

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

And

British Columbia Hydro and Power Authority
British Columbia Utilities Commission Inquiry
Respecting Site C

PRINCE GEORGE , B.C.
September 29th, 2017

FIRST NATIONS INPUT SESSION
PRINCE GEORGE

BEFORE:

D.M. Morton,	Commision Chair/Panel Chair
D.A. Cote,	Commissioner
K.A. Keilty,	Commissioner
R.I. Mason,	Commissioner

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1 **PRINCE GEORGE, B.C.**

2 **September 29th, 2017**

3 **(PROCEEDINGS COMMENCED AT 1:05 P.M.)**

4 THE CHAIRPERSON: Good afternoon. Thank you for joining
5 us as we open our first of three scheduled First
6 Nations input sessions this afternoon, here in Prince
7 George.

8 My name is Dave Morton, and I am the Panel
9 Chair for the Site C Inquiry, and I'm also the Chair
10 of the British Columbia Utilities Commission. With me
11 today are my fellow Site C Inquiry Panel members.
12 I've got Dennis Cote on my left, Karen Keilty on my
13 right, and Richard Mason on her right.

14 The First Nations input session is part of
15 the second important phase of the Site C inquiry. As
16 you know, we spent the first six weeks of this inquiry
17 collecting data and analysis from many parties
18 interested in, and affected by, BC Hydro's Site C
19 project. The quality of these submissions was
20 commendable. Many people committed a great deal to
21 producing a quality submission within the short time
22 frame that was provided. This affirms what we already
23 know; that there are experts and affected parties who
24 can bring us insight into the many complexities of
25 evaluating the economic impact of the Site C project.

26 We have the task of making findings of this

1 inquiry and we recognize that our findings are better
2 with your input.

3 The provincial government has directed us
4 to examine the economic impact on BC Hydro ratepayers
5 associated with continuing, suspending, or terminating
6 the Site C project. Consequently, the purpose of this
7 First Nations input session is for the Panel to gather
8 feedback on our preliminary report and the questions
9 that were asked in the Order in Council. I would be
10 remiss not to mention that in accordance with the
11 Order in Council, this inquiry is not a
12 reconsideration of decisions made in the environmental
13 assessment process, or by any statutory decision-
14 makers or the courts.

15 There are copies of the executive summary
16 of our report at the entrance table, and the full
17 report is available on our website or by making a
18 request through our office.

19 I'd like to address a couple of
20 housekeeping items. I was going to introduce you to
21 Mr. Bemister; he is -- you've already met him, I'm
22 sure. He's at the back, of Allwest Reporting. He
23 will help with the logistics of this session and the
24 presentation, while his team will be recording and
25 transcribing these sessions. There is live audio
26 being streamed from our website at SiteCInquiry.com

1 and following this session the transcription will be
2 posted along with the rest of the inquiry documents on
3 that website.

4 There is some tea and coffee just outside
5 the room; please help yourself as you need to. We're
6 not intending to take a break during the session, so
7 if anyone wants to come in and out and get coffee,
8 please feel free to.

9 With that, we're ready to open this First
10 Nations input session in Prince George, B.C., and
11 please go ahead. Thank you.

12 **SUBMISSIONS BY CHIEF WILLSON (#0100):**

13 CHIEF WILLSON: Thank you, Mr. Chairman. With me -- I'm
14 Chief Roland Willson of West Moberly First Nations.
15 To my right is Chief Lynette Tsakoza from Profit
16 River, and our legal counsel, John Gailus is here.

17 I want to start off by thanking the Dene
18 for allowing us to be on their traditional territory,
19 for this momentous occasion. This is the second
20 time I've had an opportunity to present to the BCUC.
21 The first time was on a power line transmission. I
22 believe it was the DCAT project.

23 THE CHAIRPERSON: It was, sir. I was there.

24 CHIEF WILLSON: Yes. Yes. So -- I just went blank.

25 Sorry.

26 We have a slide presentation, "As Long As

1 Rivers Flow". The title of the presentation is rather
2 specific because it's part of the treaty. As long as
3 the rivers flow, the grass grows, and sun shines is
4 the caption for the Treaty 8 document, you know. So
5 this is -- what you have on the screen right now is
6 the look -- looking downriver from the Peace Canyon
7 dam, standing on the bridge. And this is to show that
8 fluctuation in the river that happens when they're
9 holding water back, and when they're releasing water
10 to generate power.

11 Now, first off, we have been very clear
12 that we are not opposed to the creation of energy.
13 What we're opposed to is the destruction of this
14 valley. We feel that there is absolutely no reason to
15 destroy this valley, the last 20 percent of this
16 valley, in order to create this energy. We have
17 written many letters, tried to have many conversations
18 with the government and BC Hydro on the alternatives.
19 We were one of the first supporters of wind. We have
20 -- well, now we have four large-scale wind power
21 projects in our territory. The first one that was
22 commissioned was Dokie Wind, which is right in our
23 back yard. A pretty massive -- it wasn't the first
24 one built.

25 **Proceeding Time 1:11 p.m. T2**

26 Bear Mountain was the first one built, but

1 Dokie Wind was the first one that was commissioned,
2 the first one that got approval in B.C.

3 Just to show, I'm not sure if you're
4 familiar, but we just won a pretty exciting case where
5 that's the Treaty 8 territory as it was presented in
6 1899 by the federal government to the First Nations
7 that were in part of that. We are actually -- I'm not
8 sure this is going to work, but can you see that
9 little red -- that's the Peace River right there.
10 Well, that's the Finlay River, that's the Parsnip
11 River and this the Peace that flows over there to Lake
12 Athabasca.

13 It's the only spot in the whole Rocky
14 Mountain trench where the waters from the west side of
15 the Rocky Mountains flow through to the east side of
16 the Rocky Mountains. It's rather special. It brings
17 all the warm air from the west coast through the
18 mountains. That's why there is prickly pear cactus
19 growing on the south banks. It's a pretty unique
20 climate up there for that.

21 This is the oral promise of the
22 commissioner that was made to the First Nations to
23 entice them into the treaty, the signing treaty. And
24 I'll quickly read it out:

25 "Our chief difficulty was the apprehension
26 that hunting and fishing privileges were to

1 be curtailed, and the provisions in the
2 treaty under which ammunition and twine is
3 to be furnished went far in the directions
4 of quieting the fears of the Indians for
5 they admitted that it would unreasonable to
6 furnish the means of hunting and fishing if
7 laws were to be enacted which would make
8 hunting and fishing so restricted as to
9 render it impossible to make a livelihood by
10 such pursuance. But over and above those
11 provisions, we had to solemnly assure them
12 that only such laws as to hunting and
13 fishing as were in the interests of the
14 Indians and were found necessary in order to
15 protect the fish and fur bearing animals
16 would be made, and they would be as free to
17 hunt and fish after the treaty as if they
18 had never entered into it. We assured them
19 that the treaty would not lead to any forced
20 interference with their mode of life."

21 That was -- the oral promises have been directed by
22 the Supreme Court of Canada to be included as
23 interpretations of treaty now. This is what enticed
24 the First Nations to sign on, in here. West Moberly
25 adhered in 1914. I'm not sure when your dates were?

26 CHIEF TSAKOZA: It's was like '18 something.

1 CHIEF WILLSON: So the water is vitally important to the
2 First Nations. Moberly Lake First Nations, or the
3 West Moberly First Nations were located on the west
4 end of Moberly Lake. Prophet River, Blueberry River,
5 Halfway River, Doig River. Fort Nelson is located
6 right on the Fort Nelson River. So water is a key
7 element of survival for us.

8 This is an image -- on the left of the
9 screen is the image of West Moberly, our community
10 back in the early 30s there. Archeological evidence
11 shows us being on the lake for over 400 years.

12 The image on the right -- I'm not sure if
13 you guys are familiar with the book, *Crooked River*
14 *Rats*. It was a book done about the Hudson's Bay
15 Company and the trading and stuff like that. Well, my
16 uncles were the riverboat men, the bowmen on those
17 riverboats moving those supplies through the Finlay
18 River, the Parsnip and the Peace River. That's one of
19 my uncles there with the -- on one of the freight
20 boats moving through Deserter's Canyon up on the
21 Finlay River, which is now underwater because of the
22 Williston Reservoir.

23 Part of the presentation that we did back
24 during the joint review panel, the David Suzuki
25 Foundation in conjunction with Global Forest Watch put
26 together all the existing information on cumulative

1 effects. It's probably the only cumulative effects
2 address that has ever been done in northeastern B.C.
3 B.C. has not done one.

4 The BCUC -- not BCUC, the JFP, sorry,
5 admitted that there is no information out there on
6 cumulative effects and there needs to be some.
7 They've also addressed the fact that what they know of
8 the cumulative effects, there's already too much
9 happening.

10 What you have is, on the left, an image of
11 existing human footprint, oil and gas pipelines,
12 roads, stuff like that. On the right-hand side is the
13 same image with the 500 metre buffer applied to it,
14 which is a common practice done. You're not allowed
15 to hunt within certain number metres from certain
16 areas. If there's a person out there or a dwelling,
17 you've got to stay anywhere between 400 metres to a
18 quarter of a kilometre away for discharging firearms
19 and stuff like that, so.

20 It shows you the intensity of what's going
21 on up in northeastern B.C. that's never been
22 addressed. It's the heart of the -- well, it's the
23 breadbasket for B.C. All the oil and gas come out of
24 -- primarily out of northeastern B.C. Coal. There's
25 a couple million cubic metres of timber, lumber that's
26 developed up there.

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Proceeding Time 1:16 p.m. T3

Now we're the home of wind. Right there in that little open spot is where Moberly Lake is. So you can see what's left. Prophet River is north of this map up here.

Currently on the Williston reservoir, B.C. quite often -- and BC Hydro quite often tout Williston as being a recreational lake. It's a reservoir, not a lake. A lake is something that the Creator has made. This is manmade. And every spring this is what happens down at the dam, the Peace Reach. The debris that is still in the bottom of the reservoir and that drops in from the sloughing from the banks, because it's called a rinsing effect. Every time they raise and lower the waters it washes the banks of the reservoir and it continues to grow. It hasn't reached its maximum and it's still doing that. So you can imagine trying to swim or boat out there in this.

And the imagine on the right is actually my son and a friend of his back in 2007. We went up there and it was a hot day and they wanted to go swimming, so they crawled out over the logs and got into the water and were swimming, and the winds -- because it comes through the Rocky Mountains, the winds came up real fast and they wound up being stuck out in that with waves and the trees were crashing

1 around. It became a pretty serious situation. We had
2 to get them out of there real quick. And it was
3 evident that it's not even close to being a
4 recreational body of water. They have to dump fish in
5 it to keep it alive.

6 This is the sloughing that I was talking
7 about, the rinsing effect. That cabin is now not
8 there any more. It fell in. But all along the sides
9 of the banks it's -- they call it unconsolidated
10 soils. It's just silt and just washes into it. When
11 BC Hydro draws -- it's got a call for power and they
12 draw down on the reservoir, these beaches appear.
13 They can be a couple kilometres long and the dust
14 storms that come up, they've had to move the Tsay Keh,
15 not -- yeah, Tsay Keh Dene Nation about three times
16 now because of the dust storms up there at the north
17 end of the reservoir.

18 1973 was the Attachie slide that happened.
19 This is one of the big issues of the valley is that
20 the soil moves, the land moves all the time. They're
21 constantly having to redo the roads up there because
22 of the sliding of the roads. The bank, just above the
23 Halfway River -- this is the Halfway that comes in
24 right here. Right above the Halfway River, we're
25 looking downstream, this whole bank dropped into the
26 river and it changed the actual channel of the river

1 now. And it's an ongoing thing that's happening.
2 Right at the site, at the Site C construction site
3 they have two stress factors that have happened and
4 they've had multiple slides that have happened right
5 on site. This will, if it's flooded, the valley is
6 flooded, it's going to continue to happen. It's going
7 to intensify.

8 So there's nothing clean or green about
9 large-scale hydrologic reservoirs. They are renewable
10 but -- to an extent, but they're not clean or green.

11 What we have is an image on the left is bow
12 trout spawning in one of the tributaries on the Peace
13 River. I believe this is Carbon Creek. And my son,
14 that's his first fish. That's my son sitting in the
15 back over here. That was one of his first fish he
16 caught. It was a seven pound Dolly Varden. We
17 couldn't eat him. We would have let it go but he
18 snagged it so much hard on the hook that it damaged
19 his jaw so we had to keep it. But, you know, that was
20 my first -- his first fishing experience was having to
21 throw a fish back, right? You know, typically in our
22 culture we would take that back and feed the family,
23 but in this situation we threw it in the garbage,
24 right, because we don't want to eat it because of the
25 mercury issue that's happening up there.

26 And part of that was this study that we

1 did. There has been no study from the B.C. government
2 or BC Hydro up until recently on mercury contamination
3 in the fish. What they do have is this is a caption
4 out of the *British Columbia Fish and Wildlife*
5 *Regulations*. And it's in there today still. Mercury
6 1, mercury levels in the lake trout, bow trout, Dolly
7 Varden, from the Williston Lake and its tributaries
8 and in lake trout from Pinchi Lake may be high.
9 Normal consumption is not a significant hazard to
10 human health but high consumption may be. So they
11 recognize that there is an issue with the mercury in
12 the fish, which is in the Williston reservoir.

13 We did a study a number of years ago and
14 have identified these red lines are all the
15 tributaries that are connected to the Williston
16 reservoir where fish, where they stock is a natural
17 barrier. There's a waterfall or something that they
18 can't get beyond.

19 **Proceeding Time 1:22 p.m. T04**

20 So those, that's the level of exposure that
21 we have to fish. And down here at the end, this is
22 the Peace Canyon, W.A.C. Bennett Dam. So that
23 theoretically is the stop point. But whatever goes
24 through the dam then goes into the Dinosaur Reservoir,
25 and then the fish in the Dinosaur Reservoir eat those.
26 We've never done a study on the Peace River. We

1 haven't done it. That's our -- we're hoping to do it.
2 And the reason why this is important is because this
3 is my family. This is our family, and we've done an
4 annual fish count for over 50 years on the Crooked
5 River, which is a tributary that goes into the Parsnip
6 River.

7 And we were sitting around discussing the
8 mercury levels in the fish in the Williston Reservoir,
9 and one of the elders that was sitting there said,
10 "Well, this river connects to the Williston Reservoir.
11 So the fish that we're catching here, are coming from
12 the Williston Reservoir, aren't they?" And nobody
13 thought about that. And we thought, well, that's
14 probably it, because these big fish follow the --
15 they're called -- we call them "shiners". They're
16 little fish. They spawn and these ones follow them
17 up, and we catch these ones there. That fish, that's
18 a cousin of mine. That will -- you know, we'll can
19 it, we'll dry it. That probably went on the barbeque
20 out there at camp and fed everybody out there at the
21 camp. We would have ate probably a dozen of them out
22 there, you know.

23 So, what do you consider normal levels of
24 consumption, and what do you consider high levels of
25 consumption?

26 No one has ever sent us a notice or

1 anything to the Nations about the issuance of the
2 warning of mercury. There's never been a discussion
3 with us on it. We've had to dig all this information
4 up ourselves out there.

5 So our study, this shows you where this is
6 -- this is the Williston Reservoir, that's the Peace
7 arm. W.A.C. Bennett Dam is here. And this is the
8 Crooked River down here. So we -- this is the picture
9 that I just showed you of the camp; that's one spot,
10 and this is the second spot on the Crooked River.

11 So we applied for funding, we got some
12 funding to do a study. And our study showed we caught
13 65 fish. And of the 65 fish, all but one, two, three,
14 four -- four of them -- oh, five. Fell underneath
15 this 0.2. Now there's two levels here that are
16 identified. 0.2 is personal consumption, and 0.5 is
17 the commercial consumption. I don't know why there's
18 a difference; why there would be a difference between
19 somebody -- me eating the fish, or me selling the fish
20 to somebody. I don't understand that.

21 But this is where -- in front of you, I
22 handed out two Hershey Kisses. So 0.2 somewhat
23 represents these two little Hershey Kisses of
24 consumption. A woman of child-bearing age, or young
25 children, should not ingest more than that level.
26 That's what our treaty right has been reduced to

1 already, in the Williston Reservoir. No forced
2 interference, we were promised.

3 Some of these levels -- and these, you'll
4 hear from certain scientists that only the big fish
5 have the mercury. They argue -- BC Hydro argues that
6 the mercury levels should be diminishing in the
7 Williston Reservoir. But this study shows that they
8 aren't. All the fish that we tested had mercury in
9 them, not just the big ones. The little ones even had
10 mercury in them. So their numbers, or their facts,
11 are a little askew.

12 And it's BC Hydro, in light of what we did,
13 in response to what we did here, ran their own study
14 out there, and they hired their own fisheries
15 biologist. And we're just -- I think we're just
16 getting the results of that now. So, again, this is
17 my son. I use him as a guinea pig.

18 This was our first fly fishing experience
19 with him. We were out on the Sukunka River. It's
20 away from where Site C is, and W.A.C. Bennett Dam is,
21 and we thought we were pretty safe. And so he caught
22 a little rainbow and a northern pike on a fly rod.
23 And we showed him how to get it.

24 **Proceeding Time 1:11 p.m. T2**

25 I showed him how to take care of it and
26 when we went to leave I drove across the bridge and

1 turned around and on the backside of a tree there was
2 a sign hanging there, and it just caught me out of
3 curiosity. Why would somebody hammer a sign on the
4 backside of a tree in a pullout. You'd want it on the
5 inside.

6 So I went over to take a look at it and
7 this sign was there. You know, "The concentration of
8 selenium in the waters of Blind Creek is above the
9 Canadian drinking water guidelines." What does that
10 mean? Is it safe right?

11 So we had no idea. This is a notice from
12 one of the coal mines that's operating there and the
13 runoff from the coal mines is selenium and it goes
14 into the river. You know, it's called solution by
15 dilution. They dump it into the river and get rid of
16 it.

17 No forced interference. This is a sign at
18 Moberly Lake. We are under, actually, conservation.
19 Only a couple of things that interfere with treaty
20 rights and our ability to harvest. Conservation is
21 one of them, and safety is one of the other ones. So
22 when a species get to a point where they have to
23 actually intervene and put in conservation measures,
24 we have to then abide by it. So right now, the lake
25 that we've lived on for over 400 years, we are not
26 supposed to be fishing the lake trout out of it.

1 Now, the lake trout are the preferred fish.
2 They are like -- we're not a salmon culture. We don't
3 have salmon in the Arctic watershed where we are. But
4 the bow trout, the Dolly Varden and the lake trout,
5 are comparable to salmon. They are large, there's a
6 lot of fat in them, they're good to eat. And a big
7 fish will feed a family for quite a while.

8 Grizzly bear, buffalo, mountain sheep,
9 goats, they are all on their way to being threatened.
10 Or they are probably listed now on the south Peace.
11 The lake trout are being extirpated. B.C. -- we found
12 out why they are being extirpated is that B.C. ran a
13 commercial fishery off of Moberly Lake and Guillam
14 Lake in the early '50s to help with the war effort
15 during World War II, to feed the troops overseas.

16 Oil and gas has polluted the water and
17 contaminated moose. That was another study that we
18 had. Edible plants, medicinal plants, constantly
19 being sprayed by BC Hydro, Canfor, oil and gas.
20 Ecosystem based study that we did on the upper Moberly
21 watershed that the upper Moberly watershed is no
22 longer culturally sustainable up there.

23 So everything in the news today is about
24 caribou. So, in -- when did they go to full pool?
25 1969? They went to full pool on the Williston
26 Reservoir.

1 MR. GAILUS: '67.

2 CHIEF WILLSON: '67?

3 THE CHAIRPERSON: Sorry, what --

4 CHIEF WILLSON: The full pool on Williston Reservoir. So
5 when they flooded Williston Reservoir it fragmented
6 the caribou migration pattern up there, and this is
7 documented by the province and biologists. It created
8 a northern population and a southern population of
9 caribou. Now, we did another study called, "I want to
10 eat caribou before I die", and we talked about how we
11 used caribou in our culture, and they were one of the
12 primary staples of our diet. They were like the fish
13 in the rivers. They were a convenient food. Whenever
14 you needed food, if you couldn't find your preferred
15 food, like moose, you can always go to the mountain
16 and you can always get caribou. You can always go to
17 the river and you can always catch fish. They were
18 always there, you can always depend on them.

19 2014 -- I believe it was 2008 we went to
20 court with First Coal and the province on trying to
21 protect the Burnt Pine Caribou herd. Out of that we
22 got this information. The population status in 2014
23 was 425 caribou in the south Peace. Now, after the
24 court case we entered negotiations with the province
25 and brought in the federal government and we're still
26 currently talking with them about implementing terms

1 of SARA, the *Species at Risk Act*.

2 These caribou are identified as they were
3 upgraded from threatened to the next level up. To
4 being extirpated. We went from 2014 from being 425 to
5 2017 down to 207. This is after B.C. is supposed to
6 have been implementing safety conservation measures on
7 the caribou.

8 **Proceeding Time 1:32 p.m. T06**

9 There were seven herds in 2014. We're down
10 to five herds in 2015. The Burnt Pine caribou have
11 been extirpated. That's the one that we went to court
12 over, trying to protect. We won the court case; we
13 should have been able to protect them, but it was too
14 little, too late for them.

15 The numbers on the Kinse-Za and Scott herd,
16 they used to be two different herds, but they've
17 combined them now because their numbers were so low.
18 We actually started the penning program on the Kinse-
19 Za/Scott herd. We went from -- I believe it was 13 up
20 to 74, the last count this year there's been 74.
21 We've been running a penning program for the last
22 three years on them, and they have -- they're doing
23 well. They're not out of the woods.

24 In order to have a sustainable harvest of
25 caribou for every member of our community, and taking
26 just a ballpark number of a family of five to harvest

1 one caribou to feed -- and caribou are very small.
2 They're not very big. They're a little -- about the
3 size of a deer. For a family of five -- we have 300
4 members in our community, so that's 50 caribou. The
5 provincial biologist has told us that in order have a
6 sustainable harvest of 50 caribou, we have to have
7 over 3,000 caribou on the ground to sustain that.
8 That's West Moberley.

9 Our next door neighbour, Sto:Lo First
10 Nations, they've got 1500 people. Profit River --
11 CHIEF TSAKOZA: 287 people.

12 CHIEF WILLSON: Yeah. So that's what we are forced to
13 deal with now. We have on our own decided we're not
14 hunting caribou any more until we can recover them.
15 So our communities have decided that they're protected
16 right now.

17 Ongoing effects. The top image, and I
18 apologize, these are a little graphic. The top image
19 is a female cow moose. She was found at a sour gas
20 well dead. She had been there for a week, and no
21 animals touched it. Crows didn't touch it, coyotes
22 never touched it. She just laid there. We got an
23 autopsy done, and they couldn't determine what caused
24 her to die. She was by all accounts a healthy moose.

25 Sour gas is one of those -- it's called a
26 silent killer. One part per billion will knock you

1 down on the ground. And it does not -- it dissipates
2 in the body tissue, it doesn't hang around. So if you
3 walk into a site that has a leak -- and we can't prove
4 that that's what it was, but we have no other
5 explanation of why that moose just fell over and died.

6 The image on the bottom left is a cow moose
7 -- a cow moose. A cow bison of the Fontas herd. The
8 Fontas herd are protected caribou -- geeze --
9 protected bison up north of Dog River. This female
10 got into a well site and got her head stuck under the
11 pipes in a well site, and they couldn't get her out,
12 so they had to put her down. This is an ongoing thing
13 that happens.

14 The bottom right-hand picture is a young
15 bull caribou that fell off the edge of the sample pit,
16 the bulk sample pit, at First Coal coal mine, and
17 died. There was only two left when this happened, and
18 there was -- the female that was left, left the area
19 and moved. So that herd has now, according to the
20 province, has been extirpated out of there.

21 This image -- the reason why I have this
22 image up here is, we were in a long discussion with
23 B.C. and the coal mine. And the coal mine hired a
24 biologist, and a consultant, and he stood up in a
25 public meeting telling everybody that these caribou
26 need this coal mine in order to survive. He made a

1 public announcement about that. You know? And B.C.'s
2 own caribou specialist argued to say that this mine
3 would be detrimental to this caribou, and B.C. ignored
4 him and listened to the coal mine company instead,
5 right?

6 And we're not -- I'm not trying to argue
7 that coal is bad. There is a place, I believe, for
8 coal. But it has to be done in a way that's
9 sustainable. You can't put a coal mine in the middle
10 of a herd that's supposed to be protected. B.C. was
11 breaking its own rules.

12 Our past and our future are all tied to our
13 spirituality. Water is the lifeblood of every living
14 thing. The Peace River is the main artery in B.C., in
15 our area, that flows through there. All the other
16 tributaries dump into the Peace River.

17 **Proceeding Time 1:37 p.m. T7**

18 Eighty-five percent -- 80 to 85 percent of the Peace
19 is already taken out with W.A.C. Bennett and Peace
20 Canyon. We are learning to live with those impacts.
21 They're ongoing impacts. Continuously every year
22 something is going on up there.

23 What you see here is an image of us looking
24 upriver from the Peace towards those two mountains at
25 the back. Those two mountains are the Twin Sisters.
26 Now, during the NDP's last term they created what was

1 called the LRMP process, Land Resource Management
2 Plans. And the Twin Sisters have been identified in
3 that Dawson Creek LRMP as protected, spiritually
4 protected. I believe it's the only ones that have
5 been identified in any of the LRMPs as spiritually
6 protected for First Nations. That's the headwaters
7 for us. There's prophecies around the mountains. You
8 know, so it's like the blood flowing through your
9 veins. If you poison that blood you'll eventually
10 die. You'll get sick. And if we're not careful with
11 the water in our area, through shale gas, through
12 mining -- we're already seeing the effects of it with
13 methylmercury, with the caribou, the low moose
14 populations that are out there. Because we can't hunt
15 the caribou we have to depend more on the other
16 species, what takes a significant toll on them. All
17 these fires that happened this year, all the people in
18 those areas that hunt aren't hunting there. They're
19 coming to our area and they're hunting. So there's
20 even more of a toll on those things.

21 Findings of the Joint Review Panel,
22 cumulative effects were not properly addressed. The
23 JRP talked about that. The Panel's view that with or
24 without Site C cumulative effects, significant --
25 effects significant and cannot be mitigated. Adverse
26 impacts to Treaty 8 hunting, fishing and trapping and

1 other rights as well as cultural heritage are
2 significant and cannot be mitigated. Three species of
3 fish that the First Nations rely upon will be
4 extirpated. Those are the ones I was talking about:
5 Kokanee -- not Kokanee. Bow trout, Dolly Varden.
6 Arctic grayling is another one. And BC Hydro and
7 B.C.'s solution to that is to dump Kokanee in there.
8 Now, Kokanee are not an arctic watershed fish. You
9 know, that's an introduction of a foreign species into
10 our ecosystem up there.

11 Fish that remain will be contaminated in
12 methylmercury for at least 20 years. That's from Site
13 C. That's not talking about the ongoing 50 years of
14 impact that we're having from W.A.C. Bennett and Peace
15 Canyon. Now, they had said that in the Williston
16 Reservoir that after 20 years the level should be
17 diminishing. We're showing that we're not from the
18 evidence that we have found. So, I mean if Site C is
19 anything like the other reservoirs, I imagine it's
20 going to be 50 years for them as well.

21 The other issue of this is it introduces
22 mercury contaminated fish into Moberly Lake. The
23 reservoir will flood the natural barrier that's in
24 place. There's a set of falls there. And the fish in
25 the Williston Reservoir -- or in the Site C Reservoir
26 will then have access into Moberly Lake. So it will

1 have direct connection to the lake now.

2 THE CHAIRPERSON: The Moberly River?

3 CHIEF WILLSON: The Moberly River. What did I say?

4 THE CHAIRPERSON: No, no, just to confirm it's the
5 Moberly River.

6 CHIEF WILLSON: The Moberly River. And in the Halfway.

7 Found significant adverse effects on the
8 following valued ecosystem components: fish and fish
9 habitat, vegetation, ecological communities, wetlands,
10 rare plants, species at risk, migratory birds,
11 heritage and resources. We have a gravesite and a
12 sweat lodge located at Bear Flats. Bear Flats has
13 been a gathering spot for the Dene Tha people for a
14 thousand years. There's archaeological evidence in
15 place out there right now.

16 We're in a fight right now with BC Hydro on
17 road realignment. You know, right at Bear Flats. In
18 their infinite wisdom they decide to put the road
19 right through the middle of the gravesites, right
20 through the sweat lodge, and right through everybody's
21 house that's in Bear Flats, the non-native ranchers
22 that are living there. You know, and that was
23 deliberate in my point of view. There was no reason
24 for them to put that there other than to get us out of
25 the valley. It gets the ranchers out of the valley
26 and it gets us out of the valley. So one of the last

1 spots that we have to use is we have to negotiate an
2 agreement with the ranchers so that we can continue to
3 access land that we have had for over a thousand
4 years.

5 **Proceeding Time 1:11 p.m. T8**

6 Costs of Site C fall largely on the First
7 Nations. Our ability to exercise our constitutionally
8 protected treaty rights are irreparably harmed by the
9 existing dams and will be of Site C. 85 percent of
10 the Peace River in B.C. is taken up already by dams
11 and reservoirs. Can't fish from the shore. There's
12 signs up all over the place, "Destabilized banks", you
13 know "Be careful, the river could rise at any time
14 without warning." Fish are being extirpated or
15 contaminated, caribou and other ungulates are being
16 extirpated or displaced.

17 First Nations were unanimously against Site
18 C at the issuance, before the issuance of the
19 Environmental Certificate that was put out. After
20 that, some of the First Nations figured they need to
21 try and get what they can out of this because they
22 thought it was a done deal.

23 We didn't -- nobody was in favour. Not one
24 of the First Nations that have signed right now in our
25 area have said "We're in favour of Site C." Signing
26 an impact benefit agreement to try and recover

1 something does not mean that they are in favour of it.

2 You know, West Moberly and Prophet River,
3 we were steadfast against it. There's absolutely no
4 reason to destroy that valley in order to create the
5 energy that they need. Right now, existing, there are
6 two SOP projects that are approved for geothermal.
7 One in Valemount and one in Pemberton. Between the
8 two of them, if they were allowed to go their maximum
9 ability, there's over 407 megawatts of power there,
10 sitting there. That's almost half of what Site C
11 could produce at a fraction of the cost and a fraction
12 of the footprint of what Site C is. We could build
13 ten geothermal plants in B.C. at a fraction of what
14 Site C will cost.

15 Wind farms. Solar. You know, smaller
16 scale run-of-the-river projects on Site C where you
17 are not actually impounding water and blocking the
18 river off.

19 We were never allowed to discuss any of
20 that. B.C. made a decision to move forward with Site
21 C and then they came and told us about it. There was
22 no consultation. Consultation, in our belief, is the
23 dialogue that happens between the two parties to get
24 to a decision. You don't make the decision and come
25 and tell us what you're doing. That's then called a
26 mitigation program, not a consultation program.

1 The Crown promises no forced interference
2 with our usual locations of hunting, fishing and
3 trapping. The Crown has repeatedly breached those
4 promises. Terminating the project provides an
5 opportunity for reconciliation. This is the big
6 argument right now. What happens when you shut this
7 down? Well, what are we going to do?

8 Well, right now, all the work that any of
9 the First Nations got is done. They got all the
10 upfront clear-cutting, individual ground words, you
11 know bulldozing and stuff like that. The majority
12 of the First Nations are done now. They are off site.

13 If this project gets turned around, we're
14 in a prime position to get back in there and help
15 reclaim the thing and put it back to bed. So there
16 would be a significant increase into the population.
17 Not population, but the benefits to the First Nations
18 on it.

19 First Nations are willing to partner in
20 alternatives. We have agreements in place with wind
21 farm companies in our area. We are talking with
22 geothermal companies, we are talking with solar
23 companies about opportunities. We've even entertained
24 gas-fired power plants.

25 Every company that's operating in
26 northeastern B.C., every oil and gas company is

1 burning natural gas right now, but they are exempt
2 from the *Clean Energy Act*, and they are not recognized
3 as greenhouse gas producers up there. And they are
4 continuing to do so. There's applications right now
5 in place to apply new gas-fired power plants. If they
6 are allowed to do it, why isn't B.C. allowed to do it.
7 Use it as a bridge until a new technology comes along.

8 **Proceeding Time 1:47 p.m. T09**

9 Use it as a backup in case -- when wind isn't
10 producing, and fire it up. There's enough power at
11 the Burrard Thermal Plant, if they refurbished that
12 for a billion dollars, there's more than enough energy
13 there. And they could run that as backup to
14 everything else.

15 Okay, I think I'm done. [non-English
16 language]

17 THE CHAIRPERSON: Thank you.

18 CHIEF WILLSON: There was a -- during one of the court
19 cases, one of the judges had said, "Why is Profit
20 River in this?" They're located way up there. Quite
21 a ways away. And that was insulting, basically. Our
22 communities come together, you know. Before we had
23 cars, we walked. It was a way of life. They would
24 walk from Profit River, we would come from Moberley to
25 Bear Flats, and we would gather there, and we would
26 gather in all kinds of spots along the Halfway, and

1 other areas. That was the way of life. That's how we
2 moved around. And we got horses, and we rode them.
3 People still to this day from Profit River are coming
4 down and fishing at the Halfway River. Now we have a
5 vehicle, we can drive down there.

6 **SUBMISSIONS BY CHIEF TSAKOZA (#0101):**

7 CHIEF TSAKOZA: Yeah, it was just like -- I was astounded
8 when that judge actually said that. I was, like, wow.
9 So, like, you've got to think, like, back then, like,
10 how did they look at us Indians, did we just stayed on
11 the rez, and stuff like that. You know, you need
12 other community members and stuff like that to grow.
13 So we had the family to grow and stuff like that,
14 right? And there -- I remember when I used to take my
15 grandma and them, my grandma used to pack her horses
16 and stuff like that, and they -- she'd be like, why,
17 I've got to -- we're going to go visit family and
18 stuff. They would -- she would go all the way to
19 Halfway and stuff like that, and a bunch of us would
20 go with them.

21 But I mean, like, it's just -- that
22 actually really was like -- I was really astounded,
23 like, he actually said that. Like how do you actually
24 look at us First Nations and stuff like that? Like,
25 you know?

26 It's just like, you know, like modern-day

1 things. If we need to go somewhere and stuff like
2 that, we're going to plan to have a flight, or a car.
3 We're going to drive. We're going to get there one
4 way or another. It don't matter. So, like, when we
5 have family and stuff like that, we will make it.
6 Like, we'll walk if we have to, or we will ride our
7 horses and stuff like that. Back then and stuff -- I
8 mean, I was just -- that actually kind of really
9 hurted me that he would ever say something like that,
10 you know? It's just like, okay.

11 So I actually wanted to stand up and ask
12 them, like, well, how did you get there? Can you
13 explain that to me? Like, so where do you actually
14 live, and stuff? Like, you know, and I'm, like -- it
15 just -- when we want to go somewhere and see someone,
16 especially family, because family is, like, number one
17 thing, right? And that's all we got is family.

18 So, I mean, that makes us, you know, want
19 to see them and stuff like that. We all want to see
20 our family. And one way or another, we're going to
21 get there and stuff, you know? But that's how I see
22 things and stuff like that. Like, it just -- hunting,
23 you know? We'll go hunting, take our horses and stuff
24 like that. Now, nowadays, everyone's all modernized,
25 right? They have quads or whatever, and stuff like
26 that. But you know, it's the same thing. You want to

1 -- you want food? We're going to go get it. We have
2 to go and get it, actually, because no one's not going
3 to bring it to you.

4 So, I mean, the door swings both ways, and
5 stuff like that, right? But I just -- I was just
6 astounded, like, he actually said that. I was like,
7 wow.

8 But here's one of the -- one of our elders,
9 her name is Mary McKanachaa. She's a member of the
10 Prophet River First Nations, and she described
11 traveling from Prophet -- Prophet River Reserve, south
12 of the Fort Nelson, south and then west of -- through
13 the mountains, then further west of -- past
14 Arctic/Pacific divide. She said she marked all the
15 trails known to and used by other people on the map.
16 It was looked -- it would look like a spider web. It
17 would be like -- yeah. When it was pointed out to her
18 about that route as she marked and crossed a red line
19 deleting --

20 **Proceeding Time 1:52 p.m. T10**

21 CHIEF WILLSON: Delineating.

22 CHIEF TSAKOZA: I can't see it, sorry. And claimed in
23 the western boundary of the treaty 8, being the
24 Arctic/Pacific divide, she answered, "there was no red
25 line on the ground over which she had travelled."

26 So basically what she was saying, and

1 stuff like that, how people try to put us as
2 boundaries. My grandma used to always tell me, she'd
3 say, "There is no boundaries." You know, she said,
4 "It is not just Halfway, it's just not Blueberry, West
5 Mo," and stuff like that. She'd say, "We have family
6 everywhere." She was like, "There's no lines or
7 anything." She'd say, "This is our home." And she
8 would say, "You know," she'd say, "We walk over there.
9 We don't ever ask permission, say, like 'Well, hey,
10 Chief of West Mo, can we come visit you and stuff?
11 We're going to come fishing.' No, we're all family."
12 And stuff like that. One way or another and stuff.
13 So I mean like through marriage or whatever and stuff
14 like that, right? I mean, like, there is just no
15 lines and stuff like that.

16 It drives me crazy when people say, "Oh,
17 this is the Prophet River," or "the Prophet boundary."
18 No, it's not. It's like -- can you tell me where is
19 that line? Because I want to see it. We have never
20 put lines on our treaty territory ever. You know,
21 we're all family one way or another. We all got
22 family. That's what I tell my kids. I'm like, "You
23 got family in Blueberry, you got family in Doig and
24 West Mo, Halfway." You know? And I say, "Through
25 marriage," and stuff like that but it's just like --
26 yeah.

1 So there's no lines there and stuff like
2 that. And we walked -- or we rode our horses and
3 stuff like that to West Mo or whatever community that
4 we're visiting and stuff like that.

5 I do remember when I was a kid, my grandma
6 did -- she was packing her horses and stuff like that.
7 She said she was going to go and visit, make her way
8 down to Halfway and stuff like that. And yeah.

9 But -- yes. So thank you.

10 CHIEF WILLSON: That was a caption out of the Western
11 Boundary court case that just happened. Mary
12 McKanachaa was, called them a lay presenter. Is that
13 what it is?

14 MR. GAILUS: Lay witness.

15 CHIEF WILLSON: Lay witness.

16 MR. GAILUS: Paragraph 165.

17 COMMISSIONER COTE: Could I ask a question. Hopefully
18 you can education me. Increasingly as we've gone
19 through this period of listening to presentations,
20 this issue of the mercury has come up, and can you
21 explain to me -- my understanding is it's coming from
22 vegetation in the Williston reservoir. Particularly
23 what vegetation is it? Is it the trees that were just
24 cut and laid out. Is that what's causing it?

25 CHIEF WILLSON: There is lots of speculation on what's
26 causing it. Some of it is natural, that's in the

1 ground. But the problem is is that this particular
2 body is now sitting on top of it and it's moving it
3 around.

4 I know I used to have a -- I was in the
5 forest business, logging, and if you cut aspen down --
6 and this is why pulp mills have to contain all their
7 water. If you cut aspen down, lay it on the ground,
8 it then starts to decompose and in the decomposing of
9 that methylmercury is released in between the cambium
10 layers, and that site actually becomes contaminated.
11 So anywhere that they're using -- in the pulp mill
12 that they're using deciduous wood, that's an issue.
13 They have to contain all the water so it doesn't get
14 off site. And then you have to reclaim it afterwards.

15 So there is millions of cubic metres of
16 aspen in the valley, and there is new vegetation
17 that's getting dumped in through the rinsing effect of
18 the whole thing. So it's a combination of existing,
19 that's already there, introduction of what's in the
20 trees that's being released, and the weight of the
21 reservoir itself. There could be a deposit of
22 methylmercury somewhere. There's an enormous amount
23 of weight pushing down and it moves stuff around
24 underneath and it could be -- we don't know. You
25 know. But what we do know, is that it's not
26 diminishing. It's not going down, it's still high

1 after 50 years. You know.

2 **Proceeding Time 1:57 p.m. T11**

3 COMMISSIONER COTE: In the case of Site C, relative to
4 the vegetation part, are you aware of anything that's
5 been done different with Site C that was not done in
6 the case of the Williston Reservoir? In other words,
7 is there a difference what they've done? Are they
8 clearcutting, removing it all, or you know?

9 CHIEF WILLSON: What their plan is to I guess log the
10 whole valley out. That's the difference that they're
11 doing this time, is to log the whole valley out. But
12 that still begs the argument why -- why large-scale
13 hydroelectric? I mean we're in a new age. You know,
14 we have new technology. Site C should be the last
15 thing we look at, not the first thing. If after we've
16 exhausted geothermal and we've exhausted wind and
17 exhausted all this new technology, every day is coming
18 out with new stuff, you know, that's viable; then
19 let's have a talk about Site C. Let's not jump off
20 the bridge immediately on Site C. I mean that's --
21 all around the world they're taking large
22 hydroelectric dams down, you know, and here we are
23 talking about putting them up. It doesn't make any
24 sense.

25 We see what's going on in Muskrat Falls.
26 It's just, it's outdated technology. We should be

1 beyond that. Canada is supposed to be a world leader
2 in technology. We invested the Space Arm, you know.
3 We invented the polio vaccine. Things like that.
4 Geothermal is -- Alberta is talking about building
5 geothermal. You know, they're the most ungreen
6 province out there and they're pulling in, you know,
7 they're kind of embracing this new technology. And
8 here we are running around like cavemen on this. It
9 just doesn't make sense.

10 I would gladly cut the ribbon on a
11 geothermal plant to save that valley. It's
12 ridiculous.

13 THE CHAIRPERSON: Just to follow up on Dennis's
14 questions, the mercury studies that you were showing,
15 those were studies that you've conducted or were
16 conducted on behalf --

17 CHIEF WILLSON: Yes.

18 THE CHAIRPERSON: And how recent were they?

19 CHIEF WILLSON: Two thousand and -- 2012, I think.

20 THE CHAIRPERSON: Right, and does that show the mercury
21 levels in the water or is that --

22 CHIEF WILLSON: In the fish tissue.

23 THE CHAIRPERSON: In the fish tissue.

24 CHIEF WILLSON: Yeah. Yeah, we were -- we don't -- we
25 eat fish.

26 THE CHAIRPERSON: Right, yeah.

1 CHIEF WILLSON: Yeah, so we were trying to understand, is
2 the levels going down, or like where are the levels?
3 Is there an issue with this fish?
4 THE CHAIRPERSON: Yeah.
5 CHIEF WILLSON: Right? So that was the study that we
6 did. We want to follow it up.
7 THE CHAIRPERSON: Yes.
8 CHIEF WILLSON: But once we did our study then our
9 funding agency kind of dried up on us.
10 THE CHAIRPERSON: Right, and there's no provincial
11 government studies?
12 CHIEF WILLSON: Well, BC Hydro commissioned their own
13 study right after us.
14 THE CHAIRPERSON: Right.
15 CHIEF WILLSON: So I'm not sure. I think they're done
16 now with -- I haven't seen the report.
17 THE CHAIRPERSON: You haven't seen the results, okay.
18 CHIEF WILLSON: Yeah, so.
19 THE CHAIRPERSON: Also you mentioned, when you were
20 talking about alternative energy potential, you
21 mentioned Site C run-of-river. Is that something that
22 you or someone you know has looked into that? I
23 assume what you mean is you still have a powerhouse
24 there and you wouldn't have the dam. Is that --
25 CHIEF WILLSON: There were other alternatives that were
26 presented during -- that were eliminated out of the

1 discussion because of the dynamics of what Site C --
2 they had to maximize the head of the river. And
3 everything that they did, because of that decision,
4 said they had to do Site C in order to maximize the
5 head of the river.

6 THE CHAIRPERSON: Right.

7 CHIEF WILLSON: There was Site 7 --

8 THE CHAIRPERSON: 7B?

9 CHIEF WILLSON: 7B. There was a number of cascading ones
10 right at Site C site that they talked about doing a
11 series of cascading.

12 THE CHAIRPERSON: Right.

13 CHIEF WILLSON: It wasn't 1100 megawatts.

14 THE CHAIRPERSON: Yeah.

15 CHIEF WILLSON: But it still allowed the river -- there
16 was no impoundment of water. It was kind of a true
17 run-of-the-river on it.

18 THE CHAIRPERSON: Right.

19 CHIEF WILLSON: There was a number of other ones that
20 were out there that they weren't allowed to discuss
21 because of that dynamics.

22 THE CHAIRPERSON: Yeah. I mean 7B was a more
23 conventional dam, but it was upstream from Halfway and
24 West and the Moberly River, you know, smaller in terms
25 of height and I think about a quarter of the power.
26 Right.

1 CHIEF WILLSON: We never had the opportunity to discuss
2 them.

3 THE CHAIRPERSON: Right.

4 CHIEF WILLSON: Right. They were just taken right off
5 the table, saying they're not viable.

6 THE CHAIRPERSON: Right. Right. A few nights ago I
7 heard someone -- at least I thought I heard them say
8 that the Williston Reservoir fluctuates up to 3 metres
9 up and down twice a day. Does that sound like --

10 CHIEF WILLSON: It can.

11 THE CHAIRPERSON: Yeah, yeah.

12 CHIEF WILLSON: Yeah, overnight it can go from being --
13 well, 3 metres isn't -- yeah, it'll drop by that quite
14 often.

15 THE CHAIRPERSON: Yeah.

16 CHIEF WILLSON: And it all depends. Right now, for the
17 last week, we can't understand why but the river is
18 extremely high right now. They're releasing a lot of
19 water and I don't understand. There's no call for
20 power, there's no demand right now, but there's a lot
21 of water being flown -- flooded out of the reservoir,
22 so I don't know what's going on. Like that's a lot of
23 resources being wasted, right?

24 **Proceeding Time 2:02 p.m. T12**

25 THE CHAIRPERSON: Yes.

26 CHIEF WILLSON: The reservoir might be full, and they

1 have to -- instead of spilling, they might have to
2 just have water go, right? But, yeah. And there is
3 no warning to that, right? Like somebody in Vancouver
4 decides to release water, and they flip a switch, and
5 turbines kick in, water's flowing. You're standing on
6 the shore up to your knees in water. You then figure
7 it's time to go.

8 THE CHAIRPERSON: Right. Right. Okay.

9 **SUBMISSIONS BY MR. GAILUS (#0102):**

10 MR. GAILUS: My name is John Gailus. I'm a lawyer for
11 the First Nations. I've been -- I think I've been on
12 the Site C file since about 2011, 2012, or
13 thereabouts. And I wanted to recognize the Tseh Kay
14 Dene territory that we're here on today. I want to
15 thank Chiefs Willson and Tsakoza for their
16 presentation.

17 To give you a sense of the costs that the
18 First Nations have had to bear from choices that were
19 made by BC Hydro in the 60s and 70s, and now most
20 recently on Site C. I'm going to summarize a bit of
21 the material that we sent in to the Commission. I've
22 only got a few slides. But I want to start with a
23 quote, and I think it's in our submission. It says:

24 "The Commission therefore concludes that an
25 energy project certificate for Site C should
26 not be issued until an acceptable forecast

1 demonstrates that construction must begin
2 immediately in order to avoid supply
3 deficiencies and, two, a comparison of
4 alternative feasible systems plans
5 demonstrates from a social benefit cost
6 point of view that Site C is the best
7 project to meet the anticipated supply
8 deficiency."

9 That probably sounds familiar to some of
10 you. That's from 1983, the decision that you made.
11 And I think that's -- you find yourselves in the same
12 position now, although you're not making a
13 recommendation to issue a certificate. But the same
14 issues have arisen, in terms of your terms of
15 reference.

16 This is what the joint review panel report
17 said. Harry Swain was the chair, and there were two
18 others, and I know you've got a submission from Dr.
19 Swain on that. They weren't able to determine cost or
20 need, and they said the proponent has not fully
21 demonstrated the need for the project on the timetable
22 set forth.

23 And so the timetable set forth was a 20-
24 year time horizon, or 19 years. I think it was 2033
25 was the end of it. And then we said this about
26 justification. Now, justification -- this was

1 justification in the context of the *Canadian*
2 *Environmental Assessment Act*, 2012. But very similar
3 to a justification decision that the Utilities
4 Commission would be called on to make. And he said:

5 "Justification must rest on an unambiguous
6 need for the power and analyses showing its
7 financial cost being sufficiently attractive
8 as to make tolerable the bearing of
9 substantial environmental, social, and other
10 costs."

11 Now, we say, and in the *PVLA* court case,
12 the federal court case, the Peace Valley land owners
13 brought, the judge in that case made a finding that
14 the panel had said the project couldn't be justified.
15 Now, somehow he managed still to stay that the
16 decision of the Governor in Council, the federal
17 government, was reasonable in the circumstances.

18 But I haven't seen anything from either the
19 federal government or the provincial government
20 actually doing that analysis. They're saying that the
21 joint review panel got it wrong.

22 They also made a number of other findings.
23 There was insufficient review of alternatives to the
24 project. This statement is always trotted out. "The
25 project is the least expensive alternative." But that
26 was based on a \$7.9 billion budget and a different

1 model. So in terms of the amount of the debt and
2 equity, I think it was 70/30 or 80/20. And by the
3 time the final investment decision came out, it was
4 100 percent financed by the government. And the
5 project cost had ballooned to \$8.8 billion.

6 Chief Willson spoke about the serious
7 adverse effects that can't be mitigated. And they
8 recommended independent review by the Utilities
9 Commission on the economic issues, something we're
10 doing now.

11 And then finally, relying on export markets
12 is expensive. I think we know this. The power may
13 not be needed in B.C. until at least 2028, that's what
14 -- that was on a low LNG scenario.

15 **Proceeding Time 2:07 p.m. T13**

16 So the environment approvals were made. We
17 know this. But I think the fundamental issue that
18 you're faced with is: Do we need this project? And
19 the JRP is a good place to start.

20 And so under the low LNG scenario, they
21 said, "You're not going to need any power until 2033."
22 But they were constrained. They couldn't consider
23 existing resources. They couldn't consider the
24 Columbia River Treaty, they couldn't consider Burrard
25 Thermal in making that calculation. And we put this
26 in our submission. You know, when you -- I'm a

1 lawyer, I'm not an economist or an energy expert, but
2 you know, 1300 plus 900 makes 2200. Well, that seems
3 like two Site Cs to me.

4 Things have changed. We've got a 2016 load
5 forecast that's more pessimistic than the one that was
6 put forward to the JRP, and Deloitte's review, even
7 more so. It's our view, and I think this is shared by
8 many of the interested parties, the project is not
9 needed anytime in the foreseeable future.

10 Now, the province, the former government
11 put forward a whole number of proposals, said, "Well,
12 we're going to need it for LNG. We're going to sell
13 it to Alberta. We're going to electrify the gas
14 fields." And the latest one was, "All those electric
15 cars that are going to be running around Vancouver."

16 I just want to address the one that's
17 obviously the most important to the First Nations, is
18 the electrification of the gas fields. Well, that
19 means more impacts, more fracking, more contamination
20 of the water, more GHG emissions, more transmission
21 lines and further cumulative effects than treaty
22 breaches.

23 So, if you can get past that question, "Do
24 we need the project at all," then you can turn to
25 costs, and I know that there's been a lot of
26 submissions on that by a number of folks, but the cost

1 at the FID without a shovel being put in the ground
2 went up 900 billion -- 900 million. 900 billion, god.
3 Without a shovel being put in the ground.

4 Now, that was never disclosed to the First
5 Nations at any point, any time. I'm not going to
6 relitigate the court cases, but I think that's an
7 important point, was they, even after the AC was
8 issued, the Nations continued to consult with BC Hydro
9 on alternatives. They said, "Well, what about this?
10 What about that?" And it was always, "No, the project
11 cost is 7.9 billion."

12 Deloitte's report which you have in front
13 of you says somewhere between 1 and 2 billion increase
14 if the River diversion date is missed. I chose the
15 high-end numbers. And I think it's extremely likely
16 as the contractor says they can't meet the target, and
17 I read in the newspaper yesterday that they are
18 shutting down their operations for the winter and
19 laying off 200 people.

20 Can we get the cost recovery back? No.
21 You know, it's either going to have to be through
22 rates or through export. That was the *Times Colonist*,
23 so I don't know in terms of whether that's the best
24 source.

25 The project is 100 percent debt financed,
26 no return on investment for 70 years. I think was an

1 issue that came up in one of the Utility Commission
2 hearings. One of the witnesses for BC Hydro confirmed
3 that.

4 There's a huge impact on alternative
5 energy. The sources are price competitive and given
6 the project's revised budget, they are less expensive
7 and provide more benefits. KPMG did a report. I
8 think they've actually done two reports for Clean
9 Energy B.C. Deloitte's -- I think Deloitte did a
10 very good job in terms of their alternatives review.
11 And of course the UBC study that addressed this, and
12 said the terms of the price of wind going down, that
13 is about a billion dollars cheaper.

14 Clearly it limits the development of
15 alternative energy sources: wind, solar, geothermal,
16 run-of-the-river, biomass. We've got gas that exists
17 to deal with peak capacity load issues and it doesn't
18 make any sense to sort of have Site C sitting there as
19 a backup for those times, for those occasions.

20 Now, one of the things that the First
21 Nations put forward was the Columbia River Treaty.
22 Well, why not use the Columbia River Treaty
23 entitlement? And in our submission we attached a copy
24 of a letter -- unfortunately mine doesn't have a date
25 on it. It was sent December of 2014. It was a letter
26 from the Treaty 8 Tribal Association to Ministers

1 Bennett and De Jong. This was just before the final
2 investment decision. And I would recommend this
3 letter to the Commissioners to read because I think
4 that it answers some of the questions that come out of
5 the interim report.

6 **Proceeding Time 2:13 p.m. T14**

7 And so, you know, we put this forward to BC
8 Hydro. And certainly on a reading of the *Clean Energy*
9 *Act*, the energy isn't produced in B.C. so therefore it
10 wouldn't fall within that 93 percent.

11 And of course the current approach is they
12 just sell it back to the U.S. I say 25 to 30 dollars
13 a megawatt. I'm not sure what it is currently. I'm
14 sure probably the commissioners have those numbers at
15 your fingertips. Site C with a new budget, \$100 plus
16 a megawatt. So why not repatriate that power?

17 The response was, "Well..." -- from B.C.
18 Hydro is, "Well, we can't look at it and, well, you
19 know, the U.S could terminate." Well, it's ten years'
20 notice to terminate the Columbia River Treaty. And
21 while as Chief Willson said some dams are being taken
22 out. I don't think the Grand Coulee Dam is going
23 anywhere anytime soon. U.S. needs that power and
24 certainly, you know, in Seattle and Portland and other
25 places like that.

26 So I think the letter, the December 2014

1 letter goes through -- and I think in quite a lot of
2 detail. I note that Chief Tsakoza and Willson are the
3 authors of that letter, but I thank they had a lot of
4 help in writing it from our consultants. But it goes
5 through and systematically pulls apart the argument
6 for Site C. And I think it's just as relevant and
7 even more relevant in terms of what we've seen happen
8 sine 2014.

9 THE CHAIRPERSON: Is that part of your exhibit in this
10 proceeding?

11 MR. GAILUS: It's part of the submission. I'm not sure
12 which tab it was in in terms of our submission, but
13 it's definitely in there.

14 THE CHAIRPERSON: Okay. Thank you.

15 MR. GAILUS: 20-page letter. Now, I know that we're not
16 here to relitigate the court challenges, but I notice
17 in going through BC Hydro's submissions they basically
18 said, "It's all good. Court cases have been
19 dismissed. Supreme Court of Canada is not going to
20 hear it. Don't worry about it. Nothing to see here."

21 So, I think it's worthwhile to tell you
22 exactly what happened, having been counsel on it. So,
23 the First Nations filed judicial review applications,
24 so administrative law proceedings in the B.C. Supreme
25 Court and in the Federal Court. It's a quirk of our
26 federation that if you want to challenge a federal

1 decision you have to go to the Federal Court, and if
2 you want to challenge a provincial decision you've got
3 to go to B.C. Supreme Court.

4 But they made essentially the same
5 arguments. The decision infringes their treaty
6 rights. The Minister has never considered whether or
7 by by issuing this approval they'd be breaching their
8 treaty promises. We said the decision was
9 unreasonable based on the information available. In
10 the provincial sphere we said that the fix was in.
11 Like it was a *fait accompli* as Chief Willson said.
12 The decision had already been made when Gordon
13 Campbell flew up to Hudson's Hope to make the
14 announcement and that the consultation and
15 accommodation were inadequate.

16 Those applications were dismissed. And
17 they said the Ministers weren't required to determine
18 if their treaty rights were infringed, and that if the
19 First Nations wanted to bring forth those claims they
20 should be brought in a civil action. So a full blown
21 trial. And we've seen how long that can take on --
22 you know, frankly, on the western boundary, that took
23 twelve years, and the only issue in that case is where
24 is the line? So this would be a much more complicated
25 case.

26 They also said that these are polycentric

1 decisions. We hear this a lot in environmental
2 assessment. You know, the Ministers have to take into
3 account all kinds of considerations, so deference is
4 required. And they said that the province made good
5 faith efforts to consult and accommodate. The appeal
6 courts agree. But they went a little bit further,
7 they said the Crown has no jurisdiction to determine
8 infringement. And, again, you have to bring an action
9 for infringement. And they said the consultations was
10 adequate in the circumstances.

11 So the process that the First Nations got,
12 the court said, yeah, that's adequate. The Crown
13 fulfilled its duty to consult in those circumstances.
14 Crown doesn't need to look at infringement. You want
15 to go talk about infringement? Go bring a claim.

16 **Proceeding Time 2:17 p.m. T15**

17 Supreme Court of Canada dismissed the leave
18 to appeal applications, but the infringement claims
19 that the Crown breached the treaty remain unaddressed.
20 None of the cases every addressed that. They
21 basically said, "Go bring an action."

22 If the project is completed, I mean, we say
23 the alternative energy sector is dead. Hydro rates
24 will go up substantially. B.C.'s credit rating
25 suffers. The surplus will be exported at a huge loss
26 to B.C. Windfall to California and possibly Alberta,

1 and there won't be any reconciliation of the treaty
2 rights of the First Nations with the Crown.

3 I want to make also the Panel aware that
4 there's also costs of continuing litigation.
5 Blueberry River has a cumulative effects case that
6 includes Site C that will be going to trial in March
7 of 2018. Now, they tried to get an injunction against
8 industrial activity in areas of critical interest to
9 them. Areas that are also critical to these First
10 Nations as well, and others. They all use the valley
11 extensively and intensively for the exercise of their
12 rights.

13 The interesting thing that the court did
14 there is they said that the First Nation had
15 established irreparable harm, and for the lawyers in
16 the room, they all know what that is. That basically
17 means you can't compensate in damages, but they didn't
18 give the injunction because they said, "Well, we're
19 not going to shut down all these developments because
20 the trial is imminent. So take it to trial and then
21 maybe you'll get your injunction. Maybe you'll get,
22 you know, billions of dollars in damages." That case
23 is out there.

24 We have the Western Boundary decision.
25 Chief Willson referenced the lines on the map. Now
26 conveniently, B.C.'s position was that the line was

1 much further to the east and didn't include -- I don't
2 think it included even the Dinosaur Reservoir. I
3 think it was even further. So none of the dams, none
4 of the reservoirs were included as part of Treaty 8.
5 Now, I drove from West Moberly's reserve to the Peace
6 Canyon, down the bridge by the Peace Canyon. It's
7 about a twenty-minute drive. I was speeding, mind
8 you, but you know, say twenty to thirty minutes. Not
9 part of Treaty 8 apparently.

10 Well, the court has now said, no, that's
11 ridiculous, that the Treaty includes Williston
12 Reservoir, W.A.C. Bennett dam and as well as Dinosaur
13 and Peace Canyon. Well, there's now a massive
14 compensation claim for infringement and nuisance that
15 the First Nations potentially have against BC Hydro.

16 The Site C court case has only addressed
17 the duty to consult, and the First Nations were
18 directed to bring an infringement action, and that
19 action is ready to be filed, and it is the taxpayers
20 who will be on the hook for legal costs and damages.
21 And I think this needs to be part of the consideration
22 in terms of the report you make to the government, in
23 terms of the risks associated with going forward go
24 beyond simply, "Well, we're going to have a cost
25 overrun here because the river diversion isn't going
26 to be made." And these are all important

1 considerations, I think, that the government is going
2 to need to grapple with.

3 THE CHAIRPERSON: Sir, before you -- could I --

4 MR. GAILUS: I think I'm done anyway.

5 THE CHAIRPERSON: Before we move to the next, can we go
6 back to that previous slide, please.

7 MR. GAILUS: Conclusions or --

8 THE CHAIRPERSON: No, the next one after. That one.

9 MR. GAILUS: That's fine.

10 THE CHAIRPERSON: So you said taxpayers on the hook for
11 legal costs and damages. Is that for all three of
12 your bullet points? Because I thought you said that
13 the middle bullet -- was it the middle bullet that was
14 BC Hydro?

15 MR. GAILUS: Pardon me?

16 THE CHAIRPERSON: So, are all three of these against the
17 provincial government or are some against Hydro?

18 MR. GAILUS: So in the case of Blueberry -- Blueberry's
19 case is against the provincial government and the
20 province has gone out and hired outside lawyers to
21 defend that case. Western Boundary would be against
22 B.C. and Canada. And then Site C would be a case
23 against B.C. -- I guess we bring Canada into that one
24 too, and probably BC Hydro. So, three sets of lawyers
25 on the other side, and then you know, damages if we be
26 successful on that.

Proceeding Time 2:22 p.m. T16

1
2 CHIEF WILLSON: One thing that -- for me, it doesn't make
3 any sense, is no injunction, because trial is
4 imminent. We argued right from the beginning, once we
5 filed our court case, is that they should put tools
6 down and stop. Right? Because the more they do, and
7 if it actually stops, the more it's going to cost.
8 Like, if Site C gets shelved, you know, that's an
9 expense.

10 But they don't have to stop. They continue
11 to -- right now, they're still up there working,
12 right? And they're still incurring costs up there.
13 And then they get to turn around and argue, well, it
14 costs too much, you can't shut us down. And we don't
15 get to argue that, well, you should have shut it down,
16 you know, and saved the money on it. You know? It's
17 an unfair argument that's out there on this.

18 And as of right now, there is no legal
19 mechanism to protect the treaty, these treaties.
20 They're pretty much useless. The promises that were
21 made, no forced interference. If every company is
22 allowed to go forward, and all we get to do is sue for
23 damages, they can destroy what the treaty means, and
24 all we get is some cash. You know, our way of life,
25 our culture, you know, our spirituality, gets flushed
26 down the toilet.

1 You know, I made this mention in one of the
2 JFP hearings. If all it was was the right to fish,
3 and not actually be able to go and, you know, teach my
4 son the values of catching a fish, feeding the family,
5 the spiritualness of being out there, the prayers that
6 happen, that kind of stuff, I could sit in my house
7 and fish out of the toilet bowl. Whether I catch a
8 fish or not is obviously irrelevant. Whether there is
9 any Dene-Za meaning to that doesn't matter to anybody.
10 We just fade off into the distance like caribou. You
11 know? We'll be images on the wall in some museum.
12 Oh, you remember who these people were? You know?

13 And like it just -- it's that -- it's mind-
14 boggling. Like, why did we sign the treaty? You
15 know? We're the only ones trying to live up to the
16 treaty. And it's not just about the First Nations.
17 The treaty belongs to everybody. There was promises
18 made. The honour of the Crown is at stake. Nobody
19 seems to care on this. You know, we were trying to
20 find reasonable alternatives so that B.C. could meet
21 its obligation for power demand.

22 We were told to shut up and get out of the
23 way. You're irrelevant. We're like lint in the
24 pocket. Something to throw away in the garbage, you
25 know? Oh, if there's an issue, sue us. That costs
26 money. You know? Where are we supposed to get that

1 money? How are we supposed to get that money? B.C.
2 and BC Hydro have big pockets, you know? They had no
3 problem putting 25 lawyers in the JRP. They had three
4 tables of people sitting in the JRP, just sitting
5 there. Two of them were sleeping. They had pictures
6 of it in the newspaper. You know? Nodding off.

7 The amount of resources that they dumped
8 into this thing to fight us was unbelievable, you
9 know? We're set on pop bottles and beer cans trying
10 to raise money to do this, you know? And not grind
11 this thing to a halt and tell people to go away, but
12 to say, "Let's sit down together and find a solution
13 to this." And the answer was "No."

14 We're the voices of "No." That's who we
15 are, you know.

16 It's frustrating. It's hard, you know. I
17 have elders that have passed away now, in this fight.
18 I have elders right to this day that have to drive
19 from Hudson's Hope to Fort St. John, because that's
20 the business centre. That's where all the shopping
21 malls are. And they have to drive through that valley
22 and look at everything that's been done there. Every
23 day. They have to watch that, you know. And that
24 tells them that they're worthless. They don't mean
25 anything. When their grandchild is saying, "What's
26 going on here, grandpa? Why are they doing this?"

1 **Proceeding Time 2:26 p.m. T17**

2 What do they do? Because we want to supply jobs to
3 Alberta? 95 percent of the people that were working
4 out of there are from Alberta. The prime contract
5 that was issued for that, that person lived in Alberta
6 the year before that. He opened up an office in Fort
7 St. John and he became a B.C. resident. We lived
8 there for a thousand years. Time immemorial. Ten
9 thousand years. Charlie Lake Hayes is sitting there,
10 have evidence of us being there ten thousand years
11 ago. And we're irrelevant.

12 So thank you for your time. You can eat
13 these now.

14 THE CHAIRPERSON: Not yet.

15 COMMISSIONER COTE: I think we're up for one question
16 again, to my own education. Correct me if I'm wrong,
17 Chief Willson, but I believe you made a comment in
18 your presentation earlier with respect to if this
19 project Site C were to be cancelled it would go a long
20 way to reconciliation. Is that pretty much what you
21 said? I'm sorry, it was a ways back.

22 CHIEF WILLSON: Yes.

23 COMMISSIONER COTE: Could you explain what that means in
24 real terms?

25 CHIEF WILLSON: Well, what is reconciliation? We
26 actually haven't had anything to reconcile yet.

1 W.A.C. Bennett and Peace Canyon are an issue that we
2 have to deal with sooner or later. Site C, you know,
3 as an accommodation measure, we present it as an
4 accommodation measure. Let's let at alternatives to
5 this thing. And they said no. You know, so would it
6 be considered reconciliation? Yeah, I would think so.
7 Like, why wouldn't it? There's irreparable harm.
8 They've cut old growth forest in the Upper Moberly
9 watershed. They've just clearcut Eagle Island. There
10 was three to seven eagle nests on that island. Wiped
11 them out, completely gone. The wood is all piled up
12 on the island right now. How do we reconcile that?
13 What do you put a value to that?

14 The David Suzuki Foundation put out a
15 report. Frizel Moolan, Dr. Frizel Moolan made mention
16 of it during the Joint Review Panel. He couldn't
17 present it because he hadn't got the final numbers.
18 But he put together a value. He says in here:

19 "Over a 50-year period the central net
20 present value, NPV, was estimated at \$204
21 billion as that valley stands today..."

22 That's what the value of that is.

23 "...with a range from 83.7 billion all the way
24 to \$333.7 billion."

25 No one's ever looked at what the value of a
26 tree is standing. When you look at a tree you look at

1 the lumber value out of it. How many 2 by 4s can I
2 cut out of that tree? Nobody looks at the fact that
3 that tree is part of the ecosystem that is a carbon
4 sink. It pulls carbon out of the atmosphere. You
5 know. This was part of the Peace dividend piece. I
6 believe they submitted, the Suzuki Foundation has
7 submitted this into this process here. But it was one
8 of those things of talking about.

9 What is the value of a moose? We know what
10 the value of a cow is. You take a cow to slaughter,
11 it's 85 cents per pound plus, you know, for butchering
12 and \$1.00 per pound per weight for the animal that
13 exists. So you put a dollar value on that, well,
14 that's the value of a cow. Well, what's the value of
15 a fish and medicinal plants? Rare medicinal plants
16 that you can only find in this valley. You know. How
17 do you reconcile that? I don't think that's an easy
18 question. I don't know, did I even answer your
19 question?

20 MR. GAILUS: Maybe just to pick up on Chief Willson's
21 point, I think, you know, and it was on his last slide
22 and I think it is important to point out that, you
23 know, if we're talking about termination and
24 remediation and as he said, the First Nations are well
25 placed both in terms of the companies that they've got
26 -- I think all of the First Nations have companies or

1 contractors who, you know, plant trees, move dirt
2 around, but also have that traditional knowledge in
3 terms also in terms of plants. You know, what's going
4 to grow well here? What's going to grow well there?
5 And those medicinal plants and traditional plants you
6 harvest. That's not something you're going to get
7 from one of the big firms in Vancouver or something
8 like that, big environmental firms.

9 So, you know, terminating the project,
10 remediating it, becoming engaged in a conversation
11 about alternatives I think is where you're going in
12 terms of reconciliation, you know, those three pieces.

13 **Proceeding Time 2:30 p.m. T18**

14 CHIEF WILKSON: Yeah, we have the new liberal federal
15 government in place that have just stood up and said
16 that they are going to fully implement UNDRIP. You
17 know, FPIC, Free Prior Informed Consent. We've got
18 the new NDP government and have just stated that they
19 have full intention of implementing free prior
20 informed consent and United Nations declaration on
21 indigenous people, UNDRIP. And we, right from the
22 very beginning, stated they do not have free prior
23 informed consent from us to do this on that.

24 So part of if this thing gets shelved, I
25 would imagine we would sit down and have those
26 discussions about what is that.

1 I don't know if that answered --

2 COMMISSIONER COTE: Between the two of you, you have.

3 Thank you.

4 THE CHAIRPERSON: Mr. Gailus, I wonder if we could go
5 back to the last slide again, please. I still have
6 another question.

7 So looking, for example, at the first
8 bullet point, do I understand you correctly that
9 that's a litigation that could be brought against the
10 province and if it is brought against the province,
11 there could be a request for an injunction on Site C.
12 Is that --

13 MR. GAILUS: No, no. So the first bullet, this is
14 ongoing litigation. There have been two injunction
15 applications that Blueberry First Nation have brought,
16 and as I say, the first one was -- I think we were
17 trying to stop B.C. Timber sales from selling some cut
18 blocks. That was unsuccessful. They said, "You need
19 to..." The judge basically said, "Well, bring another
20 injunction that's a little broader, and so they did,
21 and then in that decision, the judge went through it
22 and said, "Well, you have actually established that
23 there's irreparable harm here, but I'm not going to
24 give your injunction based upon what's called the
25 balance of convenience. I'm not going to shut down
26 all industrial activity in this area because there's

1 going to be a trial that's going to start in March of
2 2018."

3 But that case, that case includes Site C,
4 right? So they've claimed, in terms of infringements
5 -- like when you're making an argument for a treaty
6 right, or an infringe -- you have to show particular
7 infringements of that. And so there is W.A.C.
8 Bennett, there is Peace Canyon, there is Site C, there
9 is a number of gas wells that have been developed.
10 There's a fairly extensive list.

11 So that case is much far advanced in terms
12 of moving forward next year.

13 THE CHAIRPERSON: The last bullet point, that
14 infringement action has not been brought yet. It
15 could be brought and an injunction could be applied
16 for there, is that correct?

17 MR. GAILUS: Yes. Yes, that would be an option. It's
18 interesting. The judge in the Federal Court said,
19 "Well, you could just go get an injunction," and we
20 said, "Well, it's a little more difficult than that in
21 the First Nations context." He was a patent lawyer in
22 his previous job. So.

23 We made the infringement argument in the
24 context of the judicial reviews. We didn't want to
25 get a situation where -- there's this concept in law
26 called collateral attack. You actually have to attack

1 the underlying decision, you can't just go at it
2 sideways. So that's why the infringement action
3 wasn't brought in the first instance. We said, "In
4 our view, you could bring it in the context of the
5 judicial reviews." The courts have told us otherwise,
6 so you know, that's what we're dealing with now.

7 CHIEF WILLSON: You can't sue to stop an infringement.
8 You can only sue after you've been infringed. That's
9 the problem right now, that there's no mechanism to
10 stop them from destroying something, right? We can
11 only sue for damages afterwards.

12 THE CHAIRPERSON: But you can bring -- you could request
13 the injunction at the time that you bring that case
14 should you do so. Is that correct?

15 MR. GAILUS: Yes. Yes, we could.

16 CHIEF WILLSON: So after they flood the river and
17 destroy the valley, then what do you -- that's the
18 option right now.

19 THE CHAIRPERSON: Would you have to wait that long or is
20 it --

21 CHIEF WILLSON: Well, that's what it seems like, yeah.
22 So the Upper Moberly watershed, that was one of the
23 injunctions was to stop them from logging the old-
24 growth forest there. And the old-growth forest, once
25 you cut it down, it's gone. You can't replant it.
26 Like new trees will grow back -- oops, sorry. New

1 trees will grow back but it's not going to be old-
2 growth forest anymore and whatever is in the old-
3 growth forest, that ecosystem is gone. It's gone
4 forever. It's changed on that. So that's gone now.

5 That would -- I don't know, considered to
6 be irreparable harm. That's one small thing. But you
7 know, at the stage of they go ahead and flood the
8 whole valley and destroy the whole valley. How are
9 you going to reclaim the Williston reservoir? You
10 can't reclaim that. And that's gone forever, that.
11 You know?

12 **Proceeding Time 2:37 p.m. T19**

13 So what we're trying to do is find an
14 alternative to not make that mistake again, you know?

15 I remember stories from Tsay Keh. We have
16 friends in Tsay Keh and our friends in Suracha, and
17 they remember waking up, and the water's at the door
18 of their cabin, you know? So they moved up. They
19 thought it was spring freshet, the spring floods, and
20 they moved up, you know. They just packed up and
21 moved their camp up a little farther. And they were
22 waiting for the spring run-off to end, and they never
23 did. The water never did recede, you know? That's --
24 they even moved their communities. They've moved
25 three times because of the ongoing impacts there.
26 They've sued and filed. Inside of treaty -- a hundred

1 percent inside of Treaty 8 territory, they sued BC
2 Hydro and them (inaudible) have got a settlement out
3 of it, on them. Right? You know, and that seems to
4 be -- BC Hydro told us, well, if you think there's
5 impacts, prove it. You know? So, we've got to go and
6 show that there's impacts to Treaty 8 territory on
7 that, and then put all that stuff together.

8 We're trying to avoid that with Site C.
9 You know? That's the part that doesn't make any
10 sense. There's absolutely no reason for a large-scale
11 hydroelectric reservoir on the Peace River. We have
12 viable, more cost-effective options in front of us.
13 In 1980, the BCUC told BC Hydro to go and investigate
14 geothermal. They have steam vents, right? At W.A.C.
15 Bennett Dam, you know. They've got a -- it's in the
16 Hudson's Hope thing. It's a tourist thing. You can
17 go there in the middle of winter, and, you know, boil
18 water on these steam vents, right at the dam. They
19 know that there's geothermal capacity there. Of all
20 the wells that they drill in northeastern B.C., some
21 35,000 wells, northeastern B.C., they have downhole
22 information on every single well. They know how hot
23 it is down there, you know?

24 They have to worry that when they puncture
25 into a certain zone, that the water down there that's
26 boiling, with the steam vapour comes flying up out of

1 the hole, and does a blow-out on them. They have to
2 worry about that. They know that that information is
3 there, they know it's there.

4 They know that there's geothermal down in
5 Vancouver. Viable, really viable geothermal. Why are
6 we so resistant? I don't understand.

7 THE CHAIRPERSON: Thank you, sir. Thank you. Does
8 anyone else have any more -- no, good. Is there
9 anything else that you'd like to --

10 Well, we'd like to thank you very much. It
11 was a very interesting presentation, and we really
12 appreciate you taking the time to come and give it to
13 us. And, thank you. Appreciate it.

14 We'll take a few minutes break now. We'll
15 come back in a few minutes. So it's 2:40. We'll come
16 back at ten to.

17 **(PROCEEDINGS ADJOURNED AT 2:42 P.M.)**

18 **(PROCEEDINGS RESUMED AT 3:00 P.M.)** **T20**

19 THE CHAIRPERSON: Shall we continue, please?

20 MR. JONES: Certainly.

21 THE CHAIRPERSON: Or start our second speaker?

22 MR. JONES: Yes. My name is Sean Jones. I'm a lawyer
23 here on behalf of McLeod Lake Indian Band. And beside
24 me is a councillor from the band, Verne Solonas. I
25 would like to thank the Commission for allowing us the
26 opportunity to present today. I'd like to acknowledge

1 the traditional territory of the Tseh Kay Dene people.

2 In a moment I'm going to ask Verne to make
3 some opening remarks and to provide some context
4 around the agreements that McLeod Lake Indian Band
5 came to with BC Hydro and the province with respect to
6 Site C, but also to explain that these agreements
7 weren't just with respect to Site C. The process of
8 consultation that happened with McLeod Lake Indian
9 Band addressed previous impacts both to the
10 relationship between McLeod Lake, Crown, and BC Hydro
11 regarding the development of previous BC Hydro
12 infrastructure in the territory as well as the impacts
13 to that territory, and the difficulty that would
14 transpire if Site C were cancelled or suspended in
15 unraveling that relationship that has grown and moved
16 reconciliation forward between McLeod Lake and BC
17 Hydro, and by extension, the provincial Crown.

18 So with that context I'd like to ask
19 Councillor Solonas to say a few words and provide us
20 his insight and his context on those impacts as
21 someone who lived through them.

22 **SUBMISSIONS BY COUNCILLOR SOLANAS (#0103):**

23 COUNCILLOR SOLONAS: Thank you, Sean. I'd also like to
24 thank the Commission for providing us the opportunity
25 to present today. Sean is the lawyer, I'm the
26 councillor.

1 McLeod Lake actually is within the
2 Williston Lake watershed and my first recollection of
3 that area was in 1961 and '67. Our parents traveled
4 from McLeod Lake to the trap line every year. And we
5 had a cabin on the Kutlam Creek which intersects,
6 flows into Parsnip River a mile from the Nation River,
7 were the Nation river flows into the Parsnip River as
8 well.

9 And my first recollection was in 1961 and
10 we were at the cabin. And I leave the cabin and I
11 walk out to the fire. Mom's got a fire outside the
12 cabin and it's maybe 30 feet from the front door to
13 the cabin. And I hear a strange noise across the
14 river. It's getting kind of dark, it's summertime,
15 June. Late -- mid, late June. And a strange noise in
16 the bush. And I asked my mother, of course, "What is
17 that noise?" And she says, "Timber Wolf." And of
18 course I'm five years old and never heard a Timber
19 Wolf before and I said, "Well, what is a Timber Wolf?"
20 And of course my sister voluntarily described it as a
21 big -- like a big wild dog that eats bad kids. Of
22 course, I think that was reference -- some reference
23 to me perhaps.

24 **Proceeding Time 3:06 p.m. T21**

25 And I watched my mother, who was kneeling
26 down cooking bannock at the fire, and she doesn't

1 appear too concerned. So at that point, I thought,
2 "Okay, if she's not concerned then it must be okay."
3 And she also mentioned that dad was going to be home
4 soon anyway, so not to worry about things.

5 My dad would take the boat, our boat, out
6 onto the river. We had a boat and outboard motor, and
7 his favourite thing was going out early in the
8 morning, like, when I say early I mean 7:00 a.m., and
9 go out hunting. And if he had to check traps, that's
10 when he would do it. You know, so evenings spent a
11 lot of time on the river. And that year, in 1961, my
12 mom came to me and she said, "Oh, dad wants to start
13 teaching you and your brother how to trap." My
14 brother being my younger brother, Richard, who was
15 four years old. And his favourite thing was, when dad
16 would go out in the morning in the boat, we'd see
17 who'd wake up and whoever got to wake up got to go
18 with him out in the boat. And if we were out in the
19 boat for a full day, usually, so he had a history of
20 making me sleep in every morning. So that way he got
21 to go with dad.

22 But in any event, my dad took me -- when he
23 -- it was my turn to start teaching me how to trap,
24 and we found a location south of our cabin, maybe
25 three or four miles up-river. And we picked the
26 location, and he showed me how to set a trap. First

1 of all we had to look for beaver sign. Beaver sign
2 basically is markings on the bank indicating beavers
3 in the area. And we were taught how to spot beaver
4 sign.

5 And I thought we picked the wrong location,
6 because I didn't see any beaver sign. But I think dad
7 chose that area because it was easy to land. Normally
8 the banks are pretty steep and I think he had a
9 concern that the banks were always clay, and if you
10 slipped on that steep clay bank, you'd go right down
11 to the bottom of the river and that's it. So I think
12 he was concerned about it. So we picked a low-land
13 area. We went in there and he showed me how to set
14 the trap to catch the beaver, and then the next thing
15 is, we had to cover up the trap with the leaves. And
16 then we had this red beaver caster all around to cover
17 our smell. And so my brother Aaron always would
18 remind me that he caught a beaver and I didn't. So
19 that was my experience setting traps with dad, and
20 learning how to trap.

21 In 1967, we went back again. We were there
22 in 1960 and 1961 again, and again in 1967. It's a big
23 thing for the families. My dad had to land the boat
24 in 1967. He didn't have a boat, so he borrowed Harry
25 Tupperwait's boat. Harry Tupperwait owned a store and
26 gas station, a café and gas station at McLeod Lake.

1 until we got there in 1967 and all the trees were cut
2 down all around our cabin. And all the trees were cut
3 down everywhere you look in 1967, and it was -- yeah,
4 it was completely different from what I remember as a
5 child.

6 In 1967 my dad and my uncle worked for BC
7 Hydro on the Nation River and they were felling trees
8 prior to -- they were trying to -- government and the
9 company were trying to get all the trees out before
10 the flood. So Mom and all us kids and our auntie we
11 stayed at the cabin, and my dad and my uncle camped up
12 on the Nation River and every morning they would get
13 up and they'd go to work, and Mom and us we would hang
14 around the cabin. And on one occasion our oldest
15 brother, he was 15 and I was 11, my brother Richard
16 was 10 and our other brother he was 8, and we took our
17 dad's boat upriver for the day and we went fishing.
18 And at the end when we came home we had over 20 fish
19 in the boat, a lot of Arctic grayling and some trout
20 and some dollies. Mostly trout and Arctic grayling.
21 Tonnes of Arctic grayling. And I thought, oh great,
22 we're going to feed the family for three or four days
23 now, and here when we got home Mom and auntie had shot
24 a bear and auntie showed my mom how to make a bear
25 sausage. That's where you cook -- you boil a bear --
26 a moose intestine in bear fat and then you pull that

1 out of the pot and then you hang it over the fire and
2 the smoke to dry, and that's got to be the tastiest
3 thing I ever tasted was that bear sausage. And auntie
4 is really super old school and she knows a lot of
5 stuff and she showed my mom -- my mom was originally
6 from Fort St. James and Nakasli showed my mom how to
7 make bear sausage.

8 So we had a lot of food, do really well.
9 Never -- you bring the flour and with flour and some
10 rice you can live the whole summer and we always had
11 ducks and beaver, fish, moose, bear, whatever we
12 wanted, like right there. That's the only thing we
13 ever ate.

14 And so in '67 we left there and the next
15 year I was at residential school and in April, and my
16 -- I just came back from a walk on a Saturday, and I
17 remember my cousin Gracie, who is older than I, she
18 was standing next to the fire escape and called me
19 over, so I walked over there. And she said she just
20 got a letter from back home and her mom said that they
21 couldn't -- so she said that they couldn't go out to
22 the trap line any more.

23 **Proceeding Time 3:15 p.m. T23**

24 So that was the last time we went out
25 there, and she said that her mom said that everything
26 was flooded.

1 What mom told us later was that dad had
2 received something like \$1200 from BC Hydro or the
3 government in compensation, and so I always wondered
4 like how come they compensated the parents but they
5 didn't compensate the kids, and we couldn't go back
6 there after that. That was the end of that.

7 A lot of the families in McLeod Lake area
8 would continue trapping but by the '70s -- in 1975 I
9 actually got a job in Mackenzie at BCFT and a lot of
10 the young guys used to get their own jobs. The only
11 they ever got a job was hitchhiking down the road, and
12 none of the young guys ever ever trapped. We all got
13 jobs in the mills and of course, our mode of
14 transportation was now the car. And trucks. Prior to
15 that, the only mode of transportation is by boat and
16 up and down the rivers.

17 And by 1975 none of the people ever used
18 any of the Williston reservoir any more because that
19 was all under water. And the mills had come in and
20 completely changed the whole environment. There was a
21 town in Mackenzie. I remember in '71 when I came home
22 from residential school and mom said, "Well, we're
23 going to Mackenzie and we're going to go..." When we
24 were coming back in '67 from the trapline by boat, we
25 got almost to Tuya Lake which is like ten miles from
26 McLeod Lake by river and that -- and there was a

1 bridge over the river which wasn't there when we went
2 out to the trapline earlier in the summer. So we
3 stopped at the bridge and dad started walking through
4 the bush, and I thought, is he crazy? Like where is
5 going to? And I asked mom and she said, "He's going
6 to the Mackenzie townsite." And I said, "There's a
7 town here? Like in the middle of nowhere? Like are
8 these people crazy? Or what's going on here?"

9 So it was the first time I'd ever found out
10 that there was a town called Mackenzie out in the
11 middle of nowhere. And what I didn't know was, that
12 country was all changing. There was roads. You could
13 drive down the backroads. You could go out to the
14 trapline and then there was a town in the middle of
15 nowhere.

16 So by the '75, '76 all the young guys
17 worked in the mills and none of the guys ever used
18 boats. All the old people, the only thing they ever
19 did was they used boats to get in and out of their
20 traplines and hunt and fish, and the 1960s, 1960, '61
21 through the late '60s, by '68 it was changing like
22 completely.

23 And all the kids that came out of
24 residential school, not one of them went trapping.
25 And we all went to work in the mills.

26 So my dad continued to trap even into the

1 1980s and I always sort of suspected the reason he
2 trapped was because, first of all, that was the only
3 thing he knew, but he really super enjoyed it. Like
4 when he's out there, when we were out in the boat or
5 down the river or up the lake, my dad always like
6 going down the river in the boat and we'd go fishing
7 and he'd just sit in the waterhole and just fish and
8 that was his thing.

9 And then up the lake he'd be hunting, and
10 so through the 1980s that's what why -- he kept up
11 that lifestyle because he enjoyed it so much. And I
12 always thought that the reasons that -- I always
13 thought that my parents were the happiest when we were
14 on the trapline. Like they were at their best and
15 they fed us off the land. There was no stores around.
16 And even in '67 there was a camp a mile up the river
17 but there was no store.

18 **Proceeding Time 3:21 p.m. T24**

19 So we ate good because of the toil of my
20 parents, my mom and dad. Even auntie. Auntie and mom
21 shooting the bear and making bear sausage.

22 I came home in '71. '72 we moved to Prince
23 George and mom and dad didn't work any more, and the
24 only means they were able to feed us was through going
25 through the welfare office, completely different. And
26 I just thought, you know, I don't know why we left

1 that lifestyle because I always thought that was where
2 they were happiest was when they out on a trap line an
3 at McLeod Lake. Prince George was a complete
4 different scene and they didn't have the education to
5 get good jobs in the city.

6 But my dad moved back to McLeod Lake in the
7 '80s and he lived there until he died seven years ago,
8 and he continued to trap well into his sixties. And I
9 always thought the reason he continued, he didn't --
10 and he was a World War II veteran, he got two
11 pensions, an Old Age Pension and also from the army.
12 I always suspected the reason he went out trapping was
13 because that's where he enjoyed it the most. That was
14 where he was most happy. And that Williston
15 Reservoir, 1967, that just totally ruined that whole
16 northern country. That's the way the old people grew
17 up. That's where they grew up and that's where they
18 made their living, and after that nobody went up there
19 any more. Nobody went up north of Mackenzie any more
20 after '68, '67, '68.

21 And the only thing I have to say is -- the
22 only thing I have to say in closing is really
23 appreciate the time that the Commission has provided
24 us to make this submission. And I know Sean is
25 probably going to talk really a lot there, so let him
26 go and --

1 ways, from its traditional lifestyles. And through
2 that displacement being unable to support itself
3 economically, unable to support -- people were unable
4 to support their families and there was a great deal
5 of pain and hardship. And a great deal of that
6 hardship came because there was no effort to reconcile
7 the efforts of the Crown with the interests of the
8 communities that were there.

9 And Councilor Solonas tells a story of the
10 hardship they endured in the McLeod Lake community for
11 a very long time with respect to the difficulties and
12 the displacement that was caused by the development of
13 BC Hydro infrastructure. But Site C, regardless of
14 the impacts that it may create on the land and to the
15 communities, provided a different opportunity, a
16 different opportunity for McLeod Lake to work with BC
17 Hydro.

18 And that's why today McLeod Lake is here to
19 -- excuse me. McLeod Lake is here to confirm that it
20 supports the continuation of Site C based on the
21 agreements that have been put in place between McLeod
22 Lake, BC Hydro and the provincial Crown.

23 And perhaps, the most important aspect of
24 those agreements is that those agreements acknowledge
25 the impacts that were created by the Williston
26 Reservoir and past BC Hydro infrastructure

1 development. In that respect, Site C provided a
2 turning point in the relationship between McLeod Lake,
3 BC Hydro and the provincial Crown. And that
4 terminating or suspending Site C at this point in time
5 would unravel not just those agreements that I know
6 that you have access to, the IBA, the contracting
7 agreement and the tripartite land agreement, but would
8 also unravel that renewed relationship between McLeod
9 Lake and BC Hydro. And in that respect, would set
10 back reconciliation between the McLeod Lake community
11 and McLeod Lake Nation and BC Hydro.

12 That's McLeod Lake's first reason for
13 supporting the continuation of the Site C project.
14 The second reasons is that discontinuing it or
15 suspending it at this point in time would be an
16 economic catastrophe for the community. We have a
17 community that's building capacity, that has been
18 displaced from its traditional ways and it is finding
19 ways to move forward, both by reviving and retaining
20 its traditional ways, but moving forward with new
21 economic opportunities. Site C provides that
22 opportunity and McLeod Lake has entered into
23 agreements with that respect to the Site C Project.

24 So continuing -- McLeod Lake comes out in
25 support of continuing the project and wants to note
26 that suspending it or discontinuing it, terminating

1 it, would unravel that process of reconciliation.

2 And it wants to note specifically -- I'll
3 provide some key messages that I'll get into in more
4 detail as we go through the presentation, that by
5 reviewing the project, and assessing the implications
6 of continuing, suspending or terminating the project
7 triggers the duty to consult, and that thus far there
8 has been no consultation between BC Hydro or the
9 provincial Crown and McLeod Lake.

10 As I'm sure the Commission is well aware,
11 that it doesn't have the power to effect that
12 consultation. It lacks the remedial powers necessary
13 and the order-in-council mandating it to conduct this
14 inquiry didn't provide the panel with those powers.
15 But the Commission can play an important role in that
16 process by reporting that the Crown needs to consult
17 McLeod Lake about this decision.

18 And when it makes its report, that the
19 Commission must not just consider the financial
20 impacts of the project but must consider how those
21 financial impacts bear on McLeod Lake's aboriginal
22 title, aboriginal rights, and treaty rights.

23 **Proceeding Time 3:32 p.m. T26**

24 And whatever decision the Lieutenant
25 Governor in Council makes, it cannot rely on after the
26 fact consultation. That consultation needs to occur

1 beforehand. And particularly in decisions like this,
2 where there is the Crown exercising discretion with
3 respect to a decision. The Crown needs to consider
4 how the exercise of that discretion will move
5 reconciliation forward, or how it will move it
6 backwards; whether it will advance it or whether it
7 will impair it.

8 But most importantly, with respect to any
9 decision to suspend or terminate, the Crown in making
10 that decision can't leave McLeod Lake Indian Band
11 worse off than it is now with respect to the
12 agreements that it has negotiated in good faith and
13 fulfilling the honour of the Crown with respect to
14 Site C. Not just because those agreements pertain to
15 the impacts of Site C, but because they're a part of
16 the package that provided redress for the historical
17 impacts that Councillor Solanas spoke of.

18 And with that, the Commission needs to note
19 that when the Crown consults with McLeod Lake, and
20 reaches an accommodation for any suspension or
21 termination, that it needs to provide benefits greater
22 or equal than the Site C agreements with respect to
23 the monetary benefits, with contracting opportunities,
24 and that any transfer of the land that's already been
25 agreed to must also be fulfilled.

26 And with respect to termination in

1 particular, the Crown could find itself in the
2 position of having excess and surplus fee simple lands
3 now at its disposal. McLeod Lake Indian Band would
4 expect that the Crown would honour its duty to consult
5 with it regarding any potential disposition of those
6 lands, in order to fulfill past claims.

7 That is -- those are the key messages that
8 McLeod Lake would like to deliver today. I'd like to
9 go through those messages in greater detail. I've
10 provided two books to you. One is a rather thick book
11 of legal authorities. I'll begin by going through
12 some of the legal arguments around the duty to
13 consult, just to flesh them out a bit. But I'm sure
14 that the panel members are all very familiar with
15 them. And I don't plan on taking the Commission, or
16 the panel, through those legal arguments or those
17 authorities in any detailed way unless there is
18 questions about them.

19 The other document is an affidavit that's
20 been sworn and provided by Chief Harley Chingee of the
21 McLeod Lake Indian Band, who's not here with us today.
22 But he speaks around the band's position and the
23 impacts that have occurred, as well as the process for
24 negotiating the agreements that the Crown came to with
25 McLeod Lake with respect to Site C, and the historical
26 redress for previous BC Hydro infrastructure.

1 So I'm going to start by talking about the
2 duty to consult as it applies here. And then go on
3 and talk about the impacts to the renewal agreement
4 that BC Hydro entered into with McLeod Lake Indian
5 Band before then continuing to talk about briefly the
6 impacts that would flow from the IBA, the contracting
7 agreement, the tripartite land agreement, as well as
8 the impacts to the band itself and the territory.

9 **Proceeding Time 3:37 p.m. T27**

10 So, as I've mentioned, McLeod Lake supports
11 the continuation of Site C. And that's primarily for
12 the fact that it provided a key moment in the history
13 of BC Hydro, the provincial Crown, and McLeod Lake
14 Band.

15 McLeod Lake can't say that BC Hydro did
16 everything perfectly with respect to Site C or that
17 it's doing everything right. But it can say that Site
18 C provided the opportunity to move forward and do
19 things better. And it provided compensation in a way
20 for McLeod Lake to be involved in economic development
21 and move the community forward, and it did so in
22 respect of McLeod Lake Indian Band's treaty rights,
23 aboriginal title, and aboriginal rights. So now, any
24 decision that could adversely impact those agreements
25 and those accommodations that were provided because of
26 those rights through those Crown agreements triggers

1 the duty to consult.

2 Furthermore, as the Commission is well
3 aware, the Commission itself is not able to discharge
4 that duty, and the Crown must provide other avenues
5 for consultation. Regulatory processes can be relied
6 on by the Crown, and we appreciate that the Panel is
7 taking this time to gather this information and
8 present that to the Lieutenant Governor in Council,
9 and we would appreciate very much the Commission
10 taking that contact, that information and that context
11 forward to the Crown so that it can consult with
12 McLeod Lake with respect to this decision. We ask
13 that the Commission report that consultation thus far
14 has been inadequate. The Commission certainly has
15 within its powers to assess and report on the adequacy
16 of consultation.

17 THE CHAIRPERSON: Excuse me, sir. Do you mean the
18 adequacy of consultation within this process or are
19 you speaking of the adequacy of consultation prior to
20 this process?

21 MR. JONES: Yes, that's a good question and I'm happy you
22 asked that. Certainly I'm not saying that the
23 Commission in any way should assess the consultation
24 that was taken up previously with respect to the
25 decision to proceed with Site C. I'm saying that this
26 process here, to review the Site C particularly with

1 the implications of Site C and to report on the -- a
2 decision, to report on the implications of continuing,
3 suspending, et cetera, that certainly in that process
4 you would have -- you have the ability to report to
5 the Lieutenant Governor in Council that if it were to
6 make a decision with respect to your findings or
7 respect to suspend or terminate at this point in time,
8 that the consultation about that decision has not been
9 adequate.

10 THE CHAIRPERSON: Thank you for clarifying.

11 MR. JONES: Yeah. Sorry, I should have been clearer on
12 that point.

13 THE CHAIRPERSON: Okay.

14 MR. JONES: It's important to note that the Crown, the
15 case law has decided many times that the Crown cannot
16 contract out of the duty to consult. That the Crown's
17 constitutional always applies independently and
18 regardless of the express or implied intention of the
19 parties. And I think that's very important to have in
20 mind with respect to the implications of the IBA, the
21 contracting agreement, and the tripartite land
22 agreement. Those agreements provide that Hydro or the
23 Crown, within its discretion, could suspend or
24 terminate Site C, and that if it did suspend or
25 terminate those agreements, that that would mean that
26 no further payments were due under those agreements.

1 And McLeod Lake accepts that but notes that that does
2 not mean that those agreements fairly would constitute
3 all the accommodation required at that point in time.

4 **Proceeding Time 3:42 p.m. T28**

5 But instead, what the meaning of those
6 termination provisions is that the agreement between
7 the Crown and McLeod Lake at that point in time needs
8 to be re-evaluated and that there needs to be further
9 consultation because the common-law duty to consult
10 under the constitution prevails.

11 To make sure that that consultation is
12 effective, the Crown must, at this time, make sure
13 that it consults and uses the power that it has to
14 ensure that McLeod Lake Indian Band is adequately
15 accommodated with respect to any decision that could
16 be made.

17 I'd like to, with that kind of overview of
18 the duty to consult, and McLeod Lake's position on how
19 it applies here, now turn our attention a little bit
20 back to that history that Councillor Solonas was
21 speaking of, and the role that that history played in
22 coming to these agreements with BC Hydro and
23 specifically talk about the renewal agreement between
24 BC Hydro and McLeod Lake Indian Band.

25 I'm going to turn briefly to the affidavit
26 that Chief Harley Chingee has provided. As I'm sure

1 you are well aware, McLeod Lake and BC Hydro had a
2 very fractious relationship that was unbecoming the
3 honour of the Crown for many years. Councillor
4 Solonas spoke about how the development of
5 infrastructure in the territory occurred without its
6 consultation and consent or accommodation and the
7 devastating impact that it had.

8 If you turn to paragraph 7 and 8 in the
9 affidavit, Chief Chingee speaks about that. At
10 paragraph 7 he says: Starting in the 1950s, BC Hydro
11 began developing its core infrastructure in the McLeod
12 Lake Band territory without consultation and without
13 McLeod Lake Band's consent.

14 That infrastructure included dams,
15 reservoirs, generating stations, transmission lines
16 that forever changed the McLeod Lake Indian Band
17 territory and McLeod Lake Band's ability to exercise
18 its Aboriginal title and rights within it.

19 BC Hydro's infrastructure in the McLeod
20 Lake Band territory continues to have profound effects
21 on the community and its members including the ways in
22 which McLeod Lake Indian Band and its members exercise
23 their Aboriginal title and rights over their lands and
24 resources and their connections to their neighbouring
25 communities. Those impacts had a devastating effect
26 on the McLeod Lake Indian Band community and its

1 members, and the most enormous impact was that of the
2 Williston reservoir.

3 In paragraphs 10 and 11, Chief Chingee
4 speaks specifically about the Williston Reservoir.

5 "Williston Reservoir and other BC Hydro
6 infrastructure created profound pain and
7 hardship for McLeod Lake and in its
8 members."

9 And I think we saw Councillor Solonas communicate that
10 pain earlier today.

11 "Members were displaced from their
12 traditional hunting, trapping, and fishing
13 areas. Trapping, hunting, and fishing in
14 areas like Cutham Creek could no longer be
15 practiced. The Parsnip drainage system
16 could no longer be used. Species like the
17 Arctic grayling and the caribou herds were
18 severely impacted. Moose were also affected
19 and became scarce.

20 Members could not trap, hunt, or fish
21 like they used to. Members lost the ability
22 to provide for themselves and the ability to
23 pass those traditional skills onto their
24 children. By the 1980s almost all members
25 had abandoned trapping. It was no longer
26 viable as a way to feed yourself, your

1 family, or as a way to make money. Families
2 left McLeod Lake and moved to centres like
3 Prince George.

4 The displacement from their homes and
5 their livelihoods meant that McLeod members
6 had to go on social assistance."

7 There is a profound history, a profoundly painful
8 history between the Band and BC Hydro. The renewal
9 agreement that McLeod Lake negotiated with BC Hydro
10 with respect to development of Site C and with respect
11 to these historical impacts, address this and try to
12 reset that relationship.

13 **Proceeding Time 3:47 p.m. T29**

14 If you could please turn to Exhibit B of
15 the affidavit, I'd just like to take you to that
16 renewal agreement briefly so that you're familiar with
17 it.

18 The agreement is dated for reference on
19 March 30th, 2016. That happens, not coincidentally, to
20 be the same day that the IBA with respect to Site C is
21 dated. And the reason for that is because what I will
22 call the Site C agreements, the IBA, the contract
23 agreement, and the tripartite land agreement, were
24 presented to McLeod Lake Band as a package. But
25 before I get to that package I'd like to just set a
26 little bit of context by taking you through a bit of

1 the renewal agreement.

2 If you go to the third paragraph, about
3 halfway through, the BC Hydro starts to acknowledge --

4 COMMISSIONER COTE: Page 1?

5 MR. JONES: Sorry. You're on tab B.

6 COMMISSIONER COTE: What's that, what page?

7 MR. JONES: 2 in Exhibit B.

8 COMMISSIONER COTE: I'm sorry. Okay.

9 MR. JONES: Yeah, sorry. And it's paragraph 3 or
10 paragraph 2 under the header "Purpose of the Renewal
11 Agreement: Moving Forward from a Shared Past." The
12 third line, there's a sentence that starts:

13 "BC Hydro has listened to these experiences
14 and acknowledges that this historical
15 development had and continues to have a
16 profound effect on the community of McLeod
17 Lake. In particular, BC Hydro has heard
18 from McLeod Lake elders, leaders, and
19 members the ways in which their lands and
20 resources and their connections to
21 neighbouring aboriginal communities have
22 forever been changed by the development of
23 the Williston Reservoir."

24 BC Hydro goes on to acknowledge that it wants to
25 change that.

26 "BC Hydro deeply regrets these impacts. We

1 will not repeat the mistakes of the past.
2 It is time to turn the page and start a new
3 chapter in our shared history. Hearing
4 these stories has fortified BC Hydro's
5 resolve to forge a renewed and everlasting
6 relationship with McLeod Lake that is
7 collaborative and mutually beneficial.

8 The agreement is rooted in the joint
9 vision that a successful future together
10 will be shaped by doing business in a
11 transparent, open, and integrative way that
12 respects the distinct cultural values of
13 McLeod Lake and promotes an economically
14 thriving community."

15 With the renewal agreement BC Hydro
16 acknowledged that it needed to do things differently.
17 And it acknowledged that it needed to restore its
18 relationship and "turn the page or start a new
19 chapter" in the words of the agreement, with McLeod
20 Lake. And this came at the moment that it was
21 negotiating the Site C agreements. And it connected
22 with those agreements.

23 If you go down to the bottom of the page,
24 please, the third line from the bottom. There's a
25 sentence that begins to explain -- it begins, "If
26 McLeod Lake..." but that sentence starts to explain the

1 conditions on which BC Hydro will enter into the
2 renewal agreement:

3 "If McLeod Lake has duly authorized, signed,
4 and delivered the impact benefits agreement
5 between BC Hydro, McLeod Lake for the Site C
6 project, and the associated tripartite land
7 agreement and contracting agreement, and BC
8 Hydro has received evidence from McLeod Lake
9 to BC Hydro's reasonable satisfaction that
10 such agreements were the subject of a
11 positive community ratification vote on or
12 before July 31st, 2016, this one-time lump
13 sum will be paid by BC Hydro within seven
14 days after the execution of the renewal
15 agreement."

16 It's clear that the renewal agreement makes
17 the approval of the Site C package part -- makes it a
18 requirement for BC Hydro to enter into the renewal
19 agreement and provide the compensation under it.

20 The renewal agreement also takes about
21 contracting opportunities. If you turn to what is
22 page 4 of the renewal agreement, page 5 of the
23 Exhibit, heading number 3 is "Contracting
24 opportunities".

25 **Proceeding Time 3:53 p.m. T30**

26 And it explains in that paragraph that BC Hydro knows

1 that McLeod Lake has aspirations to continue to grow
2 its business opportunities and agrees to provide
3 contracting opportunities as part of this renewed
4 relationship. And it specifically lists contracting
5 opportunities in Appendix A.

6 If you turn to the last page of the renewal
7 agreement, Appendix A, under paragraph (b), the last
8 item specifically lists Site C.

9 So it's important to understand in this
10 context that the honour of the Crown here is engaged
11 in a much larger sense than just specific to the Site
12 C agreements. But to the entire historical
13 relationship between BC Hydro and the steps that have
14 been recently taken to reset that agreement, and that
15 suspending or terminating the project would unravel
16 that progress.

17 Coming to the renewal agreement was not
18 easy for McLeod Lake, and I'd like to take you back to
19 the affidavit for a moment or two, to paragraph 15, so
20 that we can hear a little bit more about that process
21 and the difficulties that it created for the band.

22 Paragraph 15:

23 "Approving the renewal agreement was
24 difficult for McLeod Lake Indian Band. The
25 first time the renewal agreement had to be
26 put to the community, it was rejected. It

1 was only after negotiations for other
2 agreements associated with Site C had
3 advanced that McLeod Lake Indian Band was
4 able to put the renewal agreement before the
5 members again."

6 Paragraph 16, the Chief goes on to explain
7 that, as the renewal agreement required McLeod Lake
8 Indian Band to approve and execute the IBA, the
9 contracting agreement and the tripartite land
10 agreement, McLeod Lake Indian Band considered all
11 those agreements during the community ratification
12 process. The McLeod Lake Indian Band, the renewal
13 agreement and the Site C agreements are a package of
14 accommodation intended to address past impacts and in
15 particular the impact of the Williston Reservoir as
16 well as the impacts that would be created by Site C.

17 In determining if the renewal agreement was
18 acceptable, McLeod Lake Indian Band weighed not just
19 the benefit of the combination measures contained
20 within it, but also the aggregate of the benefit and
21 accommodation measures in the Site C agreements.
22 McLeod Lake would not have entered into the renewal
23 agreement if the associated benefits created by the
24 Site C agreement were not part of the package.

25 McLeod Lake Indian Band considers the
26 renewal agreements accommodation for past impacts and

1 infringements of aboriginal title and rights
2 insufficient in isolation from the other Site C
3 agreements.

4 McLeod Lake appreciates the opportunity to
5 put this information before the Commission, so that it
6 has that context. Because it's important for the
7 Commission to know that it would not be consistent
8 with the honour of the Crown for BC Hydro to now
9 suspend or terminate the agreement without consulting
10 with McLeod Lake about how the effects of that
11 suspension or termination would affect the package of
12 benefits that were integral to the McLeod Lake
13 community.

14 It was important for McLeod Lake that BC
15 Hydro recognized that Williston forever changed McLeod
16 Lake's connection with its territory, and created
17 profound hardships. But it was also important that it
18 committed not to repeat that mistake, and that it
19 provided those opportunities for McLeod Lake to move
20 forward. That was the purpose of not just the renewal
21 agreement but the other Site C agreements.

22 And when considering any suspension or
23 termination the Crown needs to consider how it will
24 fulfill the purpose of those promises. Because the
25 honour of the Crown is at stake any time it deals with
26 First Nations and makes such promises with respect to

1 their title and rights.

2 I'd like to move on now from the renewal
3 agreement now that it's set that context, and discuss
4 very briefly the IBA, moving into the contracting
5 agreement and then the tripartite land agreement. In
6 the IBA, BC Hydro agreed to provide McLeod Lake Indian
7 Band with two one-time payments and a stream of
8 payments to be paid annually for 70 years.

9 **Proceeding Time 3:58 p.m. T31**

10 I believe that that information is public.
11 I won't get into the numbers because that information
12 is confidential.

13 Only one of those payments has been
14 received. Those payments, however, were to
15 accommodate impacts caused by Site C and to address
16 those impacts mentioned by the renewal agreement. And
17 that's not unusual for these types of agreements
18 between the Crown and First Nations for payments to be
19 distributed over the life of the project. But it's
20 also not unusual for those impacts to be front-loaded,
21 and that is the case with Site C.

22 Construction from Site C has already caused
23 impacts on McLeod Lake's title and rights, but only a
24 very small portion of the accommodation for those
25 impacts has been provided. If Site C were suspended
26 or terminated then the Crown would need to consult

1 with the impacts that have been endured. In that
2 regard the Crown must know that the benefits provided
3 in the IBA should not represent a maximum level of
4 accommodation. If Site C is suspended or terminated
5 the Crown will need to address new circumstances and
6 address the circumstances that are on the ground at
7 the time and the impacts to McLeod Lakes' rights and
8 title.

9 The same very much applies to the
10 contracting agreement. The contracting agreement most
11 specifically, and those contracting arrangements are
12 mentioned in the renewal agreement. They flow not
13 just from Site C, but a renewed relationship between
14 McLeod Lake and BC Hydro.

15 Chief Chingee, at paragraph 28 of the
16 affidavit, has said that the suspension or termination
17 of Site C would result in an economic catastrophe for
18 the Band.

19 I'll take you to paragraph 28 just so that
20 we can hear the Chief's words for themselves:

21 "If Site C is suspended or terminated, it
22 will be an economic catastrophe for McLeod
23 Lake Indian Band. McLeod Lake Indian Band
24 businesses have made themselves available
25 for pending Site C opportunities. Those
26 McLeod Lake Indian Band businesses have

1 incurred expenses such as preparing for
2 bids, hiring staff and purchasing equipment.
3 All those expenditures were financed based
4 on at least six to eight years of
5 contracting opportunities."

6 We're only two years into those six to eight years.
7 The suspension or termination of Site C would mean the
8 end of McLeod Lake's construction business. What was
9 supposed to be an opportunity to build capacity and
10 revitalize McLeod Lake Band would have the opposite
11 effect. Companies and jobs would be lost and people
12 would likely have to leave McLeod Lake territory to
13 pursue other opportunities if it's suspended or
14 terminated.

15 This is exactly what happened with the
16 Williston Reservoir and it's exactly the type of
17 mistake that BC Hydro promised not to repeat in the
18 renewal agreement. Instead, the renewal agreement
19 promises to help McLeod Lake meet its aspirations to
20 become an economically thriving community. If Site C
21 were suspended or terminated, those promises need to
22 be fulfilled. They can't be taken off the table.
23 Terminating, if consultation and accommodation is not
24 done properly, could have the opposite effect. It
25 could end up repeating those mistakes and leaving
26 McLeod Lake worse off than it was.

1 and aboriginal rights to. Any decision with respect
2 to that agreement most certainly triggers the duty to
3 consult, and McLeod Lake would expect that because
4 that is there not just for the Site C project but for
5 historical redress, that those lands need to be
6 transferred whatever the decision is with regards to
7 Site C.

8 Furthermore, if the decision were made to
9 suspend or terminate the project such that the Crown
10 found itself with fee simple lands that were in
11 surplus that have now come back into its hands, the
12 case law is clear that McLeod Lake would need to be
13 consulted on that.

14 If the project were suspended or
15 terminated, Chief Chingee in his affidavit at
16 paragraph 33 describes the territory will be left
17 looking like a moonscape. Large sections will have
18 been deforested. Many slopes will need to be
19 stabilized to prevent erosion. As he states in the
20 affidavit at paragraph 35:

21 "Construction activities for Site C have
22 already begun in the McLeod Lake Band
23 territory. Impacts have already occurred.
24 Those impacts need to be remediated. Some
25 may not be able to ever be remediated to
26 McLeod Lake Indian Band's satisfaction. For

1 those impacts McLeod Lake Indian Band will
2 bear the full brunt of the impacts as if
3 Site C had been constructed, but McLeod Lake
4 Band will not have received the full
5 payments, contracting opportunities, and
6 land that the Crown has promised in
7 accommodation for those impacts."

8 So, if Site C is expanded or terminated,
9 the Crown must consult with McLeod Lake Indian Band.
10 It must do that now before any decision is made.
11 McLeod Lake Indian Band would expect that it will be
12 awarded direct award contracts to remediate the
13 territory and would be accommodated in an amount equal
14 or greater to the package that has already been
15 offered to it, agreed to by the Crown, and which were
16 dutifully entered into.

17 I think it's very important to note that
18 although many First Nations cannot support Site C, and
19 McLeod Lake did struggle with that, McLeod Lake has
20 now come through BC Hydro's efforts to take this as a
21 turning point in the relationship. It doesn't want to
22 unravel that relationship and it doesn't want any
23 decision with respect to Site C to have that potential
24 to move reconciliation backwards. That's why it asks
25 the Commission to make sure that when it reports to
26 the Lieutenant Governor in Council, that it carries

1 forward the message that consultation thus far has not
2 been adequate and that it needs to consult with McLeod
3 Lake Band on this decision.

4 Thank you very much for taking the
5 opportunity to hear us today.

6 THE CHAIRPERSON: Thank you, sir.

7 COMMISSIONER COTE: Just one question. I know Councillor
8 Solanas outlined where the McLeod Lake -- you know,
9 what the territory is. Could you repeat that? I
10 didn't quite pick it up. It's my understanding it's
11 pretty much in and around the area of the Williston
12 Reservoir. Is that a fair statement?

13 **Proceeding Time 4:04 p.m. T33**

14 COUNCILLOR SALONAS: The area that was impacted initially
15 in '67 was all the way from *Chu-lay-a*, all the way up
16 to Finlay Forks. That was the area that our people
17 mostly used when it comes to trapping.

18 Historically and prior to that, it was even
19 further east, all the way into Alberta border, as
20 Harley's dad Harry, who is today 95 years old, he was
21 born in 1922. What he said was, shortly after
22 contact, around the time of contact, the natives in
23 McLeod Lake would hunt in that Peace River area, and
24 that would take them well into Alberta. And there was
25 a reason for that. Now, that reason escapes me at
26 this point, but we used that area extensively along

1 the Parsnip River system.

2 The Parsnip River flowed north to and would
3 meet Finlay Forks -- meet the Finlay River at Finlay
4 Forks, and together would form the Peace River, which
5 then flowed east. And there's a lot of history too,
6 evidence indicating that our people were quite active
7 in that area.

8 Does that answer your question?

9 COMMISSIONER COTE: It does. And it leads to another.

10 You spoke of impacts --

11 MR. JONES: Sorry, can I just --

12 COMMISSIONER COTE: I'm sorry?

13 MR. JONES: I'll just clarify as well. In the affidavit,
14 Chief Chingee does describe the territory in more
15 detail. And Appendix A of the affidavit --

16 COMMISSIONER COTE: I was looking at that.

17 MR. JONES: -- includes a map which is actually appended
18 to Treaty number 8, for McLeod Lake's adhesion in
19 2000, and it provides a more visual description of the
20 territory.

21 COMMISSIONER COTE: Terrific, thank you. I'll make sure
22 I familiarize myself.

23 MR. JONES: I didn't take you through that, but I'm happy
24 to provide that.

25 COMMISSIONER COTE: Okay. You mentioned there were
26 impacts of Site C that you've already felt. In what

1 -- specific as to what they were. Could you maybe
2 outline them for me?

3 MR. JONES: Well, my understanding is that there has been
4 a great deal of deforestation. There has been linear
5 impacts. Certainly because McLeod Lake today, its
6 purpose was to carry forward the message around the
7 agreement and the need for consultation. We haven't
8 prepared a detailed analysis of all those impacts.
9 But particularly around the main area, there's been
10 deforestation, there's been destabilization of slopes,
11 that would need to be, you know, prepared with riprap
12 if it was suspended for a long period of time, or
13 would need to be restabilized. There are certain -- I
14 believe that there's been already diversion of streams
15 and those sort of things that are impacting the
16 community.

17 With any large infrastructure project, most
18 of the impacts are going to occur through
19 construction, and that initial disruption of the
20 territory, and what that means to the ecosystem and
21 the wildlife, et cetera. Whatever the diverse views
22 in the community may be around those impacts, McLeod
23 Lake Band made peace with that, and has entered into
24 the renewal agreement, and is willing for the project
25 to go forward. It's concerned in particular that if
26 the project were suspended or terminated, that those

1 impacts would endure. And what was agreed to in terms
2 of accommodation, or how we can live with those
3 impacts, would then -- could potentially be taken
4 away. And that would certainly turn the page
5 backwards to the time of the late 60s and the early
6 70s, and unravel that process of consultation or
7 reconciliation.

8 COMMISSIONER COTE: I understand, thank you.

9 THE CHAIRPERSON: Just a question about the tripartite
10 land agreement. I don't need you to go into a lot of
11 detail, but just generally speaking, it's -- the
12 McLeod Lake Indian Band had land that it essentially
13 traded with the Crown? Is that the idea, fee-simple
14 land? And that land is where the dam is being
15 constructed? Do I understand that correctly?

16 MR. JONES: Yeah. I wouldn't say necessarily traded, but
17 as part of the package of accommodation, the
18 tripartite land agreement, which was Exhibit C to the
19 affidavit, provided that the Crown would transfer
20 2,500 acres -- I can discuss this agreement more
21 fully, because it is public. It's not confidential.

22 That agreed to a transfer of 2,500 acres as
23 part of the package of accommodation.

24 THE CHAIRPERSON: Right.

25 MR. JONES: And it was to be for the use and control by
26 McLeod Lake, so that it could do as it sees fit.

1 **Proceeding Time 4:14 p.m. T34**

2 Now, the implementation of that agreement
3 has not, to my understanding, advanced very far. They
4 are still in the process of selecting the lands and
5 there is some negotiation around that, which is what
6 the agreement called for.

7 The termination provisions in that are
8 somewhat interesting. You know, at 3.2 (a) talks
9 about if the project is delayed or suspended, then the
10 transfer can be delayed or suspended. But if the
11 project is terminated, this agreement is terminated,
12 but there is nothing about the requirement to continue
13 to transfer the lands.

14 THE CHAIRPERSON: And is there a transfer of land from
15 McLeod Lake to BC Hydro also?

16 MR. JONES: No.

17 THE CHAIRPERSON: There isn't? It's just a one-way
18 transfer.

19 MR. JONES: So as part of that, the package of the IBA,
20 the two payments, the stream of payments over 70
21 years, the contracting opportunities and land in
22 recognition of impacts to the territory. And I
23 believe that that -- well, the quantum and the amount
24 of land to be transferred may differ from First Nation
25 to First Nation. That's kind of the broad overview of
26 the package that most First Nations entered into.

1 THE CHAIRPERSON: Thank you, sir.

2 MR. JONES: You're welcome.

3 THE CHAIRPERSON: If there's no more questions, then
4 we'd like to thank you very much for joining us here.
5 We're very interested in what we've heard and we
6 appreciate you bringing these issues forward for us.

7 MS. JONES: Thank you very much. We appreciate the
8 opportunity to make the submission.

9 THE CHAIRPERSON: Thank you. So we are hereby
10 adjourned, dismissed.

11 MR. JONES: Thank you.

12 THE CHAIRPERSON: Terminated.

13 **(PROCEEDINGS ADJOURNED AT 4:15 P.M.)**

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I HEREBY CERTIFY THAT THE FORGOING
is a true and accurate transcript
of the proceedings herein, to the
best of my skill and ability.

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A.B. Lanigan, Court Reporter

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September 30th, 2017

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