case, I  
14          was informed by one elder of this site. That elder  
15          then passed away, and his son had that knowledge. So  
16          I went to his son to have that conversation about this  
17          particular sacred site, and it's called the Dancer  
18          Rock. Very big, almost the size of a house, rock on  
19          the side of the river, and they call it -- it's how it  
20          translates in English, but it moves. And it shifts,  
21          based on certain things.

22                        And I needed to make sure that DCAT did not  
23          come near that, or impact that in any way. So that's  
24          kind of where this "Oh, my God" issue came from, and  
25          in this particular case what I was concerned about.  
26          And so when I was updating B.C. Hydro on it, I wanted

1 to make sure is they understood that that sacred  
2 issue, that you cannot mitigate, it does not matter  
3 what you do, you cannot -- if you're going to infringe  
4 on sacredness, that's a big issue. But that wasn't  
5 the case here.

6 I don't recall using the term "show  
7 stopper". We term it "Oh, my God". So I'm not too  
8 sure where that came from, but the "Oh, my God" issue  
9 is something a little bit different than the rest of  
10 the assessment. It does not mean the rest of the  
11 assessment -- a significant effect might come up that  
12 cannot be mitigated as well. It just looks at the  
13 sacred issues as one piece that can't be addressed.  
14 And so there is a separation between the two.

15 MS. RANA: Q: The evidence summary that B.C. Hydro  
16 filed stated that you advised that any other impacts  
17 that might be identified in the IAS could be mitigated  
18 with more typical measures. Do you recall making that  
19 statement?

20 MR. MUIR: A: No, I do not. The assessment itself then  
21 would produce the information that we'd be able to  
22 make a decision such as that. Whether it could be  
23 mitigated or cannot be mitigated. So, no. I do not.

24 MS. RANA: Q: The evidence summary also states that  
25 although you advised that the suggestion of one  
26 community member was to tunnel under the river, rather



1 part of our promise, that we'd let them know if we  
2 found anything out.

3 MS. RANA: Q: So when B.C. Hydro says there was no  
4 request for B.C. Hydro to consider this alternative,  
5 is that your understanding?

6 MR. MUIR: A: Well, that's what I read. I assumed they  
7 would take that in consideration because we bought it  
8 forward. We wouldn't necessarily bring things forward  
9 if a community member asked for -- had issues with the  
10 mine. And during community interviews they talk about  
11 a lot of things. Well, if they mitigation on a mine,  
12 we wouldn't necessarily bring that to Hydro. We  
13 brought forward the information that was pertinent to  
14 this particular case, to Hydro, and assuming they  
15 would take that into account, I guess.

16 MS. RANA: Q: I don't have any further questions unless  
17 you have anything else you want to say about the March  
18 29<sup>th</sup> phone call that you recall.

19 MR. MUIR: A: No, I do not.

20 MS. RANA: That concludes Mr. Muir's direct evidence.

21 THE CHAIRPERSON: Thank you, Ms. Rana.

22 **CROSS-EXAMINATION BY MR. SANDERSON:**

23 MR. SANDERSON: Q: Good morning, Mr. Muir. Mr. Muir,  
24 you're going to have to bear with me a little bit  
25 during the course of this discussion because a lot of  
26 the material is fairly new to me. So if I'm putting

1 questions to you which you think are answered in the  
2 report et cetera, they may well be and it's just I  
3 haven't had enough time with it that I'm feeling  
4 really comfortable that I know everything that's in  
5 there. So if there's places in here that would help  
6 the Panel in response to a question I ask, feel free  
7 to ground them back in your report or point to  
8 anywhere else you think might be useful in the  
9 material.

10 With that said, I did want to start with  
11 your CV in Exhibit 5-21, and I think you rather  
12 covered this in your direct. But my take on your role  
13 with West Moberly, and really your focus in your, I  
14 assume, undergraduate and certainly in your graduate  
15 degree, is on the -- what I'll call the management of  
16 the lands for which West Moberly has responsibility or  
17 are important to them. Is that fair? And let me  
18 distinguish along with your question, let me  
19 distinguish between management of the lands and study  
20 of individual environmental values of the land.

21 MR. MUIR: A: Okay, sorry, I'm just unclear what the  
22 question exactly is.

23 MR. SANDERSON: Q: I'm distinguishing -- you know, I'm  
24 focusing on your overall and where you would claim to  
25 have expertise and experience, and suggesting to you  
26 that that experience is with respect to managing the

1 land on behalf of the West Moberly as distinct from,  
2 say, doing wildlife studies or doing fish assessments  
3 or other more biophysical specific analysis.

4 MR. MUIR: A: I guess there'd be two -- there is my  
5 role at West Moberly and there's my education and  
6 training.

7 In terms of management, there's a  
8 difference between planning and management. At  
9 university I kind of took classes and was training by  
10 professors in both planning and management. In terms  
11 of the actual fish assessment, the example you used,  
12 the experience that I have is looking at it from an  
13 impact assessment perspective, so community  
14 perspective. I'm not a fish biologist. I'm not an  
15 ecologist. I was trained in impact assessment  
16 generally speaking.

17 Impact assessment, the field of it has  
18 multiple disciplines. It's not just any one  
19 discipline. So I was trained in impact assessment, in  
20 particular to land uses and how the land uses might  
21 engage with different values on the land, say moose or  
22 sometimes fish. So I cannot provide you the exact  
23 methodologies on how to study the impact on fish. What  
24 I could look at from an impact assessment perspective  
25 is whether or not fish ought to be studied.

26

1 **Proceeding Time 9:33 a.m. T09**

2 MR. SANDERSON: Q: Right.

3 MR. MUIR: A: And how that study is carried out, the  
4 extent of which, that is something where fish  
5 biologists would have to come.

6 However, looking at it from an impact  
7 assessment perspective, you do have to understand --  
8 and this is what an impact assessment generalist would  
9 have to understand -- is where are fish populations in  
10 the ecosystem, where are we? Where we were in the  
11 past, what are we today? So as a generalist, you do  
12 have that ability to look at it. How you study, say,  
13 a bull trout and how you do -- what's it called? --  
14 the electro fishing, things like that. Of course  
15 that's where that professional would have to --

16 MR. SANDERSON: Q: That's where the fisheries biologist  
17 comes in.

18 MR. MUIR: A: Yes.

19 MR. SANDERSON: Q: And similarly for wildlife. At some  
20 point the wildlife biologist comes in to actually  
21 figure out how to assess a particular species or  
22 determine its health or any of those sort of more  
23 specific tasks.

24 MR. MUIR: A: To some degree, yes. Usually with  
25 assistance from other professionals as well.

26 MR. SANDERSON: Q: And when I look through your list of

1           publications which you've helpfully added to your CV,  
2           I do see a consistent focus on the impact assessment  
3           process which you mentioned in the answer you just  
4           gave. And that really seems to me to be the core of  
5           your professional interest. How to go about doing  
6           these kind of assessments from both a theoretical and  
7           a global sort of perspective.

8   MR. MUIR:    A:    I don't know if I'd call it a core, but  
9           it would be one of, yes.

10   MR. SANDERSON:  Q:    Okay. And what I took from those  
11           articles, frankly just the titles, but having looked  
12           at a few, is that you have some deep-seated concerns  
13           with respect to the way the environmental assessment  
14           process is undertaken on resource projects in B.C.  
15           generally.

16   MR. MUIR:    A:    I guess when you look at it from where  
17           environmental assessment came from, back in the '70s,  
18           and how it was envisioned to be a tool for  
19           sustainability --

20   MR. SANDERSON:  Q:    Yeah.

21   MR. MUIR:    A:    -- in comparison to how it's practiced  
22           today, not just in British Columbia but in other  
23           places as well. Some provinces do it a little bit  
24           better. Some actual -- within B.C. actually do it  
25           well too. So it's not necessarily a blanket brush  
26           that everything is bad, it's just that there is not a

1 consistent approach that is probably more effective  
2 than others.

3 MR. SANDERSON: Q: There is an article that you mention  
4 in your CV which I just want to reference. And I'll  
5 give you a copy if I need to, but I'm just going to  
6 read you a paragraph. And if it's going to help you  
7 to have it in front of you, then I'm happy to do that.

8 This is a document entitled "Losing its  
9 Way: Environmental Impact Assessment in British  
10 Columbia, Canada". And it's an article I understand  
11 to be co-authored between you and Annie L. Booth. Are  
12 you familiar with that article?

13 MR. MUIR: A: Yes.

14 MR. SANDERSON: Q: That was an article, what, you  
15 prepared last year and published this year?

16 MR. MUIR: A: Yes, it was published this year.

17 MR. SANDERSON: Q: Yes. And I just want to read a  
18 quote from it, and just get you to elaborate it a bit.  
19 You say, towards the end of that article, page 167:

20 "British Columbia's dualistic approach to  
21 assessing the cumulative impacts raises a  
22 serious question as to whether the  
23 government is capable of upholding the  
24 fundamental principles of natural justice.  
25 After all, a sense of biocentric and  
26 cultural justice does not seem to underscore

1           the manner in which B.C. and the  
2           Environmental Assessment Office structure  
3           environmental impact assessments as a  
4           planning tool. Environmental impact  
5           assessments ought to be used as a mechanism  
6           to assist in the purging of inequalities in  
7           society, rather than as a conduit to further  
8           historic intolerances and existing  
9           disadvantages within a contemporary  
10          context."

11          And I think it was that paragraph that led me to  
12          believe you had some pretty core quarrels with the  
13          manner in which British Columbia, in particular, is  
14          undertaking environmental impact assessment.

15       MR. MUIR:    A:    Well, I think is important to note what  
16          lens that you put on it. All articles have a certain  
17          lens in which you look at it -- a data set. And in  
18          that case, it was an environmental justice lens and it  
19          was theoretically grounded in the equality clause of  
20          the *Constitution*. So it did not look at Section 15  
21          necessarily -- or, pardon me, Section 35. It looked  
22          at Section 15. So when you look at it from an  
23          equality perspective, in this particular case -- now  
24          in that case, you had an environmental assessment up  
25          north. A Section 11 order, which is issued by the  
26          Environmental Assessment Office. It identified --

1 well, for non-First Nations, we're going to look at  
2 cumulative effects. For non-First Nations -- oh,  
3 pardon me. For non-First Nations, we're going to look  
4 at cumulative effects. For First Nations, we're not  
5 going to look at cumulative effects. So from an  
6 equality perspective, that calls into question --  
7 well, why are we doing it that way? Is that under  
8 Section 15 potentially a violation of the *Charter*?

9 **Proceeding Time 9:37 a.m. T10**

10 In isolation, maybe the separation is not.  
11 But in practice when you look at cumulative effects,  
12 how it is used with EA as a decision-making tool, it  
13 really brings up a problem. Why are we looking at  
14 cumulative effects for non-First Nations and why don't  
15 we do it for First Nations? So that's kind of that  
16 dual role is why aren't we doing it for both? Why is  
17 one group in society elevated to a higher level of  
18 protection where the other one is downgraded?

19 MR. SANDERSON: Q: Yes.

20 MR. MUIR: A: That's kind of what it looked it. So  
21 it's very important for the lens. It's less what Dr.  
22 Booth and I think than the lens that we apply to the  
23 data set.

24 MR. SANDERSON: Q: Well, I'm not quite sure, Mr. Muir.  
25 I understood, I think your answer up until your last  
26 sentence or so, the article is entitled "Losing its

1           Way: Environmental Impact Assessment in British  
2           Columbia", and while it speaks of a particular case  
3           study, I took it to be an attempt by you and Dr. Booth  
4           to express your views with respect to the state, if  
5           you want, of environmental impact assessment in this  
6           province.

7       MR. MUIR:    A:    No, I think that'd be an  
8           overgeneralization. Dr. Booth has published another  
9           four articles on impact assessment. She's done  
10          extensive research, First Nations and public policy in  
11          general. One of our articles she published on  
12          environmental impact assessment actually looked at the  
13          views of industry, and in that article if you read  
14          that article in concert with the other articles she  
15          wrote about First Nations, you actually see a strong  
16          correlation between the views of EA from the industry  
17          and First Nations. The difference is the view of  
18          government actually.

19                    So is it biased? No, it actually is  
20           looking at -- here's the whole picture, you have  
21           government itself with one view of EA, and you have  
22           the two parties that are left working together with a  
23           different view, and that view is actually quite  
24           similar. The view of industry and First Nations is  
25           not necessarily different.

26       MR. SANDERSON:   Q:    I wasn't suggesting it was, Mr.

1           Muir. I was really just trying to establish your  
2           perspective on government view of the environmental  
3           assessment process here. And I think I'm still  
4           hearing that you have a fundamental quarrel with the  
5           way in which environmental assessment and the  
6           perspective government takes to it in this province.

7   MR. SANDERSON:   Q:   I don't know if I'd phrase it as a  
8           quarrel. I do take issue with some of the practices  
9           they use.

10                   In some cases up north we have one EA was  
11           the Babkirk Landfill environmental assessment. That  
12           was done well from the First Nations perspective. All  
13           the communities liked it in the end. It had in that  
14           case the Environmental Assessment Office was  
15           administering the process. Their proponent worked  
16           well with the community. So it's not necessarily with  
17           government itself, but it's how things are being  
18           implemented in some cases. There's inconsistencies.  
19           And in practice, if it's not meeting with theory, then  
20           that's a problem.

21   MR. SANDERSON:   Q:   All right, thank you.

22                   Bringing it back now to Hydro and the DCAT  
23           project, I think it was clear from your direct  
24           examination and the material you filed, you have been  
25           actively engaged in talking to Hydro about the DCAT  
26           project for pretty much two years?

1 MR. MUIR: A: I don't know about two years but perhaps  
2 close to that.

3 MR. SANDERSON: Q: So it began in 2010, I think your  
4 report says.

5 MR. MUIR: A: Yes, I think the first letter from Hydro  
6 was in 2010, yeah.

7 MR. SANDERSON: Q: And is it fair to say that over  
8 those two years, Hydro has been seeking information  
9 from the West Moberly First Nation in general, and you  
10 in particular, with respect to any knowledge you or  
11 the First Nation might have regarding resources of  
12 particular importance to the First Nation, or  
13 potential impacts with which you are particularly  
14 concerned? That's been an ongoing theme of Hydro's  
15 questions to you.

16 MR. MUIR: A: Yes.

17 MR. SANDERSON: Q: And over that period you've been  
18 consistently provided with the work that B.C. Hydro  
19 had performed to try and assess that for itself up to  
20 any particular point in time. You're not suggesting  
21 Hydro has withheld documents from you. It's been  
22 forthcoming in providing them to you when they've been  
23 available?

24 MR. MUIR: A: It's provided documents to us, yes.  
25 They've held things back. I don't know about certain  
26 documents.

1 MR. SANDERSON: Q: And in particular they provided you  
2 with the environmental overview assessment which got  
3 filed in these proceedings. Subsequently they  
4 provided you with their proposed environment  
5 management plan. And those are all things you've been  
6 invited to comment upon?

7 MR. MUIR: A: The environmental overview, yes. The  
8 environmental management plan, are you referring to  
9 the one that was just filed on Friday, or --

10 MR. SANDERSON: Q: No. I'm referring to the one in  
11 early May, I'm told.

12 MR. MUIR: A: The large document? Like the -- yes, the  
13 -- sorry.

14 MR. SANDERSON: Q: And you have received those  
15 documents and been invited to comment, just to confirm  
16 that line.

17 MR. MUIR: A: Yes.

18 **Proceeding Time 9:42 a.m. T11**

19 MR. SANDERSON: Q: Yeah. Did you ever take issue with  
20 the -- and I'll focus now on the environmental  
21 overview. Did you ever take issue with the  
22 methodology employed in the overview insofar as it  
23 related to specific wildlife resources? And let's  
24 take moose as an example. Is there any -- was there  
25 ever a time when you said, you know, "The way you've  
26 assessed moose is somehow inadequate or inappropriate,

1 or not methodologically correct?"

2 MR. MUIR: A: Yes.

3 MR. SANDERSON: Q: All right. And can you tell me what  
4 your criticisms were?

5 MR. MUIR: A: Well, those are contained within the  
6 report, primarily.

7 MR. SANDERSON: Q: So it might help if you -- I see a  
8 discussion of moose at page 125 of your report. But  
9 if there is other places, by all means let me know.

10 MR. MUIR: A: Yes, I think within the scoping and the  
11 baseline sections, so, Section 4.3 and Section 4.4 of  
12 the report, it does contain information about moose.

13 MR. SANDERSON: Q: Right. Now, what I'm wondering is,  
14 I can read what's at page 125 and following, which is  
15 a criticism of the moose assessment that was done  
16 there. And I'll come back to that. Is there anywhere  
17 else in the report where you are critical of the  
18 manner in which the moose assessment was done?

19 MR. MUIR: A: I don't recall off the top of my head,  
20 other than perhaps in a conclusion, some comments  
21 about it as well.

22 MR. SANDERSON: Q: And the information contained at  
23 pages 125 through 127 was conveyed to Hydro when?

24 MR. MUIR: A: When we provided the final report.

25 MR. SANDERSON: Q: Last Thursday.

26 MR. MUIR: A: Last Thursday, yes.

1 MR. SANDERSON: Yes. Now, West Moberly, I guess, since  
2 time immemorial, has been concerned with, aware of and  
3 reliant upon moose?  
4 MR. MUIR: A: Yes.  
5 MR. SANDERSON: Q: And that's as the land manager high  
6 on your list of important priorities through your  
7 career there?  
8 MR. MUIR: A: We have a lot of priorities. I wouldn't  
9 say it's -- they don't quantify. Caribou has been  
10 pretty high on our priority because they're almost  
11 extirpated.  
12 MR. SANDERSON: Q: Yes.  
13 MR. MUIR: A: So in terms of focus, we're very  
14 concerned about that species.  
15 MR. SANDERSON: Q: Fair enough.  
16 MR. MUIR: A: But every species within the season  
17 around is equally a concern.  
18 MR. SANDERSON: Q: All right. And moose is one of  
19 those species.  
20 MR. MUIR: A: Moose is one of those species, yes.  
21 MR. SANDERSON: Q: And has been ever since you've been  
22 at West Moberly.  
23 MR. MUIR: A: I think it has been for a very long time,  
24 yes.  
25 MR. SANDERSON: Q: Right. And one didn't need to go  
26 and do interviews in the community in order to know

1           that a threat to moose is of serious concern to the  
2           West Moberly First Nation.

3 MR. MUIR:    A:    Not to understand that, no.  However, in  
4           a particular case, we would.  It's not something we're  
5           -- as lands manager, I'm responsible to the community.  
6           They have a mixed economy.  So it's important to note  
7           that we have a traditional economy and a modern  
8           economy.  And in some cases, in certain areas, I  
9           guess, look at it spatially, some areas, there is  
10          development, and they're working.  Everyone has jobs.  
11          Other cases, they want to practice their traditional  
12          rights.  So, is moose a priority generally speaking?  
13          Yes.  But in a specific case, that's something that  
14          the community has to determine to tell me whether, in  
15          this particular consultation process, I need to make  
16          sure it's brought forward.

17 MR. SANDERSON:  Q:    Right.

18 MR. MUIR:    A:    The caribou is a good example in our  
19           mind.  I didn't know caribou was even an issue after  
20           three years of working on things until an elder came  
21           in and we were engaged at that community project, and  
22           we talked about caribou, and then all of a sudden he  
23           mentioned that it's a critical winter zone.  There is  
24           only a couple of caribou left.  And then all of a  
25           sudden that became one of our main concerns.  And that  
26           was on the first coal case.

1 MR. SANDERSON: Q: Did the traditional seasonal round  
2 you referred to, and I think you talk about that at  
3 page 124 of your report, Exhibit C5-20. If I can take  
4 you to the last full paragraph on that page --

5 MR. MUIR: A: Page 124? Sorry.

6 MR. SANDERSON: Q: 124.

7 MR. MUIR: A: Yeah.

8 MR. SANDERSON: Q: So the last full paragraph, the  
9 paragraph beginning "First B.C. Hydro cannot..."

10 MR. MUIR: A: Mm-hmm.

11 **Proceeding Time 9:47 a.m. T12**

12 MR. SANDERSON: Q: That paragraph discusses some --  
13 what I'll call temporary displacement issues during  
14 construction. And then the last sentence of that  
15 paragraph concludes:

16 "Additional questions should also be asked  
17 in relation to West Moberly, given the  
18 cultural values include, for example, the  
19 traditional seasonal round."

20 Now, the traditional seasonal round that you refer to  
21 there, maybe you could just help the Commission out  
22 and explain what the traditional seasonal round is.

23 MR. MUIR: A: The traditional seasonal round is a term  
24 that was coined by, from my understanding, from Hugh  
25 Brody in his book *Maps and Dreams* when he did research  
26 with the Dunne-za communities back in the late 1970s.

1           And what it was is an articulation of the manner in  
2           which they use the land. And the traditional seasonal  
3           round -- well, the seasonal -- that's an important  
4           word. So different seasons they do different things.  
5           And the round implies, well, it happens every year.  
6           It's something that they do and it's how they move  
7           about the landscape. Different species are used  
8           different ways in different areas for different  
9           purposes. It's something very old. No one's ever  
10          tried to figure out how old it is. It's just very  
11          old. It's their cultural expression on the land, I  
12          guess is the best way to look at it. It involves  
13          different species, plants, things like that.

14 MR. SANDERSON:   Q:   And a description of the traditional  
15          seasonal round as it had been, as determined by Dr.  
16          Brody based on his interviews in the 1970s, is found  
17          in that book *Maps and Dreams*, correct?

18 MR. MUIR:        A:    Yeah, that's a snapshot in time. At that  
19          point here's what the individual found.

20 MR. SANDERSON:   Q:    Would that be an accurate snapshot  
21          today of what the traditional seasonal round looks  
22          like?

23 MR. MUIR:        A:    In some respects, yes. In some respects,  
24          no. Say specific to West Moberly First Nations -- and  
25          there's a map in here that you will see of West  
26          Moberly seasonal round. That was put together, if my

1 memory serves me correctly, by two or three people  
2 that live in the community. That's all that was on  
3 the reserve at the time. So he interviewed a couple  
4 of hunters and they drew their hunting areas. If he  
5 were to do that mapping exercise say today with West  
6 Moberly, well, it would cover a much larger area.  
7 Within the document we do have what the community  
8 terms as the preferred treaty territory. If you were  
9 to sit down and do a similar exercise, you would have  
10 that entire territory with circles and lines and  
11 different points on it. So from a land use  
12 perspective it would obviously be much different  
13 because there'd be more people to actually interview.

14 From a species perspective, it is a little  
15 bit different today than it was in the past. For  
16 instance, when Brody came in in the early 1970s – and  
17 it's not articulated within the book but specific to  
18 West Moberly First Nations – you don't see caribou in  
19 the round. Well, that's because caribou were removed  
20 from the traditional round temporarily by the elders  
21 at the time because they passed a traditional seasonal  
22 -- pardon me, they passed a traditional law because  
23 the two dam -- pardon me, when the W.A.C. Bennett Dam  
24 was built it flooded a very large territory in the  
25 caribou area, and they found hundreds of dead caribou  
26 supposedly floating in the reservoir. And the impact

1 on that species, the elders said okay, we're going to  
2 stop. So when Brody came in and did a study, caribou  
3 were noted as being very important to the communities,  
4 but they weren't necessarily in the round.

5 Now, some of us have looked at that, said,  
6 well, it's probably because the elders they never  
7 fully explained it to him, or perhaps he didn't quite  
8 understand that or didn't ask the right question. So  
9 when we spoke to the elders for our caribou project,  
10 they were in the round before but they were moved  
11 roughly in the '70s temporarily. They're still  
12 removed to this day because the species hasn't  
13 recovered. So some species could be removed a little  
14 bit, or they could be removed permanently if they're  
15 extirpated.

16 So the seasonal round does change over  
17 time. It all depends on the landscape itself.

18 MR. SANDERSON: Q: Has the West Moberly First Nation  
19 assessed the seasonal round as it exists today?

20 MR. MUIR: A: Pardon me?

21 MR. SANDERSON: Q: Has the West Moberly First Nation  
22 assessed the traditional seasonal round as it exists  
23 now?

24 MR. MUIR: A: I'm not quite sure I understand your  
25 question.

26 MR. SANDERSON: Q: Have you done an exercise to

1 determine what the traditional seasonal round looks  
2 like as now conducted by the West Moberly First Nation  
3 members?

4 MR. MUIR: A: The elders have told me it's the same.  
5 It's still -- it's adaptive. It's something that they  
6 do. It's not something they're -- they're not going  
7 to -- marmots, I guess, is a good example. They might  
8 hunt more marmots one year than the other, but it's  
9 not something that is -- goes through a significant  
10 change, I would say. Like, it's something that  
11 changes with time but not, I would say, dramatic  
12 changes, from what I've been told. I'm just looking  
13 for a reference. There is in *Maps and Dreams* a  
14 description of the seasonal round, that is -- and I'm  
15 focusing here not so much on the specific locations as  
16 the what I'll call migratory path of the season.  
17 So the people, as I understood it, moved through the  
18 territory during different seasons in order to  
19 undertake different activities suitable to the season.  
20 And what I'm really wondering is whether the  
21 description I would find in *Maps and Dreams* continues  
22 to be an accurate description of the way that people  
23 move over the course of the year.

24 **Proceeding Time 9:52 a.m. T13**

25 MR. MUIR: A: Well, I think it's important to note that  
26 that is done with quite a few communities. Robin

1 Riddington is -- and I'm pretty sure is the author who  
2 described the Dunne-za -- there is four distinct  
3 subgroups of Dunne-za. West Moberly, as the report  
4 notes, is part of the Mountain Dunne-za. There is  
5 also the Forest Dunne-za, the Plains and the Muskeg.  
6 So, Riddington -- pardon me, in Brodie's book, that is  
7 a generalization what the round is. How the round is  
8 also described to me is, there is rounds within the  
9 rounds. So, it's something that -- if someone is out  
10 hunting quite a bit in one area, then they might  
11 change to another area. So it's not something that I  
12 would say that -- I guess you've got to be careful  
13 when you look at the concept of "round". It's not  
14 something they go around their territory *per se*. It's  
15 something that they do at different times of year, in  
16 different locations. If they're hunting in one area,  
17 for instance, and they start seeing the moose licks  
18 being used a little bit less, they'll focus to another  
19 area because they -- perhaps the moose population is  
20 getting low. So the round itself and how they  
21 exercise it is very dependent upon the ecosystem.

22 MR. SANDERSON: Q: Yeah. I think I appreciate those  
23 sensitivities. What I was wondering is whether you  
24 are able to be any more specific with respect to where  
25 the round takes the people in the specific context of  
26 the area we're concerned about in this application.

1 MR. MUIR: A: Okay. With respect to this, and impact  
2 assessment, it's fundamentally -- you look at the  
3 past, you look at the present, and you look at the  
4 future. And some of the community quite -- they talk  
5 quite a bit about the past. The Groundbirch area was  
6 very important to them. They did a lot of different  
7 things with respect to the season round in that area,  
8 include camping and fishing, going to visit other  
9 people, their trail systems. In the present, it's  
10 much more problematic to do that, because of the  
11 amount of private land and other development. So the  
12 seasonal round has been changed from impact, but not  
13 from culture. I don't know if that was your question.

14 So there is changes that have occurred but  
15 it's not in the culture itself. It's those external  
16 influence upon the culture.

17 MR. SANDERSON: Q: I understand. But it is those  
18 external influences that I was wishing to explore.  
19 That is, accepting that the traditional round  
20 culturally has not changed, the manner in which it's  
21 exercised within the corridor for this proposed  
22 project, do you think that's changed? Or do you have  
23 any knowledge about whether that's changed?

24 MR. MUIR: A: Well, I think it's important to  
25 distinguish between when they talk about area, you  
26 cannot reduce First Nations' land use, particularly

1 the Dunne-za and West Moberly, down to a specific  
2 area. How many times do you shoot a moose in the same  
3 spot? Well, you don't. You shoot moose in habitat.  
4 That habitat is a very large area. So whenever they  
5 talk about area, they talk about the Groundbirch area.  
6 Well, it's not how, again, back to that Eurocentric  
7 view versus the First Nations' view, and how they look  
8 at the land, where non-First Nations, we all like our  
9 little boxes. Like, planners, we love our little  
10 circles and our polygons. We can separate everything.  
11 Well, with them, everything overlaps and intertwines.  
12 It does not -- you can't put things into compartments  
13 like that.

14 So whenever they talk about the DCAT  
15 project itself, they know, like, one of the  
16 interviewers I think was very clear, he was saying 90  
17 percent, which is very interesting, because he was  
18 very close to what Hydro was saying was 80 percent of  
19 its -- on private land. And he, I think, was -- or  
20 she, pardon me, I shouldn't would say that -- was  
21 talking about that. So some areas they know they just  
22 can't use any more. But other parts are still within  
23 the round in that Groundbirch area. So they don't  
24 talk about the specific site sometimes. Unless there  
25 is a campsite right there, or a sacred site right  
26 there. But that site is used -- there is definitely a

1 trail that goes right through that area. There is two  
2 trails, as the one map in here indicates. And the one  
3 trail, or part of the trail, pardon me, has been  
4 significantly impacted. The other part of the trail,  
5 what the one elder was talking about, where he wanted  
6 to make sure it was protected, then what remained of  
7 it. So within the round, yes, they use that area for  
8 hunting. But they use the area 20 feet beside it, 100  
9 feet beside it, and five kilometres away. It's within  
10 that territory of that habitat that they require.

11 MR. SANDERSON: Q: Now, when you say there is two  
12 trails that go through it, can I take you to page 51?

13 MR. MUIR: A: Fifty-one?

14 MR. SANDERSON: Q: Yes. This is figure 2 on page 51,  
15 Madam Chair.

16 Now, I appreciate that this is a little  
17 hard, at least in my copy, to depict. But are you  
18 able to look at that map and indicate which trail that  
19 you're referring to when you talk about these two  
20 trails?

21 **Proceeding Time 9:58 a.m. T14**

22 MR. MUIR: A: These are not maps of trails per se. The  
23 book doesn't distinguish that. So if someone was  
24 marking these specific lines as a trail, that we  
25 wouldn't know. What we do know, it's their areas of  
26 use. Some of the lines, if I would look at it, would

1           indicate to me, like the one in the far right corner,  
2           far right side, pardon me, well, that's a line going  
3           straight south. If I would look at it today I'd say,  
4           well, maybe someone was drawing a trail there. Some  
5           of the other ones you can see it's a circle. Well,  
6           that's probably not a trail. They did something very  
7           specific within that circle. So some of these lines  
8           may indicate trails, some of them may not. They  
9           definitely indicate land use though.

10 MR. SANDERSON:   Q:    I see. So you can't look at this  
11           map and conclude that there is a trail in any  
12           particular place. Is that right?

13 MR. MUIR:        A:    That wouldn't be the purpose of the map  
14           actually, no.

15 MR. SANDERSON:   Q:    And that would be a misapplication  
16           of the map if you did employ it in that way.

17 MR. MUIR:        A:    No, not necessarily because to go over  
18           their hunting they had to get there somehow. So  
19           there's going to be trails within where they hunt.

20 MR. SANDERSON:   Q:    If I coming to the land wanted to  
21           understand where there were trails or weren't trails,  
22           would this map be of any assistance to me or not?

23 MR. MUIR:        A:    I'd say it'd be of great assistance to  
24           you because it'd be an indication of, well, if they  
25           hunt, say if you look at it to the far left, that's  
26           into the mountains. Well, the question is, well, if

1           they went over their hunt, how would they get there?

2 MR. SANDERSON:   Q:    Right.

3 MR. MUIR:     A:    So it would lead you to the next question  
4           as, well, now where are your trails?

5 MR. SANDERSON:   Q:    I see.  It would lead me to suspect  
6           there are trails.  It wouldn't tell me where they are  
7           exactly.

8 MR. MUIR:     A:    Not exactly in the GPS point, no, but --

9 MR. SANDERSON:   Q:    Okay.  Now, with respect to -- you  
10          mentioned there are two trails you think that are  
11          implicated by the DCAT corridor.  Are you able to say  
12          where those are?

13 MR. MUIR:     A:    It's not what I indicate actually.  It's  
14          the community documented that during the interview  
15          process.

16 MR. SANDERSON:   Q:    But can you refer me in Exhibit 5-20  
17          to somewhere that would tell me where those trails  
18          are?

19 MR. MUIR:     A:    Yeah, it's in the appendix.  Page 172,  
20          Figure 21.

21 MR. SANDERSON:   Q:    Maybe you could help me a little bit  
22          with reading the legend and actually just  
23          understanding what this figure is supposed to tell us.  
24          First of all, where on it and how are trails  
25          indicated?

26 MR. MUIR:     A:    Okay, so for the first polygon, the

1 bigger one that you see in blue, a very light shade of  
2 blue.

3 MR. SANDERSON: Q: Yes.

4 MR. MUIR: A: That's B.C. Hydro's 7 kilometre buffer,  
5 roughly speaking.

6 MR. SANDERSON: Q: Yes.

7 MR. MUIR: A: Within that buffer you see two other  
8 polygons, one that runs roughly speaking the length of  
9 the DCAT project from Dawson Creek to the Pine River.  
10 And then at the Pine River Junction you see a second  
11 polygon that goes kind of from north to south. And  
12 again, the maps would have been much easier to see if  
13 we have them in large scales. So the first -- the one  
14 that runs from east to west, that indicates the old  
15 trail. Pardon me, the trail that is heavily impacted  
16 today. And then the polygon shown there is where  
17 their big concern is for what remains of that trail.

18 There was a trail that came up from the  
19 Murray River, that is the river directly -- that joins  
20 the Pine River. There's a trail that ran up the  
21 Murray River that joined along with this other trail  
22 that continued up the Pine River. So that smaller  
23 polygon covers kind of a confluence of, we think,  
24 about three trails, three main trails.

25 MR. SANDERSON: Q: So stay with that thought and just  
26 flip back now to Figure 16 at page 148, which has the



1 River to meet that trail, and then the other trail  
2 goes from Dawson Creek, meets up with these two --  
3 kind of this juncture and then keeps on going to the  
4 west as well.

5 MR. SANDERSON: Q: Okay. And if I'm looking at the  
6 map, I guess the trail on the Murray would be on the  
7 north side of the Murray?

8 MR. MUIR: A: That I do not recall.

9 MR. SANDERSON: Q: Okay. And then what is it that I  
10 see right in the middle of the picture that there is  
11 two crossings of the Pine. What am I looking at? A  
12 highway? Is the first one a highway?

13 MR. MUIR: A: The first one is the highway, and the  
14 second one is the railway.

15 MR. SANDERSON: Q: Right. So there is sort of  
16 bisecting east-west across the Pine there both a road  
17 and railway, which I guess would have bisected both  
18 the trails you described. The one coming up the Pine  
19 and the one coming north from Murray.

20 MR. MUIR: A: Potentially.

21 MR. SANDERSON: Q: Yeah. Well, necessarily, I guess,  
22 eh? Because they -- both the railway and the highway  
23 cut right across.

24 MR. MUIR: A: I just don't know if they cut right  
25 there, that that's, I guess, what I'm saying. Like,  
26 if the trail for the Murray is on the south side, then

1           it would have joined up with the Pine trail.

2 MR. SANDERSON:   Q:    I see.

3 MR. MUIR:        A:    Before that.  So I don't know if it --

4           those impacted the Murray trail.

5 MR. SANDERSON:   Q:    How would the people, by the way,

6           have got across the river?

7 MR. MUIR:        A:    Well, they would have to walk or they had

8           -- I have learned from an elder, Doig, how to build

9           traditional rafts.

10 MR. SANDERSON:   Q:    Okay.  So they were -- okay.

11 MR. MUIR:        A:    So there would be a couple of different

12           ways.

13 MR. SANDERSON:   Q:    Yeah.  But those are -- those

14           wouldn't be how they got across the river any more.  I

15           mean, that traditional use nowadays with the various

16           crossings there are, whatever use is being made of

17           trails presumably one would use the bridge to get

18           across the --

19 MR. MUIR:        A:    Oh, no, actually.  The paddle for the

20           Peace that happens every year, the one elder, for

21           instance, shows people how to build the rafts, again,

22           and he floats down the river.

23 MR. SANDERSON:   Q:    Right.

24 MR. MUIR:        A:    He still uses it.  So, no.  Some of those

25           traditional methods are still used.  They're not used

26           as frequently, perhaps.  But to say that they're not

1           used any more, I think, would not be true.

2 MR. SANDERSON:   Q:   No. Okay. Now, I guess from this

3           description we're not -- you can't say with confidence

4           exactly where you put the trail, other than that

5           they're running -- they're following the two rivers,

6           is basically --

7 MR. MUIR:       A:   I'd say -- no, for the Murray I do not

8           know whether it's on the north or the south side.

9 MR. SANDERSON:   Q:   Right. Okay.

10 MR. MUIR:       A:   But for the other trails, I was told that

11           they were on -- they run on the east side of the

12           river.

13 MR. SANDERSON:   Q:   Okay.

14 MR. MUIR:       A:   Of the Pine River, pardon me.

15 MR. SANDERSON:   Q:   Right.

16 MR. MUIR:       A:   So the river running kind of at the top

17           to the bottom, it would be on the right-hand side of

18           the Pine River.

19 MR. SANDERSON:   Q:   Right.

20 MR. MUIR:       A:   So up where the highway and the rail line

21           is --

22 MR. SANDERSON:   Q:   Yes?

23 MR. MUIR:       A:   -- there is the potential for the two

24           trails right there. For the Murray, I'm unsure

25           whether it's on the north or the south side.

26 MR. SANDERSON:   Q:   All right. And are the railway and

1 the highway in interference with those trails, then?

2 MR. MUIR: A: Yes.

3 MR. SANDERSON: Q: Where would you -- and then the  
4 trail, I guess, follows the right bank, looking at the  
5 photograph of the pine, and curves around following  
6 sort of parallel to the highway and parallel to the  
7 river?

8 MR. MUIR: A: Which trail are you talking about? The  
9 Pine trail?

10 MR. SANDERSON: Q: Yeah, the Pine trail. So, I'm now  
11 on the Pine trail, I'm on the west side of the river.  
12 And I'm following that ridge, I assume. Is that  
13 right?

14 MR. MUIR: A: Likely, yes.

15 MR. SANDERSON: Q: Yeah. So at the top of the ravine,  
16 and I've got the highway on my right and the river on  
17 the left, basically.

18 MR. MUIR: A: Sorry, say that again?

19 MR. SANDERSON: Q: I've got the highway on my right,  
20 that you can see in the photograph, and the river on  
21 the left.

22 MR. MUIR: A: Yes.

23 MR. SANDERSON: Q: Okay. Are you able to tell me where  
24 in all of that the DCAT route would take us?

25 MR. MUIR: A: I think it's just a little bit at the top  
26 of the picture. This picture was not taken



1                   What I've done and I'm going to give you,  
2                   Mr. Muir, is a -- I'll give it to your counsel and to  
3                   you, just to help in this discussion, is a table of  
4                   contents for the report as it was and is now. You'll  
5                   see what we just tried to do there was indicate what  
6                   was in the June 5<sup>th</sup> report and what is in the final  
7                   report, and if you look to the second page you'll see  
8                   a legend and you'll see that the black sections are  
9                   the ones that were in the draft and were provided to  
10                  Hydro on June 5<sup>th</sup>. The red sections were the ones that  
11                  had at most the heading but no text. And the purple  
12                  sections were ones where significant pieces of text  
13                  had been added but there was a discussion in the  
14                  draft. Are you able to confirm the general accuracy  
15                  of that? I don't know if you've got the draft report.  
16                  MR. MUIR:    A:    I don't have the draft report with me,  
17                  no. But I would say that this is not a reflection of  
18                  the draft, the table of contents, because some of the  
19                  headings, the text may have changed but the purpose of  
20                  the subsections did not, from what I recall.  
21                  MR. SANDERSON:   Q:    Yeah, what I was really rather  
22                  relying on this for was just to have you confirm that  
23                  the discussion that's in the final report with respect  
24                  to the subjects that are depicted in red was not  
25                  provided to Hydro until July the 5<sup>th</sup>, last Thursday.  
26                  MR. MUIR:    A:    The specific headings are not the same,

1 no. And some information, some headings have been  
2 added, yes.

3 MR. SANDERSON: Q: No, that's not quite my question.  
4 Let us just take an example. Go to section 3.4 which  
5 starts at page 90, I think. Sorry, no, it starts at  
6 page -- yeah, page 90. So I'm in the final report now  
7 as filed in Exhibit C-20 at page 90, section 3.4, and  
8 I want to suggest to you that none of the content of  
9 section 3.4, none of the substance of what's written  
10 there all the way through to page 108 was provided.

11 MR. MUIR: A: To be honest I can't answer that  
12 question. I don't have the other document. The draft  
13 was just that. It was a draft. So whenever the date  
14 came up that we had to provide it to Hydro, we  
15 provided them what we had completed to date.

16 MR. SANDERSON: Q: Right.

17 MR. MUIR: A: It was a living document, so the day that  
18 we provided it, the work kept going on it. So I  
19 cannot -- without the document in front of me I cannot  
20 confirm which sections were exactly in there.

21 MR. SANDERSON: Q: Okay, well, I'll confirm that  
22 through our own witness, but what I want to confirm  
23 with you is that to your recollection, any of the  
24 concerns you had with respect to future projects and  
25 activities and the specific actions that are listed  
26 now in relation to oil and gas proponents, in relation

1 to coal mines, in relation to past hydroelectric dams,  
2 secure landfills, wind farms, industrial facilities,  
3 all of those things, none of that was provided to  
4 Hydro in the draft, was it?

5 MR. MUIR: A: No, none of it was -- yes, it was  
6 provided within the comments from the community. And  
7 this is where the community, that community-based  
8 approach is very important, because collecting those  
9 interviews, that information from the community we  
10 heard quite a bit about shale gas, about the mines and  
11 everything else in the territory, that cumulative  
12 issue. So with that information in hand, that led us  
13 to, well, we need to include this other articulation  
14 of the projects that are out there. So that was put  
15 in as an example of this is kind of what the community  
16 was talking about. That section, or pardon me,  
17 section 3 as a whole assisted in articulating here's  
18 the current conditions that the community is  
19 confronted with.

20 **Proceeding Time 10:13 a.m. T17**

21 So it is within the report in terms of the  
22 -- in some of their interviews. This just now fleshes  
23 out here's what they're talking about. So if they're  
24 talking about shale gas. This is some of the  
25 literature that we found on shale gas. So part of  
26 that, the research methods, was looking at the primary

1 data from the community and the secondary data -- or  
2 pardon me, existing data that existed out there in the  
3 literature. So this is what kind of led us to then  
4 looking more in depth at those subjects.

5 MR. SANDERSON: Q: Mr. Muir, you were the land use  
6 manager for West Moberly?

7 MR. MUIR: A: Yes.

8 MR. SANDERSON: Q: And people who wanted to undertake  
9 activities in the area, let's deal first of all with  
10 the shale gas developers, they would come to you and  
11 to West Moberly as the land manager to ask what  
12 concerns you had with respect to their entry and their  
13 projects on your land, correct?

14 MR. MUIR: A: They would come to inquire how to engage  
15 the community to do that exercise.

16 MR. SANDERSON: Q: And they had done -- "they" being  
17 the different would-be shale gas producers within the  
18 Groundbirch area or the area of the project, they had  
19 come to you in fact, to you personally, with their  
20 plans with respect to oil and gas development in the  
21 area?

22 MR. MUIR: A: Who do you mean by "they"?

23 MR. SANDERSON: Q: Well, let's take examples. You list  
24 a number here. Let's start with Shell. Shell is  
25 discussed in here in its project in section 3.4.1.  
26 You were in dialogue with Shell over the last year,

1 two years, three years?

2 MR. MUIR: A: Shell consults us on their applications,  
3 yes.

4 MR. SANDERSON: Q: And on a regular basis and has for a  
5 number of years.

6 MR. MUIR: A: Yes.

7 MR. SANDERSON: Q: Yes. And is that true of the other  
8 parties that are described in section 3.4.1.1 of the  
9 report?

10 MR. MUIR: A: Pardon me? Section --

11 MR. SANDERSON: Q: Page 90 and following?

12 MR. MUIR: A: So you're just referring to section  
13 3.4.1.1?

14 MR. SANDERSON: Q: At this time, yes.

15 MR. MUIR: A: I would say Air Liquide. I have never  
16 met them. I don't know who they are. Arc Resources  
17 has engaged with the community. I don't have any  
18 memory of them ever engaging us over in that area.  
19 Murphy Oil, I don't recall seeing them for a couple of  
20 years and not -- I don't recall any work with us in  
21 that area. Encana does engage with us. I don't  
22 recall them engaging with us specific to this tie-in  
23 though. And those are the proponents that are in  
24 there.

25 MR. SANDERSON: Q: Right. Sticking with Shell for a  
26 minute, do you have some of process that you

1 formalize with them?

2 MR. MUIR: A: No, we do not.

3 MR. SANDERSON: Q: Do they come and see the chief  
4 regularly?

5 MR. MUIR: A: I don't manage the chief's schedule so I  
6 could not answer that question.

7 MR. SANDERSON: Q: Okay. The next section, 3.4.1.2 is  
8 the mines. These are mines which you've expressed and  
9 the chief has expressed concerns about in a number of  
10 different forms, correct? Are these, any of these the  
11 mines that gave rise to the West Moberly litigation?

12 MR. MUIR: A: No, they are not.

13 MR. SANDERSON: Q: Are they in the same area or exhibit  
14 some of the same characteristics?

15 MR. MUIR: A: When you say -- what do you mean by "same  
16 area"? Sorry. Like in the northeast?

17 MR. SANDERSON: Q: Yeah.

18 MR. MUIR: A: These are all within West Moberly's  
19 preferred treaty territory, yes.

20 MR. SANDERSON: Q: And are they ones which have  
21 potential -- raise potential concerns with respect to  
22 the caribou of the nature that was discussed in your  
23 West Moberly litigation with First Coal?

24 MR. MUIR: A: Yes. Some of them.

25 MR. SANDERSON: Q: And so they are projects which are  
26 and have been of significant concern and priority



1        generalize. What I was seeking to establish was that  
2        these are mine proposals which you've been aware of  
3        for some period of time, and which the community has  
4        been expressing to you concerns in your capacity as  
5        land manager to come to grips with.

6        MR. MUIR:    A:    Yes.

7        MR. SANDERSON:    Q:    All right. And you've been working  
8        on those lines, and those concerns, for different  
9        periods of time depending on the mine. But for a  
10       number of years.

11       MR. MUIR:    A:    Yes. We have roughly -- at any one time,  
12       anywhere from 10 to 20 environmental assessment  
13       processes going on at once.

14       MR. SANDERSON:    Q:    Okay. Okay. Thank you. Now, if I  
15       could jump you back to this outline. And by the way,  
16       we should get this outline marked as an exhibit, I  
17       think. Mr. Bemister, if I can give it -- whatever our  
18       next exhibit number is. I think it's B-35.

19       THE HEARING OFFICER:    Exhibit B-35.

20       (OUTLINE (TABLE OF CONTENTS) OF DRAFT EXHIBIT C5-20  
21       PROVIDED BY MR. SANDERSON MARKED EXHIBIT B-35)

22       MR. SANDERSON:    Q:    If I can take you to Section 4 of  
23       Exhibit B-35, you'll see that's the section that  
24       starts to hone in on the comments on Hydro's  
25       application for a CPCN. And that's contained in the  
26       report at page 108.

1 MR. MUIR: A: Is it possible for us to actually have  
2 the other -- to actually have the two to look at them?  
3 Because it's -- it was restructured, the -- for in  
4 terms of information flow.

5 MR. SANDERSON: Q: I was being -- I was trying to  
6 accommodate the confidentiality of the draft and not  
7 violate that, which is why I did it this way, because  
8 I didn't want to put to you the draft because I  
9 appreciate it's not the text of the draft that I'm  
10 concerned about, and your counsel and I have agreed to  
11 keep that draft confidential.

12 MR. MUIR: A: Well, I'm not saying we bring the draft  
13 in. What I'm saying is, I think it would be more  
14 pertinent to actually show the full table of contents,  
15 because some things have been removed or just retitled  
16 to be more precise. So that's, I guess, what I'm  
17 asking is, could we have both table of contents, both  
18 from the draft and the current one, to look at.

19 MR. SANDERSON: Q: We'll try and do that maybe over a  
20 break. But let me just say this, Mr. Muir, and maybe  
21 you can confirm it. My understanding is from Section  
22 4, there were headings. They were different than  
23 these, in Section 4. But they were all blank.

24 MR. MUIR: A: Sorry?

25 MR. SANDERSON: Q: They were all blank. Whatever the  
26 heading, there was no information provided with the

1           sole exception of some information under the scoping  
2           of valued components in Section 4.2, and then in  
3           Section 5 the area in purple, the Groundbirch area,  
4           transmission lines and impacts. Can you at least  
5           confirm that's true?

6 MR. MUIR:    A:    I can confirm that I'm -- that there was  
7           information under Scoping.

8 MR. SANDERSON:   Q:    Yeah.

9 MR. MUIR:    A:    Like you mentioned. I don't recall how  
10           much, if anything, was put under the other headings.

11 MR. SANDERSON:   Q:    Okay.

12 MR. MUIR:    A:    When we were putting together the draft,  
13           one of our goals was getting out. So B.C. Hydro  
14           understood -- like, it was a community-based project.  
15           We wanted to make sure they had the community's voice  
16           in front of them. That's the most important -- that's  
17           the lens at which everything else is looked at. So, a  
18           lot of the time went into making sure we had the beef  
19           of the Section 3, all of the community input, in that  
20           draft. So, I remember working quite a bit on the  
21           front end of the report, to get that done. So I don't  
22           recall whether how much we actually had at the time  
23           completed on those sections.

24 MR. SANDERSON:   Q:    All right. Well, maybe what I'll do  
25           is ask you to refresh yourself on that over the break.  
26           And I'll just close before the break, if this is

1 convenient, Madam Chair, by seeking your confirmation  
2 over the break as well, that there was very little of  
3 what is now in Section 4 and 5 produced to B.C. Hydro.  
4 That's point one I'd like you to confirm.

5 And point 2, I'd like you to confirm that  
6 you were the author of those missing sections. That  
7 is, the sections that have now been fleshed out in  
8 Exhibit C5-20 are -- is your work, based on what  
9 you've been doing in the last month.

10 MR. MUIR: A: Well, I think it's important to note that  
11 it's the community's report. The community-based  
12 report is a reflection of their views and their  
13 values. The information that is provided within  
14 Section 4.4 would not have been possible without first  
15 doing the community interviews. So they helped focus  
16 what we would look at in terms of the documents.

17 **Proceeding Time 10:23 a.m. T19**

18 An environmental impact assessment has --  
19 we just had one reviewed by a third party. It was  
20 ResCan Environmental and they spent 1000 hours  
21 reviewing an environmental assessment. Well, that's  
22 1000 hours of a lot of professionals. For us doing  
23 our review, the professionals are the community. So  
24 the community input is very important to leading us up  
25 into doing this type of information. So I guess I can  
26 confirm is we just finished the community articulating

1 or putting together the community information. So how  
2 much information we had in section 4.4 would not have  
3 been substantive, no.

4 MR. SANDERSON: Q: And the words that appear in 4.4 and  
5 the other sections as they now are are your words,  
6 based on the work that had been done previously. But  
7 the actual words we see here, unless they're in  
8 quotes, from the community interviews, were written by  
9 you.

10 MR. MUIR: A: Yes, that was written by me.

11 MR. SANDERSON: Okay. That would be a good time, Madam  
12 Chair, if that's acceptable.

13 THE CHAIRPERSON: It is now 10:25 so let's be back at a  
14 quarter to eleven.

15 **(PROCEEDINGS ADJOURNED AT 10:25 A.M.)**

16 **(PROCEEDINGS RESUMED AT 10:47 A.M.) T21**

17 THE CHAIRPERSON: Please be seated. Mr. Sanderson, you  
18 are to continue.

19 MR. SANDERSON: Thank you, Madam Chair.

20 **CROSS-EXAMINATION BY MR. SANDERSON, (CONTINUED):**

21 MR. SANDERSON: Q: Over the break, Mr. Muir, I hoped  
22 you obtained from your counsel the two things you were  
23 asked for. One is the original table of contents of  
24 the draft and also I think we managed to print off for  
25 you a copy of the draft report. Have you had a chance  
26 to quickly look at that?

1 MR. MUIR: A: I've quickly looked at the table of  
2 contents that was provided. I haven't gotten quite a  
3 chance to go through the document itself.

4 MR. SANDERSON: Q: Okay. So, to cut to the chase here  
5 and make it simple, I'm just going to ask you to  
6 confirm a couple of things. And you can -- I don't  
7 think it will take you long to do that on the stand.

8 The first is, if I can take you to -- in  
9 the final report, Section 4.4, which is entitled  
10 "Baseline Conditions and Current Conditions". That's  
11 at page 121 it begins.

12 MR. MUIR: A: 121.

13 MR. SANDERSON: Q: And just see what that covers. And  
14 then if you switch -- if you flip ahead a couple of  
15 pages to 124, you'll see that there is some pages  
16 there which I took you to before, detailing some  
17 specific concerns with respect to the DCAT project.  
18 And I wanted you to just confirm for the record that  
19 those sections, 4.4, in particular pages 124 through  
20 127, were not found anywhere in the draft.

21 MR. MUIR: A: No, they were not. These were -- this --  
22 Section 4 provides the initial comments on the  
23 application.

24 MR. SANDERSON: Q: Yes.

25 MR. MUIR: A: Those initial comments are based on upon  
26 the community views, like I mentioned before. So

1           these were not provided -- that the substance of it  
2           was not provided to B.C. Hydro in the draft.

3 MR. SANDERSON:    Q:    No.

4 MR. MUIR:        A:    Because at that point, we had only  
5           completed the articulation of the interviews.

6 MR. SANDERSON:    Q:    And similarly if I can flip you  
7           ahead a little bit, to page 147, in the new -- in the  
8           final report. And beginning in the middle of that  
9           page there is a discussion of trails being of great  
10          importance to West Moberly. Do you see that?

11 MR. MUIR:        A:    Yes. Yeah.

12 MR. SANDERSON:    Q:    And from there till the end of that  
13          section, all of that discussion also is new, and was  
14          not provided in the draft, correct?

15 MR. MUIR:        A:    Yes.

16 MR. SANDERSON:    Q:    Thank you. And now if I could just  
17          take you to the evidentiary update which is Exhibit B-  
18          34, your counsel took you there this morning and read  
19          to you a passage from page 2. And you'll see that in  
20          line 5, there is the word "'showstopper'", in quotes,  
21          "issues".

22 MR. MUIR:        A:    Yes.

23 MR. SANDERSON:    Q:    And I heard you to say -- well, you  
24          didn't use the word "showstopper". Instead, during  
25          the conversation, you were talking about what you call  
26          "oh, my God" issues.

1 MR. MUIR: A: Well, I said I don't recall using the  
2 word "showstoppers".

3 MR. SANDERSON: Q: Yes.

4 MR. MUIR: A: I typically refer to them as the "Oh, my  
5 God", yes.

6 MR. SANDERSON: Q: But for those of us who might use  
7 "showstopper" normally, "Oh, my God" means about the  
8 same thing, wouldn't you agree?

9 MR. MUIR: A: Not in the context of the community,  
10 because it's -- there still could be showstoppers  
11 afterwards. We're just -- the "Oh, my God" is just to  
12 deal with sacredness. So if it's a sacred site, that  
13 it's very important, because that's can't -- you can't  
14 mitigate the sacred part. Other projects -- or,  
15 pardon me, other elements still might result in  
16 significant effects that cannot be mitigated or might  
17 be mitigated. Just this just kind of pulled  
18 everything out. That's kind of the purpose of the  
19 "Oh, my God" kind of question at the beginning.

20 MR. SANDERSON: Q: Is it your sworn testimony that the  
21 purpose of the call on March the 29<sup>th</sup>, 2012, was for  
22 the purpose of identifying "Oh, my God" moments or  
23 issues, as you just described? Or was it, as I  
24 suggest to you it was, intended to describe issues  
25 which were of fundamental importance to proceeding  
26 with the project or not.

1 MR. MUIR: A: It was -- from my recollection, it was to  
2 provide B.C. Hydro with what information we had, had  
3 collected up to that point. I don't recall if it was  
4 for one purpose or another. From my perspective it was  
5 this is where I want to ask and answer hopefully my  
6 question of the "Oh, my God" issue.

7 **Proceeding Time 10:52 a.m. T22**

8 MR. SANDERSON: Q: You didn't understand B.C. Hydro to  
9 be asking you though, only to identify those issues  
10 that related to sacredness. What they wanted at lest  
11 was you to identify any issues that caused a  
12 fundamental objection from West Moberly.

13 MR. MUIR: A: Well, we couldn't, I couldn't provide say  
14 all fundamental issues --

15 MR. SANDERSON: Q: I understand.

16 MR. MUIR: A: -- from West Moberly because the  
17 interviews were not completed by then.

18 MR. SANDERSON: Q: I understand. But what they wanted  
19 was any that as of March 29<sup>th</sup>, 2012, you'd managed to  
20 uncover. Is that fair?

21 MR. MUIR: A: Yes.

22 MR. SANDERSON: Q: All right.

23 MR. MUIR: A: I guess. That was my interpretation was  
24 that I was to provide -- or pardon me, we, our goal  
25 was to provide the "Oh, my God" issue to them.

26 MR. SANDERSON: Q: No, I don't want to get hung up on

1 terminology. I'm making a distinction though between  
2 "Oh, my God" and any other matter that you discovered  
3 up to March 29<sup>th</sup>, 2012 which you felt was a significant  
4 impediment to proceeding with the project.

5 MR. MUIR: A: Up until that point, that phone call, the  
6 two big issues that were raised by the community were  
7 -- that were discussed internally was the "Oh, my God"  
8 issue and the going under the river. That's my  
9 recollection.

10 MR. SANDERSON: Q: And in the conversation on March  
11 29<sup>th</sup>, did you identify the -- I'm going to put that  
12 differently. So that up until March 29<sup>th</sup> you were  
13 aware of no other issues which might again be properly  
14 characterized as giving rise to fundamental opposition  
15 to the project.

16 MR. MUIR: A: Not that I recall, no.

17 MR. SANDERSON: Q: And as I heard you this morning, one  
18 member, one albeit important member of the community,  
19 was a source of the concern with respect to going  
20 under the river.

21 MR. MUIR: A: He holds our history around the trail.

22 MR. SANDERSON: Q: Right.

23 MR. MUIR: A: Typically when an individual in the  
24 community is the holder of that information, they are  
25 looked to first if to say, "Can we mitigate this with  
26 a particular project? If so, how is the best way to

1 do that?" So this individual kind of played that  
2 role.

3 MR. SANDERSON: Q: And he conveyed to you in the  
4 remarks that are quoted in the report, a preference  
5 for the line going underground as opposed to an aerial  
6 crossing of the river.

7 MR. MUIR: A: Yes, they're quite familiar with -- like  
8 in the Pine River, for instance, about 60 kilometres  
9 outside of Chetwynd, there is a pipeline that goes  
10 over the Pine River. When they're in that area that  
11 causes them a lot of stress because when they're out  
12 on land they want to be attaching themselves to the  
13 land, not infrastructure. So when they're out fishing  
14 that one area, that one visual really upsets them.  
15 The tunneling under they're quite familiar with, and  
16 that's why it was brought up probably pretty quickly  
17 because of oil and gas. Quite often they drill under  
18 rivers.

19 MR. SANDERSON: Q: Right. That wasn't conveyed to you  
20 as a potential showstopper issue though in the March  
21 29th conversation, was it?

22 MR. MUIR: A: It wasn't a -- well, this is where we do  
23 have to differentiate on terminology because I was  
24 looking at the "Oh, my God" issues.

25 MR. SANDERSON: Q: Right.

26 MR. MUIR: A: Showstopper is a little bit different

1           because that kind of -- perhaps from the Eurocentric  
2           perspective brings us into is it a significant effect?  
3           There still could be a showstopper irrespective of an  
4           "Oh, My God" issue.

5   MR. SANDERSON:    Q:    I understand that.

6   MR. MUIR:        A:    So that's why I'm being careful on  
7           differentiating because the community is very clear  
8           with me on that.

9   MR. SANDERSON:    Q:    And I'm attempting to be equally  
10          careful --

11   MR. MUIR:        A:    Okay.

12   MR. SANDERSON:    Q:    -- in suggesting to you that in that  
13          call, it was incumbent upon you, or at least Hydro was  
14          hoping that you would identify any "Oh, my God" and  
15          any showstopper issues, however you wish to understand  
16          that term. Is that fair?

17   MR. MUIR:        A:    I provided Hydro with the information I  
18          had at the time.

19   MR. SANDERSON:    Q:    Right.

20   MR. MUIR:        A:    That's all I could have done.

21   MR. SANDERSON:    Q:    Right, and did not express that in a  
22          showstopper context; that is, using the Eurocentric  
23          view of showstopper, you didn't suggest to Hydro at  
24          that time that there existed a showstopper issue of  
25          which you were presently aware.

26   MR. MUIR:        A:    I actually can't make that decision.



1           might have, or additional effects it will have to an  
2           area, is it a show-stopper, yes or no?

3                         So that kind of -- that happens later on in  
4           the process, rather at the front end with them.

5 MR. SANDERSON:    Q:    On March 29<sup>th</sup>, 2012, had the  
6           community provided you, at that stage, with  
7           information which caused you to suggest to Hydro that  
8           you were aware that there might be a showstopper from  
9           the community's perspective, not from your  
10          perspective?

11 MR. MUIR:        A:    Well, the community -- we're right in the  
12          process, at that point.  So we're in the process of  
13          talking to people, doing interviews.  Sometimes we  
14          have chats with people, sometimes people don't want to  
15          be interviewed.  Not everybody wants to sit down with  
16          this microphone in their face and sit down for an hour  
17          and talk to us.  Sometimes they'll come back and say,  
18          "Hey, did my uncle talk to you about the moose issue  
19          in the area?"  Or, "Hey, did they talk to you about  
20          the -- our certain smudge that we collect from that  
21          area?"  And I could say "Yes, he or she did."  So they  
22          don't then partake, usually, in the interview.

23                         So it's at that point the community process  
24          is right underway.  So they're not -- they're -- they  
25          want to get the study done.  We do quite a few studies  
26          in the community, and it's not until we get to the end

1           that the community sits down and they talk about it  
2           amongst themselves. A lot of discussions happen  
3           internally. The one individual about the "Oh, my God"  
4           issue, when I asked him about that, he went home. On  
5           other projects, he's gone home. Sometimes he goes  
6           home and he dreams about it. Dunne-za are dreamers.  
7           So he goes home and he thinks about it. Sometimes  
8           they'll say, "I'll come later and talk to you." That  
9           could be in 30 days. Sometimes it's a couple of  
10          months. Or they go home and talk to their family  
11          members to talk about the oral history of the area.  
12          So it's very dependent upon the situation. But the  
13          community as a whole -- this is part of the process.  
14          And I guess that's what I'm trying to convey is, the  
15          community could not at that point, because we're right  
16          in the middle of their process to make those types of  
17          determinations at the end.

18 MR. SANDERSON:   Q:   Do you agree with the statement on  
19                    line 3 and 4 that the purpose of which -- that is, the  
20                    purpose of the March 29<sup>th</sup>, 2012 phone call, was for  
21                    WMFN to provide an update to B.C. Hydro on the status  
22                    of the IAS. Is that true?

23 MR. MUIR:        A:    Not the way it's articulated there, no.  
24                    That, I'm not saying that's not B.C. Hydro's view on  
25                    it. That may very well be true. Why I wanted to talk  
26                    to them and why I agreed to doing this step, was

1           because of the "Oh, my God" issue. I did not want --  
2           and this -- you'll see those profound rocks later on.  
3           I did not want the community to go through what they  
4           went on that other project was very traumatic for  
5           them. So, if we're going to be talking about that,  
6           impacting a traditional site like that is -- it's  
7           depressing, right? I had a 75-year-old man crying in  
8           my office once. So, it's very -- well, it's important  
9           for you understand. Like, these things are very --  
10          they have meaning to them. And this thing is so  
11          important, that's how I looked at it. And if that's  
12          not how Hydro looked at it, I can't answer that.

13 MR. SANDERSON:   Q:   Did you have any sense of what Hydro  
14                   was expecting out of that phone call?

15 MR. MUIR:        A:   I thought they were expecting the same  
16                   thing I was.

17 MR. SANDERSON:   Q:   Had you identified "Oh, my God"  
18                   sacred issues to them as a distinct category in the  
19                   past?

20 MR. MUIR:        A:   To B.C. Hydro?

21 MR. SANDERSON:   Q:   Yeah.

22 MR. MUIR:        A:   In the past, as in other projects?

23 MR. SANDERSON:   Q:   Had you told them that, look, there  
24                   could be an "Oh, my God" moment. I need to have a  
25                   call with you in order to assess whether one exists  
26                   with respect to this project.

1 MR. MUIR: A: I did tell them about -- there was a very  
2 serious issue that may arise, but I did tell them  
3 about a sacred site along that area that I'm very  
4 concerned about, and I need to check this. This is a  
5 very important issue.

6 MR. SANDERSON: Q: Is the purpose -- is it your  
7 testimony that the sole purpose of that call was to  
8 identify whether there was a sacred site on the river?

9 MR. MUIR: A: My purpose? Yes. I don't know B.C.  
10 Hydro's.

11 MR. SANDERSON: Q: But if I were to look, for instance,  
12 at the setup to that meeting, at the agenda for that  
13 meeting, was entirely to deal with sacred sites. Is  
14 that all that meeting was for?

15 MR. MUIR: A: Well, first, I was in the airport, so it  
16 wasn't really a meeting. It was a quick  
17 teleconference. And in terms of what the record says,  
18 I guess I'd have to let that speak for itself.

19 MR. SANDERSON: Q: All right.

20 MR. MUIR: A: I don't recall exactly what the record  
21 says.

22 MR. SANDERSON: Q: Okay, thank you.

23 Thank you very much, Mr. Muir. Thank you,  
24 Madam Chair.

25 MR. MILLER: Madam Chair, some interveners have reserved  
26 the right to cross-examine. So I'm not quite sure if

1           they are going to be asking questions or not. So,  
2           I'll run through the list. Shell Canada?

3 MR. LANDRY:    Thank you, Madam Chair. No questions.

4 THE CHAIRPERSON:   Thank you, Mr. Landry.

5 MR. MILLER:    City of Dawson Creek?

6 MR. HILDEBRAND:   No questions.

7 THE CHAIRPERSON:   Thank you, Mr. Hildebrand.

8 MR. MILLER:    BCOAPO?

9 MS. WORTH:     Nothing arising, thank you.

10 MR. MILLER:    Is there anyone else that wishes to ask  
11           questions before Commission staff?

12                   I guess it's me, then, Madam Chair.

13   **Proceeding Time 11:05 a.m. T24**

14 **CROSS-EXAMINATION BY MR. MILLER:**

15 MR. MILLER:    Q:    Good morning. We spoke earlier about  
16           your developing role with regard to the report.  
17           Initially I think you phrased yourself as being a  
18           facilitator and then you moved more into an author  
19           role. Is that correct?

20 MR. MUIR:     A:    The facilitator role I guess itself was  
21           changed a little bit. At one end I was facilitating  
22           the management of the project itself, and I wasn't  
23           envisioning myself doing a lot of the writing and  
24           pulling information together like the appendixes and  
25           such. When I left West Moberly I did make a promise  
26           to B.C. Hydro that this was not going to be a project

1           that fell off. We made a commitment to getting it  
2           done. I personally made a commitment to getting it  
3           done. So I wanted to make sure it was done, so I  
4           asked West Moberly if I could stay on it just to make  
5           sure it got done, kind of what they had envisioned it  
6           to be. So my role from -- I went from a facilitator,  
7           from an administrator perspective, to facilitating the  
8           actual pulling information together and then bringing  
9           it back to the community for them to review.

10 MR. MILLER:    Q:    Are there any parts of the report that  
11           you merely copied from maybe someone you were working  
12           with and you don't have particular input into?

13 MR. MUIR:     A:    Pardon, sorry?

14 MR. MILLER:    Q:    So if we go through the table of  
15           contents, do you have that in front of you?

16 MR. MUIR:     A:    Which one?

17 MR. MILLER:    Q:    On the report.

18 MR. MUIR:     A:    The final?

19 MR. MILLER:    Q:    Exhibit B, yeah. I don't -- haven't  
20           seen in the drafts.

21 MR. MUIR:     A:    Okay.

22 MR. MILLER:    Q:    The only thing I've seen is the final.

23 MR. MUIR:     A:    Yeah.

24 MR. MILLER:    Q:    So we have various sections, so -- and  
25           the first one is the introduction. Did you have input  
26           into writing that?

1 MR. MUIR: A: Yes.

2 MR. MILLER: Q: And what about the second section?

3 MR. MUIR: A: No.

4 MR. MILLER: Q: Who wrote that?

5 MR. MUIR: A: That was put together by Wendy Aasen. So  
6 my input at that point when I was working with her was  
7 directing her to put together the kind of the story of  
8 Treaty 8.

9 MR. MILLER: Q: Okay. The third section, the context  
10 of the ecological setting, was that your -- did you  
11 have input into that work, or again was it Ms.  
12 Aasen's?

13 MR. MUIR: A: I would say that would be joint.

14 MR. MILLER: Q: Joint?

15 MR. MUIR: A: Joint, yes.

16 MR. MILLER: Q: Section 4, initial comments, was that  
17 -- I think you said earlier that was your section, you  
18 wrote that?

19 MR. MUIR: A: Yes.

20 MR. MILLER: Q: Section 5?

21 MR. MUIR: A: That's more joint.

22 MR. MILLER: Q: And when you say joint, is that Ms.  
23 Aasen and yourself or is there someone else in there?

24 MR. MUIR: A: Ms. Aasen and myself.

25 MR. MILLER: Q: Okay.

26 MR. MUIR: A: However, just a point of clarification

1           too, when you say "someone else", this report was  
2           reviewed internally within the company I work for.

3 MR. MILLER:    Q:    I'll get to that.

4 MR. MUIR:     A:    Okay, sorry.

5 MR. MILLER:    Q:    Okay. Section 6, who wrote that?

6 MR. MUIR:     A:    That would be me.

7 MR. MILLER:    Q:    You?

8 MR. MUIR:     A:    Yes.

9 MR. MILLER:    Q:    And I think you said you helped compile  
10           the appendices?

11 MR. MUIR:     A:    Yes. That was also the assistance with  
12           West Moberly. West Moberly played a large role, too,  
13           throughout it in terms of not only data and reviewing  
14           but also some of the pictures, the maps themselves  
15           were put together by West Moberly's land use office.

16 MR. MILLER:    Q:    Okay. I think when your counsel was  
17           introducing the report and asking you some questions,  
18           she indicated and I think you agreed that you could  
19           speak to the methodology contained in the report, is  
20           that correct?

21 MR. MUIR:     A:    Yes.

22 MR. MILLER:    Q:    Let's talk about the methodology for a  
23           bit. There were 40 individuals interviewed or offered  
24           interviews, I understand. Could you tell us about how  
25           those individuals were selected?

26 MR. MUIR:     A:    Within West Moberly it ranges in terms of

1 the project, the type of project, the area, and  
2 perhaps most importantly, people's time. A lot of  
3 times people come to the community proponents and  
4 government. They don't actually understand that these  
5 individuals, the community members have lives like all  
6 of us. We get on average thousands of referrals a  
7 year. We have maybe up to 20 years ongoing at once.  
8 In one year we had 13 requests for traditional use  
9 studies. There was no way we could possibly do that  
10 and meet all the consultation requests. So one of the  
11 big variables in terms of participation is are people  
12 around, and are they exhausted or not, and can they  
13 participate? We really leave it up to them as a land  
14 office. We don't pressure people in to do interviews.

15 There are community protocols internally  
16 that I am aware of that they go through. In  
17 particular I can use caribou as an example because  
18 we've done quite a few projects there, where one elder  
19 was -- lack of a better expression, the go-to  
20 individual. He was the only one alive at the time  
21 when the elders passed the traditional rule about  
22 hunting caribou. He's the only one that ever hunted  
23 caribou. So when we needed to talk about caribou we  
24 didn't interview 25 people in the community  
25 necessarily, but we interviewed him particularly. So  
26 in this project when it came to it, community members



1 knowledge with respect to caribou or any other issues?

2 MR. MUIR: A: Only one.

3 MR. MILLER: Q: Just with -- only one?

4 MR. MUIR: A: Only one.

5 MR. MILLER: Q: There's essentially 39 in the volunteer  
6 category.

7 MR. MUIR: A: Yeah.

8 MR. MILLER: Q: Okay. How was this volunteer  
9 opportunity put forward to the First Nation? How do  
10 they become aware of the opportunity to participate?

11 MR. MUIR: A: Usually we pay one of the youth in the  
12 community. We give him 20 bucks and he hops on his  
13 bike and he goes around the community and puts a flyer  
14 on everyone's door. That's kind of a first step. And  
15 we post letters in the community on bulletin boards.  
16 Depending on the project, if we have time, we also put  
17 the little flyers into the -- West Moberly has  
18 something called "mass mail". So every member of  
19 voting age, I believe, gets a package once a month  
20 with all the updated information, what's going on in  
21 the community. So we put it in there as well.

22 MR. MILLER: Q: So what measures or steps, if any, does  
23 West Moberly take to ensure that its interview sample  
24 is representative of the broader First Nation  
25 community?

26 MR. MUIR: A: Depending on the project, that's a very

1 specific question. Typically at West Moberly, as on  
2 all qualitative research, you reach a saturation  
3 point. That is, you have data that's just being  
4 replicated, or people are saying the same thing, just  
5 different ways. We have some interviewers, some  
6 interviews, weren't quoted in the report because they  
7 said something that the other interviewees said as  
8 well, just perhaps in a more articulate manner.

9 Sorry, I just lost your question.

10 MR. MILLER: Q: So, my question was directed towards  
11 the sample we have for the interviews, which --

12 MR. MUIR: A: The sample --

13 MR. MILLER: Q: -- almost all of them were people that  
14 volunteered their services, right?

15 MR. MUIR: A: Okay.

16 MR. MILLER: Q: So how do we make sure -- how does West  
17 Moberly make sure, or what steps does it take, if any,  
18 to make sure that that sample of people who are now  
19 coming forward are representative of the community?  
20 Is it just assumed if they come forward they're  
21 representative of the broader community views?

22 MR. MUIR: A: No, it's not assumed. So, first it's an  
23 open thing. We don't want to sit there and have  
24 individuals where -- I know some individuals more than  
25 others. So we wouldn't have it where I'm pulling  
26 people in, because there's also an appearance in the

1 community that's favouritism. So it's always been  
2 left open for that. In terms of, do we know whether  
3 it's representative of the community views or not?  
4 The step that's taken there, and this is something  
5 that was in the consultation agreement with Hydro,  
6 it's a very important step, and the term that we use  
7 is community verification.

8 I don't think we get hung up too much on  
9 the terminology there. The point of that is, whatever  
10 is put together -- so this document, several  
11 iterations of it went back to community members to  
12 look at. And if my memory serves me correctly, eleven  
13 people have looked at it. So at the end of the day --  
14 I guess we'll use our example of caribou. If we had  
15 one person put the information together, or, say, 50  
16 people put it together, that's -- that report  
17 irrespective of the number or the project, would go  
18 back to the community and individuals that may or may  
19 not even participate in this, would look at and say  
20 "Does this represent the views of West Moberly?" And  
21 this is where the code of governance is very important  
22 and plays that integral role in that decision-making  
23 process.

24 And the chief will speak more to this. I  
25 can't speak in detail about it. But the members on  
26 counsel represent their families, but they sit on

1 council to represent the nation. So at the end of the  
2 day, whatever the nation puts forward to external  
3 entities, such as B.C. Hydro in this case, with this  
4 report, and the BCUC, the report itself is  
5 representative of the nation. If something at that  
6 point is caught saying, "This one quote we don't agree  
7 with," or "This one articulation of cumulative impacts  
8 we don't necessarily agree with," during that  
9 community verification process those elements would be  
10 taken out.

11 **Proceeding Time 11:13 a.m. T26**

12 I could direct you to one thing that came  
13 up at the last minute. When I say "last minute" I  
14 mean roughly in the last week when we're putting it  
15 together as an example of this. It's Figure 11 and  
16 you just turn to page 8 in the report. You don't have  
17 to actually go to the figure because it -- now, in  
18 Figure 11 it says:

19 "Picture of a dead bear hanging in a tree in  
20 the Groundbirch area beside a traditional  
21 (spiritual) plant gathering site. This was  
22 found after the non-First Nations hunting  
23 season. It was poorly skinned and some meat  
24 may have been taken. (Note: This picture  
25 has been removed subsequent to community  
26 review, and a request was made to keep a

1                   notation of the incident.)"

2                   Well, this is something where in the area  
3 they had these external individuals coming in and  
4 practicing land use activities that are much different  
5 than theirs. In this case it was a very disturbing  
6 picture. It was an animal that was left hanging by  
7 its neck in a tree. Some members wanted it in to show  
8 this is how non-First Nations hunt, some of them, and  
9 it's very bad. We need to make laws about that to  
10 stop that from happening. When it went through a  
11 couple of other reviewers that are more -- they look  
12 at it from that very cultural lens rather than  
13 teaching others and using it as a tool for doing other  
14 further processes, the one individual that -- that's  
15 kind of what he partakes in the review. He sat down  
16 and we had a telephone call about it and we talked  
17 about whether it's appropriate or not to do this. The  
18 reason why they're upset about it, because it  
19 disrespected the spirituality of the animal. The  
20 spirit of the animal, pardon me. If we were to put  
21 that picture in there, even though it's important for  
22 you to see what happened and understand why it's an  
23 egregious act by a human, would further that.

24                   So during that review process, that picture  
25 was removed. However, that same individual agreed  
26 with the other reviewers that we need to use it as a

1 teaching tool. So they asked, and this is kind of  
2 what we came to is, well, I'll leave the figure in  
3 there, the heading, it'll stay in the list of figures,  
4 but it'll be in the body of the document. And we put  
5 that little brackets in kind of explaining why it was  
6 taken out. However, the picture itself will be  
7 removed, and if it's required, if we need to address  
8 this further, we can go through other mechanisms  
9 perhaps with the Crown and produce it where it's not  
10 made public. Because that's the concern is that this  
11 was a public document, that continuation of that  
12 disrespect to the animal would continue.

13 MR. MILLER: Q: Okay. Of the 40 individuals that  
14 participated in the interview process, you mentioned  
15 already that not every account of the individual was  
16 included if it was the same as someone else had.

17 MR. MUIR: A: Yes.

18 MR. MILLER: Q: You've already interviewed so you  
19 didn't make a specific attribute there.

20 Were there any situations where the results  
21 of the interview weren't included, and it wasn't a "me  
22 too" situation as well?

23 MR. MUIR: A: Sorry, it wasn't a "me too"?

24 MR. MILLER: Q: A "me too". I'm saying the same thing  
25 as the last person.

26 MR. MUIR: A: No.

1 MR. MILLER: Q: You spoke a bit about the community  
2 verification process and I think you referenced a  
3 number around eleven people. Can you tell us what  
4 that process is?

5 MR. MUIR: A: It's a little bit confidential, but what  
6 I can say is the information -- there's individuals  
7 within the community that serve certain purposes. And  
8 Dunne-za, some are dreamers and were very spiritual.  
9 Others are -- they're hunters or they're trappers. So  
10 depending on the project, some individuals will make  
11 themselves available to discuss things. There are  
12 people in the community -- the one elder I worked with  
13 quite a bit, he doesn't read or write, but he's a  
14 reviewer. So this is something where we would say a  
15 report, say the caribou report where we'd sit down  
16 with him and walk through the report saying, "Here's  
17 what we're saying. Here's what the report says.  
18 Here's where we took what you told us and put it  
19 together. Is this the right way to say it?" And then  
20 he would comment yes or no or "You forgot something."

21 MR. MILLER: Q: So are these eleven individuals around  
22 about that number also part of the sample of 40  
23 interviewees, or -- is there an overlapping?

24 MR. MUIR: A: Depending on the project there's  
25 sometimes small overlap.

26 MR. MILLER: Q: What about this project?

1 MR. MUIR: A: Two that I recall.

2 MR. MILLER: Q: Two --

3 MR. MUIR: A: Participated in the process and the  
4 review.

5 MR. MILLER: Q: So two were interviewed and also took  
6 part in the review.

7 MR. MUIR: A: Yes.

8 MR. MILLER: Q: Okay. Have the chief and councillors  
9 approved of the contents of this report, to your  
10 knowledge?

11 MR. MUIR: A: It's been submitted, so to the best of my  
12 knowledge that would be -- yes.

13 MR. MILLER: Q: In the report at page 15 -- you don't  
14 need to turn there, this is just a reference for the  
15 transcript and the Panel members. There is an  
16 indication that the report followed West Moberly's  
17 research standard protocols in the custom code of  
18 governance. Can you explain what are West Moberly's  
19 research standard protocols?

20 **Proceeding Time 11:18 a.m. T27**

21 MR. MUIR: A: This is something we worked -- West  
22 Moberly tries to find a balance between their  
23 traditional ways and how, say, modern society works.  
24 They're not always the same thing. Sometimes things  
25 can work together, some things can't. So the research  
26 protocols kind of evolved out of working with the

1 University of Northern British Columbia, some  
2 researchers from there, as well as from the University  
3 of Alberta. And what we tried to do is find that  
4 balance between what the two parties would need, while  
5 protecting the interests of both parties.

6 Ironically, a lot of the views are very  
7 similar, such as keeping things private, not giving  
8 out traditional information to other parties, things  
9 like that. In terms of how the custom code of  
10 governance plays into that, the community is  
11 represented by four families. So the goal of every  
12 research project is always to make sure that we try to  
13 interview not an equal -- that might be the wrong word  
14 -- but try to make sure we give that opportunity to  
15 each family, to make sure that their voice is in  
16 there. Because at the end of the day, if we have to  
17 go through the community verification process, and I  
18 only interviewed, say, one family out of the four,  
19 well, the other three families most likely will have a  
20 problem with that report.

21 So to make sure that we can get through,  
22 that we're representative, we try to be inclusive as  
23 we can with each family. It doesn't always happen.  
24 We have never had a project had an equal amount on  
25 every family. And some projects will have one family  
26 that I'll double than the other. But at he end of the

1           day, it comes down to, well, why didn't someone  
2           participate? Well, maybe that family had more  
3           information. Maybe it had more time. So those are  
4           the types of questions that may arise during a  
5           community verification process that the lands  
6           department would have to make sure we'd be ready to  
7           answer if chief and council posed them.

8   MR. MILLER:   Q:   Okay. I'd like to change topics  
9           briefly. On page 16 of the report, there is a  
10          notation that the report doesn't include complete or  
11          comprehensive traditional use study, nor a traditional  
12          ecological knowledge study. So, how -- in your words  
13          could you explain to the panel what the differences  
14          are between a traditional use study, as compared to a  
15          community-based environmental assessment report?

16   MR. MUIR:    A:   That's a very good question on how the  
17          discipline itself -- some of these terms, like TUS,  
18          traditional use study, is used sometimes to mean a lot  
19          of different things. I've seen a TUS actually do an  
20          impact assessment. So sometimes it's just on how  
21          people explain their methods, rather than the term *per*  
22          *se*. In this case, traditionally -- since my  
23          understanding, how I always look at it, is traditional  
24          use study is, you sit down with the community members  
25          and you have them put polygons or dots or lines on a  
26          map. So it's kind of map exercise, where they sit

1 down and put everything together, then you take that  
2 and put it into your mapping system. That's kind of a  
3 traditional use study.

4 Within that, they may talk about different  
5 species and say why they use caribou or why a certain  
6 ground vegetation is important in medicine. So you  
7 might collect some of that information as well.  
8 Whereas an impact assessment uses that -- that's one  
9 data set. So the traditional use information is  
10 important as a data set within how you're looking at  
11 that picture, that past, present and the future.

12 It's not always necessary to include dots  
13 and lines on a map in order to understand their land  
14 use. There is a significant difference, say, between,  
15 say, West Moberly who has established rights, in  
16 comparison to, say, another First Nation that may have  
17 asserted rights. It is my understanding that those  
18 individuals that have asserted rights have to  
19 demonstrate use and occupancy of land. Well, for West  
20 Moberly, the rights are established. They have a  
21 hunting right. The question is, do they hunt in that  
22 area and, if so, what does hunting mean and how can  
23 they carry that out and what are the interactions  
24 between those other influences on the landscape?

25 So, the difference, I guess, in this case  
26 is, we took the traditional use method -- so that some

1 of that information, that approach, and it's  
2 incorporated within how we articulate the impacts over  
3 space and time to West Moberly.

4 MR. MILLER: Q: If a comprehensive traditional use  
5 study had been conducted, what additional information  
6 would you expect to receive that might better inform  
7 the panel as to whether or not it should find the  
8 consultation, in this case, to be adequate?

9 MR. MUIR: A: For it to be adequate?

10 MR. MILLER: Q: Or inadequate. It has to assess the  
11 issue: Has the First Nations consultation in this case  
12 been adequate? There is a reference to, in the  
13 report, to saying it's not a full traditional use  
14 study or hasn't been conducted. And so can you tell  
15 the panel members had one been conducted, would there  
16 have been any additional benefit or knowledge imparted  
17 to them that you could have shared?

18 **Proceeding Time 11:23 a.m. T28**

19 MR. MUIR: A: I think there would have been. We are  
20 limited with our agreement with Hydro. They wanted  
21 the 7 kilometre buffer. That was their area that they  
22 were interested in traditional use. The problem is  
23 you cannot understand their impacts of hunting on just  
24 that one little area. They don't just go to that one  
25 area and shoot a moose or pick berries. They use a  
26 very large piece of land. Part of their culture is

1 moving about that land, that seasonal round. By  
2 taking that 7 kilometre thing it makes it very  
3 difficult to do that. A comprehensive review might  
4 entail the entire Peace River sub-basin. If you want  
5 to understand the system of West Moberly, their  
6 cultural system on the land, well then, you'd have to  
7 look at their entire territory and how they move about  
8 and why.

9 Would it be a better understanding? It  
10 would. It would paint that landscape picture of what  
11 happens on the land and why they go some places and  
12 why they don't go elsewhere. It would take into  
13 account that cumulative issue in the land. Without  
14 looking at the cumulative impacts, it's very  
15 problematic to determine whether or not a specific  
16 site is in fact the last piece. It's very easy to  
17 tell people and animals, "Go somewhere else." But  
18 where to? Have you looked at can they go anywhere  
19 else? Is it meaningful to go somewhere else?

20 So without that more comprehensive review,  
21 perhaps not the entire sub-basin but maybe something  
22 more comparable around that seasonal round within a  
23 particular area. So looking at that bigger picture,  
24 that more comprehensive review, I think is integral to  
25 understanding the true impacts on treaty rights.  
26 Otherwise you're just taking a very small, kind of

1           that cut and paste approach rather than looking at it  
2           from their system. It's hard to understand when a  
3           system breaks down without understanding the entire  
4           system.

5 MR. MILLER:    Q:    On the -- let me start again. Part of  
6           what I think you've said so far and I think that's  
7           also referenced in either some of the answers that  
8           have been filed by West Moberly is you're often -- or  
9           I should say the administration of the First Nation is  
10          often getting requests for people that want to do  
11          projects in your area, so you're engaged in  
12          consultation efforts constantly. So many projects are  
13          going on in your area, correct?

14 MR. MUIR:     A:     Yes.

15 MR. MILLER:    Q:    So have you been able to -- or have any  
16           of those other projects given you further traditional  
17           use material that could have been incorporated into  
18           your report but not there for us to digest now?

19 MR. MUIR:     A:     The one thinking of West Moberly -- and I  
20           think a lot of communities have a similar rule. You  
21           can't go to an elder and ask them the same question  
22           ten times. It's like anybody. If you ask someone  
23           over and over again they're going to get frustrated.  
24           During my tenure with West Moberly we have never done  
25           that. Whatever data we have, we make available to  
26           every other study.

1                   With respect to TUS data, we do have some  
2 information but it's back in -- it predates me. I  
3 think it was 2000, in that time period sometime. It  
4 has not been digitized. So it's sitting in a pile of  
5 boxes about this high, about four probably banker  
6 boxes. There's a lot of interviews and there's maps  
7 that are in there. It has not been digitized so it  
8 doesn't lend itself to be easily used in studies, if  
9 at all. If it was digitized and we had funding to  
10 digitize it, then without a doubt that would be used  
11 in a study like this or any other study, any other of  
12 the 1,000 referrals we look at. So when we do have  
13 information that's available, we bring it forward.

14 MR. MILLER:    Q:    So let's make sure I understand what  
15 your evidence is. There is some information that  
16 hasn't been digitized and is therefore somewhat  
17 inaccessible by the First Nation to incorporate into  
18 this report.

19 MR. MUIR:     A:     Yes, if it was digitized --

20 MR. MILLER:    Q:     Yes.

21 MR. MUIR:     A:     -- then it would be -- it would be very  
22 simple to look at it, to look at it in this context.

23 MR. MILLER:    Q:     Okay. Now, you talked earlier about  
24 needing, from the First Nations' perspective, to get a  
25 system view or a comprehensive view. So can you tell  
26 the Panel, at least in your view, what needs to be

1 done to get that whole system view or comprehensive  
2 view of impact of a particular project?

3 MR. MUIR: A: I think one of the important pieces in  
4 that is there's two parts, and it's something we tried  
5 to lay out in the report itself where there are some  
6 projects that are directly related to DCAT such as the  
7 tie-ins. So -- though tie-ins will only occur if DCAT  
8 occurs. So there's one piece right there. It's  
9 anything that's directly -- there's that link between  
10 the two, that ought to be incorporated.

11 **Proceeding Time 11:28 a.m. T29**

12 Then from there it's what else is on that  
13 land base that may influence them for exercising  
14 rights? Like that long list of projects that are in  
15 there is to show the Panel there's a lot going on in  
16 the land. It's not as simple as they can just go down  
17 to Tumbler Ridge. Well, there's five mines there,  
18 five more proposed. They can't go into where their  
19 sacred area is. There's mines proposed on top of  
20 their culture camps. It's very difficult to go  
21 anywhere in the Groundbirch area as well. Like, when  
22 you look at the land base itself, when you have 18,000  
23 wells, 6,000 cut blocks, 10,000 facilities, 100,000  
24 kilometres of pipeline, and 60,000 kilometres of  
25 roads, that's a lot of stuff.

26 So the question is -- to determine that

1 spatial unit I think would take some time. I don't  
2 think it's impossible to do. But it's a sit down and  
3 try to figure out what the community -- if this  
4 proposed project is sitting here and it's going to  
5 influence you, it's not as simple as, well, the moose  
6 itself is influenced within 10 kilometres. But if  
7 that influences is in 10 kilometres, that might push a  
8 community member 100 kilometres out of the way. So  
9 it's very difficult sometimes to sit there and put a  
10 spatial unit, a generic spatial unit. It's very  
11 project specific. That is something that usually we  
12 deal with during the scoping phase. We'd sit down  
13 with the community members, say, "Okay, we need to  
14 look at this project within what we do."

15 In this particular case I would say it  
16 would be the Groundbirch area and the Pine River  
17 watershed, with some of the other smaller watersheds  
18 perhaps that would be included within that.

19 It wasn't directly posed to the community  
20 in terms of how should we have studied this? With the  
21 study area we did include, we called it "the review  
22 area", and it's because the community members, we just  
23 never sat down to talk about that comprehensive study.  
24 So that review area was kind of put together on what  
25 of data we had available. It does not necessarily  
26 represent the best area to do that comprehensive

1 review. But it would be something comparable to that.

2 MR. MILLER: Q: One of the -- on page 16 of the

3 reports, one of the points made is also that a

4 traditional ecological knowledge study wasn't

5 completed. Now, can you tell the Panel what that type

6 of study does, and then follow up on why to your

7 knowledge it wasn't undertaken?

8 MR. MUIR: A: First it was not undertaken because it

9 was not part of the agreement between B.C. Hydro and

10 West Moberly. It's a much more comprehensive study.

11 MR. MILLER: Q: Let me stop you there. Did you ask for

12 it to be done?

13 MR. MUIR: A: Usually when we do our studies it's

14 included within what we do. Once a study is scaled

15 back, that's one of the first things that has to be

16 removed because it's a -- there are additional layers

17 to doing interviews. So I guess I'd give an example

18 today for traditional use site. If a member points to

19 one of the rivers, says, "This is where I fish for the

20 bull trout run when they come up to feed on the

21 peamouth." Well, right in that statement, you know,

22 the little bit of traditional knowledge, they're

23 fishing for a specific species in a specific spot

24 because that species is coming into use in other ones.

25 You'd get a bit of traditional knowledge. So a TUS

26 might capture that.

1                   A traditional ecological study might take  
2                   it another step further. "Well, when did you know to  
3                   catch that fish there?" "Well, actually it's when the  
4                   mosquitoes come out and the little buds fall off the  
5                   poplar trees, and the water kind of hits a certain  
6                   level." This is -- I just learned this this summer,  
7                   why they fish in one spot. So there's a significant  
8                   difference between a TUS and a traditional ecological  
9                   study. It took me four years for that one member to  
10                  get comfortable with me saying, "Well, actually,  
11                  here's when I go." Now, they don't look at it with a  
12                  here's my traditional ecologic knowledge. It's just  
13                  what they know. So sometimes you have to be very  
14                  comfortable with them, they have to be comfortable  
15                  with you, and it takes more time and money to do it.

16 MR. MILLER:    Q:    West Moberly and B.C. Hydro agreed on  
17                  the type of report they would product, correct?

18 MR. MUIR:     A:    Yes.

19 MR. MILLER:    Q:    It took some time but eventually you  
20                  came to an agreement, correct?

21 MR. MUIR:     A:    It took quite a bit of time, yes.

22 MR. MILLER:    Q:    So if those two types of studies, a TUS  
23                  and TEK were important to you, why didn't you insist  
24                  they be included?

25 MR. MUIR:     A:    Sorry, I'm just grappling with what is  
26                  confidential and what is not, on a public record.

1 MR. MILLER: Q: Well, I don't want you to breach any  
2 confidentiality.

3 Because, Madam Chair, I'm not quite sure  
4 which confidential information may be disclosed, my  
5 suggestion to Ms. Rana was perhaps she could speak to  
6 the witness so we can skirt the issue of having to go  
7 in camera if the question truly does require  
8 confidential answers. If we just maybe allow a few  
9 moments for Ms. Rana, assuming Mr. Sanderson has no  
10 problem with that.

11 MR. SANDERSON: No.

12 MR. MUIR: A: Sorry.

13 **Proceeding Time 11:36 a.m. T30&31**

14 MR. MILLER: Q: Mr. Muir, are you able to provide any  
15 information for us?

16 MR. MUIR: A: Yes, I can provide a little bit of  
17 information. During the process it was always  
18 envisioned that a certain data would always be  
19 collected. The impact assessment approach enables all  
20 of those data, whether it comes from traditional use  
21 studies or traditional ecological studies, to be  
22 incorporated within the report. The parties disagreed  
23 on the approach, and some of the funding within the  
24 approach, and it got to the point where we're going on  
25 and on, and the parties had -- we had a compromise.  
26 We had to get a study done. It doesn't make the study

1           invalid, it just means that certain pieces weren't  
2           explored as much as they could have been.

3 MR. MILLER:    Q:    Thank you. I'm just going to pick up  
4           on something you had mentioned just a moment ago about  
5           cumulative effects assessment, okay? Now, as I read  
6           the report, and also the answers to many of the  
7           Information Requests that were asked, there is a  
8           litany of cumulative effects that have been noted in  
9           West Moberly's area, if I can call it that. So what  
10          additional information, if any, would be provided by a  
11          cumulative effects assessment that's not already  
12          before the panel in terms of the information that's  
13          been filed? How would that help at all? I mean, as I  
14          understand part of the position is, our area of the  
15          province, our land area, has been torn up by a lot of  
16          development already, and we're losing a lot of the  
17          rights we should have been able to preserve. So, what  
18          more would this study do to help shed light on what's  
19          going on?

20 MR. MUIR:     A:     Well, it's difficult to provide, I guess,  
21          the answer of what the cumulative effect would be,  
22          without doing that type of study. However, what it  
23          would provide is the panel with a better understanding  
24          of what the impact is. Like, the community was just  
25          asking for -- we need to assess these projects  
26          correctly. We need to do a good job, we need to be

1 thorough. This is about who we are. If we don't look  
2 at it from a cumulative perspective, we're going to  
3 miss the details. People talk about caribou quite a  
4 bit in the northeast particularly because of West  
5 Moberly's court case. But there is a very -- it's a  
6 species that's easy to understand in terms of -- look  
7 at where we are today. At the time of treaty, there  
8 were thousands. The community talked about them like  
9 bugs on the land. There was a sea of caribou. There  
10 was just caribou everywhere. Well, today we're down  
11 to a couple of hundred in a certain area. It's a much  
12 different picture than that past. So, the cumulative  
13 impact assessment would, one, articulate if it's  
14 properly designed, of course, what the past looked  
15 like. So at the time of treaty, what did the  
16 community have on the land? How did they hunt? Not  
17 how did they hunt, pardon me. But how meaningful was  
18 it to hunt a moose? How easy was it to hunt a moose  
19 sometimes, right? Did they have to drive 200  
20 kilometres from their campsite to get a moose? Or is  
21 it within a couple of kilometres? What was the  
22 population like?

23 And say for caribou, you went from a very  
24 large number to a very small number. But you know we  
25 have all this habitat left. So why do we have all of  
26 this habitat that can still support thousands of

1 caribou, but yet we're down to a couple of hundred?  
2 Without taking that bigger picture, we have a bunch of  
3 these mines that are included in here, some that  
4 already exist, they're all going into one complex for  
5 caribou. And yet now they're looking at the  
6 cumulative impacts to 25 caribou rather than the herd.  
7 So we are going from assessing the big number down to  
8 this little site-specific. But they don't want to  
9 talk about the next mine that's coming in, in detail.  
10 They're defining the baseline as today.

11 Well, that's not good enough for treaty  
12 rights. We need to understand what was at the time of  
13 treaty, what do we have today, to understand the  
14 seriousness of what that impact really means to the  
15 community. For caribou, it's -- we use that as an  
16 example because, well, we have lots of habitat, why  
17 don't we have the animal? No one has looked at that  
18 bigger picture to try to answer those questions. So  
19 in terms of looking at the cumulative thing, that  
20 would also provide the panel with, well, if this is a  
21 small impact to moose, as the proponent contends,  
22 well, what are the other impacts to moose in the area?  
23 Like, the one map that we did include, and the land  
24 use department did run a quick spatial analysis on  
25 that, well, it came back to, of the good moose habitat  
26 in the area, they're down to 13.8 percent. Just

1           within the seven kilometre DCAT study area.

2                       Well, what is it like now at the landscape  
3           level? Right? We know there is those 18,000 wells,  
4           6,000 cut blocks, and hundred thousands of kilometres  
5           of pipeline.

6   **Proceeding Time 11:41 a.m. T32**

7                       What does all that mean to the rest of that  
8           habitat? How much has that habitat shrunk over time?  
9           So if you're going to say this is small impact to move  
10          us and therefore a small impact to the community, you  
11          have to know what the other impacts out there are.  
12          Otherwise that small little thing might be quite  
13          significant. That's that truism, the straw that  
14          breaks the camel's back. We're confronted with that  
15          all the time. You heard a little bit from the  
16          community here too when they talk about -- I think the  
17          term was death by a thousand decisions. Well, you're  
18          the only gas commission that makes thousands of  
19          decisions a year. It's turned down one project in six  
20          years because of the First Nation concern, yet we have  
21          species slowly dropping off. Caribou are already  
22          almost gone. And we have a lot of other concerns that  
23          are out there.

24                       So when we start looking at what does it  
25          mean to me if you practise treaty rights, when you  
26          start to look at hunting there's problems. When you

1 look at fishing, well, there's problems. Is that lake  
2 trout within their lake? They can't catch them  
3 because they're nearly extirpated. The large  
4 predatory fish within the reservoirs have high levels  
5 of mercury. The fish in the south near their coal  
6 mines have high levels of selenium. So when you look  
7 at their -- what does it mean to practise rights and  
8 culture in the land, there's a lot of things out  
9 there. To a lot of us that might be foreign but to  
10 them that's personal. That's like you going to  
11 grocery store and guessing, well, are the berries okay  
12 to eat or are these -- what I'm buying from the  
13 freezer, is that okay to eat? And those are the  
14 questions that they shouldn't have to ask themselves  
15 if the treaty is being upheld. They should be to go  
16 out, collect whatever they need to say for example  
17 eat, and bring it home, not have to worry about those  
18 things.

19 So the cumulative effect assessment not  
20 only understands the impact of species, but also  
21 characterized what that means to people. Without that  
22 picture it's very difficult to understand what does  
23 this really mean? We're left with this piecemeal  
24 approach.

25 MR. MILLER: Q: If a cumulative effects assessment was  
26 to take place, realistically how long would that take

1 place? How long would that take to complete? Several  
2 years or --

3 MR. MUIR: A: Depending on the cumulative impact  
4 assessment. There is no one way to do cumulative  
5 effects assessment. It is very, I guess, objective  
6 driven. We -- sorry.

7 MR. MILLER: Q: West Moberly was looking to have one  
8 done.

9 MR. MUIR: A: So first, I guess, the two studies that  
10 were done in the area, and this is something that we  
11 highlighted in the report saying cumulative effects  
12 assessment is the right way to look at what's going on  
13 in the land and to manage the impact to treaty rights,  
14 to making sure they don't become a significant  
15 problem.

16 We had the Forest Practice Board that did  
17 one, I think, within a year or two roughly speaking  
18 when they looked at the Kiskatinaw watershed, which is  
19 right south of the DCAT project. And then there is  
20 the one done by UBC which involved an area around the  
21 community which is just right to the northwest of the  
22 DCAT project. That one again was a spatial assessment  
23 which was done within probably a couple of years.  
24 Publishing the papers and reports are a little bit  
25 different. But in terms of collecting information, it  
26 all comes down to what other data is out there. So

1 just like community studies, if you know -- if you  
2 have a certain population, survey population of --  
3 what's a good example? Elkin area, for instance, then  
4 you wouldn't go out and redo it. Or moose, for  
5 instance. And moose is the important one here because  
6 we don't have that baseline in the population. And  
7 you cannot assess impacts, in my view, if you don't  
8 have that current population. It's fine to say  
9 there's lots of habitat for moose, but what about the  
10 numbers? Where are they? Why are they low?

11 So the distribution and population levels  
12 are a very important element with there. So it really  
13 comes down to how much data we have that is credible,  
14 and is it sufficient enough to do those assessments?  
15 And looking at the gaps that we would have in it in  
16 order to fill them. So some assessments have been a  
17 couple of years, some have been a bit longer.

18 MR. MILLER: Q: So if we put aside for a second the  
19 fact that a cumulative assessment -- cumulative effect  
20 assessment might provide greater information and  
21 greater understanding, does the report itself contain  
22 the knowledge, at least on behalf of the First Nation  
23 members, as to what they consider the cumulative  
24 effects are, to their knowledge?

25 MR. MUIR: A: I would say you could use this as a  
26 scoping document, at least first step, in terms of

1           what you would need to look at for cumulative effects  
2           from their perspective.

3 MR. MILLER:   Q:    So there's no cumulative effects that  
4           members of the First Nation brought to your attention  
5           and you said, "Well, we're not going to include that  
6           in this report."

7 MR. MUIR:    A:    Sorry, can you repeat that?

8 MR. MILLER:   Q:    The effects, at least as expressed by  
9           the community members, were contained in the report.  
10          There's nothing omitted as far as people that  
11          participated, volunteered information. It's all in  
12          there with respect to cumulative effects.

13 MR. MUIR:    A:    That I couldn't speak to because that was  
14          not -- that wasn't a specific question within the  
15          research project to the community members. What I  
16          think you do have in here is a cumulative effects  
17          assessment from their perspective on what's going on.  
18          You have a lot of comments in here that point to a lot  
19          of problems. The current condition is much different  
20          than the baseline, and that's what you can hear them  
21          talking about. Is it a complete cumulative assessment?  
22          No, it probably is not. But is it one for this area?  
23          I think you can say it is a pretty darn good view on  
24          what the cumulative impact assessment is to their  
25          cultural rights.

26

**Proceeding Time 11:46 a.m. T33**

1 MR. MILLER: Q: Let's talk a bit about that concept of  
2 a baseline. And I'll maybe put it slightly  
3 differently than you have. I think Hydro may say it's  
4 tried to do a baseline. It's one that the First  
5 Nation disagrees with, because I think the way you put  
6 it was, it's too current. We have to look further  
7 back to get a proper baseline. What is -- how far  
8 back should we be going to get a proper baseline?

9 MR. MUIR: A: That would depend on the value component  
10 that you're taking into consideration. Say, fish  
11 within the area. That would be when something  
12 actually -- I would not be able to tell you for, say,  
13 bull trout how far back would you have to go to where  
14 bull trout are -- they're within their natural  
15 variation. There's a term that ecosystem scientists  
16 use, which generally means if we have a habitat that  
17 is more or less untouched by humans, what would exist  
18 there and what would it look like? So that natural  
19 variation on the landscape.

20 You want to get back as close as you can.  
21 That's the goal of impact assessment, to that. So  
22 then you can measure the impacts of change over time.  
23 And then you can determine, well, we've had  
24 significant impacts and then the next little one  
25 coming in might be a significant impact as well. It  
26 most likely is.

1                   So for some species, it might be different  
2                   in terms of the temporal scope. So, how far back do  
3                   you go in time? For caribou, it's likely pre-dam.  
4                   And it's likely based on the traditional knowledge  
5                   that I am aware of. It's back probably to the 1920s,  
6                   perhaps. In 1920s, 1930s. For different species, it  
7                   would have to be different times, though.

8   MR. MILLER:    Q:    So one of the species that's of  
9                   particular concern here is moose. So, how far back --  
10                  do you have an opinion on that? How far back should  
11                  we be looking?

12   MR. MUIR:     A:     For moose, this is actually -- I think  
13                  could be easily -- I won't say an answer, but  
14                  something that we could do a GIS exercise. So using  
15                  that mapping system, you can actually -- for every  
16                  well site, private land, all those different land  
17                  uses, you can actually run a program to tell you when  
18                  did all this come in? And then build that just to  
19                  illustrate -- here's how development occurred in the  
20                  year over the course of the years. Within our  
21                  project, or within the report, I'll direct your  
22                  attention to -- where is it? -- to page 189. Page  
23                  189, Figure 37.

24                                So what this map illustrates is the  
25                                development of oil and gas wells from 1950 to 1970,  
26                                1990 and 2011. And you can see there's a straight

1 contrast between 1950 and 2011. So if you want to  
2 look at that natural variation, what exists in a land  
3 with, say, within the Groundbirch region for  
4 terrestrial species, you might be looking at a  
5 baseline of 1970 where there are some wells that are  
6 south of the Peace River. But there's not too many in  
7 comparison to 2011. When you get up to 2000 -- or,  
8 pardon me, 1990, you start seeing an influx of wells.  
9 So, a potential baseline might be 1970, in terms of  
10 looking at the habitat and the species level.

11 MR. MILLER: Q: Thank you.

12 MR. MUIR: A: You're welcome.

13 MR. MILLER: Q: Can I get your attention directed to  
14 page 88 of the report? So under Section 3.3.2, the  
15 Forest Practices Board. Is it pronounced Kiskatinaw?

16 MR. MUIR: A: It means "sleep slopes" in Cree, and I  
17 always pronounce it wrong in the community. I'm going  
18 to say it wrong now too.

19 MR. MILLER: Q: Okay. I'm going to call it the river  
20 shed, then. So will we understand.

21 MR. MUIR: A: Kiskatinaw river shed, sure.

22 MR. MILLER: Q: I'll use the river shed.

23 MR. MUIR: A: Okay.

24 MR. MILLER: Q: It's easier for me.

25 MR. MUIR: A: I'll agree to that.

26 MR. MILLER: Q: Okay. So, is this watershed in the

1 proposed corridor of the DCAT project? Or is it  
2 adjacent to it? Where exactly is this watershed?

3 **Proceeding Time 11:51 a.m. T34**

4 I guess if you turn over to page 85 and  
5 it's Figure 6, now, that figure shows the three study  
6 areas with the B.C. Hydro DCAT project right in the  
7 middle, and the Kiskatinaw study area is the red in  
8 the bottom right and you can see the tip of it touches  
9 into the DCAT area. That is not the entire Kiskatinaw  
10 watershed, however. That's just a study area. The  
11 Kiskatinaw River actually continues flowing north,  
12 which is up the map, to the top of it into the -- over  
13 I think into a -- I don't know if it flows right in on  
14 the map here, into the Peace River. So the south part  
15 of the Kiskatinaw is not included within that study  
16 area. Their study area just looked at one portion of  
17 the Kiskatinaw watershed and it only touches maybe a  
18 kilometre or two within the DCAT study area.

19 MR. MILLER: Q: Is this particular watershed area  
20 referenced at all specifically in the report?

21 MR. MUIR: A: They generally don't speak in watersheds.

22 MR. MILLER: Q: That's fine, I did see it so --

23 MR. MUIR: A: Yeah, they -- within the specific study  
24 area I'd have to go back to look at the report,  
25 whether there is comments directed to that area. They  
26 do talk about the south around the Tumbler Ridge area.

1 MR. MILLER: Q: Yeah.

2 MR. MUIR: A: And this includes that part of area, or  
3 part of the south end of the Kiskatinaw study area.  
4 Like the Bear Hole Park at the bottom of that, for  
5 instance, is a winter zone for caribou.

6 MR. MILLER: Q: Just give me a moment, sorry.

7 Okay, on page 14 of your report there's a  
8 reference to the study area as being the area selected  
9 by B.C. Hydro while the review area was another area  
10 that reflected concerns of the community members,  
11 correct?

12 MR. MUIR: A: Yes.

13 MR. MILLER: Q: So the review area is a larger piece of  
14 land that encompasses the study area, correct?

15 MR. MUIR: A: Yes.

16 MR. MILLER: Q: Okay. How was the review area  
17 selected? What parameters or what criterion were  
18 used?

19 MR. MUIR: A: Whenever we're doing projects with the  
20 community, and this is something that we worked with  
21 B.C. Hydro on, that it's very difficult to put down a  
22 map and say, "Here's the area I want to talk about."  
23 Well, some elders will talk to you about what they  
24 want to talk about, so it's sometimes presumptuous for  
25 you to bring in a specific spatial unit. After  
26 working with them I knew some of the members well

1           enough where I'd have a couple maps off to the side  
2           with different scales in case they wanted to talk  
3           about other things.

4                        So the parties agreed that while they have  
5           their specific interests within that 7 kilometres for  
6           the TUS data, that the community could talk about  
7           their concerns in a broader area because that's how  
8           they used the land. So the actual review area was  
9           based upon that it's a piece of the preferred treaty  
10          territory. How much of it it's maybe roughly speaking  
11          a third, maybe 25 percent of the preferred treaty  
12          territory. But it was the focus of a lot of comments  
13          that they made, and it was also based on the data that  
14          we did have from British Columbia. So it was selected  
15          based on two things: the general description from  
16          community members about the area where there's  
17          cumulative effects, as well as the data that we had  
18          available.

19   MR. MILLER:    Q:    So the review area, am I correct,  
20                    encompasses both tracts of Crown land and also tracts  
21                    of what you might call private or fee simple land  
22                    owned by third parties?

23   MR. MUIR:     A:    Yes, both are. Within Appendix -- at  
24                    Appendix 3, we don't have to flip there but just for  
25                    general reference, the GIS technician did put together  
26                    -- the British Columbia has wildlife management units.



1 don't have population numbers. That needs analysis is  
2 not within the document. That is some information  
3 that is very pertinent for decision makers to ensure  
4 that proponents, or the Crown itself, gathers in order  
5 to make an informed decision so they understand that  
6 if there is 1,000 moose out there, and someone says  
7 "Well the population is fine, look it, there is 1,000  
8 moose, that is within the natural variation, that is  
9 okay." What sometimes isn't assessed is, well, can a  
10 member go out and shoot that moose? So the concept of  
11 access and allocation of species is not necessarily  
12 fleshed out within this report. That would be  
13 something that would be a follow-up document that this  
14 would help -- that this would -- our current document,  
15 would influence the development of that one in terms  
16 of what we'd scope into it.

17 MR. MILLER: Q: Can we agree that -- and I will call it  
18 the harm. That harm that has been caused to date, to  
19 West Moberly's lands, or lands upon which they  
20 exercise treaty rights, hasn't occurred because of the  
21 DCAT project? So what we have here today, to date, in  
22 West Moberly's territory, hasn't arisen as a result of  
23 DCAT?

24 MR. MUIR: A: No, it has not. So yes, I would agree  
25 with you, I guess. I just want to be clear, you are  
26 asking if these impacts occur because of DCAT?

1 MR. MILLER: Q: So, what I am trying to do is establish  
2 a snapshot at a particular point in time today, so --  
3 or as of the date the report was filed. It contains a  
4 lot of information on impacts, negative impacts that  
5 have happened to First Nations interests, particularly  
6 West Moberly's, correct?

7 MR. MUIR: A: Yes.

8 MR. MILLER: Q: And so, what I was asking you is, can we  
9 agree that those impacts that are outlined in this  
10 report, haven't arisen as a result of the DCAT project  
11 itself, but other activities in West Moberly's  
12 territories?

13 MR. MUIR: A: Yes.

14 MR. MILLER: Q: Then that gets to my next series of  
15 questions. So, there is a number that has often been  
16 used throughout the report, and I am going to try and  
17 find out what it actually applies to, it is what I  
18 call the 80/20 split. When Hydro is saying that 80  
19 percent of the project is going to be on private  
20 lands. And there is some other references throughout  
21 the report that I want to explore.

22 So, on page 129 of the report, there is a  
23 comment that says:

24 "The precise extent of land that is  
25 alienated from West Moberly cultural  
26 activities is unknown, as the Crown has not



1 in reference necessarily to the whole treaty  
2 territory, but just the study area of B.C. Hydro. And  
3 it comes from their -- the CPCN application.

4 MR. MILLER: Q: The DCAT corridor.

5 MR. MUIR: A: Yes.

6 MR. MILLER: Q: Let's talk a bit about how West Moberly  
7 members can exercise their treaty rights. So, there  
8 is -- I think there is basically two divisions of  
9 land. There is either private or Crown land that they  
10 have access to, correct?

11 MR. MUIR: A: That's not quite my understanding. We  
12 include the *Badger* test. It has to be put to visible  
13 and compatible use. So if there is a piece of private  
14 land but it's not put to any type of use, even if the  
15 use is there, is it incompatible to the community's  
16 use?

17 MR. MILLER: Q: We'll get to the private land in a  
18 minute.

19 MR. MUIR: A: Okay.

20 MR. MILLER: Q: But generally, two categories we're  
21 talking about. We have private land and Crown land.  
22 Those are the two types of land available up there.  
23 The First Nations are much more restricted in being  
24 able to access any rights on private land, correct?

25 MR. MUIR: A: I guess I'm having a hard time  
26 understanding your question.

1 MR. MILLER: Q: Well, let me give you an example. So,  
2 throughout the report, I think a couple of individuals  
3 reference the fact that it's hard to find where they  
4 can go hunting because they're not sure who owns the  
5 land. But sometimes, if they know the landowner --  
6 it's fee simple land and they know the landowner,  
7 sometimes the landowner lets them go hunting on the  
8 land. Sometimes they don't.

9 MR. MUIR: A: Yes.

10 MR. MILLER: Q: So, First Nations can exercise treaty  
11 rights on private land in some instances, correct?

12 MR. MUIR: A: Yes.

13 MR. MILLER: Q: And in some instances they're not able  
14 to.

15 MR. MUIR: A: Yes.

16 MR. MILLER: Q: For whatever reason. And then the  
17 First Nations are also able to exercise treaty rights  
18 on Crown lands more freely than they are on private  
19 lands, correct?

20 MR. MUIR: A: It depends on what is on the Crown land.

21 MR. MILLER: Q: Right.

22 MR. MUIR: A: There are -- within British Columbia  
23 there are 263 different types of tenures. Some are  
24 oil and gas, some are mining, some are wind farms. So  
25 that piece of Crown land, for example, might have a  
26 coal licence that overlays it. The coal licence

1 allows a coal mining company now to apply for notice  
2 of work. With that notice of work, they're allowed  
3 to, say, build roads and dig trenches and do a lot of  
4 other things like a helipad. Well, that notice of  
5 work, which I think is a permit on Crown land, now  
6 removes the ability to safely hunt in that area  
7 potentially because of the road. You can't shoot down  
8 the road. So, within Crown land, there is another  
9 layer of different types of tenures that are  
10 problematic in terms of exercising treaty rights.

11 MR. MILLER: Q: Okay. So if we can talk -- or maybe  
12 concentrate a bit on the proposed DCAT corridor, I  
13 think the -- and tell me if I'm wrong -- the species  
14 that have been highlighted in the report that are  
15 particularly of interest, although maybe for different  
16 reasons, are the caribou. Correct? Moose, and then  
17 there's elk and deer. Those are the ungulates.

18 MR. MUIR: A: Yeah. They have -- there is definitely  
19 preferred species.

20 MR. MILLER: Q: Yeah.

21 MR. MUIR: A: And the preferred species are not elk and  
22 deer.

23 MR. MILLER: Q: Right.

24 MR. MUIR: A: It was bison, or buffalo, caribou and  
25 moose, for ungulates.

26 MR. MILLER: Q: Okay. So, let's concentrate on the



1 in the north, and the caribou, the Narraway in the  
2 south, this behaviour actually occurred everywhere,  
3 and the traditional knowledge helped fill in that gap.

4 So, caribou within that area have been  
5 extirpated from it. That being said, the provincial  
6 biologist at the Ministry of Environment, did inform  
7 me that he had information from one of the guide  
8 outfitters, I think it was the guide outfitter that  
9 had caribou tracks in the Kiskatinaw watershed. Where  
10 that caribou came from, whether it came from the west,  
11 the north, the east, or south, that was unknown. So,  
12 there had been caribou reports in the area. It is not  
13 uncommon that we get caribou that do walk out in these  
14 areas. But today, in terms of caribou populations,  
15 they are pretty much extinguished from that area.

16 MR. MILLER: Q: So, let's speak about some of the other  
17 ungulates. From reading the report I understand there  
18 is a bit of competition between the elk and the deer  
19 on one hand, and the moose on the other. They don't  
20 -- I think the way I understood it, they don't really  
21 co-exist in the same environment that well, is that  
22 correct?

23 MR. MUIR: A: From my understanding from the elders,  
24 yes. The two species, the elk and the moose don't  
25 particularly like each other, and one is a browser  
26 versus one is a grazer.

1 MR. MILLER: Q: Right, and the -- as I, at least, read  
2 the report, part of the problem if I can put it that  
3 way, has been an increase in elk and deer population  
4 over past times. Is that correct?

5 MR. MUIR: A: Yes.

6 MR. MILLER: Q: Okay, and is it also true that with  
7 respect to the transmission corridor that is being  
8 proposed for the DCAT project, I guess as well as any  
9 other transmission corridor, it also possibly  
10 increases the risk of predation from wolves, correct?

11 MR. MUIR: A: Yes.

12 MR. MILLER: Q: Which may have an impact on the moose  
13 numbers?

14 MR. MUIR: A: Yes.

15 MR. MILLER: Q: That would also have an impact on the  
16 elk and deer, would it not? Are the wolves selective  
17 with respect to moose?

18 MR. MUIR: A: From the information that I have been  
19 provided by Dr. Seip from the Ministry of Forest Lands  
20 and Natural Resource Operations, the information that  
21 has come back, because we do quite a bit of caribou  
22 research is the wolves target moose first. That seems  
23 to be their preferred species.

24 MR. MILLER: Q: Okay, and I think there was a comment  
25 in the report with regard to decreased -- on at least  
26 Crown land available for hunting by First Nation

1 members, that the West Moberly First Nation has had  
2 some competition, or felt some impact from other First  
3 Nations hunting or practicing treaty rights in at  
4 least what they, what West Moberly would consider to  
5 be their more traditional territories, is that right?

6 MR. MUIR: A: I think we would have to be careful on  
7 how we characterize that interaction between  
8 communities. Other communities to the north have been  
9 devastated by oil and gas. It saddens West Moberly  
10 members when they go up there to visit them, to see  
11 the level of destruction of the land where they are  
12 literally surrounded by private land,

13 **Proceeding Time 12:11 a.m. T38**

14 I think it's important to remember, is this  
15 entire area is a -- and I can't pronounce the Dunne-za  
16 term for it, but it's the Land of the Beaver People.  
17 So it all comes back at the end of the day, it is  
18 Beaver land. The arrival of Europeans kind of  
19 fostered this creation of this concept of First  
20 Nations being all separated when they are distinct,  
21 but yet in this case, a lot of them are very close in  
22 terms of their kinship.

23 So is the -- the community members from  
24 other First Nations are coming down, because they just  
25 don't have those species in the north. So it is  
26 increasing the use of the area in terms of treaty

1 rights. When you look at, say, the South Peace area  
2 -- or not the South Peace, but pardon me, the review  
3 area, you have West Moberly, Halfway, Soto, Doig,  
4 Blueberry and I think Prophet is just to the north.  
5 So you have five to seven First Nations all dependent  
6 on this. And I don't know their population off the  
7 top of my head, but it's probably in the range of  
8 1,500 to 2,000 people. Well, that's a lot of moose,  
9 when you look at it. So if you have community members  
10 now from the north that can't rely on territories up  
11 there, because of cumulative impacts, they are going  
12 to come down to the south, if there's any land left,  
13 to try to harvest species as well. And that is their  
14 treaty right to do that under Treaty No. 8.

15 So there is that interaction now that did  
16 not exist, I would say, a hundred years ago to the  
17 same level.

18 MR. MILLER: Q: Let's talk about possible impacts or  
19 already existing impacts to, not wildlife this time,  
20 but vegetation. So what particular impacts does West  
21 Moberly see from a vegetative or environmental  
22 perspective if this project goes ahead. Are there any  
23 concerns with the transmission corridor or any species  
24 that West Moberly considers are at risk that would be  
25 terribly hampered by the construction of this proposed  
26 line?

1 MR. MUIR: A: Their view of what is at risk is a little  
2 bit different than, again, that Eurocentric approach.  
3 They would look at a rare species, how I've been told  
4 -- they would look at a rare species as something that  
5 is rare within their area. So where an ecologist  
6 might look at it and say, "Well, it's distributed  
7 evenly across the landscape, it's not a rare species,  
8 but it might be rare to where they specifically use  
9 land."

10 And in this report you did -- there was  
11 mention of a -- I think it's okay to say it, because  
12 it's included here, the diamond willow and a certain  
13 fungus on a tree. Those are two traditionally used  
14 species. Combining them creates -- not creates per se  
15 but it adds a different layer of significance to it,  
16 of culture use. There are certain species in this  
17 area that are collected. Would the DCAT project, if  
18 constructed, impact it? It would because it would --  
19 afterwards the power lines are not the natural  
20 vegetation that comes back, including tree species.  
21 There is a lot of grasses. That then entails usually  
22 elk coming in as well. So power lines, from my  
23 understanding from the community, are not areas that  
24 lend itself to picking a lot of different species  
25 unless they are managed to do so.

26 And one case where West Moberly was

1 managing a certain power line, because it was also  
2 their grazing tenure -- now, this power line was just  
3 west of the community. There is a picture in here of  
4 it, where the community West Moberly was trying to  
5 manage different land uses. So they were trying to  
6 manage the use of it by cattle, and as well as use of  
7 it by community members to pick berries, as well as a  
8 power line. And unfortunately in this once incidence,  
9 and B.C. Hydro might correct me, it's B.C.  
10 Transmissions, I think was the entity, sprayed it with  
11 pesticides.

12 So we had some areas where we tried to  
13 manage where we actually encourage plants coming in,  
14 yet they've been extirpated because of the develop- --  
15 not extirpated, pardon me, but impacted because of the  
16 development.

17 So it really comes down to a certain area  
18 whether or not certain plants are present there, or  
19 were present in the past, and they would like to see  
20 them again.

21 MR. MILLER: Q: Has B.C. Hydro offered to work with  
22 West Moberly to help manage the area, seek your input  
23 into maybe alleviating some of the unfortunate events  
24 that occurred with pesticide in the past?

25 **Proceeding Time 12:22 a.m. T39**

26 MR. MUIR: A: B.C. Hydro has provided us with two

1 documents that may be used to help facilitate that  
2 discussion. One was the one I couldn't remember  
3 earlier today but it was the environmental management  
4 plan, and I do recall a vegetation document as well.  
5 Those are the types of documents that usually we  
6 discuss -- the mitigation and monitoring of a project  
7 is a second part of the community analysis. We first  
8 look at whether the project should go ahead or not.  
9 And if it should go ahead, or if it's able to go ahead  
10 under treaty rights, then how should it go ahead. So  
11 it's a second layer to that discussion.

12 So B.C. Hydro has produced documents that  
13 would help in that discussion. We have not gone into  
14 a meaningful discussion with them on it yet because  
15 the first step was the community report that we have  
16 in front of us today. That then provides us with a  
17 stepping stone in order to understand what we need to  
18 talk about for those very specific documents.

19 MR. MILLER: Q: I talked a bit to you earlier about  
20 the use by other First Nations of the Treaty area, so  
21 that there was -- and I know this wasn't your term --  
22 there was some competition for the available resource  
23 amongst the First Nations. There was only so much and  
24 everyone is trying to access it.

25 Another pressure, am I correct, on hunting,  
26 or hunting rights, I should say, for the West Moberly

1 Nation is competition from recreational hunters,  
2 right?

3 MR. MUIR: A: Yes.

4 MR. MILLER: Q: And by those I mean non-First Nation.  
5 Those without treaty rights, okay?

6 MR. MUIR: A: Yes.

7 MR. MILLER: Q: How do you see the impact, if any, of  
8 this proposed transmission line on further competition  
9 with recreational hunters?

10 MR. MUIR: A: When I first arrived at West Moberly, it  
11 was right in the midst of hunting season, and this was  
12 part of the discussion they first had with me, and  
13 they said, "We don't want to talk to you much, go out  
14 and see for yourself. Go out for a ride with a couple  
15 of community members and they will show you the land."  
16 And when I went out, I very quickly realized what  
17 their point was. During hunting season, especially in  
18 good moose habitat such as in this area, there's  
19 hunters everywhere. We had one member of council,  
20 when he was out on one of his trails, get shot at. He  
21 had a bullet go over his head, and he had to duck and  
22 he had to crawl out. It's very dangerous there in  
23 hunting season in some of these areas. There's every  
24 little nook and cranny has a camper or a tent for  
25 hunters.

26 When you go on these linear corridors, this

1 provides access further and further back into these  
2 areas that community members, especially, would hunt  
3 in. So every linear corridor that is constructed  
4 provides that access to others. The rule of thumb we  
5 usually use is even if it's removed from a vehicle, so  
6 driving in your SUV, if you can still get in with your  
7 little ATV, your little quad, then we'd have another  
8 couple of kilometres on top of that. And they put  
9 their little trailers and they go further back in. So  
10 every linear disturbance provides a greater access for  
11 non-First Nations to use the area. And they are used  
12 frequently.

13 If you go out to any of them, you'll see  
14 little quad trails down just about any linear  
15 disturbance there is, especially the seismic trails  
16 which are just littered across the whole landscape.

17 MR. MILLER: Q: Has West Moberly noticed any  
18 difference between the competition with recreational  
19 hunters on transmission corridors which are on Crown  
20 land as opposed to private land?

21 In other words, is B.C. Hydro's suggestion,  
22 or proposal to build a large chunk of the project on  
23 private land going to lessen or be a lesser evil for  
24 the First Nation as compared to taking up more Crown  
25 land.

26 MR. MUIR: A: In terms of access to the animal, that's

1 a difficult question to, I guess, answer. If they  
2 had access to it, well, then yes, that would increase  
3 the competition. If they don't have access to it, the  
4 competition may still be increased because the moose,  
5 if it is on private land, well, eventually that moose  
6 walks off of private land and can be accessed by the  
7 community elsewhere. So again, these species, they  
8 don't just stand around. Different species have  
9 different ranges that they live within. So in terms  
10 of the species and access to it on private land, if  
11 they don't have access from that private land holder  
12 to go on their land and shoot it, then there still  
13 could be an impact in terms of whether that moose on  
14 that private land would walk off it before getting  
15 shot by an individual on private land.

16 **Proceeding Time 12:22 a.m. T40**

17 MR. MILLER: Q: Yes, I acknowledge that point. I  
18 guess my -- the premise under the question, and which  
19 I am not sure if you agree with or not is that usually  
20 private land owners don't allow the sort of access  
21 that recreational hunters may have to Crown land. Is  
22 that a fair premise.

23 MR. MUIR: A: There is a difference between the two,  
24 yes.

25 MR. MILLER: Q: And private land owners generally  
26 being more restrictive with granting access than might

1 otherwise be available on Crown land, correct?

2 MR. MUIR: A: Yes.

3 MR. MILLER: Madam Chair, I'm going to move into a new  
4 area so I don't know if this is a convenient time or  
5 if you wish me to continue until 12:30.

6 THE CHAIRPERSON: Thank you, Mr. Miller. This looks  
7 like a very good time. So let's come back here at ten  
8 to two. Is that about right?

9 MR. MILLER: 1:50?

10 THE CHAIRPERSON: An hour and a half. 1:50, yes, please.

11 **(PROCEEDINGS ADJOURNED AT 12:23 P.M.)**

12 **(PROCEEDINGS RESUMED AT 1:54 P.M.)**

**T41-42**

13 THE CHAIRPERSON: Please be seated. Mr. Miller, you are  
14 going to continue.

15 MR. MILLER: Thank you, Madam Chair.

16 **CROSS-EXAMINATION BY MR. MILLER (Continued):**

17 MR. MILLER: Q: Mr. Muir, does West Moberly agree with  
18 the sentiment that to the extent the proposed DCAT  
19 corridor makes use of existing corridors, that there  
20 will be a lesser ecosystem impact than if B.C. Hydro  
21 proposed the land through say virgin Crown territory?  
22 In other words is the fact that they tried to follow  
23 what may be called already disturbed roots, is that of  
24 any comfort to West Moberly?

25 MR. MUIR: A: It depends on the situation, and in some  
26 cases we've had proponents come to the community and

1 say, "We're going to use existing disturbance or widen  
2 the right of way by a little bit." In many cases  
3 having one right of way is better than having say four  
4 or five. However, it comes a question for the  
5 community is: How big is that right of way and where  
6 is it? So it's very specific to that case.

7 In this situation it did not seem like  
8 following the existing right of way was considered a  
9 bad idea. I think that was more favourable in this  
10 case. For how much of the pipeline when you get  
11 around the Pine River area, that still remains a  
12 question mark whether it should follow the existing  
13 pipeline or should go somewhere different. The treaty  
14 land entitlement concern in the area as well as some  
15 of the treaty rights in that area, leave that  
16 particular -- the East Pine area a little bit in  
17 question as to whether it should follow an existing  
18 right of way. Perhaps even -- some people comment on  
19 whether it perhaps should be under the road and things  
20 like that. So a large portion of it there was no  
21 significant concern around following the right of way,  
22 but the East Pine area it was a little bit different.

23 MR. MILLER: Q: Okay. So I think earlier this morning  
24 and I don't want to put words in your mouth, but I  
25 think you said words to the effect that the production  
26 of the report was step one, and now we need to engage

1 in further consultation to try and lessen the effects,  
2 if we can, or to see if the project is suitable for  
3 West Moberly. Is that somewhat accurate?

4 MR. MUIR: A: Yeah, that's pretty accurate. The  
5 information that was just filed on Friday by B.C.  
6 Hydro, the information about the moose, that contained  
7 information that would have been very valuable earlier  
8 on in the consultation process, if we would have had  
9 that to comment on and perhaps refine. So that's a  
10 good example of something where, now that we have our  
11 report, we had this additional information that we can  
12 now continue with and discuss further.

13 MR. MILLER: Q: Okay now, I realize you're not employed  
14 with West Moberly and I can ask the chief this  
15 question if you're not comfortable answering this.  
16 What do you see the timeline being for further  
17 consultation efforts that West Moberly would like to  
18 have undertaken?

19 MR. MUIR: A: That's probably a question best left to  
20 the chief because it has to do with future  
21 consultation. I think that would be overstepping my  
22 bounds, my current role.

23 MR. MILLER: Q: Okay. I will ask the chief that  
24 question. But based on your experience as a land  
25 manager and having some capacity in the environmental  
26 department, could you put a time frame on it: This

1 would be the shortest and could go this long. Could  
2 you give the Panel, based on your experience, a bit of  
3 a guesstimate, I guess, as to what the timeline might  
4 be?

5 MR. MUIR: A: Notwithstanding some say capacity, some  
6 timing in the time issues and resources in terms of  
7 financial ability and human capital as well to do the  
8 work, and a willing proponent to work with the  
9 community, it could range depending on how much work I  
10 guess you want to do and how many studies may be  
11 involved in it, anywhere from say six months to say a  
12 couple years.

13 MR. MILLER: Q: You mentioned in your answer the  
14 availability of human capital, and also resources,  
15 financial resources to be able to do work. And you've  
16 mentioned already that your -- or sorry, your former  
17 employer, that West Moberly here gets inundated to  
18 some extent with these consultation obligations. We  
19 have various proponents coming forward. How much of a  
20 burden was that for West Moberly in trying to respond  
21 to Hydro's questions, or information on impacts that  
22 they were seeking?

23 **Proceeding Time 1:59 p.m. T43**

24 MR. MUIR: A: I would say it's about average in terms  
25 of our pressure. We have a lot of proponents all at  
26 once, and, like, we try to be respectful of each

1       proponent. Everyone's project is the most important  
2       thing in their world. The problem is, their world,  
3       they have one or two. In our world, we have a couple  
4       of hundred ongoing, some of them very large, like the  
5       EAs, around, perhaps, that 10 to 20 mark. We did find  
6       it very difficult to provide information perhaps as  
7       quickly as Hydro did. But it's because we're working  
8       other projects asking the same type of information.  
9       Not Hydro projects *per se*, but other projects, say  
10      mines or oil and gas or forestry. So it's something  
11      we struggle with all the time in the office, is who's  
12      going to do this? And how can we get it done quicker?

13                   We try our best within what we have. We  
14      only have a couple of people in the office to do work  
15      like this. And community members only have so much  
16      time as well. So we really wanted to -- we did focus  
17      on the report, that was our main thing. That's the --  
18      really, that kind of gets our office engaged, in terms  
19      of the consultation, because now we have some  
20      substantive input from the community. So, was it a  
21      challenge? Yes, it was a challenge, and it was very  
22      similar to some of our other challenges internally as  
23      well.

24   MR. MILLER:    Q:    Okay.

25   MR. MUIR:     A:     But I do think we tried our best.

26   MR. MILLER:    Q:     Okay. B.C. Hydro has proposed several

1 alternative routes for the possible DCAT line. And  
2 they have sent those possible alternatives to West  
3 Moberly, correct?

4 MR. MUIR: A: To the best of my knowledge, yes.

5 MR. MILLER: Q: From a wildlife and let's say hunting,  
6 that aspect of the treaty right, is there one route  
7 that West Moberly is aware of that has less impact  
8 than others?

9 MR. MUIR: A: I think it was the existing -- I do  
10 recall a discussion around the -- the power line where  
11 it currently crosses the river.

12 MR. MILLER: Q: Yeah.

13 MR. MUIR: A: And placing it there, more than anywhere  
14 else. So in terms of lessening -- if you took the  
15 same general route, like that general area, then the  
16 current placement of the -- current, pardon me, the  
17 placement of the current power line would be it. And  
18 the second one, I've heard people talk about -- and I  
19 don't know if this is possible, but underneath the  
20 road or the rail line so two -- there is two things  
21 that cross the river, perhaps attaching it to that or  
22 something like that.

23 MR. MILLER: Q: Going along the side of the railway  
24 line? Is that what you're suggesting?

25 MR. MUIR: A: Yeah. Well, that's what some people in  
26 the community talked about, that when we started

1 getting into this a little bit more towards the end,  
2 they started putting their minds towards other  
3 possibilities.

4 MR. MILLER: Q: Did you explore with B.C. Hydro at all  
5 whether or not they had access to railway lines, such  
6 that that alternative might be considered?

7 MR. MUIR: A: The first alternative that was put  
8 forward by the community was the tunneling under.  
9 That was the preferred approach. There was some  
10 discussion around, is it possible to do that? Those  
11 are discussions I guess we had hoped to have with  
12 Hydro, that if tunneling is an option, or the roads --  
13 those are some questions we just don't know at this  
14 time.

15 MR. MILLER: Q: Okay. In the report, there is a  
16 discussion about the concept of threshold for  
17 sustainability, particularly with respect to wildlife.

18 MR. MUIR: A: Mm-hmm.

19 MR. MILLER: Q: Given the various corridors that have  
20 been proposed by B.C. Hydro, do any of them, to your  
21 knowledge, or as expressed by members of the West  
22 Moberly nation, do any of those alternatives cause a  
23 real issue for any species being at threshold for  
24 sustainability?

25 MR. MUIR: A: Grizzly bears were a particular concern.  
26 Grizzly bears do not like -- we know they don't like

1 any type of human disturbance. They stay away from  
2 things. Grizzlies are a very important species. Some  
3 of them are very spiritual to community members.  
4 There was no assessment of what this would add to the  
5 landscape.

6 **Proceeding Time 2:04 p.m. T44**

7 When people look it and they say, "Well,  
8 this is only 2 hectares," I don't know if that's the  
9 exact amount but for example if it's 2 hectares, "It's  
10 only a small piece, don't worry about it." Well, it's  
11 2 hectares adding to what? What has been already  
12 impacted? And when you look at grizzly bears, and we  
13 do have that in the report, there is a map page 191,  
14 this is a map out of a report done by Global Forest  
15 Lodge where they looked at the human disturbances on  
16 the landscape such as linear disturbances from power  
17 lines, roads, pipelines, as well as more the polygon  
18 impact from well sites, private land, forestry cut  
19 blocks. And they looked at, well, what does this mean  
20 in terms of grizzly bears? Well, this is what they  
21 came back with, and they applied the zone of influence  
22 buffer by about 500 metres. So every road, for  
23 instance, would be buffered by 500 metres either side,  
24 based on what the animals may or may not -- it's not  
25 enjoyable for them to be within those zones.

26 So when you look at, well, that covers

1 a very large portion of that review area in terms of  
2 impacts to grizzly bears. Grizzly bears are important  
3 to the community as well as, my understanding, the  
4 broader society of British Columbia. Well, if grizzly  
5 bears are important, well, this really calls into  
6 question our management approach to grizzly bears. We  
7 can't say we like something and then on the other hand  
8 not do anything to protect them.

9 And in this case, the grizzly bears weren't  
10 an a valid component. They were moot removed kind of  
11 based on the logic that they wouldn't like it. Well,  
12 that's the very reason why you include something. If  
13 a species doesn't like your project, you need to  
14 consider it. The extent at which you consider it is  
15 always something that you need to consider and look at  
16 within the review process. But at a bare minimum it  
17 should have been included as a valid component.

18 And for moose it's a little bit different  
19 for the threshold because it's -- they are more  
20 resilient to certain types of industrial development.  
21 That being said, then you have issues of predation.  
22 And the reports that I have read with respect to  
23 moose, they talk about moose being resilient. But  
24 none of those studies that I've ever read actually  
25 look at moose and their resilience as a population  
26 within a setting that we have in the northeast. When

1       you start adding in those 6,000 cut blocks, 100,000  
2       kilometres of pipelines and everything else, do those  
3       assumptions or scientific studies that have been done  
4       elsewhere apply in this area? Well, those are some  
5       questions committee members have raised quite often.  
6       Is this actually applicable here? We don't think  
7       there's anywhere else in B.C. that looks like this.  
8       Alberta, different story because they have the tar  
9       sands.

10               But when you look at -- other areas of B.C.  
11       might be okay. The moose might be able to take a  
12       power line with say a couple of thousand cut blocks,  
13       but what about the 18,000 wells and the 10,000  
14       facilities? When you look at that broader picture it  
15       becomes at least a question you need to ask and do  
16       some type of investigation rather than just an  
17       overview.

18   MR. MILLER:   Q:   Okay. One of the alternatives, if I  
19       can put it that way, to at least serving some of the  
20       customers that B.C. Hydro is going to serve if this  
21       goes ahead is gas-fired generation for some of the gas  
22       producers. What is West Moberly's preference, if it  
23       has one, with respect to these plants either being  
24       supplied by electricity, needing a transmission line  
25       or having the producers use gas to generate the power  
26       they need? In other words, is gas-fired generation a

1 better option from West Moberly's perspective than a  
2 transmission line?

3 MR. MUIR: A: I think it was an option that they  
4 thought ought to be considered.

5 MR. MILLER: Q: And I'm asking for what's Moberly's  
6 opinion.

7 MR. MUIR: A: That might be a question I would pose of  
8 the chief because it's a position of the nation which  
9 I cannot give.

10 MR. MILLER: Q: Okay. From your knowledge would gas-  
11 fired generation have an ecological effect?

12 MR. MUIR: A: Everything humans do does. Is it greater  
13 or less? That's part of the analysis.

14 **Proceeding Time 2:09 p.m. T45**

15 MR. MILLER: Q: Now, at page 130 of the report there is  
16 a reference to the Groundbirch area and I think you  
17 talked about it earlier, being a significant location  
18 for West Moberly members. And there is, I think, some  
19 indication that people still camp in that area, and  
20 people still hunt, and do other activities. Can you  
21 shed a little more light on what use, to your  
22 knowledge, the West Moberly members have made in the  
23 recent past and are making now, of that area?

24 MR. MUIR: A: One example I could use, the individual  
25 was not -- best of my knowledge, that individual was  
26 not interviewed for this process, but their family has

1 a culture camp that's up in the area. And a culture  
2 camp, to put it simply, is the immediate family -- so,  
3 West Moberly has four families, so that family is one  
4 of the families -- would gather in a certain area, so,  
5 I don't know, depending on the family anywhere from 20  
6 to 30 people will come out and camp for one to two  
7 weeks in one spot. Hunters would be there as well.  
8 People, during the day, would do various activities  
9 depending on the area. Different camps focus  
10 sometimes on different things. Sometimes there is  
11 just a camp for fishing. And they focus on just  
12 catching fish. Well, when some are fishing, some also  
13 might be out hunting. So it's not that a fishing camp  
14 -- they don't pick berries and they don't hunt. It's  
15 just that's the location is primarily there to do one  
16 activity sometimes.

17 In other cases, it's multiple activities.  
18 In this particular area I am aware of a culture camp  
19 that is more land-based. It's not necessarily  
20 fishing. People may fish in the area, but it's not  
21 necessarily chosen for fishing. While there -- so the  
22 adults, if they're out hunting with some of the youth,  
23 that they're teaching how to hunt, so it's an  
24 important transmission of knowledge. While someone is  
25 out hunting, they're obviously bringing -- perhaps  
26 their kids or someone else's kids with them, younger

1 kids might be out with, say, some of the elders  
2 picking berries, and learning about berries and  
3 medicine. So the camp itself is this very interesting  
4 cultural phenomenon, if you will, from a social  
5 science perspective, of how they use the land base.  
6 Well, within that traditional seasonal round we're  
7 talking about, very important role is at camp. And  
8 what that camp does, each camp has a rough spatial  
9 area that's important to it, and that they hunt  
10 within. And that they may pick berries. Usually  
11 certain elements like, say, picking berries, the  
12 teaching berry sites, are closer to the camp, whereas  
13 some of the very good berry picking might be a little  
14 bit further but that's where the adults go, or maybe  
15 it's a day trip with the kids or something.

16 So it really depends on each family on how  
17 the culture camp would operate. And there is one of  
18 those within this area.

19 MR. MILLER: Q: Okay, so, do we -- or do you know, I  
20 should say, in what sort of proximity that cultural  
21 camp is to any of the facilities being proposed as  
22 part of the DCAT project?

23 MR. MUIR: A: We are in the midst of actually  
24 completing our culture camp project. Usually what  
25 elders do when they tell us about their camps, they  
26 put their hand on a map and say, "Here." One family I

1       knew -- she put her hand on a map, said she had a camp  
2       there and I needed to protect all their different  
3       activities. But I was never told exactly where.  
4       After working with them for three years, I was told  
5       where the camp was. After five years, I was allowed  
6       to go to the camp, but only after they left. Right?  
7       And this was a community -- this was part of teaching  
8       in the community, right? I kind of saw it coming. I  
9       understood it. Well, just before I left, that elder,  
10      for the first time, last year, told me where her berry  
11      site was. And for me to go and check her berries. So  
12      it's kind of difficult to put a -- I can't pinpoint  
13      it. But I can tell you the general location and it's  
14      -- I'm just trying to see if there is a good map to --  
15      I guess what I can say, it's in between where the  
16      Murray River and the Pine meet. And it's further  
17      north than the Pine River.

18   MR. MILLER:   Q:   Which map are you looking at?

19   MR. MUIR:     A:   Oh, I'm not looking at a map.

20   MR. MILLER:   Q:   Oh.

21   MR. MUIR:     A:   I just -- I can't find a really good map  
22      that would illustrate it.

23   MR. MILLER:   Q:   But can you give us some sort of, like,  
24      distance, even if it's only a rough approximation?  
25      Are we talking one kilometre, ten kilometers, 50  
26      kilometers. What sort of distance are we talking

1 about?

2 **Proceeding Time 2:14 p.m. T46**

3 MR. MUIR: A: It is probably just north of where they  
4 have identified treaty land entitlement, around the  
5 Stewart Lake area. Stewart Lake itself has camping,  
6 and they have done camps there. I don't know if that  
7 was used last year though. This camp I am talking  
8 about was used very recently. I know Stewart Lake  
9 itself is very important for a lot of different  
10 reasons. The Groundbirch area did have some camps  
11 identified that were used in the past.

12 The Culter camp that I am specifically  
13 talking about right now is further north of Stewart  
14 Lake. And how much further north I'd need a better  
15 map. I think Stewart Lake is 15, 20 kilometres maybe,  
16 north of the line. So, the camp would be a little bit  
17 further north of that.

18 MR. MILLER: Q: Okay.

19 MR. MUIR: A: And when they are at a camp, usually  
20 everything they do is within a days drive maybe. And  
21 in terms of hiking, it would be a couple days hike  
22 perhaps. That is roughly the space unit. Unless they  
23 are out in the mountains, and then it is much  
24 different. They actually situation camps with wind,  
25 because the smoke and animals, so it is a lot more  
26 complicated how they situate it. But out in this

1 area, some of those variables don't come into account.

2 MR. MILLER: Q: Now, you reference earlier what I am  
3 going to call the moose study habitat, or the moose  
4 habitat study that was Exhibit B-34?

5 MR. MUIR: A: Okay.

6 MR. MILLER: Q: When did West Moberly first get that  
7 report?

8 MR. MUIR: A: Sorry, is this the exhibit? I just don't  
9 have it written down. Is this -- apologies. Is this  
10 appendix B?

11 MR. MILLER: Q: Yes.

12 MR. MUIR: A: To the evidentiary update?

13 MR. MILLER: Q: Yes.

14 MR. MUIR: A: We received this, I think, late Friday.

15 MR. MILLER: Q: Okay, did you have any input into --  
16 when I say "you" I mean more properly, West Moberly  
17 members. Did they have any input into the contents?

18 MR. MILLER: A: No.

19 MR. MUIR: A: No.

20 MR. MILLER: Q: No?

21 MR. MUIR: A: This is the first we became aware of it,  
22 when it was submitted to BCUC.

23 MR. MILLER: Q: And I know that if you just got it  
24 recently, you probably only had a limited chance to  
25 read it, right?

26 MR. MUIR: A: Yeah. Yes.

1 MR. MILLER: Q: Are there any points that you, or if  
2 you are able to say, West Moberly, are either strongly  
3 in agreement with, or strongly in disagreement with?

4 MR. MUIR: A: It would be difficult at this time to say  
5 whether we are in strongly agreement or disagreement,  
6 because it hasn't been thoroughly examined. I did  
7 flip through it quickly, I read the introductions. I  
8 read some pieces of the body and read the conclusion.  
9 The conclusion did raise a concern, it is on page 26  
10 of 45, or 23 of the report, but 26 of 45 I think of  
11 the submission where the conclusion is.

12 In the conclusion it states that:

13 "As much of the proposed DCAT project is on  
14 areas that are already significantly altered  
15 by agriculture, residential development and  
16 existing right-of-ways, little additional  
17 impact is anticipated on moose numbers and  
18 movement."

19 What is concerning here is, we are back to this little  
20 thing, "in addition to what?" In this report and I've  
21 quickly flipped back through it, I didn't find  
22 anything that actually looked at that broader  
23 landscape. Like what are we talking about? There is  
24 two hectares, two hectares of the last 10 hectares?  
25 So it is not put into context. And when we say  
26 "impact anticipated on moose numbers," well based on

1 the one report that was put forward by British  
2 Columbia's report on moose, it states that their moose  
3 data is outdated for population surveys.

4 So, again that would be another concern I'd  
5 have, is well, how do we know it is a small impact,  
6 first off. And how do we know it is a small impact on  
7 moose numbers if we don't have the scientifically  
8 credible data on moose populations? And that is not  
9 in West Moberly's perspective, that is British  
10 Columbia's own view on how it needs to update moose  
11 numbers. From what I recall it is every three to five  
12 years they need to update their population surveys.  
13 Well, in this case, as the one document reads, I think  
14 the last time they did a moose survey in these  
15 management units was 2004. Well, that puts it  
16 outdated by three to five years, and perhaps a bit  
17 longer.

18 **Proceeding Time 2:18 p.m. T47**

19 MR. MILLER: Q: So if you're going to be saying it's  
20 not a big impact on something, well, we don't know  
21 what the current moose number is, are. Since 2004,  
22 not only do we have the hunting that's been maintained  
23 at the current level but we also had about five years  
24 ago, from what I recall, a very bad winter where we  
25 had reports coming back from some members on their  
26 trap line where one member reported ten dead moose,

1 another reported 42 dead moose. It was a very very  
2 bad winter for moose. The community estimated up to  
3 70 percent of the population died in some areas.

4 When a councillor and myself discussed this  
5 with the Ministry of Environment, the individual there  
6 estimated that their biologist said, well, perhaps 50  
7 percent of the moose population died. Well, the  
8 following year, none of the moose numbers were reduced  
9 to take that into account. So when we look at the  
10 current population number, we're very concerned about  
11 whether there is enough to maintain a basic hunt for  
12 First Nations let alone everybody else hunting.

13 So we started looking at the community and  
14 their traditional seasonal round, have a treaty right  
15 to harvest a surplus of moose, well, when we look at  
16 the level of impact to the species and the fact we  
17 don't have updated information, that's of concern to  
18 us.

19 So that's the one thing that kind of, I  
20 guess, grabbed my attention right away. I didn't see  
21 that type of analysis in the report. However, I did  
22 not read it thoroughly. I did flip through it. I  
23 didn't see any type of spatial assessment.

24 MR. MILLER: Q: I want to next direct your attention to  
25 the appendices to the report because I want to  
26 identify where some of these maps came from, so I want

1 to run through them with you. At least on my copy of  
2 the report it starts on page 168.

3 So the first one is from the Department of  
4 Indian Affairs. It's titled "Map of Treaty Number 8",  
5 so that one's fine. The next map though on page 169,  
6 can you share with us the source of this map?

7 MR. MUIR: A: This map was generated by West Moberly.

8 MR. MILLER: Q: Okay. When approximately?

9 MR. MUIR: A: For this project, so within the past six  
10 months roughly.

11 MR. MILLER: Q: And then the map on page 170.

12 MR. MUIR: A: Same thing.

13 MR. MILLER: Q: So it's going to be the same series of  
14 questions, so I don't know if you just want to keep  
15 flipping through and tell us the origin of the maps.  
16 So next one's Figure 20.

17 MR. MUIR: A: Generated by West Moberly roughly within  
18 the same time frame.

19 MR. MILLER: Q: Figure 21?

20 MR. MUIR: A: Same thing.

21 MR. MILLER: Q: Figure 22 it looks like coming from  
22 Hydro, is that correct?

23 MR. MUIR: A: Yeah. This one raised a little bit of  
24 concern. I wasn't aware of the GDAT, that's what it's  
25 called, power line until this process. So this was a  
26 little bit of concern. It was identified by one of

1 the interveners, which kind of drew my attention to  
2 it. And then I don't recall where this presentation,  
3 it was -- I think we got it off a Google search of the  
4 internet. So that map was from a PowerPoint  
5 presentation that was done by B.C. Hydro. I'm not  
6 sure where the presentation was done but it was done  
7 recently.

8 MR. MILLER: Q: So just to follow up on your answer  
9 there, when do you recall first becoming aware of  
10 GDAT?

11 MR. MUIR: A: During this --

12 MR. MILLER: Q: When?

13 MR. MUIR: A: The DCAT process.

14 MR. MILLER: Q: When? A year ago? Six months ago?  
15 Closer to two years ago?

16 MR. MUIR: A: Oh no, no. This is more recently. Six  
17 months maybe.

18 MR. MILLER: Q: Okay. Figure 23?

19 MR. MUIR: A: This is from the same presentation.

20 MR. MILLER: Q: This is a Hydro map?

21 MR. MUIR: A: Yes.

22 MR. MILLER: Q: Figure 24?

23 MR. MUIR: A: Same thing.

24 MR. MILLER: Q: Figure 25?

25 MR. MUIR: A: This map was generated by West Moberly in  
26 conjunction with the other maps that West Moberly

1 generated.

2 **Proceeding Time 2:23 p.m. T48**

3 MR. MILLER: Q: So just to stop here on Figure 25, so  
4 we've got quite a large legend showing us various  
5 things. Where did all this information come from?

6 MR. MUIR: A: All of this information is from the  
7 British Columbia database.

8 MR. MILLER: Q: Okay.

9 MR. MUIR: A: So this is data generated by British  
10 Columbia, it's not created by West Moberly. It's  
11 provided to West Moberly through a data-sharing  
12 agreement between the Crown and the nation. What you  
13 see in the picture here is, the darker orange is the  
14 best moose habitat. And then it kind of goes down  
15 from there. The lighter orange is the next class, and  
16 then the yellow, and so on. As you can see, quite a  
17 bit of the moose habitat in map 25, when you flip over  
18 to the following map, map 26, you can see now the  
19 concern from the community when we talk about impacts  
20 the moose habitat. There is quite a bit of impacts,  
21 and you can barely see some of those colours any more.

22 MR. MILLER: Q: Okay. So Figure 26 is a West Moberly  
23 map as well?

24 MR. MUIR: A: Yes. And the data that's over top of  
25 that, that looks like the oil and gas data.

26 MR. MILLER: Q: Okay.

1 MR. MUIR: A: That's also derived from British  
2 Columbia.  
3 MR. MILLER: Q: Figure 27.  
4 MR. MUIR: A: The same thing.  
5 MR. MILLER: Q: West Moberly map?  
6 MR. MUIR: A: Yeah. So that's the spatial area  
7 identified by B.C. Hydro, the seven-kilometre buffer.  
8 MR. MILLER: Q: Figure 28?  
9 MR. MUIR: A: Same thing.  
10 MR. MILLER: Q: Figure 29?  
11 MR. MUIR: A: This comes from a report that -- there  
12 was a consulting firm, it appears, that generated a  
13 report for B.C. Hydro. And this again was found on a  
14 Google search.  
15 MR. MILLER: Q: Okay, then we go to Appendix 2 for some  
16 more maps. So, Figure 30.  
17 MR. MUIR: A: So, Figure 30, now, this area is a little  
18 bit smaller than the review area of West Moberly. So  
19 this -- the spatial unit outlined by the red, I'm  
20 pretty sure would fit inside of the spatial unit. The  
21 review area, pardon me. And this illustrates the  
22 intact forests that remain in West Moberly's  
23 territory.  
24 MR. MILLER: Q: Okay. Figure 31.  
25 MR. MUIR: A: Figure 31. All of these maps in this  
26 appendix are from the same source, from the global

1 force watch report that we've included here. So, map  
2 31 illustrates the oil and gas wells that are within  
3 the spatial unit.

4 MR. MILLER: Q: Okay. So let's go to Appendix 3, then,  
5 which is starting with a map of what's entitled  
6 "Management unit 719." Where does this map come from?

7 MR. MUIR: A: These maps -- now, these spatial units  
8 are of British Columbia's wildlife management unit.  
9 So if you'll open up the hunting regulations, the  
10 synopsis, these special units are British Columbia's,  
11 and how they look at managing certain species. So  
12 each of them comes from British Columbia. And what is  
13 inside of it for the spatial data is from British  
14 Columbia, and it's just clipped for each unit.

15 MR. MILLER: Q: Okay, and then we can go to Appendix 4,  
16 and there is one final map. It's called Figure 40,  
17 "Map of oil and gas tenures in the review area".  
18 Whose map is this?

19 MR. MUIR: A: This map is generated by West Moberly as  
20 well. And the data comes from British Columbia.

21 I guess you could see, if you look at  
22 Figure 40, you can see the lake getting surrounded by  
23 the oil and gas activities.

24 MR. MILLER: Q: Mm-hmm. Okay, in March, 2012, B.C.  
25 Hydro submitted, you call them revisions or updates to  
26 the proposed routes, or all possible routes for the

1 DCAT project. Did West Moberly have any input into  
2 the *rooting* changes, or *routing* changes?

3 MR. MUIR: A: Not to my knowledge, no.

4 MR. MILLER: Q: Have you had an opportunity to see if  
5 the proposed changes from March of 2012 had a lesser  
6 or greater impact on West Moberly Nation's members'  
7 rights?

8 MR. MUIR: A: No, we have not.

9 MR. MILLER: Thank you, Mr. Muir. Those are staff's  
10 questions, so I guess now would be appropriate if the  
11 panel has any questions, you could ask them now. Ms.  
12 Rana, I understand, has some rebuttal -- or, sorry,  
13 reply cross, reply, examination, to do. Or you could  
14 hold your questions till the end.

15 COMMISSIONER MORTON: Mr. Muir, I have a question about  
16 the "Oh, my God" phone call. And I'm just wondering,  
17 was that a planned call?

18 **Proceeding Time 2:34 p.m. T49**

19 MR. MUIR: A: Yes, it was.

20 COMMISSIONER MORTON: Between you and Hydro?

21 MR. MUIR: A: I believe so, yes.

22 COMMISSIONER MORTON: Okay. And what was -- can you  
23 remind me, I'm sorry if you've already told us, but  
24 what was the purpose of the -- what was the planned  
25 purpose of the phone call?

26 MR. MUIR: A: The planned purpose, from my perspective,

1 for what we do in the community is making sure we get  
2 the one big question answered that could be very  
3 concerning to community members, and that's -- we turn  
4 to the "Oh, my God" issue because we came across one  
5 project where something was missed, and some very  
6 important sacred -- a dreamer's sacred area was  
7 revealed and it already had been impacted. So now we  
8 kind of -- from there we learned from how we should  
9 approach things, proposals, so now we'd always ask the  
10 question to the community very quickly, is there an  
11 "Oh, my God" issue in here? So if we're doing  
12 interviews or something, is there something here we --  
13 is extreme concern that we really need to get a hold  
14 of the proponent or anything like that, put the brakes  
15 on, have a meeting with chief and council, talk about  
16 something very serious.

17 COMMISSIONER MORTON: So when you asked Hydro for the  
18 call or when you set the call up, you explained that  
19 that was what you -- that was the purpose of the call?

20 MR. MUIR: A: From what I recall it was kind of, I  
21 would say, mutually agreed to. I don't think it was  
22 myself or Hydro necessarily asking one or the other.  
23 Obviously one person started the conversation, of  
24 course. But I think it was mutually agreed to, we  
25 need to talk.

26 COMMISSIONER MORTON: Right.

1 MR. MUIR: A: Like soon rather than later if there are  
2 big issues and they wanted to have an update. So I --  
3 COMMISSIONER MORTON: Okay. All right, thank you.  
4 MR. MUIR: A: You're welcome.  
5 THE CHAIRPERSON: The Panel has no further questions, so  
6 thank you, Mr. Muir.  
7 MR. MUIR: A: Thank you.  
8 THE CHAIRPERSON: Ms. Rana?  
9 MS. RANA: Thank you.  
10 **RE-EXAMINATION BY MS. RANA:**  
11 MS. RANA: Q: I just have a couple of questions for you  
12 on redirect. The first few arise from Mr. Sanderson's  
13 examination of you this morning, particularly with  
14 respect to the draft report. If you recall, counsel  
15 asked you about some of the changes that had been made  
16 from the first draft and final draft, and I just  
17 wanted to ask you what was your understanding of what  
18 was to be included in the draft report that you  
19 provided to B.C. Hydro on June the 6<sup>th</sup>?  
20 MR. MUIR: A: It was my understanding we provided where  
21 we are at that point. So as much information that --  
22 wherever we are in the draft, then we provide that to  
23 them. So there was no commitment to have some  
24 information more than others. My goal was to provide  
25 them with as much as we could, especially the  
26 community's voice. That was the important part is

1 getting that data in front of them so they could see  
2 what the concerns were. And I think we accomplished  
3 that. It was a draft. That was the first we have --  
4 we normally don't use that procedure. I've never done  
5 it in all the time I've worked at West Moberly. We  
6 usually have always waited to the -- we finish the  
7 final draft and provide it. In this case it was  
8 discussed during negotiations that Hydro would like a  
9 draft as soon as we could, provide them something, and  
10 the date was settled on. And so at that point we  
11 provided them with everything we had.

12 MS. RANA: Q: And I believe it was your testimony this  
13 morning that in that draft report there were some  
14 headings that were there as headings but there was no  
15 content under them. I'm not going to ask you about  
16 specifics so --

17 MR. MUIR: A: Okay, sorry.

18 MS. RANA: Q: -- I don't think you have to worry about  
19 the report. But were there some headings there that  
20 contained -- in the table of contents that contained  
21 no content in the actual report?

22 MR. MUIR: A: Yes, when we were putting together the  
23 draft, I was starting to get a sense listening to  
24 community members, how we would have to start looking  
25 at the actual application that's in front of the BCUC.  
26 So we had drafted, or put in the draft, pardon me,

1       some headings that were right out of -- the headings I  
2       think were very close if not identical to the headings  
3       in the application itself. Then after we started  
4       getting into it, thinking about it a little bit more,  
5       we changed the headings to be more representative of  
6       what the community -- how they were explaining the  
7       story rather than how Hydro had put together their  
8       report.

9               So one example that I did notice was  
10       alternatives, where the first -- the draft had the --  
11       there was a heading saying "Project Alternatives".  
12       And the final report, the title was "Alternatives to  
13       the Proposed DCAT". So, and information was moved  
14       around a little bit.

15              For instance, the treaty right stuff that  
16       we did include in the final report was not in the  
17       initial report but it was moved from the end of the  
18       report to the front of the report. So a lot of it was  
19       just moving information around, how best to kind of  
20       explain, how the logic of what they're saying kind of  
21       would flow out. And with the community that's an  
22       evolving -- like, it's part of a learning process too.  
23       Part of community based research is the community  
24       learns, the proponent learns, the researchers learn,  
25       everyone is kind of going through that process. And  
26       in doing so, because we go back to the community and

1 we talk about things, the report at the end when we go  
2 to the community verification step, hopefully by then  
3 we've moved things around so it's articulated in a  
4 fashion that they think represents their concerns.

5 **Proceeding Time 2:34 p.m. T50**

6 MS. RANA: Q: Did the draft report contain all of the  
7 transcript excerpts from the interviews that appear in  
8 the final report?

9 MR. MUIR: A: Yes.

10 MS. RANA: Q: At any time did you, before providing the  
11 final report to B.C. Hydro, did you advise them that  
12 all of the transcript excerpts were included in the  
13 draft report?

14 MR. MUIR: A: Yes, I informed Hydro that the -- while  
15 some of the information if we find it repetitive, or  
16 something, we might take it out. If it is just kind  
17 of redoing things. If we thought one sentence will  
18 kind of explain something a little bit more we'd move  
19 it around. That came back to telling the story  
20 correctly. One elder, like the one comment we have at  
21 the end of the report, he talks about his kids all the  
22 time. His grandkids, pardon me, his 42 grandkids, or  
23 great grandkids, I can't remember what the number even  
24 is. But when he talks about impacts to land, that is  
25 what he says. That is his message to me, is don't  
26 forget about my kids. So that was kind of put as the

1 conclusion, because that is this one elder, that was  
2 his conclusion. That is what we need to be concerned  
3 about, is that one thing. So, it is some information  
4 was moved around, but the substantive body of it was  
5 not changed, no.

6 MS. RANA: Q: After you provided the draft report to  
7 B.C. Hydro, did they at any time raise any concerns  
8 with you about the completeness of the report?

9 MR. MUIR: A: Not to my recollection, no.

10 MS. RANA: Q: I just have one question to clarify that  
11 came out of the cross-examination from the commission,  
12 B.C. Commission lawyer, and that is respect to the  
13 moose habitat study, or appendix B of the recently  
14 filed evidence of B.C. Hydro. And you were asked if  
15 you received it before it was filed. Now, I just want  
16 to clarify, that you are no longer working for West  
17 Moberly First Nations, so are you aware of whether  
18 West Moberly First Nations received the evidence, or  
19 the study, before it was filed with the BCUC on --

20 MR. MUIR: A: I do not believe they received it before,  
21 no.

22 MS. RANA: Q: Thank you, those are all my questions.

23 THE CHAIRPERSON: Thank you, Mr. Muir, you have done your  
24 duty, so now you can be excused. Thank you.

25 MR. MUIR: Thank you.

26 (WITNESS ASIDE)

1 MR. MILLER: Madam Chair, I believe Chief Wilson is next,  
2 although I am informed it may take about 10 to 15  
3 minutes to set up for his presentation. So perhaps we  
4 could take a 15 minute break while that goes on.

5 THE CHAIRPERSON: That break will then serve as our  
6 afternoon coffee break, so we will return in 15  
7 minutes.

8 **(PROCEEDINGS ADJOURNED AT 2:36 P.M.)**

9 **(PROCEEDINGS RESUMED AT 2:52 P.M.)** **T52**

10 THE CHAIRPERSON: Please be seated.

11 **ROLAND WILLSON, Affirmed:**

12 **EXAMINATION IN CHIEF BY MS. RANA:**

13 MS. RANA: Q: Chief Willson, before you begin your  
14 presentation this afternoon, I just want to direct  
15 your attention to your biography that is found in  
16 Exhibit C5-21 on page 31 of that exhibit. Do you have  
17 that in front of you?

18 CHIEF WILLSON: A: Yes, I do.

19 MS. RANA: Q: And it states that you have been Chief of  
20 West Moberly since August of 2000. What was your  
21 position prior to being elected chief?

22 CHIEF WILLSON: A: Before I became chief in 2000 I was  
23 a councillor. I became councillor in 1999. I was  
24 councillor for a year. Prior to that I had a logging  
25 contracting company based out of Prince George and the  
26 surrounding area.

1 MS. RANA: Q: Your biography also states that you sit  
2 on several boards and councils. I believe there are  
3 four listed there. Could you take a moment to tell us  
4 about your role on those boards and councils?

5 CHIEF WILLSON: A: Sure. I currently sit as an AFN,  
6 Assembly of First Nations representative. I was  
7 appointed by the Regional Chief Shawn Atleo at the  
8 time for the BCAFN as a representative to the B.C.  
9 Energy and Mining Council. I currently still sit on  
10 that board as secretary treasurer for them. I am also  
11 currently sitting in the B.C. First Nations Gaming  
12 Council. B.C. is one of the only provinces in Canada  
13 that does not have a revenue sharing agreement in  
14 place with the local First Nations over revenue  
15 sharing on gaming, issues we're trying to negotiate  
16 with the province, unsuccessfully.

17 I also am on the executive sub-committee of  
18 the First Nations Pipeline Limited Partnership. We  
19 have 15 First Nations on the -- Pacific Trails  
20 Pipeline have a partnership with, now it's Apache in  
21 Canada in EOG, a 30 percent equity stake in that  
22 pipeline. I was appointed by the chiefs at the table  
23 to the executive group to that. I also am one of the  
24 founding members of the Northeast Aboriginal Business  
25 and Wellness Centre. It's one of three of the  
26 business development centres located in the province

1 of British Columbia, currently in the process of  
2 closing because of lack of funding from the federal  
3 government on it.

4 I sit on a bunch of other smaller boards  
5 and committees throughout the province. But that's  
6 about I think -- was that four?

7 MS. RANA: Q: That was four.

8 CHIEF WILLSON: A: Okay.

9 MS. RANA: Q: I'll just take you to your role as chief  
10 of a First Nation at this time and ask, what has been  
11 your involved in the DCAT project to date?

12 CHIEF WILLSON: A: Well, the primary -- the referral  
13 process resides in the lands office. My role is being  
14 involved in the initial discussions. When the  
15 referral first came in, we had some phone calls, a  
16 couple of conference calls with them, sat in in a  
17 couple meetings, being involved in some letters that  
18 were written primarily with my signature on them, to  
19 address some of the concerns that were identified  
20 through the process of the consultation.

21 And then primarily it's been mainly in the  
22 Land Use Office. We try and stay out of the -- once  
23 the referral comes in and it goes to the Land Use, it  
24 goes through the actual identified process that's  
25 structured there. We are a part of the negotiations  
26 of trying to get the agreement in place for the



1                   The presentation I'm going to do is, I've  
2                   put this together after the years of sitting on  
3                   council and listening, and seeing all the stuff that's  
4                   going on, and realizing that no one has taken a look  
5                   -- after 12 years of me being there, no one has ever  
6                   been identifying any of the cumulative impacts that  
7                   are going on. We talk about them all the time.  
8                   Everybody's aware of them, but nobody actually sits  
9                   down and has a discussion about them.

10                   So I started talking about this critical  
11                   balance, because the balance -- being First Nations,  
12                   we live in two worlds. We live in the modern world,  
13                   where we have to sit here and use laptops and stuff  
14                   like that, but also in a traditional sense of culture  
15                   and values of being able to teach my son how to hunt  
16                   and what the value of hunting is, and why we don't  
17                   hunt the caribou right now, or why the elders at  
18                   certain times pick certain medicines, while they're  
19                   doing other activities, and stuff like that. So,  
20                   we've got to be able to keep the balance between being  
21                   a part of mainstream society -- I have a job, I have a  
22                   car, I have to drive to work. I have a house, and I  
23                   have to pay a mortgage. Stuff like that. We all  
24                   realize that there is going to be development and with  
25                   those developments there's going to be impacts that  
26                   are happening. It's the unnecessary impacts that

1 we're concerned about, and how much of the impacts are  
2 happening all at once in northeastern British  
3 Columbia.

4 People don't understand what's happening up  
5 there. Everything that's happening in the province of  
6 British Columbia that's in a little piece here and  
7 there is all happening at once, at one time. We have  
8 large-scale hydroelectric projects, we have shale gas.  
9 shale gas is two years old up there. Brand-new, it's  
10 totally reformed how gas development transpires on the  
11 ground in northeastern B.C. Everyone thinks, well,  
12 it's shale gas. Well, there is still conventional gas  
13 going on with shale gas happening. There is oil  
14 development happening. There is coal bed methane  
15 development happening. That's four different  
16 petroleum resource developments happening all at once,  
17 on one piece of land out there. And we are trying to  
18 carry on a promised way of life with us. And so, what  
19 I take you through is the talk about how we fit and  
20 find our way through all of this. And so I do a  
21 PowerPoint and then I actually do a Google -- or, a  
22 presentation where I take you, I call it on a tour of  
23 my neighbourhood. And show you satellite imagery of  
24 what I'm talking about, and try and put it in a  
25 context of what's happened.

26 So, with your permission, I'll begin.

1                   West Moberly First Nations. We're located  
2                   at the west end of Moberly Lake. The foothills of the  
3                   Rocky Mountains. We are known as the Rocky -- well,  
4                   the Mountain Dunne-za, the Dunne-za are the beaver  
5                   people of the Peace region. We've been involved for  
6                   probably 12 years now in a federal process called the  
7                   Treaty Land Entitlement Claims. It's a specific claim  
8                   that was -- during the time of settlement, when they  
9                   were setting up the reserves, they sent an Indian  
10                  agent out to all the communities and they counted up  
11                  all the Indians and they allocated an amount of land  
12                  to them. Well, my community, when the Indian agent  
13                  came out, once my families and our people were out  
14                  hunting. So when they counted, they missed a whole  
15                  pile of people. And so that proceeded to be the  
16                  Treaty Land Entitlement Claims. So we're actively  
17                  looking for land right now. We're in negotiations  
18                  with the federal government looking for lands to  
19                  expand our reserves out there, to meet the current  
20                  population of who we are as a people there.

21                  We have 250 members. We have a self --  
22                  we're called a Section 10 custom governance code,  
23                  under INAC. We don't follow INAC's standard  
24                  governance model. We've developed our own, which has  
25                  been approved by INAC, and is being used by INAC as a  
26                  best-practices for them to go into other communities

1 to help them set up their own custom governance  
2 structure. We operate on a family-based system. We  
3 have four families, main families in our community.  
4 We have a bunch of smaller families that align  
5 themselves with the larger families for  
6 representation. The families appoint a councilor, or  
7 they elect a councilor, to represent their family, and  
8 work in the best interests of the nation as a whole.

9 Then the community elects a chief. The  
10 only position in the community that's an elected  
11 position is the chief's position.

12 **Proceeding Time 3:02 p.m. T54**

13 Currently I am the chief. I have no  
14 signing authority. I have no vote on council. The  
15 decision-making authority lies with council and it  
16 lies with a quorum of council so no one person can  
17 ever commit a nation to anything without anybody else  
18 knowing about it. At least in our situation, three of  
19 the four councillors have to be aware and have to make  
20 the decision on things.

21 Complete transparency and accountability  
22 process. We have our four band general meetings every  
23 year. One of them is an annual general assembly where  
24 we bring the auditor and we open up the books.  
25 Everybody in the membership can take a look and see  
26 what we're doing, where we're spending our money on,

1 and we get our mandates at those AGAs, and that gives  
2 us the direction to move forward.

3 As I mentioned earlier, we have a Land Use  
4 Department. Currently right now we have three people  
5 in our Lands Office. Mr. Bruce Muir was, up until  
6 just recently, our lands manager. We are actually  
7 operating without a lands manager right now.  
8 Hopefully we're going to rectify that situation.

9 The amount of paperwork that comes into our  
10 offices, nowhere else in the province has this  
11 happened. By default we get to see the cumulative  
12 picture that the province doesn't see because all the  
13 information comes to our office. The province  
14 operates in these -- they call them silos. The  
15 Ministry of Forestry deals with -- it's not Ministry  
16 of Forestry any more but for simplicity, Ministry of  
17 Forestry deals with forestry referrals, Oil and Gas  
18 deals with oil and gas referrals, Mining deals with  
19 mining referrals. They don't ever talk to each other  
20 even though there's overlaps. And all that  
21 information comes into our offices through the Lands  
22 Office, and we get approximately 35 to 65 hundred  
23 referrals annually that come in on all kinds of stuff.  
24 Oil and gas, wind, hydro, forestry, mining, lime  
25 deposits, guide outfitting. Right? Just about  
26 everything that happens comes into our office.

1                   We've got 10 to 20 ongoing environmental  
2                   assessments. A lot of the First Nations around the  
3                   country are dealing with one or two. We, at any point  
4                   in time, probably have 10 on the go, and these aren't  
5                   little things. These are boxes of information start  
6                   showing up and gets dropped off and we have a certain  
7                   amount of time that we have to go through it and get  
8                   some kind of reasonable response back to them about  
9                   what the issues are. 15,000 to 35,000 documents  
10                  annually happening. Low end of e-mails are identified  
11                  as -- the low end maybe 60, high end 80 that come in  
12                  every day. I was sitting here from this morning to  
13                  just before lunch I had 50 e-mails come through my  
14                  computer. I shouldn't have started it.

15                  You know, so I mean, we're inundated,  
16                  completely inundated. We have three people in our  
17                  office right now to try and process all this  
18                  paperwork. And it's hard to understand.

19                  When somebody sends a referral, there's a  
20                  piece of paper that comes in, but there's all this  
21                  stuff like this attached to it that we have to  
22                  process. And sometimes the numbers don't match up.  
23                  We have to call the Oil and Gas Commission and say,  
24                  "Well, you sent us a C521 referral number, but the  
25                  information you gave us doesn't correlate to that.  
26                  Where is it?" And you have to track that down. Well,



1                   And these oral promises that were made,  
2                   have been determined to be the actual promises that  
3                   enticed the First Nations to enter in the treaty with  
4                   the -- so they have to be taken into consideration as  
5                   the actual context of the treaty.

6                   Our chief difficulty was the apprehension  
7                   that hunting and fishing privileges were to be  
8                   curtailed.

9                   "The provisions in the treaty under which  
10                  the ammunition entwined is to be furnished  
11                  went far in the directions of quieting the  
12                  fears of the Indians."

13                 So, they admitted that it would be unreasonable to  
14                 furnish the means of hunting and fishing, if laws were  
15                 to be enacted which would make hunting and fishing so  
16                 restricted as to render it impossible to make a  
17                 livelihood by such pursuance.

18                 "But over and above the provisions, we have  
19                 to solemnly assure them that only such laws  
20                 as to hunting and fishing were in the  
21                 interest of the Indians, and were found  
22                 necessary in order to protect the fish and  
23                 fur-bearing animals would be made, and that  
24                 they would be free to fish, to hunt and  
25                 fish, after the treaty as if they had never  
26                 entered into the treaty. We assure them

1           that the treaty will not lead to any forced  
2           interference with their mode of life."

3       So this, I based my whole presentation kind of around  
4       this oral promise.

5           This was the leading argument in the  
6       *Mikisew Cree* court case they talked about. You know,  
7       and we are not saying no to development, we are saying  
8       there has got to be a balanced approach. You can't  
9       just keep telling us to go somewhere else, because as  
10      you've seen in the maps, we are getting to the point  
11      where there is no other place to go. We are  
12      completely surrounded now, and we are just whittling  
13      away at what little bit we have left. And if the  
14      treaty is supposed to be a sacred document, you have  
15      to honour the words of the treaty on that.

16           So, this is where I go into my tour of my  
17      neighbourhood. If you give me a moment please. And  
18      hopefully everything works. I just want to make a  
19      point that I was doing this before the ex-president  
20      was doing it. He stole my idea.

21           So this is my community, we are a small  
22      community, the smallest of the Treaty 8 First Nations,  
23      247 people, located on the west end of Moberly Lake.  
24      We have been there since time immemorial. We have the  
25      Charlie Lake Caves located in Fort St. John, one of  
26      the oldest known sites of human habitation in North

1           America, being dated at 10,500 years old. And it was  
2           our ancestors that were in those caves.

3                     My community resides here on the end. This  
4           is all of our reserve here. So I am going to take you  
5           around to just areas throughout the territory. This  
6           is an area called Lady Fern. Back in the '80s, Murphy  
7           Oil had drilled a well and hit, it was touted to be  
8           the largest well in North America at that time, it was  
9           100 million cubic feet a day that was coming out of  
10          there. Everybody completely lost their mind.

11                    The province started selling tenures in the  
12          area, companies were going on. There was an article  
13          wrote by Andrew Nikofooruk about northern greed, and it  
14          is about this area here. They had industrial  
15          espionage, people dressed in cammo with night vision  
16          goggles hiding in bushes with listening devices,  
17          listening to what the other companies were doing, and  
18          trying to figure out how far they are drilling, and  
19          stuff like this. And this was all documented.

20                    It was touted to be a 25-year development,  
21          and in five years after the province issued all of the  
22          permits -- and it is kind of like a glass. They  
23          tapped into a reservoir, they didn't have any  
24          information on the reservoir, they just knew there was  
25          lots of gas in there, and they were getting it out.  
26          And everybody stuck their straw in there, and started

1 sucking the gas out of it, and in five years, it was  
2 completely depleted. Murphy Oil just about went  
3 bankrupt, 100 million dollar company back then was --  
4 a billion dollar company now, just about went bankrupt  
5 and have spent about \$400 million and never got a cent  
6 back out of it, because it went dry before they got to  
7 develop anything. They told that they missed the  
8 formation by 200 metres in their drilling, when they  
9 stopped, and they didn't get to where they were trying  
10 to get to. But this is what ended.

11 **Proceeding Time 3:12 p.m. T56**

12 After they were done, they just left.  
13 Nobody cleaned anything up. They pushed all these  
14 roads in there. We talk about fragmentation of the  
15 land and animals, all these little lines are roads and  
16 lease sites. The little squares in here are lease  
17 sites. A lot of these lines are seismic lines.  
18 They've become corridors -- predator corridors.  
19 Predators in wolves, predators in humans. Anybody  
20 that has a quad can get on these trails and they turn  
21 into highways. And during hunting season, people are  
22 -- there's hundreds of people running up and down  
23 these lines. And the wolves actually have figured out  
24 -- they've figured out that if they see a moose cross  
25 this line here, they have figured out that a couple of  
26 hundred metres over there is another line. And

1 they'll run over to that other line and they'll wait  
2 for that moose to come out. When he comes out, they  
3 get him. And they've figured this out. They're a  
4 very intelligent animal.

5 This is an area up by Fort Nelson called  
6 the Yoho-Desanni Road. The province has probably  
7 spent about a hundred million dollars upgrading this  
8 road to access. This is the Horn River area, which is  
9 the new big shale gas play that's going on. But  
10 they've been developing this area for a couple of  
11 decades now. All these lines are seismic lines that  
12 you see here. And this is all -- this is part of  
13 reality of a lot of our people who are involved in  
14 developing this, and being a part of this. They got  
15 paid for working on seismic lines. But in  
16 understanding what the net effect and the disturbance  
17 of this was, you can see that the disconnect of the  
18 land. How does -- how do animals survive in this?  
19 How do we, as treaty First Nations, continue to trap  
20 and carry on a livelihood out there with this going  
21 on.

22 One of the big things that happens is, they  
23 call it "piggybacking". A forest company --  
24 typically, they follow forest companies, and what  
25 would happen is, a forest company will go into an area  
26 and open it up for development, put in roads, do cut

1 blocks, and what you see here is these big blotchy  
2 areas here are the cut blocks that the forestry  
3 companies started.

4 Right after they get in there, the oil and  
5 gas companies come in and say, "Well, hey, we want to  
6 -- we're interested in the area and we want to do some  
7 exploration work, just to see if there is any  
8 interesting gas there." And every well that they  
9 drill is an exploration well, because you can't really  
10 determine what's underground until they drill down  
11 there and actually get core samples, or hit gas, or  
12 hit oil, or hit whatever they have. So, they go in  
13 there and they say, "Well, we're just going to go on  
14 existing roads, infrastructure. We'll put the lease  
15 sites in logging blocks." And they'll drill  
16 something, and they'll find something interesting.  
17 And they'll think, "Well, we have to go 200 metres  
18 over, or a quarter section over here. So we have to  
19 put in a new road. And it's just going to be an  
20 exploration well. So, if we don't find anything,  
21 we'll leave." And then they'll drill something. And  
22 they'll find something even more interesting. And  
23 they'll just keep doing that. And over time, this is  
24 what happens. It becomes just a spider web of  
25 exploration wells out there.

26 Any given time, there are two, three



1 back here. I believe this is the property up here.  
2 And we sent -- we had the province come in, sit down,  
3 and we said, well, Teck Coal has the Quintette Mine  
4 site load-out facility sitting there. It has been  
5 dormant for 10 years. Why can't you let NEMI operate  
6 out of there, and then you don't have to build another  
7 one? It turned out that Teck Coal still held the  
8 permit on this site, they wouldn't let NEMI do it. So  
9 NEMI had to leave, and they build the load-out  
10 facility here, right beside them. Well, there is a  
11 forestry service road here, there is a forestry  
12 service road over here, and because these are big  
13 mining trucks, they weren't allowed to use the  
14 forestry service roads, because residents of Tumbler  
15 Ridge would go fishing down on the Murray River, and  
16 they didn't want them interacting with these big  
17 trucks. One of these, I think they are 125 ton truck,  
18 it would run over a pickup like a bump on the road.

19 So, NEMI -- this other road here is  
20 Quintette's road. Quintette wasn't using it, but the  
21 province wouldn't force Quintette to use that road, so  
22 NEMI had to build their own road. Now, this map  
23 hasn't been updated, but you can see the start of the  
24 road here. So, right in this little piece here, we've  
25 got three roads now that go through here. A complete  
26 unnecessary use of development. They could have

1 shared the road, nobody was willing to force anybody  
2 to do that. But yet we have to live with this other  
3 road here, plus all this third road over here, just to  
4 access an area back here.

5 We were trying to get them to work together  
6 on this. This is an area that in the maps here you  
7 will see the moose habitat map that Bruce was -- they  
8 took your attention to there at the end? This is an  
9 area called the Butler Ridge area. This here is  
10 Butler Ridge. This is world famous for hunting.  
11 People from all over the world come here to go  
12 hunting, they hunt elk, they get limited entry draws  
13 for sheep up there, moose, just about every large game  
14 ungulate in North America you can get right here, and  
15 it was good hunting.

16 This area right here, according to the  
17 biologists, the wildlife biologists in B.C. said this  
18 is probably one of the best moose habitat areas in all  
19 of British Columbia, right here. This is also the  
20 cite of the Talisman Monty Shale Gas, right now, it is  
21 called, Talisman's Altares area. This map hasn't been  
22 updated, I am waiting for the Google Earth to update  
23 the maps so we can actually see the physical area up  
24 here. But right now there is approximately 2,000  
25 people living in camps in this area. So, a part of  
26 the issue is, it is the best moose habitat in the

1 world right there, and there is moose running all over  
2 the place up there, but we can't access them, because  
3 there is 2,000 people operating and living in this  
4 area. We can't go hunting when there is operations,  
5 industrial operations in the area. So we have to  
6 leave, we have to go somewhere else. We don't have  
7 access to those moose.

8 The company did a study on moose and said  
9 there is lots of moose in that area, we don't have to  
10 worry about impacting the moose. About two weeks  
11 after that study was done, one of our -- two of our  
12 councilors and our lands manager at that time, flew in  
13 a helicopter, and flew over the area in the middle of  
14 winter, and never saw one moose. So we were having an  
15 argument about, well, you say there is lots of moose,  
16 we didn't see any moose, like it is not connecting  
17 here what is going on. And I raised the issue that  
18 well it doesn't matter if there is one moose, or  
19 10,000 moose there, we can't hunt them anyways, we  
20 can't get in there. Because if we shoot, discharge a  
21 firearm anywhere near a camp or somebody working, we  
22 will get charged for it. So we have to go somewhere  
23 else to find a place to do our -- business, I guess.

24 Summit Lake, this is the tip of Treaty 8,  
25 the southern tip of Treaty 8. These waters flow into  
26 the Parsnip River that flow into the Arctic watershed.

1 This is forestry activity in that area, being logging  
2 around there. Now these images are before the  
3 mountain pine beetle infestation that happened. 95  
4 percent of the forest stands down here are pine, and  
5 they are 100 percent impacted. So, the province of  
6 British Columbia never adjusted anything, they just  
7 wrapped up all the cuts so that they can try and deal  
8 with the pine beetle. So this area has significantly  
9 changed down there.

10 **Proceeding Time 3:23 p.m. T58**

11 Well, the fur-bearing animals that live in  
12 the pine forests, when the pine beetle hit, moved.  
13 They left. The animals, the moose love heavy pine  
14 timber. They have to go somewhere else now too. We  
15 don't access that area because it's very dangerous to  
16 walk around through dead trees, snags. They tend to  
17 fall down and if you're beside one when they fall down  
18 you get killed. So we don't go there any more. So we  
19 had to adjust and move and shift where we could access  
20 to. But industry and government never changed a beat.  
21 They just kept going on it. And so we've lost this  
22 area on that, and now they're going into the other  
23 areas that we've had to shift into.

24 This is probably one of the largest single  
25 most impacts in Treaty 8 territory, Wilson Lake, and  
26 it's not a lake. It's a reservoir. It's a manmade

1 body of water. There is no living shoreline on this  
2 body of water. A lake is a living organism. When you  
3 talk to fish and wildlife biologists they talk about  
4 the first two metres of shoreline in the water and on  
5 the shore is where life begins on the body of water.  
6 Around a river, around a lake, that's where all the  
7 small animals congregate. All the little fish go  
8 there because the big fish are swimming in the deep  
9 water. And life starts there and then expands out  
10 from there. With this thing, the raising and lowering  
11 of the water that's going on in the Willson Reservoir  
12 washes, it causes a rinsing effect on the shorelines  
13 of this reservoir, and it's expanding every year.  
14 Every time they rinse, drop the water to create  
15 energy, it washes and rinses the side of it. Like a  
16 bathtub when you jump in the bathtub, it raises and  
17 lowers and it washes a metre or so of land into the  
18 reservoir.

19 It also created the fragmentation and the  
20 situation that we're in right now with the caribou.  
21 All the caribou in the northeast, there was a caribou  
22 migration pattern that ran along here across the Peace  
23 River, and when they flooded it at Wilson Reservoir,  
24 this is called the Peace Reach of the reservoir, it  
25 created a manmade barrier where the caribou can't get  
26 back and forth across her. It's impacted the elk, the

1 moose, the goat, the sheep, grizzly bear. And the  
2 situation of the caribou, all the caribou in the South  
3 Peace are down to, we know now, 455 caribou left in  
4 the area, and it's caused a huge issue. We can no  
5 longer hunt them.

6 Site C is one that's on the horizon right  
7 now. This is taking up a lot of our time in  
8 discussions with B.C. Hydro. This is the third  
9 proposed dam on the Peace River. This is the last  
10 chunk of river that we have left. The flooding of the  
11 Wilson Reservoir destroyed three of our main rivers in  
12 our territory: the Parsnip River, the Findlay River,  
13 and the Peace River up to the point of the dinosaur.  
14 So the only piece that's really left at it is we have  
15 relative access to is this piece right here in the  
16 proposal, the third project, the Site C project on it.  
17 The inundation zone starts here just north of -- well,  
18 not north, I guess west of Fort St. John and it goes  
19 all the way up to -- there it is. That's the flood  
20 zone, the inundation zone of the water.

21 The Yellowstone to Yukon Conservation  
22 Initiative has identified this area as a pinch point  
23 in the Yellowstone to Yukon corridor. This is the  
24 last remaining piece where the grizzly bear can cross  
25 from north to south there, and B.C. Hydro is refusing  
26 to allow us to do any studies on bear. They tell us

1 that there are no bear that exist in this area. We've  
2 got pictures, lots of pictures that show there is  
3 numerous bear crossings, areas that they cross over.

4 So when we do all this, we talk about all  
5 this stuff, it's hard to put it in the context of what  
6 does all this mean in a cumulative impact.

7 Oops, one too many clicks.

8 This orange red zone, that's the Treaty 8  
9 territory in B.C. So I show you this because all the  
10 sites that I showed you are located in B.C. I didn't  
11 go out of B.C. These are just areas around in --  
12 close to my territory other than the Fort Nelson area.

13 **Proceeding Time 3:28 p.m. T59**

14 There is the coal belt that goes through  
15 the area, and these are all coal mines that are  
16 proposed, in various areas. I have the decommissioned  
17 Quintette and Bullmoose. They are decommissioned, but  
18 they are not yet to the stage where anybody can use  
19 them.

20 This shows you -- this is us right here,  
21 this little tent. And this shows you the coal belt  
22 that comes through here, and runs right along the edge  
23 of the Rocky Mountains, right along the foothills.  
24 And this is where all the coal from B.C. -- well, not  
25 all the coal, the majority of the coal from B.C. is  
26 going to Japan right now, from out of there.

1                   And we have -- and these are sites that  
2                   have been identified by the province as sites. This  
3                   purple is oil and gas. Information provided to us by  
4                   the OGC. This is data from 2005. There is so much of  
5                   it, it just turns into a big purple blotch. It didn't  
6                   transform very well on here.

7                   These are forest service roads in the area.  
8                   These are all the pipelines. Bruce mentioned we have  
9                   100,000 pipelines, kilometres of pipeline through the  
10                  territory. So, we quickly start disappearing and when  
11                  you look at the maps that were produced by the global  
12                  forest watch in here, and start looking at this, you  
13                  can see areas where there is some limited activity  
14                  that's going on in there, around us.

15                  So these are the places that we're trying  
16                  to protect. Trying to, you know, be able to have some  
17                  control over what's happening.

18                  Just give me a second here.

19                  So this is new information that we, through  
20                  our Treaty Land Entitlement claim, we've been  
21                  identifying. We have to look at areas that aren't  
22                  taken up. So Crown lands and anything that's fee-  
23                  simple, we are not allowed to take. We're having  
24                  discussions with companies, because companies buy huge  
25                  parcels of land and then, in a sense, that land is  
26                  taken up. Well, they don't put the majority of that

1 land to good use. In the case of Talisman, they're  
2 drilling in certain areas. And Shell, they're  
3 drilling in certain areas. So we have to look at  
4 areas where they're not drilling in and start having  
5 discussions, well, are you going to be moving that  
6 way? Is this an area that we can take and identify?  
7 We have identified the Stewart Lake area in here.

8 So, this information is derived out of the  
9 province, and it's the development from 1950s when the  
10 first wells were drilled in the territory up to 2010.  
11 So you can see not much activity going on. The 1980s,  
12 the '90s, the 2000s. You can see here 2010, this is  
13 the start of shale gas, right here. From -- and this  
14 is the last information that we have was from 2010.  
15 There is two more years of information going on in  
16 this area.

17 Also with all of this is the sites that  
18 they drill and don't find gas. And those are  
19 typically historical wells of the old conventional gas  
20 play. With shale gas, there is not a question of  
21 whether they're going to find gas. The gas is there.  
22 They know the formation, it's 2,500 metres below  
23 surface, all they have to do is drill down there, get  
24 into it and they'll horizontally drill in the shale  
25 play, and they'll find the -- and they'll have gas.  
26 It's not a matter of expiration, it's a matter of



1 coal mine in here.

2 You know, it's the consultation process to  
3 date has been more of an information process. They  
4 come in, they tell us what they're going to do, we  
5 supply some comments, they consider the comments, they  
6 go do their project. Not one -- oh no, one well, one  
7 oil and gas project in the province of British  
8 Columbia has been turned down and that was Hunt Oil  
9 and that was the only project ever stopped by the Oil  
10 and Gas Commission on a First Nation based issue, was  
11 Hunt Oil. And then Hunt Oil sued the province and  
12 they settled out of court on the -- so other than  
13 that, we've never been able to stop a project in the  
14 Treaty 8 territory. We get to mitigate these issues.  
15 Well, how do you mitigate the extirpation of caribou?  
16 You can't. You're wiping the caribou off the face of  
17 the earth, right?

18 So there's another dig at Shell, just so  
19 you know. Just this happened to be a picture that was  
20 taken and happened to be a Shell sign that was up  
21 there.

22 Our hunters were all hunting and they were  
23 harvesting moose, and they were finding the organ  
24 tissue, like the hearts and lungs were green. They  
25 would open them up and there would be a different  
26 smell in the moose, not a typical -- when you're

1 dressing an animal there's typical smells, and you can  
2 tell if there's something wrong with the moose by the  
3 texture of the hide and firmness of the meat and stuff  
4 like that. They came and said, "There's issues in  
5 this area. We're worried about it. There's a lot of  
6 oil and gas activity over there and there's something  
7 going on because all the animals, when we open them  
8 up, there's green fluid in their body cavities and  
9 stuff like that."

10 We ran what was called a petroleum  
11 contaminant study and I believe it was 2004 where we  
12 looked at the effects of oil and gas and the areas  
13 that were developed and if they were contaminated, if  
14 there was an issue with animals getting into these  
15 contaminated sites. The OGC swore up and down that  
16 there was no issue. The moose aren't going to these  
17 sites or anything like that.

18 So we set up cameras, motion sensitive  
19 cameras, and we got pictures of the moose standing  
20 there. This is a leased site, an old sump pit that  
21 was left out there where you can see a young bull  
22 moose drinking the water out of it. Typically that  
23 wouldn't be a big deal, but this is an old lease site.  
24 So we tested the soils and the soils are contaminated.  
25 Part of the process we brought in a third-party  
26 consultant. They ran the study. They did it

1 themselves. So here we have these exposed sites that  
2 are known contaminated sites, and over here on the  
3 right-hand side, here is clean fresh water that's  
4 fenced. Well, we're trying to get them to fence the  
5 contaminated stuff, and here they're automatically  
6 fencing the clean water. We don't have an issue of  
7 the animal going into the clean water. We have the  
8 issue of the animals going into the contaminated  
9 sites. It doesn't make any sense. How backward is  
10 that?

11 So the study we did, we identified that  
12 there were seven sumps. We didn't get much money. We  
13 ran a small study. We identified seven sumps and 13  
14 flare pits. 75 percent of those sites that we tested  
15 were contaminated above and beyond federal and  
16 provincial levels of what are considered to be known  
17 contaminated sites.

18 The animals had complete access to them.  
19 Part of the process of drilling for hydrocarbons is  
20 that it's high saline based, and they were -- what was  
21 happening was that they were creating manmade mineral  
22 licks out there and they were attracting animals to  
23 them. Animals were eating soil, drinking the water.  
24 Not just moose and deer and elk. Wolves, bears, ducks  
25 were coming in, landing into this pits. You've seen  
26 pictures of the Alberta tar sands where all those

1 ducks flew into that pond and it was on the news there  
2 every day about how bad that was. Well, that's going  
3 on northeast all the time.

4 **Proceeding Time 3:38 p.m. T61**

5 Even sites that aren't contaminated still  
6 pose a risk to low levels of ingestion of  
7 hydrocarbons. You know, these animals are eating the  
8 soil out there.

9 So, when we talk about 75 percent of the  
10 sites studied, that big purple blotch that I showed  
11 you, or those little triangles that I showed you, they  
12 do a thing called extrapolation. If you run a study  
13 and the study is fair and proves out to be correct,  
14 you can take that study on a small basis and  
15 extrapolate it to a larger thing, and you should get  
16 the same kind of results.

17 So, 75 percent of the sites that I just  
18 showed you in those little triangles possibly are  
19 contaminated above and beyond federal and provincial  
20 levels. And they're not doing anything to clean them  
21 up.

22 This is one of the sites that I just got  
23 this, so I apologize. I put it in here because I  
24 wanted to show you what we're dealing with in just the  
25 context of pipelines. This is one company that has a  
26 pipeline in the area. Now, the DCAT line runs

1            somewhere approximately along this area here over to  
2            Dawson Creek up there. This is Spectra Energy's  
3            infrastructure in the Groundbirch area in between Fort  
4            St. John, Dawson Creek and Chetwynd up there. This is  
5            something that we didn't know was happening. We  
6            thought Talisman -- not Talisman, sorry -- Spectra  
7            Energy and other pipeline companies were competitors.  
8            You know. We always get -- when -- I'll use Shell as  
9            an example. Shell just awarded TransCanada their  
10           pipeline job on that. So we thought, "Oh, okay, well,  
11           TransCanada got the pipeline, too bad for Spectra."  
12           Well, we find out that Spectra and Trans-Canada are  
13           actually partnering on all kinds of stuff. And this  
14           little blue line over here, this line here is the  
15           TransCanada line. This -- now, we thought they were  
16           competitors. This is a Spectra line that's being  
17           proposed from the main trunk line. Well, and  
18           TransCanada doesn't have enough gas to fill their  
19           pipeline up. So they entered into an agreement with  
20           Spectra to create this little spur line and to be able  
21           to fill TransCanada's pipeline up with excess gas that  
22           they have coming from other areas.

23                            So, there is negotiations going on that we  
24           don't know about, about expanding this. Well, this  
25           pipeline becomes infrastructure, into an area that  
26           doesn't have any infrastructure now. But that gives

1 other companies the ability to access this area. So  
2 when that pipeline goes in, they can tie into it.  
3 Now, that's one of the things that we talked about the  
4 in the DCAT process, with the transmission line. The  
5 transmission line goes through. You know, we talked  
6 about -- run along the same corridor, you know. Can  
7 you go underneath the river instead of going over top  
8 of the river? Stuff like that. We never got to talk  
9 about, well, what does that line represent?

10 Shell is going to tie into it. All the  
11 other companies are going to tie into it. It's going  
12 to turn into this spider-web of stuff out there. You  
13 know? And, yeah, there is an argument. Shell is  
14 going to develop the shale gas. But it's going to be  
15 at a different pace than what it is now. You know?  
16 And it's going to allow companies that would not have  
17 had infrastructure, because they don't have the money  
18 to build a pipeline, or build a transmission line to  
19 tie into here. Because it would have cost them too  
20 much money. This creates the opportunity for them to  
21 expand into there, which they never would have had.

22 So we don't get to talk. That's the  
23 cumulative impact that's coming, that we don't get to  
24 talk about. You know? They have to take that into  
25 consideration when they're doing this. We don't know  
26 what the thresholds are in here. We don't know how

1 much good moose habitat is left here, and where the  
2 companies are planning to expand into. We need to  
3 have those discussions to understand what the effect  
4 of that TransCanada -- the line is.

5 Gulf of Mexico, the oil break, horrible  
6 disaster, wish it never happened but it happened.  
7 It's interesting to note, 30 years earlier, another  
8 company drilling in the Gulf of Mexico, same thing  
9 happened. Their reclamation, or they're trying to  
10 stop the project, they called it a "top hat" then. It  
11 didn't work. Thirty years later, the same thing  
12 happened. The same technology that they used, they  
13 called it a "sombbrero". It still didn't work. Right?

14 They spent hundreds and millions of dollars  
15 figuring out how to drill faster, deeper and more  
16 efficient to get to the oil, and they never spent a  
17 cent on how to prevent something like this to happen,  
18 on that. And this has caused British Petroleum in  
19 B.C. to sell all their product -- all their lands in  
20 B.C. to try and cover the cost on this. And not to  
21 mention all the people that have been impacted in the  
22 local area down there because of this.

23 **Proceeding Time 3:43 p.m. T62**

24 And Britain, England, because BP was -- I  
25 don't know if they are a Crown component but they have  
26 a lot of money that goes in to England.

1                   Well, this is the PJ oilfield, just up by  
2                   Doig River First Nations. The company has four known  
3                   pipeline leaks. The first one was in 2000. Everyone  
4                   knows about it, the province knows about it, OGC knows  
5                   about it. We have been trying to get them to clean  
6                   this up for over 12 years. They just started doing it  
7                   recently. The only reason why they started doing it  
8                   was because we got the interest of CTV News to come up  
9                   with one of their -- it is called First Story, and  
10                  they did a documentary here, and they produced a  
11                  documentary called *Black Blood*, and they talked about  
12                  this very issue of what is going on here. Nothing  
13                  like this would happen anywhere else.

14                   They had a spill down here, Bruce --

15 MR. MUIR:     Burnaby.

16 MR. WILSON:    Burnaby, within two weeks they had cleaned  
17                  it up. This is going on 12 years, and this is what we  
18                  are living with up north. I have heard now they have  
19                  had a fifth rupture in this line.

20                   My first official duty as a chief when I  
21                  became chief in 2000, I was driving back from Prince  
22                  George, I was still living in Prince George at the  
23                  time, two o'clock, 2:30 in the morning I was driving  
24                  through the Pine Pass, and I came across the crew that  
25                  was going down into the Pine River to see this --  
26                  investigate what happened here. It was the Pine River

1 oil spill. Pembina Pipeline bought Federated Pipeline  
2 and at 12 P.M. in the morning, or 12 A.M. the line  
3 ruptured and spilled 951 cubic meters of light crude  
4 oil into the Pine River, impacted 200 kilometers of  
5 shoreline. I was the first civilian on site at that  
6 site at 2:30 in the morning. I had no idea what was  
7 going on. I could smell the oil in the air. I stayed  
8 on site as -- I had to call my council, get them out  
9 of bed, and say there is a pipeline rupture, we need  
10 to get something going on. We worked with Pembina  
11 Pipelines to help clean this up. Lots of our people  
12 were involved in this to help clean this up. 100,000  
13 fish were killed, unknown wildlife. We were  
14 destroying beavers, young ungulates that got caught in  
15 the water that were soaked in oil, they couldn't --  
16 they had no ability to clean them, so were just  
17 shooting them, getting rid of them.

18 Results base management, this is a big  
19 thing that the province talks about, we'll let the fox  
20 control the hen house. That is a D8 Dozer, and two  
21 belly scrapers in the middle of the Pine River  
22 scraping gravel out to upgrade the road in the Pine  
23 Pass. I have never known -- well I've never been told  
24 that this is ever acceptable anywhere out there.

25 This is a fish bearing stream. This is the  
26 same river that Pembina Pipeline ruptured on, and DFO

1 would not allow Pembina to drive across the creek,  
2 across the river in their pickup to get to the other  
3 side to turn the valve off on the pipeline because it  
4 was a fish bearing creek. But yet this goes on.

5 This is the Wilson Reservoir, a  
6 recreational lake they were touting it to be. This is  
7 the debris that comes into the Peace arm of the --  
8 this is just off the shores by the dam, the W.A.C.  
9 Bennett dam. Picture on the right is my son, and a  
10 buddy of his wanting to swimming up there, so we went  
11 up there, and I thought it was kind of funny because  
12 they were trying to get out to the water so they could  
13 go swimming. But then the waves started, the wind  
14 picked up, the waves were coming in, and all those  
15 logs started slamming back and forth, and it actually  
16 became very dangerous, and we were trying to get them  
17 out of there. And thankfully nobody got hurt up there.  
18 But it is not a recreational opportunity lake at all.  
19 All the fish in this water are contaminated with  
20 Methyl-Mercury. This is the rinsing effect of the  
21 Wilson Reservoir that I talk about. That cabin on the  
22 left is no longer there, it is now part of the pile of  
23 wood that is floating in the Peace Arm valley.

24 When they draw the water down, they create  
25 these miles of silty beach. When the wind picks up,  
26 not a big wind, just a light breeze, it picks up the

1 dust and blows the dust and then becomes huge dust  
2 storms up there, all around the valley. The Tsay Keh  
3 First Nations actually had to be moved a couple of  
4 times because of the amount of dust that was being  
5 blown through there.

6 Those are my son's first fish we caught.  
7 It was a dolly varden. We are afraid to eat it, we  
8 didn't eat it. It was hooked so bad that we couldn't  
9 throw it back, it was damaged, but being that it was a  
10 dolly varden, it is top predator in the water, and the  
11 methyl-mercury is considered to be bioaccumulable.  
12 The little fish get it, and the bigger fish eat the  
13 little fish and the big fish get enough mercury of the  
14 little fish, and the more they eat the more they  
15 accumulate in it.

16 **Proceeding Time 3:49 p.m. T63**

17 Every year Health Canada releases a health  
18 bulletin in Hudson's Hope. I live in Hudson's Hope so  
19 I get the health bulletin as a resident of Hudson's  
20 Hope, not as the chief. But the health bulletin is an  
21 advisory from Health Canada that tells everybody in  
22 Hudson's Hope not to eat more than one serving of fish  
23 a month out of the Willson Reservoir and the Peace  
24 River, because of that. I've been chief of the West  
25 Moberly First Nations for 12 years and I have never  
26 seen that health advisory come to my nation. We have

1 a treaty right to fish to harvest fish out there.

2 So the province and B.C. Hydro and Health  
3 Canada are concerned about their obligation to the  
4 residents of Hudson's Hope, but we have never received  
5 an advisory on that. I've actually engaged them right  
6 now and asked them, well, what their determination is  
7 to determine what's an acceptable amount of fish that  
8 First Nations can eat up there.

9 Two o'clock in the morning down here, I  
10 couldn't sleep, I couldn't -- the curtains were jammed  
11 in my room and I couldn't close them, and I could read  
12 a newspaper at 2:00 in the morning with the lights  
13 from outside in my room, so I took a picture of it. I  
14 was taught waste not, want not when I grew up. You  
15 know, there's no reason why these lights have to be on  
16 here. They should turn these things off.

17 I want to eat caribou before I die. This  
18 is the First Coal stuff that we had talked about,  
19 Bruce had mentioned earlier. When we started -- when  
20 the treaty was signed, they had talked about the  
21 caribou as being bugs on the landscape. They were  
22 considered to be a convenient food. If you couldn't  
23 find a moose, you couldn't get a buffalo, you could  
24 always go to the mountains and you could always get a  
25 caribou. You could always go to the creek or the lake  
26 and get fish. They were the convenient food. They

1           were what we could sustain ourselves on when we  
2           couldn't find the other things.

3                       The image in the top left is the caribou  
4           habitat of what the province calls a northern mountain  
5           eco-type caribou. We call them the caribou. The  
6           image in the middle is the creation of the Wilson  
7           Reservoir, and the start of the fragmentation of the  
8           northern -- the migration route that came through this  
9           area. There were always resident herds of caribou  
10          through the territory. There was a larger migration  
11          route that moved through and repopulated, you know,  
12          and moved back up through the territory, and it kept  
13          the other herds alive and healthy on that. When they  
14          flooded the Willson Reservoir, it fragmented this  
15          piece of -- this migration route and it turned into  
16          this. Then this here, this little piece here is  
17          called the Burnt Pine caribou herd. There was a  
18          proposed mine being -- a mine being proposed right in  
19          the critical habitat of these caribou. We said,  
20          "Well, we've got policies and stuff in place to stop  
21          that. What are you doing?" And we found out that  
22          they actually don't really pay attention to their  
23          policies.

24                       There was at that time eleven caribou. So  
25          we were talking to them and we were saying: Well,  
26          you know, when you flooded the Willson Reservoir, we

1           stopped hunting the caribou because there wasn't very  
2           many of them left. We recognized that they were  
3           impacted. So we've been doing our part trying to get  
4           these caribou to be recovered. You're supposed to, by  
5           law, according to the *Species at Risk Act*, have a  
6           management recovery plan in place. You don't have  
7           that.

8                         We had to explained to them what the loss  
9           of culture was to the caribou and, you know, and we  
10          sat down and talked with people and it was source of  
11          food, clothing, arts, tools. There's elements in the  
12          caribou itself in the tissue of the hide that was used  
13          for medicine. The habitat, when the caribou were in  
14          certain areas we wouldn't just go and hunt caribou, we  
15          would pick medicines and things at that time. There  
16          were ceremony performed during the time of the  
17          harvest.

18                        The transmission of knowledge. This is  
19          Molly, she's passed on now, but she had a lot of  
20          knowledge, and when she died we lost that. And any  
21          information that she had on the use of the caribou  
22          went with her when she passed away on that. We don't  
23          have very many elders now that can transfer that  
24          knowledge to us about the use of caribou. We're  
25          struggling now on that.

26                        Secondary impacts. Because we can't hunt

1 the caribou we're hunting the moose more now. You  
2 know, so we are highly aware of moose. Everyone that  
3 comes in the North Peace knows it, and this is a big  
4 issue for us.

5 **Proceeding Time 3:54 p.m. T64**

6 These are B.C.'s best management practices.  
7 These are their own policies that they have in place:

8 "Do not reduce terrestrial lichen ground  
9 cover. Do not reduce arboreal lichen."

10 Terrestrial is the rock moss, arboreal is the witch's  
11 hair that grows off the trees. I believe that is  
12 right.

13 "Do not create disturbances which will  
14 displace or disturb or displace caribou from  
15 the area. Do not create improved predator  
16 or human access."

17 That is B.C.'s best practices. Canada has got species  
18 at risk recovery plan for the caribou in our area who  
19 are identified to be threatened, and a recovery plan  
20 was due in 2005 I believe -- no, 2007 is when the plan  
21 was supposed to be in place. 2005 they withdrew their  
22 funding on the project and stopped the planning  
23 process.

24 Threatened caribou mean wildlife species is  
25 likely to become endangered species if nothing is done  
26 to reverse the factors leading to the extirpation or

1 extinction. Critical habitat is the habitat that is  
2 necessary for the survival or recovery of the listed  
3 wildlife species that is identified as a species  
4 critical habitat, and recovery strategy or in an  
5 action plan of the species.

6 Well, the province has been making resource  
7 development plans in these areas, based on the fact  
8 that there is no recovery plan in place. Well, the  
9 recovery plan isn't in place, because B.C. stopped  
10 doing the recovery planning on it. So --

11 And this goes to the mindset of what we are  
12 trying to deal with out there.

13 "If caribou need to be sacrificed for the  
14 sake of energy independence, I say Mr.

15 Caribou, you need to take one for the team."

16 This was Sarah Palin speaking to this meeting in this  
17 Safari Club International in Reno in 2011. Now, she  
18 is an American, yes, I acknowledge that, but it is  
19 that concept, the mindthought that we have to deal  
20 with. We are told, "Go somewhere else. You know,  
21 this is our project." We have constitutionally  
22 protected rights that cannot be taken away from us.  
23 Government and industry have interests on the land.  
24 We are always pushed aside for the interest of other  
25 people so that they can move forward. And there is  
26 never any recognition of the impact to us for that.

1                   The critical habitat, this is Hackney  
2                   Hills. The critical habitat for these caribou is this  
3                   area here. Basically. They go up there in the  
4                   wintertime, the windswept ridges, there is no snow,  
5                   the wolves can't get at them, they spend the winter up  
6                   there and they eat all of that rock lichen on the  
7                   ground up there. This is Hackney Hills, this is where  
8                   those caribou go in the wintertime on the left. This  
9                   ridge right here. This on the right is the Dokie Wind  
10                  farm. Hackney Hills had a proposed wind farm on it,  
11                  it didn't go forward, B.C. Hydro -- wasn't a good plan  
12                  for B.C. Hydro. But if it was a good plan, there  
13                  would be a wind farm up there right now. They would  
14                  have taken this development and slapped it right on  
15                  top of this ridge, and that critical habitat for that  
16                  endangered species of the caribou herd, would be gone.  
17                  And what were those caribou supposed to do after that?

18                  This is the "Oh my God" thing that we were  
19                  talking about. We didn't know about this. Our people  
20                  are dreamers, the Dunne-za Dreamers were prophets, and  
21                  the dreamers and prophets are certain people, and they  
22                  hold the knowledge, and they don't give that knowledge  
23                  out. That is part of why they are the knowledge  
24                  holders, and they are trusted with that information.  
25                  So, a wind farm company was doing an investigation  
26                  permit up here. The erected a wind tower in very

1 close proximity to this. This image on the left, and  
2 this is part of the interactive part on this, I don't  
3 know if you can see that very well, but I ask you,  
4 what do you see on that rock?

5 MR. MORTON: Moose?

6 MR. WILLSON: It is a caribou. It is a pictograph of a  
7 caribou. The wind company said it was a mineral stain  
8 on the rock. We brought the university professor up  
9 to the area to take a look at this, and he said "No,  
10 that is a pictograph and it is old, it has been there  
11 for a long time, and it is very important."

12 The image on the right is an offering site.  
13 Now, the company said they stacked those rocks up like  
14 that. They did that. But when the professor looked  
15 at it, he said "No, these rocks have been here for  
16 over 100 years." The rock moss has grown onto them,  
17 they haven't been disturbed, they haven't been moved.  
18 This is a sacred dreamer site that we didn't know  
19 anything about, and there is an investigation wind  
20 tower sitting right beside it up there. This was the  
21 "Oh my God, what do we do now? How come nobody knew  
22 about this? You know? Now we know about it, what do  
23 we do?

24 This is another one of those "What do you  
25 see?" questions. This is a face carved into a rock.  
26 This rock is the size of probably these two tables

1 high. The company said, "Well that was done by the  
2 wind. The wind did that." You can see that it is not  
3 done -- when they looked at the rock and investigated  
4 the rock, they said "No, that is man-made." That has  
5 been there for a long time.

6 The caribou issue that we were talking  
7 about with First Coal, we went to court, we filed a  
8 judicial review because the province issued them a  
9 mining application tenure permit in the critical  
10 habitat of the Burnt Pine Caribou herd. There was 11  
11 caribou left here, and the caribou were supposed to  
12 have a recovery plan. We were supposed to be  
13 recovering these caribou to a sustainable level. The  
14 province's vision of sustainable is so that to keep  
15 them from dying off, so we don't reduce the number of  
16 caribou. Our level of sustainable is we want to hunt  
17 them again. We want to eat caribou. I want to eat  
18 caribou before I die, that is the title of the report  
19 that we did.

20 **Proceeding Time 4:00 p.m. T65**

21 We haven't been able to eat the caribou in  
22 our territory since they flooded the Wilson Reservoir.  
23 We've passed our own laws saying we're not going to  
24 hunt the caribou because they've been impacted and we  
25 need to wait till they recover. We were encouraging  
26 the province to move along and the federal government

1 to move along and get these recovery plans in place.  
2 We became very aware that they have no intentions of  
3 saving the caribou. They're actually hoping they all  
4 die off on us.

5 This was First Coal's mining application it  
6 wanted to do. The application itself, it was called  
7 the ADDCAR system. It was a sidewall mining  
8 technology that they were going to dig these trenches  
9 you see here and they were going to be in a step  
10 process that go down. And they would mine into the  
11 side of the thing. And they were done mining, after  
12 they got down at the bottom, they would fill that in  
13 and then jump over to the next trench, and they would  
14 leave land in between the two trenches.

15 The concept was really good. We liked the  
16 idea of it. But we said to them, when you're right in  
17 the middle of the critical habitat of the Burnt Pine  
18 caribou. You can't do this. You're not supposed to  
19 move a rock. You're not supposed to cut a tree down.  
20 You're not -- you're supposed to leave these animals  
21 alone. You can't build a mine and not move a rock.  
22 You have to move the rock. So we're either going to  
23 try and recover the caribou, or we're going to just  
24 wipe them off. Write them off.

25 So we were engaged in this discussion.  
26 This trench is the bulk sample trench that they were

1           going to -- they built, just to get the bulk sample,  
2           50,000 tonnes of coal, so they could ship it off to  
3           their buyers to prove that they had a good quality of  
4           coal for them to buy. They had to remove two million  
5           tonnes of overburden to get to that stage. This is in  
6           an area that they're not supposed to move rock.  
7           They're not supposed to cut a tree down, and they're  
8           not supposed to be in there.

9                         This is their mining development plan,  
10           along the critical habitat of the Burnt Pine caribou  
11           herd. All these little lines or these trenches that  
12           they're going to -- they were going to build along the  
13           whole ridge. That's the ADDCAR system. So you can  
14           see the ADDCAR system to the start of the trench, just  
15           to give you kind of perspective on how big that trench  
16           is. This is just a bulk sample pit, not an actual  
17           trench. The trench would be probably three times the  
18           size of that, when they were mining, and go down three  
19           times -- three levels down from that.

20                         Dale Seip, who's the lead -- Dr. Dale Seip,  
21           he's the lead caribou expert in the province of  
22           British Columbia, probably one of the top caribou  
23           experts in Canada -- he's the go-to guy everybody goes  
24           to talk to -- wrote a report we got a copy of, and  
25           said:

26                         "The proposal would directly destroy core

1 winter range of the threaten caribou herd.  
2 It is also possible that it will displace  
3 the caribou from a significant larger area  
4 of the core habitat. If mining expands to  
5 additional areas of the Goodrich property in  
6 the future, a very large population of the  
7 Burnt Pine caribou herd wintering range will  
8 be impacted. It is questionable that the  
9 proposed mitigation measures will do much to  
10 reduce those impacts. The proposed  
11 destruction of the core caribou habitat will  
12 compromise recovery of the caribou in the  
13 area."

14 This is the province's lead caribou expert, giving the  
15 province advice on what their mandate is with the  
16 caribou. And the province ignored them.

17 We didn't say no. We said, "Let's move the  
18 mine. We'll work with you in a different spot. Let's  
19 find a better place and let's work at trying to  
20 recover these caribou." They ignored us.

21 We found out through this process that the  
22 image on the left is a cleared area of 17 hectares of  
23 land. Now, the mining companies admitted that --  
24 well, they admitted that this was an accident. They  
25 didn't have a permit. And they accidentally cleared  
26 17 hectares of land, right in the middle of the core

1 wintering habitat. Critical wintering habitat of the  
2 Burnt Pine caribou herd. They accidentally dropped  
3 their blade on the dozers and pushed 17 hectares of  
4 dirt and cleared the land.

5 The image on the right are the exploration  
6 trails, these little trails that they talk about, just  
7 to go and find out where the coal seams are. These  
8 are the D.A. Cats pushing highways into the bush.  
9 These are supposed to be exploration trails. They  
10 told the province that these are just little things,  
11 and not a big deal.

12 In total, it was about 85 hectares of land  
13 that was disturbed in critical habitat in an area  
14 where they're not supposed to cut a tree or move a  
15 rock.

16 **Proceeding Time 4:05 p.m. T66**

17 We filed a judicial review, because the  
18 province issued a tenure, a permit to them. The  
19 courts saw in our favour. The treaty protects the  
20 right to exist -- the right to exercise meaningfully  
21 traditional hunting practices, which means more than  
22 merely hunting for food, as B.C. contended. B.C.  
23 said, "You don't have a right to caribou, you have a  
24 right to hunt." We asked them, "Well, what does that  
25 mean?" Well, according to them, as long as there was  
26 a rat or a crow, that was our right to hunt. As long

1 as there was something that we could shoot, it was a  
2 right to hunt. The whole gathering of traditional  
3 medicines, the use of the culture of the caribou, all  
4 that other stuff was meaningless to them.

5 We had the right, we had the treaty right  
6 to harvest caribou in accordance to our traditional  
7 seasonal round, meaning all cultural uses are  
8 protected from the forced interference. The judge saw  
9 that we were right. The hunting of the caribou wasn't  
10 just the mere means of acquiring food, it was a  
11 continuation of our culture. It was the passing on of  
12 the knowledge. It was when we went to harvest the  
13 caribou we collected the medicine at the same time.

14 The court concluded that the balancing of  
15 the treaty rights of the native people and the rights  
16 of the public generally included the development of  
17 resources for the benefit of the community as a whole  
18 was not achieved if caribou herds and the affected  
19 territories are extirpated. Since B.C. did not  
20 meaningfully consult or reasonably accommodate our  
21 cultural rights, the permits were suspended for 90  
22 days. The court ordered B.C. to implement a  
23 reasonable active plan for the protection of the  
24 habitat and the augmentation of the caribou herd,  
25 which took into account the views of the elders and  
26 the scientists. So we did all that. We sat down and

1 we started doing a plan.

2 B.C. appealed, said the court had no right  
3 to tell them to do a plan. That's not their  
4 jurisdiction.

5 What we know now with the current  
6 population of the caribou is that we have 425 caribou  
7 left in the South Peace. In order to have a  
8 sustainable harvest of 90 caribou, we have to have,  
9 according to the provincial scientist guys, we have to  
10 have an abundance of 3,000 caribou on the land in  
11 order to harvest 90 caribou. There are 250 members of  
12 the West Moberly First Nations. You break that down  
13 real quick to family of five, that gives us 50  
14 families. A caribou is not a very big animal. It's  
15 little larger than a deer. So you take into  
16 consideration that we would maybe eat two caribou a  
17 year. A family of -- 50 families on the community,  
18 that's 100 caribou. To get to a sustainable harvest  
19 of 90 we need 3,000. That's just for the West Moberly  
20 First Nations. There are 1500 other First Nations  
21 people in the Treaty 8 territory that have access to  
22 this area. Our right to hunt caribou is gone.

23 These are the caribous that are there.  
24 This is the Burnt Pine caribou herd. When we started  
25 this we had thirteen. We've got one left, according  
26 to the province. The Moberly herd in 1995 was 191.

1 We thought that was a good stable herd. That's the  
2 herd right behind my community. We're in emergency  
3 orders right now with the province trying to scramble  
4 to get a plan together to save the last 23 caribou in  
5 that area. That's it.

6 This is a picture that was added. This is  
7 a young bull caribou that fell off the bank, off the  
8 sample permit pit and died.

9 We have been for some time working on  
10 trying to recover them. We ran a collaring program  
11 where we took our own money because the province  
12 wasn't doing anything, and we collared caribou in the  
13 green collar, the Graham herd, excuse me. We are  
14 trying to do what we can to protect our treaty rights  
15 ourselves. The government is completely ignoring us.  
16 We've got industry coming in and bullying us. We are  
17 the closest community to B.C. Hydro. These facilities  
18 in the North Peace. We are within 30 kilometres of  
19 the W.A.C. Bennett Dam. Well, actually the Peace  
20 Canyon Dam. We're within 50 kilometres of the W.A.C.  
21 Bennett Dam, Wilson Reservoir and the Dinosaur  
22 Reservoir. I don't know who their aboriginal  
23 department is in B.C. Hydro. They don't come to my  
24 community. They don't engage with us other than this  
25 DCAT project. I know who their lawyers are because  
26 they send us letters all the time about stuff.

**Proceeding Time 4:11 p.m. T67**

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That's the end of my presentation.

It is hard to talk and do this when that's what we're trying to deal with up in northeastern B.C. There's a comment in the study that the Dunne-za people should be considered to be the caribou, because we were actually talking about the extirpation of our culture. We're down to the last little pieces of our land where we can practice, and we have to argue about it on this.

It's not that the DCAT project is on 80 percent private land. It's the 20 percent that's left that they're taking away. It's all the stuff that we're not allowed to talk about, that we know is coming when they build this line. They build this line, that opens the door for industry to say, well, they already built the line. You've got to let us do our tie-ins now. What was the point of letting them build the line? It feeds to their objective of development. We understand that.

But we need to assess that. We need to be able to sit down and talk to them and say: Look, this is critical moose habitat. This is all that's left in the area. We need to protect it. We need to identify it. Why are we studying bats? You know? The treaty has been in place here for 100 years. We shouldn't

1 have to come and tell you that moose is an issue. You  
2 should know that. You're an opponent of the Crown.  
3 Your obligation, you have determined that you are  
4 consulting. The Crown has that obligation. You have  
5 identified yourself as the Crown. You should know  
6 what matters to us as treaty people in Treaty 8  
7 territory. You should know that there are concerns  
8 out there. We shouldn't have to tell you to look at  
9 this. We should be sitting down and saying, "What are  
10 we going to do?" Instead we get reports on bat  
11 studies. You know. Thank you.

12 THE CHAIRPERSON: Thank you, Chief Willson. So as you  
13 know, it's back to Mr. Sanderson.

14 MR. SANDERSON: Thank you, Madam Chair.

15 **CROSS-EXAMINATION BY MR. SANDERSON:**

16 MR. SANDERSON: Q: I just have a couple of questions,  
17 Chief Willson, if I may. I won't keep you long.

18 I wanted to take you back, if I could,  
19 after that presentation back to the transmission line  
20 itself and particularly the communications you've had  
21 with Hydro with respect to that. I don't want to get  
22 into the log at all, but I did just want to confirm a  
23 couple of things in light of a conversation Mr. Muir  
24 had this morning with Mr. Miller.

25 And the first related to the route changes  
26 that were filed as part of Exhibit B-22. I wondered

1 if I could ask your counsel and if she doesn't have  
2 one I've got an extra copy, to put a letter that's in  
3 the public file dated February 6, 2012, that forms  
4 part of Appendix A to Exhibit B-22. It appears at  
5 pages 18 and 19.

6 Chief Willson, while the commissioners are  
7 just finding the reference, for your benefit, I just  
8 wanted to take you to the tail end of the first  
9 paragraph under the heading CPCN Application, and then  
10 the paragraph under the heading Route Alignment. Just  
11 take a moment to look at that.

12 CHIEF WILLSON: A: Sorry, where?

13 MR. SANDERSON: Q: Under the heading Route Alignment,  
14 the middle paragraph.

15 CHIEF WILLSON: A: Okay, I've got that. Sorry.

16 MR. SANDERSON: Q: Yeah, if you'd just take a look at  
17 that paragraph.

18 **Proceeding Time 4:17 p.m. T68**

19 MR. SANDERSON: Q: And I was hoping you could just  
20 confirm that as of February 6<sup>th</sup>, in fact, you  
21 personally were advised through this letter that the  
22 route alignment was being changed to the form it is  
23 ultimately taken as identified in the March 23<sup>rd</sup>  
24 filing, which is Exhibit B-22?

25 MR. WILLSON: A: I cannot remember, so --

26 MR. SANDERSON: Q: It may be that this is something

1           that went to Mr. Muir and was primarily his  
2           responsibility. I didn't draw this to his attention  
3           because these questions came up after I sat down, but  
4           if you want to confer with Mr. Muir, that is fine with  
5           me.

6 MR. WILLSON:    A:    Okay. Can I do that?

7 THE CHAIRPERSON:   Please do.

8 MR. SANDERSON:   Why doesn't Mr. Muir just join Chief  
9           Willson if that is easy?

10 **BRUCE MUIR, Resumed:**

11 MR. SANDERSON:   Q:    Sorry, it was for Chief Willson, but  
12           if you can help, Mr. Muir, just to confirm that on  
13           February 6<sup>th</sup>, between you, received this letter, which  
14           advised you of the changes of route alignment that  
15           were then filed with the commission in the March 23<sup>rd</sup>  
16           filing, Exhibit B-22?

17 MR. MUIR:       A:    I would say the format does look a bit  
18           familiar, yes.

19 MR. SANDERSON:   Q:    Yes. Okay.

20 MR. MUIR:       A:    Yes.

21 MR. SANDERSON:   Q:    And you have no reason to think that  
22           -- I will leave it there. If you look to the last  
23           page of that letter, page 19 of 19? I just wanted to  
24           take your attention to the very last paragraph which  
25           says:

26                    "B.C. Hydro continues to welcome the West

1 Moberly First Nations input in all aspects  
2 of the DCAT Project, if you have any  
3 concerns that the project may impact the  
4 rights or interest of the West Moberly First  
5 Nation, or have any questions that require  
6 further information about the project,  
7 please don't hesitate to contact me."

8 Did you get back to Mr. Dale in any way  
9 with respect to those route changes that were  
10 reflected in the route realignment identified?

11 MR. MUIR: A: This is the type of information I think  
12 we received, like as you mentioned -- I am pretty sure  
13 it was you earlier when I was up here -- that B.C.  
14 Hydro did bring up multiple times about including the  
15 community and asking questions such as this. This is,  
16 I would, say similar.

17 In terms of getting back, well, the purpose  
18 of our project, the community project, was to inform  
19 the project design, so questions like this, while they  
20 are appreciated in consultation process, we wouldn't  
21 be able to provide substantive comment back to him, to  
22 B.C. Hydro until the project was done. B.C. Hydro --  
23 that was the approach that was agreed to between the  
24 parties. So asking a question like this it is -- I  
25 wouldn't say it is inappropriate, but it is not  
26 appropriate to expect a substantive response when --

1 MR. SANDERSON: Q: Mr. Muir, I am going to suggest to  
2 you, that the reason this was put to you, was so that  
3 when you did that impact assessment, you'd have full  
4 and complete opportunity to comment on the route, as  
5 realigned in the impact assessment you were doing, in  
6 which you shared with this commission on July 5<sup>th</sup>. Is  
7 that fair?

8 MR. MUIR: A: I'm not sure what you are asking me, are  
9 you implying that we didn't provide comment?

10 MR. SANDERSON: Q: No, I am suggesting to you that the  
11 reason that B.C. Hydro gave you this on February 6<sup>th</sup>,  
12 was to permit exactly the exercise that you are  
13 suggesting it should have. That is, there had been  
14 some changes to the route, you were being asked to  
15 ensure that when you did your impact assessment, you  
16 had those changes in your mind and identified any  
17 concerns you might have with respect to them when the  
18 time came. And this gave you the opportunity do that,  
19 didn't it?

20 MR. MUIR: A: Yes.

21 MR. SANDERSON: Q: Thank you.

22 MR. MUIR: A: I would imagine so.

23 **Proceeding Time 4:21 p.m. T69**

24 MR. SANDERSON: Q: Now, with respect to the draft  
25 report at June the 5<sup>th</sup>, again I think you were asked  
26 whether or not there had been any opportunity or any

1 feedback from Hydro with respect to the report? I  
2 think -- and I confess I didn't get a note of who  
3 asked this, but either Mr. Miller or perhaps  
4 Commissioner Morton, I'm not sure, in your exchange  
5 with him, asked whether there was an opportunity for  
6 any deficiencies in the draft that was provided by  
7 West Moberly First Nation to Hydro identified by Hydro  
8 between June 5<sup>th</sup> and July 5<sup>th</sup>. Do you recall it?

9 MR. MUIR: A: I recall someone asking a question.

10 MR. SANDERSON: Q: And, Chief Willson, I was going to  
11 ask you whether you had received a letter in mid-June.  
12 And I won't take you again to its contents, but a  
13 letter on June 15<sup>th</sup> which did exactly that, which went  
14 through systematically and did identify what concerns  
15 and additional -- concerns that B.C. Hydro had  
16 identified from your draft, what information was still  
17 uncertain from Hydro's perspective, and sought to  
18 continue the dialogue in that respect. Do you  
19 remember getting that letter?

20 MR. WILLSON A: Possibly. I remember we had a couple  
21 of meetings, one at -- I believe at the end of May,  
22 where we -- you wanted to sit down and have a  
23 discussion on some substantive things. I believe  
24 realignment was one of them. I can't recall. And  
25 then a letter was sent, a response was drafted. I'm  
26 not sure if it's that particular one. We had



1           though, you made a comment, Chief Willson, very end of  
2           your comments, after you'd gone through, you know,  
3           your long history of your concerns with respect to oil  
4           and gas and mining development, you brought it back to  
5           Hydro and said that "Hydro only ever sends its lawyers  
6           to see me," or something to that effect, towards the  
7           end of your comments. We haven't had the pleasure of  
8           meeting before, so that wasn't me I don't think that  
9           you were referring to.

10                        I guess I thought that whatever concerns  
11           you might have had with respect to other projects of  
12           Hydro in respect of DCAT, in fact it hasn't been the  
13           lawyers that have generally been sent to see you.  
14           You've engaged and Hydro has offered to engage with  
15           those individuals and those expertises within Hydro  
16           that you've sought to talk to, isn't that fair?

17 CHIEF WILLSON:    A:   Well, we've not had, other than the  
18           DCAT process, community meetings with B.C. Hydro other  
19           than -- sorry I can't remember. Stewart. I don't  
20           really know anybody, and I've only met Stewart through  
21           the DCAT process. I mean, B.C. Hydro has been  
22           operating in treaty territory --

23 MR. SANDERSON:    Q:   Right.

24 CHIEF WILLSON:    A:   -- for 40 years.

25 MR. SANDERSON:    Q:   Right. So your remark was about the  
26           historical relationship between your people and B.C.

1 Hydro as distinct from a remark that's aimed at the  
2 dialogue you've had with respect to DCAT.

3 CHIEF WILLSON: A: Yes.

4 MR. SANDERSON: Thank you.

5 Thank you.

6 THE CHAIRPERSON: Thank you, Mr. Sanderson. Mr. Miller?

7 MR. MILLER: Madam Chair, I've canvassed the remainder of  
8 the parties. It looks like only Commission Staff has  
9 questions for Mr. Willson. I did speak to Ms. Rana.  
10 Apparently Chief Willson is available tomorrow. It'll  
11 be at least half an hour, I guesstimate, in terms of  
12 cross-examination that I would have for him. So this  
13 may well be a convenient time to break.

14 THE CHAIRPERSON: And then come back tomorrow to  
15 continue.

16 MR. MILLER: And then I understand as well that B.C.  
17 Hydro may call a rebuttal panel, so they may want to  
18 address that now.

19 MR. SANDERSON: Yes, for the benefit of the parties I  
20 think I can speak to that. We will call a rebuttal  
21 panel. I don't expect to be long. There will be --  
22 I'll elicit -- well, the rebuttal panel will do two  
23 things. First it will speak to the evidence that was  
24 filed Friday, which was sort of what I'll call  
25 anticipated rebuttal. The benefit of the dialogue  
26 with West Moberly had given us some sense of where our

1 two areas of concern were, so we got those to Ms. Rana  
2 and the Commission on Friday.

3 The final report, though, did have some  
4 things that we hadn't anticipated then. I'll lead the  
5 rebuttal testimony with respect to that orally in the  
6 morning. I'm guessing that'll take 30 to 40 minutes  
7 probably to do that, and then that panel will be ready  
8 for cross.

9 THE CHAIRPERSON: And your panel would be ready to step  
10 in once we are done with the --

11 MR. SANDERSON: Yes, once this panel is complete, yes.

12 THE CHAIRPERSON: Right, that sounds good.

13 Before we adjourn for the day, just one  
14 more issue and homework for everybody for tonight.  
15 The Panel still has one more question we would like  
16 you to reflect on overnight, and we would like all  
17 parties to make submissions on that. And actually  
18 it's a fairly straightforward issue.

19 The Panel has significant interest in a  
20 field tour of the area, and we cannot really identify  
21 right away what exact locations but certainly give you  
22 ideas we would like to see the site for the new  
23 proposed substation, the Sundance Substation, and some  
24 of the Groundbirch area. And then also the area  
25 sections of the Pine River that -- especially which  
26 was in 16, the Figure 16 on page 148 where the Murray

1 River flows into the Pine River, that area there.

2 **Proceeding Time 4:29 p.m. T71**

3 THE CHAIRPERSON: So our number one question is whether  
4 the parties would agree to this type of tour or  
5 whether any party might object. And the second  
6 question is then really logistics related to that.  
7 How it could be done. And third, specially then, is  
8 how could it be fitted in to the existing regulatory  
9 timetable, which today indicates that B.C. Hydro's  
10 final submissions are due already on the 16<sup>th</sup>, July  
11 16<sup>th</sup>. Like, would there be legal concerns for this  
12 field trip taking place while this round of  
13 submissions are taking place? So these are the kind  
14 of issues we would like you parties' comment on  
15 tomorrow morning as well.

16 And with that, we are adjourning for the  
17 night, and we'll reconvene 9:00 tomorrow morning.

18 (PROCEEDINGS ADJOURNED AT 4:30 P.M.)

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