

IN THE MATTER OF THE JOINT REVIEW PANEL ("JOINT PANEL")  
ESTABLISHED TO REVIEW THE JACKPINE MINE EXPANSION,  
FORT MCKAY, ALBERTA, ("PROJECT") PROPOSED BY SHELL  
CANADA LIMITED ("SHELL")

AND IN THE MATTER OF ALBERTA ENERGY RESOURCES  
CONSERVATION BOARD ("ERCB") APPLICATION NO. 1554388

AND IN THE MATTER OF CANADIAN ENVIRONMENTAL ASSESSMENT  
AGENCY ("AGENCY") CEAR NO. 59540

AND IN THE MATTER OF THE *ENERGY RESOURCES CONSERVATION*  
*ACT* R.S.A. 2000 C. E-10

AND IN THE MATTER OF THE *OIL SANDS CONSERVATION ACT*,  
R.S.A. 2000, C.0-7

AND IN THE MATTER OF THE *CANADIAN ENVIRONMENTAL*  
*ASSESSMENT ACT*, 2012, S.C. 2012, C. 19, S. 52

BY THE  
ALBERTA ENERGY RESOURCES CONSERVATION BOARD AND THE  
GOVERNMENT OF CANADA

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PROCEEDINGS AT HEARING

NOVEMBER 16, 2012

VOLUME 15

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Held at:  
MacDonald Island Park  
151 MacDonald Drive  
Fort McMurray, Alberta  
T9H 5C5

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Mr. Les Cooke, Panel Member

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 Ms. Jenny Biem ) First Nation

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 ) (Self-represented)

Ms. Karin Buss ) Fort McKay First Nation  
 ) and Fort McKay Métis  
 ) Community Association

Rangi Jeerakathil, Esq. ) Fort McMurray #468 First  
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Ms. Anna Johnston ) John Malcolm, the  
 ) Non-Status Fort  
 ) McMurray/Fort McKay  
 ) First Nation and the  
 ) Clearwater River Paul  
 ) Cree Band #175

Ms. Cynthia Bertolin ) Métis Nation of Alberta  
 Ms. Debbie Bishop ) Region 1 and the  
 ) individuals and groups  
 ) named together with  
 ) Region 1

Don Mallon, Q.C. ) Mikisew Cree  
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(Registering on their behalf)	)	Osume Osuoka

**REALTIME COURT REPORTING:**

Realtime Connection, Inc.  
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**November 16, 2012**

**(8:30 a.m.)**

THE CHAIRMAN: Good morning, everyone. I'm not sure where to start. Mr. Denstedt, did you have any further comments with respect to where we left off yesterday?

MR. DENSTEDT: I do, sir.

**MATTERS SPOKEN TO BY MR. DENSTEDT:**

MR. DENSTEDT: A couple of things by way of context. First of all, last Friday, as we are aware, Dr. Schindler appeared for OSEC for a brief moment in time and left before either the Board or Shell had an opportunity to cross-examine him. Since that time, he's been on a six-day speaking tour, as I understand from my friend.

Last night, or I should say yesterday morning, the Panel posed a number of questions to a variety of parties who were witnesses for the ACFN and OSEC and asked for a response with an indeterminant timeline on it.

Clearly, that puts Shell in a very difficult position at this moment, both in respect of its rebuttal panel, but also in respect of final



1 argument, and I'll get to that in a minute.

2 The questions could be answered post-final  
3 argument, which again would require us to reopen  
4 the hearing, and I don't think that suits anybody's  
5 purposes. And I understand from my friends at the  
6 ACFN that the questions posed to their witnesses  
7 will likely be answered Monday, so I think that  
8 problem goes away on its own.

9 I'm not sure about the Dr. Schindler problem.  
10 My concern is is it's his actions that have caused  
11 this chaos. And I don't think the Panel or the  
12 Proponent or the other parties should be at the  
13 whim of one person. I just don't think that's  
14 fair, sir.

15 And in respect of that, I'm proposing to make  
16 a motion pursuant to Section 9(9) of the Rules of  
17 Practice for this direction:

18 That the questions that were posed by the  
19 Board in its letter of November 15th, 2012, that  
20 the Board direct those parties to answer those  
21 questions by noon on Monday;

22 I'd ask for the further direction of the  
23 Board that Shell be allowed to respond to those  
24 questions, if necessary, by 5:00 p.m. on Monday,  
25 and that final argument proceed as scheduled on

1 Tuesday for all parties to participate in;

2 I'd ask for the Board to direct that  
3 Dr. Schindler not respond to the rebuttal that  
4 Shell is proposing to put in today.

5 That's my motion, sir.

6 If you have any questions, I would be happy  
7 to answer them.

8 THE CHAIRMAN: I have one, sir. You asked  
9 for further direction of the Board that Shell be  
10 allowed to respond to those questions, if  
11 necessary, by 5:00 p.m. on Monday. I'm not sure  
12 what you mean by that.

13 MR. DENSTEDT: Sorry, so let me explain. So  
14 the questions that were posed to the ACFN witnesses  
15 and to Dr. Schindler may provide new evidence that  
16 Shell might need to rebut. I don't know that  
17 that's the case, and I don't expect it, but I would  
18 just like to reserve that right in case something  
19 arises.

20 THE CHAIRMAN: I think that's what I was  
21 -- well, I don't think; it "was" what I was  
22 thinking of yesterday when I spoke about a possible  
23 remedy to the situation we find ourselves in, sir,  
24 so it's consistent with what the Panel has been  
25 thinking of, in any case. I think you have to have

1           that ability; you have to have that process.

2                   Just I'd like to hear from the other counsel,  
3 particularly Ms. Buss, on, you know, whether or not  
4 the questions can be responded to by noon on  
5 Monday, for example. Ms. Buss.

6

7           **MATTERS SPOKEN TO BY MS. BUSS:**

8           MS. BUSS:                   Good morning, Mr. Chairman.

9                   In response to some inquiries I had from Board  
10 counsel, I was able to confirm that Dr. Schindler  
11 is going to be back in Alberta on Sunday and would  
12 be available to come in person on Monday morning to  
13 answer questions. I didn't specifically ask about  
14 the responding in writing by noon on Monday, but I  
15 suspect that that should be doable in lieu of him  
16 being in attendance Monday morning.

17                   So either of those options we could  
18 accommodate.

19                   The preference would be for him to come  
20 Monday morning, because that was my last  
21 communication with him.

22                   And, sorry, just for the record, Mr. Chairman  
23 Dilay, with respect to my friend's comments on the  
24 context, I want to clarify that this is not  
25 Dr. Schindler's fault that we're in this

1           predicament. In fact, it's my fault, because we  
2           knew we had a scheduling problem and I was  
3           infinitely gullible in believing my friends',  
4           Mr. Denstedt and Mr. Roth, and the other parties'  
5           time estimates. And that was my fault. And just  
6           for the record, it's not Dr. Schindler who is to  
7           blame here.

8           THE CHAIRMAN:                   Mr. Denstedt, could you speak  
9           to this option of having Dr. Schindler appear to  
10          speak to these things orally on Monday morning.

11

12          **FURTHER MATTERS SPOKEN TO BY MR. DENSTEDT:**

13          MR. DENSTEDT:                   Yes, I think, Mr. Chairman,  
14          that would be our least desirable option. As you  
15          know, there's thousands of pages of information on  
16          the record that we have been feverishly trying to  
17          prepare final argument for and was the reason why  
18          we tried to have that one extra day. To commit  
19          resources now to attend on Monday to hear  
20          Dr. Schindler seems like, again, puts us in a  
21          difficult position in that respect. We have seven  
22          parties to respond to and it's going to take the  
23          full team to do that. And while, you know, I defer  
24          to the Board's judgment on whatever they decide  
25          obviously, it would be our least desirable outcome.

1           And we think had Dr. Schindler been here for  
2           cross-examination, he would have had to answer  
3           these questions that the Board posed to him on the  
4           spot. So it seems to me that if he's arriving back  
5           in the province on Sunday, he should be able to  
6           easily answer these questions in time for noon  
7           Monday.

8                     Thank you, sir.

9           THE CHAIRMAN:                     Thank you. Just give us a  
10           moment, please.

11                     Oh, sorry, Ms. Biem.

12

13           **MATTERS SPOKEN TO BY MS. BIEM:**

14           MS. BIEM:                         Good morning, Panel. I just  
15           wanted to let you know that ACFN has no problem  
16           providing answers in writing by noon on Monday.

17           THE CHAIRMAN:                     Thanks. And I'm sorry I  
18           didn't ask you, Ms. Biem.

19           MS. BIEM:                         No problem.

20           THE CHAIRMAN:                     Thank you. Just give us a  
21           moment.

22

23                                     **(Joint Review Panel confers)**

24

25           THE CHAIRMAN:                     Thanks, everyone. In



1           that group a contact list, but I can provide it  
2           again if anyone's unsure of the current version of  
3           that list.

4   THE CHAIRMAN:                    Thanks very much,  
5           Mr. Perkins. That's important.

6   MR. DENSTEDT:                    Mr. Chairman, I'll just  
7           clarify as well that I assume our request that  
8           Dr. Schindler not respond to the rebuttal that  
9           we're submitting today is also applicable?

10   THE CHAIRMAN:                    Ms. Buss?

11   MS. BUSS:                        I spoke to my friend about  
12           this and we'll certainly undertake not to provide  
13           Dr. Schindler with the transcript of the rebuttal  
14           evidence today. But, as I told my friend, we  
15           already gave him the PowerPoint Presentation when  
16           we received it. So I'll ask him not to respond to  
17           it, but I can't get him to disabuse his mind of the  
18           information if it informs his response in some way,  
19           that would just not be possible, but that's what we  
20           can undertake to do.

21   MR. DENSTEDT:                    That's acceptable.

22   THE CHAIRMAN:                    Thank you. Thank you,  
23           everyone.

24                                    And so otherwise, we will be commencing final  
25           argument at 8:30 on Tuesday.

1                   Is there any other housekeeping? Ms. Biem?

2

3           **UNDERTAKINGS SPOKEN TO BY MS. BIEM:**

4           MS. BIEM:                   Good morning, again. I just  
5                   wanted to let the Panel know that I've provided  
6                   Shell Canada, the Panel Secretariat and Mr. Perkins  
7                   with copies of written responses to undertakings  
8                   provided by ACFN witnesses last week. And I'll  
9                   have copies of them also available at the back of  
10                  the room.

11          THE CHAIRMAN:               Did you want to speak to them  
12                  briefly?

13          MS. BIEM:                   Oh, sure.

14                   One was an undertaking by Dr. Carver to  
15                   respond to question on cross-examination by  
16                   Mr. Denstedt on Thursday night.

17                   And Dr. Candler has also provided responses  
18                   to questions regarding the area of one of the  
19                   Consultation Areas on Map 1 at Exhibit 006-024.

20                   He also has provided a list of the resources  
21                   recorded as harvested within the Jackpine Mine  
22                   footprint.

23                   He's responded to, he was asked to take a  
24                   number subject to check, and he's responded to  
25                   that.



1                   And he also has responded to Mr. Denstedt's  
2                   request to confirm whether or not Chief Jim Boucher  
3                   is the nephew of Annie L'Hommeccourt.

4       THE CHAIRMAN:                   Ms. Biem, we'll mark  
5                   Dr. Carver's letter to the Panel of November 15th,  
6                   2012 as 006-028.

7  
8                   **EXHIBIT 006-028: DR. CARVER'S LETTER TO THE**  
9                   **PANEL DATED NOVEMBER 15, 2012**

10

11       THE CHAIRMAN:                   And we'll mark the other  
12                   document by Dr. Candler as 006-029. Thank you.

13

14                   **EXHIBIT 006-029: DR. CANDLER'S RESPONSE TO**  
15                   **UNDERTAKING**

16

17       MS. BIEM:                   Thank you.

18       THE CHAIRMAN:                   Mr. Denstedt, would you like  
19                   to proceed with your rebuttal evidence.

20

21       **REBUTTAL EVIDENCE BY SHELL CANADA:**

22                   **JASON PLAMONDON (SWORN)**

23                   **JERRY VANDENBERG (AFFIRMED)**

24                   **LINDA JEFFERSON (AFFIRMED)**

25                   **WAYNE SPELLER (SWORN)**

1           **JOHN BROADHURST (SWORN)**

2

3           MR. DENSTEDT:                           Yes. Thank you.

4                   Mr. Chairman, I believe the witnesses have been  
5                   re-sworn. I must admit, it's been 12 years since I  
6                   put a rebuttal panel up, so I wasn't sure if I  
7                   needed to or not. It's good to err on the side of  
8                   discretion.

9                           We have brief rebuttal this morning from  
10                   Mr. Plamondon and from Ms. Jefferson and from  
11                   Mr. Vandenberg. The panel, I think, is already  
12                   known to everyone, so I won't bother introducing  
13                   them and just get right on with it.

14

15           **EXAMINATION IN CHIEF BY MR. DENSTEDT:**

16           Q.       I would first turn to Mr. Plamondon and ask him a  
17                   couple of questions.

18                           Mr. Plamondon, you were present for  
19                   Ms. Celina Malcolm's testimony where she suggested  
20                   that you were disrespectful to her in your  
21                   consultation with her and also towards other  
22                   Aboriginal people. And I'd ask you to respond to  
23                   that, sir?

24           A.       MR. PLAMONDON:                   Yes, thank you.

25                           Panel, I would just like to start by saying I

1 was surprised and extremely disappointed by the  
2 comments that I heard from Ms. Malcolm in which she  
3 suggested I was disrespectful to her and to other  
4 Aboriginal people.

5 I take my role with Shell very seriously.  
6 And I took this role beginning in 2004 after six  
7 years with the company as an opportunity to do  
8 something that made a difference in the communities  
9 in which we operate. I've had hundreds of  
10 engagements since then with non-Aboriginals and  
11 Aboriginal peoples and I can tell you that the most  
12 memorable of those engagements are those in which  
13 people are passionate. And I remember this  
14 engagement well because Ms. Malcolm was passionate.

15 She was upset about a letter that Shell had  
16 written to her brother, Mr. Malcolm, on  
17 January 17th, 2011. And in that letter, Shell had  
18 discussed its position with respect to the  
19 inability to fund a third-party technical review of  
20 our EIA.

21 We'd also clarified our position in respect  
22 of the inability to pay honoraria to Mr. Malcolm as  
23 an elected official, as he described himself to  
24 Shell as the Chief of the non-status First Nation  
25 from Fort McMurray, and Shell's Anti-Bribery and

1           Corruption Policy clearly prohibits payments of  
2           honoraria to elected officials.

3           The conversation with Ms. Malcolm on  
4           February 28th, 2011 went on and I addressed  
5           additional concerns that she had in respect of job  
6           availability, in respect of the consultation  
7           process.

8           The engagement that I had with Ms. Malcolm  
9           completed after we had also discussed her  
10          presumption that we would be impacting some  
11          gravesites in the mine-site area, but I assured  
12          Ms. Malcolm that the area that she described as the  
13          Cree Burn Lake area was not within our mine site.

14          I closed the engagement by offering to send  
15          Ms. Malcolm a letter in which I summarized our  
16          conversation and that letter was sent to  
17          Ms. Malcolm on March 1st, 2011.

18          And so I would just conclude by expressing to  
19          the Panel that I'm very disappointed to hear that  
20          she would consider this to be disrespectful. And I  
21          completely disagree. In my opinion, I don't think  
22          that reflects our engagement.

23        Q.     Mr. Plamondon, you're also here for Mr. Malcolm's  
24                testimony in which he alleged that Shell had duped  
25                him into misunderstanding when the hearing would

1 occur. Do you recall that and can you respond to  
2 it, please?

3 A. Yes, I can respond to those comments as well.

4 First I'd like to address Mr. Malcolm's  
5 suggestion that we told him that we would be only  
6 sharing information with him and that our  
7 consultation was information-sharing only with him  
8 and his group.

9 Shell's letter of January 18th, 2012 clearly  
10 confirms our agreement, with a scope of work that  
11 was put together by Mr. Malcolm's consultant, in  
12 which we agreed to a phased approach to  
13 consultation, which included an Open House with him  
14 and his members in which we would describe the  
15 Project and have discussion around concerns.

16 And a second phase of that consultation which  
17 would involve a follow-up meeting with select  
18 representatives from his community, including  
19 Elders, consultants, experts, in which we could  
20 discuss his concerns with the Project specifically.

21 With respect to his comments that we duped  
22 him on the date of the hearing, Shell's always made  
23 it clear to Mr. Malcolm that we were looking for an  
24 early hearing date, as early as possible.

25 Mr. Malcolm understands the process in which the

1 hearing dates are set, as he's been involved in  
2 these processes for some number of years now, as  
3 described in his testimony. And Shell notified  
4 Mr. Malcolm of its May 15th, 2012 submission and  
5 provided a copy on May 23rd, 2012. And in that  
6 submission, it clearly identified Shell's request  
7 for an October 2012 hearing.

8 With respect to Mr. Malcolm's suggestion that  
9 we agreed to take the summer off from consultation,  
10 that as well is not accurate. On May 31st, 2012,  
11 Mr. Malcolm contacted Shell and advised us that he  
12 would be pursuing membership for himself and his  
13 members with the Fort McMurray First Nation. We  
14 didn't hear back from Mr. Malcolm after that until  
15 September 17th, 2012, at which time he informed us  
16 he was no longer seeking membership for his members  
17 with Fort McMurray 468.

18 He also notified that his facilitator was no  
19 longer working with him and would not be able to  
20 facilitate the Open House that we'd agreed upon in  
21 January of 2012. And at that time, Mr. Malcolm  
22 also requested that Shell coordinate an Open House  
23 for his members within 30 days. Shell responded by  
24 saying that wouldn't be possible because of the  
25 timing restraint, but that we would be happy to

1 meet with him prior to the hearing and after the  
2 hearing about the Project.

3 With respect to the comments from Mr. Malcolm  
4 that we would be only talking about PRM, that as  
5 well is not accurate. Shell sent Mr. Malcolm a  
6 letter on October 26th, 2012, and noted our  
7 willingness to continue consultation after the  
8 hearing, including this Project, Jackpine Mine  
9 Expansion, and the Pierre River Mine project.

10 Q. Thanks, Mr. Plamondon.

11 Now, Ms. Jefferson, if I could turn to you.  
12 You were here for the testimony of the MNA and  
13 Métis Local 125 and 1935?

14 A. MS. JEFFERSON: I was.

15 Q. And you would have heard Mr. Fortna's testimony and  
16 his assertions of lack of meaningful engagement  
17 with the MNA 1935 and Local 125 by Shell, and can  
18 you respond to that?

19 A. Yes, I did, and I would like to respond to that.

20 So first I have to admit that I was really  
21 surprised to hear Mr. Fortna's characterization of  
22 our consultation with Métis Locals 125 and 1935,  
23 particularly given Mr. Fortna participated in some  
24 of this.

25 We've had dozens of meetings with both of

1           these Métis Locals, including workshops and Open  
2           Houses, some of this actually pre-dated the  
3           projects. The consultation record for the Project  
4           is extensive and our Consultation Logs have been  
5           filed as Exhibit 001-006A, 001-057, and 001-061,  
6           which Mr. Fortna in his testimony admitted he has  
7           not reviewed in detail.

8                        In particular, I'd like to respond to  
9           Mr. Fortna's account of our December 6th, 2008  
10          meeting with the Métis Local 1935 Elders, which he  
11          has characterized as lacking substance and not  
12          being meaningful consultation.

13                      I'd also like to respond to Mr. Fortna's and  
14          Mr. Loutitt's characterization of the mining  
15          activity we had at that meeting with the Elders,  
16          which I think may have left the Panel and others  
17          with the impression that Shell was disrespectful to  
18          the Elders and that we treated consultation like  
19          child's play. And quite frankly that simply is not  
20          the truth. So I would like to relay some of the  
21          facts around this meeting.

22                      So the December 6th, 2008 meeting was the  
23          second of two meetings we had with the Métis Local  
24          1935, the first was on November 13th, 2008. And  
25          the plan for these meetings actually developed out



1 of several meetings that we had had with a Métis  
2 Local 1935. I was at those meetings. Celina Doyle  
3 from Shell was at those meetings. And we met with  
4 Mr. Brian Fayant who was then the Executive  
5 Director of the Local.

6 And so there were a couple of key things I  
7 would note coming out of that:

8 One, Mr. Fayant had asked for a facilitator  
9 to help him plan the meeting, so Shell provided  
10 Will Kachur (phonetic), who was a Shell employee, a  
11 professional facilitator, to work with Mr. Fayant  
12 so that the planning for the December 8th, 2008  
13 meeting would go as he had hoped;

14 The other thing that we were requested by  
15 Brian on behalf of the Local was to come up with an  
16 activity that we could do, something interactive,  
17 to accomplish two purposes, one was to help build  
18 the relationship between Shell and the Elders, and  
19 the other, to have an educational component to help  
20 the Elders better understand mining activity and  
21 what was involved, in a fun and, you know, informal  
22 way.

23 And so Mr. Fortna has asserted that, you  
24 know, the meeting on December 6th, 2008 lacked  
25 substance. And with all due respect, he's wrong.

1           We sent senior people to this meeting. People who  
2           could make decisions, people who had the knowledge  
3           and the experience to explain our plans and to  
4           respond to questions. I was at the meeting. So  
5           were several of the panel members, including  
6           Mr. John Broadhurst, who is the chair of our Shell  
7           panel and our vice-president of development in  
8           heavy oil; Bill Kovach, who was our EIA coordinator  
9           and who was on the panel; Jeff Roberts, who at the  
10          time was our mine development manager, he's on the  
11          panel. John Rind was also there. At the time,  
12          John Rind was the general manager of the mine.  
13          He's now our vice-president of operations for heavy  
14          oil in Shell. Andy Carter was there. Andy at the  
15          time was our mine operations manager. And we had  
16          several other Shell reps at the meeting.

17                 So we took the meeting very seriously. We  
18                 brought senior people who could respond, and this  
19                 meeting was very meaningful in our eyes.

20                 In terms of who was there from Métis 1935, in  
21                 addition to Mr. Fortna and Mr. Loutitt, Mr. William  
22                 Castor and his late wife, well, now late wife  
23                 Gertie, they were both at the meeting. Contrary to  
24                 what Mr. Fortna has indicated that we haven't  
25                 engaged in dialogue with Mr. Castor. Mr. James

1 Dragon was there, the president of Métis Local  
2 1935. Brian Fayant the Executive Director of the  
3 Métis Local was there. And there were many other  
4 Métis Local 1935 Elders and members.

5 So, again, I can assure you, this meeting was  
6 meaningful.

7 I also believe, you know, it wasn't just  
8 Shell who thought the meeting was meaningful, the  
9 feedback we received at the time from the Métis  
10 Local and from Bryant is that they also believed  
11 that the meeting was meaningful, and it had  
12 accomplished the objectives that we had set out  
13 together.

14 So in terms of the meeting, we provided  
15 several materials, including a copy of a  
16 presentation that we delivered, the Public  
17 Disclosure Document, copies of Project DVDs. We  
18 had display boards for viewing.

19 In terms of how the meeting went, James  
20 Dragon and I opened the meeting together and we  
21 explained what the purpose of the meeting was,  
22 which was for Shell to provide Project information  
23 and for the Elders to ask questions and for us to  
24 talk.

25 Then we delivered the presentation on the

1 projects and responded to questions as they arose  
2 during the delivery of the presentation. Jeff  
3 Roberts explained our long-term growth plans, our  
4 corporate structure, our JV partners. He talked  
5 about the regulatory process, the timelines, the  
6 opportunities for public input. He provided an  
7 overview of our mining operations, the Jackpine  
8 Mine Phase I. He went through the Project  
9 description for both the Jackpine Mine Expansion  
10 and Pierre River Mine projects. Then Bill talked  
11 about the EIA process and EIA methods and he went  
12 through air, water, fish, health, plants, wildlife.  
13 He ran through all of the more biophysical  
14 elements.

15 Susan Whitley, who was co-ordinating the SEIA  
16 at the time, talked about socio-economic issues  
17 such as labour force, infrastructure,  
18 transportation, housing, business development,  
19 employment, traditional land use. We talked about  
20 trappers.

21 And I ran through our Good Neighbour  
22 Policies.

23 And throughout the presentation, we received  
24 questions, we answered questions. One of the  
25 issues that came up during the presentation was

1 identified, the Métis identified a need for  
2 Traditional Land Use Studies. And what we agreed  
3 at the meeting was that we would take this back at  
4 our next meeting with Brian in January and talk  
5 about how we would support Métis Local 1935 under  
6 our Good Neighbour Agreement in doing Traditional  
7 Land Use Studies.

8 And ultimately what this ended up with was  
9 agreement with the Local that the best way for  
10 Shell to support their desire for traditional land  
11 use studies was through contributing to the *Mark of*  
12 *the Métis* study, which we did, we were a major  
13 supporter of the *Mark of the Métis* study. We  
14 supported over four years, not only funding under  
15 our Good Neighbour Agreement tagged for that study,  
16 but also we provided support from Shell people and  
17 resources and time from Shell.

18 So after we went through the presentation and  
19 the Q&As with that, we got into the group activity.  
20 And basically this activity involved using oil  
21 sands materials and water in an activity that was  
22 really designed to show how an oil sands mine plan  
23 is advanced and how you build some of the  
24 infrastructure, such as dykes and tailings ponds,  
25 and to illustrate and facilitate understanding of

1           some of the key issues there are in oil sands  
2           mining, such as water management.

3           So our mine managers were there participating  
4           with the Elders in the activity, and we thought it  
5           went really well. It generated lots of good  
6           discussion. John and I were talking about this,  
7           and John was there, and we distinctly recall, there  
8           was lots of good discussion. The activity, the  
9           Elders had great questions. We were able to, you  
10          know, in a fun and informal way, provide answers on  
11          how we do oil sand mining, some of the issues, some  
12          of the challenges.

13          So, really, we believed the activity was  
14          successful and that it accomplished the objectives  
15          that the Local was seeking.

16          So after the meeting, we did provide a  
17          detailed response to Métis Local 1935. It was a  
18          letter from me to Mr. James Dragon dated  
19          April 20th, 2009. And in this letter, we wrote  
20          down, we identified all of the questions that had  
21          been brought up in both the November and the  
22          December meetings. There were 44 questions and we  
23          identified each one of those and provided a written  
24          response.

25          So some of the questions were about Shell,

1           our joint venture partners, our operations, our  
2           growth plans, our leases, some of our neighbouring  
3           industry, questions around things like dyke height,  
4           seepage, the Project description, Compensation  
5           Lake.

6                     They had questions about Métis participation  
7           in CEMA. There was a question about would Shell  
8           make a presentation at the Father Mercredi school.  
9           Questions on employment, health benefits, education  
10          requirements, apprenticeship programs.

11                    Questions on the environment, on land, fish  
12          and wildlife, report, reclamation. Questions  
13          around fish consumption from the Athabasca River  
14          and methylmercury contamination of fish. There  
15          were some questions around observed changes in  
16          rabbit populations, which would be snowshoe hare.  
17          There were some questions around reclamation.  
18          There was a question on water use, you know,  
19          surface and groundwater. And there were some  
20          questions related to culture and land use, so  
21          questions around archeology, trappers and Métis  
22          land us, the Métis Local Use Study.

23                    So we responded to all of these questions in  
24          writing and we also provided, appended some  
25          additional detail, one was our Good Neighbour

1 Policy, another was a detailed response to their  
2 questions around fish and methylmercury in the  
3 Athabasca. And then we also attached a map showing  
4 the location of the Aurora site to Shell's  
5 operations.

6 So I can't speak to what Mr. Fortna's  
7 definition is, but I believe that this would be  
8 considered meaningful consultation by most  
9 standards.

10 Just one final note on that is that we had  
11 another Open House and workshop with the Métis  
12 Elders in May 2009, May 20th, 2009. And prior to  
13 this meeting, Métis Local 1935 asked us would we  
14 provide copies of this written response so they  
15 could hand them out to the Elders, so we  
16 hand-delivered that to their office in advance of  
17 that May 2009 Open House.

18 But I'm not going to dive into the details of  
19 that May 2009 Open House, but just would like to  
20 note that Mr. William Castor was also at that Open  
21 House, contrary to Mr. Fortna's assertion that we  
22 haven't talked to Mr. Castor.

23 And I think it's also important to note that  
24 we also had a similar Open House and engagement  
25 with Métis Local 125 up in Fort Chipewyan on



1 April 21st, 2009. We had an Open House. And prior  
2 to the Open House, we met with members of the 125  
3 Board, along with ACFN and MCFN on the Project.

4 So I think there's one other example of  
5 consultation with the Métis Locals I would like to  
6 highlight, one that Mr. Fortna was directly  
7 involved in on behalf of 1935. And that's the  
8 consultation we've done in relation to our No Net  
9 Loss plans, both for the Muskeg River Expansion and  
10 for the Jackpine Mine Expansion and Pierre River  
11 Mine projects. So this would relate to Redclay  
12 Lake or the Compensation Lake that we've been  
13 talking about.

14 So as part of this consultation, if I looked  
15 back through the record, I can see an instance  
16 where Mr. Fortna asked us for a copy of our site  
17 plan so he could compare this against their  
18 traditional land use information and identify which  
19 Métis 1935 members would be best to engage in the  
20 consultation with us. And I can see where we, on  
21 the day after that request, provided him with the  
22 maps.

23 On July 23rd, 2009, we had a meeting on the  
24 MRME No Net Loss Plan, which included both Métis  
25 Locals 125 and 1935, and from Métis Local 125,

1 Mr. Fraser was there, Mr. Jumbo Fraser, Barb  
2 Hermansen was there and Gabe Bourke. From Métis  
3 Local 1935, Mr. Fortna was there, Mr. Castor was  
4 there, and Mr. Ernie Michael was there. And DFO  
5 was also there. And at this meeting, we provided  
6 an overview of our plans and responded to  
7 questions.

8 In September 2009, we then invited both the  
9 Métis Locals to engage in consultation on No Net  
10 Loss plans for the Project, Jackpine Mine  
11 Expansion, Pierre River Mine. And we indicated  
12 that we would provide honoraria for the Elders to  
13 participate in the consultation. We would cover  
14 travel expenses and meeting costs. And this is all  
15 set out in e-mails between us and the Locals.

16 There were three specific meetings on this No  
17 Net Loss consultation. The first was on  
18 November 20th, 2009. And there were two in 2011,  
19 one on February 17th and one on July 12th.

20 So I'm not going to go through the details of  
21 all of this consultation, but I believe we have  
22 consulted the Métis. We've met, we've explained  
23 our plans, we've listened to concerns, we've  
24 received the feedback, we've responded, we've  
25 passed on information that we've gathered through

1 the consultation to our EIA and SEIA teams and  
2 they've considered this in the assessment. We've  
3 provided notes and summaries of the consultation  
4 back to the Locals.

5 So I believe we've consulted.

6 Q. So, Ms. Jefferson, Mr. Fortna also suggested to the  
7 Panel that Shell has no understanding of the Métis  
8 issues. Can you respond to that as well?

9 A. Yes, I would like to respond to that. I strongly  
10 disagree with Mr. Fortna's assertion here. And I  
11 think that's clearly demonstrated from some of the  
12 examples I just gave you.

13 So I'd also like to set the record straight  
14 on Mr. Fortna's statement from the transcript on I  
15 think it was November 14th, on Tuesday. And if I  
16 go back and I look at that, he had said, he went  
17 back to Ms. Jefferson's response to Mr. Les Cooke  
18 when asked what the concerns were of the Métis, and  
19 I couldn't produce one substantive concern. And he  
20 felt that there was something that should worry the  
21 Panel, right. And because the Métis do have  
22 concerns. And he believed that Shell didn't  
23 understand what those concerns were.

24 And so quite frankly, I would just like to  
25 say that Mr. Fortna is wrong. I've reviewed my

1 testimony during the transcript that Mr. Fortna had  
2 referenced, and specifically it was Mr. Bolton who  
3 had asked me the question, not Mr. Cooke, and the  
4 question, when I looked at the question, the  
5 question was, you know, could I provide a couple of  
6 concerns that Shell had been unable to address with  
7 the MNA Region 1 and the two Métis Locals and I  
8 provided a response to that. And my response was  
9 that most of the issues that had been raised that  
10 hadn't been addressed to their satisfaction related  
11 to capacity, funding for consultation, and the lack  
12 of Métis consultation guidelines. I also stated  
13 that there hadn't been a lot of project-specific  
14 concerns raised, but where they had been raised, we  
15 had addressed them and they had been responded to  
16 and we had considered them in the assessment.

17 Q. So, Ms. Jefferson, you also just raised the issue  
18 of capacity, which Mr. Fortna suggested to the  
19 Panel was the root cause of Shell's failure to  
20 consult. Can you address that as well?

21 A. Sure. So since 2007, we've either paid or  
22 committed to over \$700,000 to support Métis Locals  
23 125 and 1935. We've covered the costs as well of  
24 consultation meetings. We've paid honorarias to  
25 Elders for their participation and consultation at

1 the rate of \$300 a day. We have had Good Neighbour  
2 Agreements with both the Métis Locals for Métis,  
3 and under these, we provide funding to cover their  
4 costs, to help them with capacity buildings, and  
5 support initiatives that they bring forward and  
6 that are important to them and their members.

7 So for Métis Local 125, since 2009, we've  
8 paid or committed to pay over \$260,000. And that  
9 includes \$40,000 for Traditional Land Use Study.  
10 And that's being responsive to what they asked us  
11 for.

12 For Métis Local 1935, from 2007 to present,  
13 we have paid roughly \$441,000. And out of that,  
14 almost \$111,000 was marked for the *Mark of the*  
15 *Métis* study.

16 So I know this is not the funding that  
17 Mr. Fortna and the Métis Nation Region 1 are  
18 referring to in terms of core consultation capacity  
19 funding, but it is funding that is responsive to  
20 what the two Locals have indicated to us, at least  
21 up until recently. We've responded to what they've  
22 asked for. It's substantive. It's meaningful.  
23 It's responsive. It's provided them resources. So  
24 that they can work on things that are important to  
25 them. Some of the funding I know they put towards

1 governance, developing governments issues. Sorry,  
2 I'm sort of stumbling on my words here. Anyway,  
3 they were doing some work on governance. It helped  
4 defray some of their office and administration  
5 overhead. I know that they put it towards  
6 projects, training, that was important to them in  
7 the community, youth and Elders initiatives.

8 So I do believe that the funding we've  
9 provided has been substantive and responsive to the  
10 needs.

11 Q. Thanks, Ms. Jefferson.

12 Mr. Vandenberg, I think you have a  
13 presentation in response to Dr. Schindler's  
14 testimony, presentation and critique. If you would  
15 just proceed with that, sir.

16 A. MR. VANDENBERG: Thank you. And thank  
17 you, Panel, for the opportunity to come back and  
18 speak today.

19 I'm going to be speaking to Dr. Schindler's  
20 critique, which he submitted as a review of the  
21 EIA, as well as some of the testimony he provided  
22 here last week.

23 I'm going focus on five main sections, shown  
24 on this slide, and I'll start with the section on  
25 acid rain.

1                   There were two broad themes to  
2                   Dr. Schindler's critique and testimony. The first  
3                   was in reference to the EIA. I felt that the  
4                   statements that he made about the EIA were  
5                   inaccurate; particularly the statement shown on the  
6                   slide, it's concluded that 23 lakes in the area  
7                   already suffer from deposition of acidifying  
8                   sulphur and nitrogen emissions, or sorry, nitrogen  
9                   compounds.

10                   It's pretty clear from our EIA that 18 of the  
11                   lakes we assessed as being acidified in the  
12                   Pre-Industrial Case, three additional lakes in the  
13                   Base Case, two more in the Planned Development  
14                   Case, and zero in the Project case.

15                   Furthermore, the exceedance of a critical  
16                   load does not necessarily indicate that the lake is  
17                   "suffering." The exceedance of a critical load  
18                   indicates that at some point this lake could have a  
19                   change in pH and therefore the lake should be  
20                   monitored. The exceedance of a critical load  
21                   through modelling is we feel it's a fairly  
22                   conservative modelling exercise and it indicates  
23                   that monitoring should be done as a precautionary  
24                   measure on that lake.

25                   That relates to the EIA.

1           He also went into some literature about  
2           acidifying emissions in the Oil Sands Region. I'm  
3           going to talk to some of the studies that he  
4           quoted. But first I'll give a little background on  
5           those studies. Those were mainly from the *Journal*  
6           *of Limnology*. The *Journal of Limnology* did a  
7           special issue back in 2010 where they looked at  
8           acidifying emissions. They had six articles in the  
9           Oil Sands Region specifically looking at whether or  
10          not oil sands developments have caused any changes  
11          in pH in acid-sensitive lakes in the Oil Sands  
12          Region.

13                 From the quotes Dr. Schindler provided, I  
14          think it's fairly clear that he was taking quotes  
15          out of context trying to make the case that damage  
16          has occurred when the authors were fairly clear in  
17          their conclusions that that's not the case.

18                 And I'll go through some of the studies here  
19          to talk about that in more detail.

20                 The first one was a quote where he's talking  
21          about a study by Whitfield et al, where he states  
22          that we didn't read the Whitfield or didn't pay  
23          attention to the Whitfield paper in our EIA.

24                 As stated, that's actually true, we didn't  
25          take the Whitfield approach. There are a number of



1 approaches that one could use to assess acidifying  
2 emissions. The approach we've used is consistent  
3 with work by CEMA in the Acid Deposition Management  
4 Framework, and it's also recommended in the Alberta  
5 EIA Practitioners Guide.

6 We have considered trying to build the work  
7 of Whitfield into our studies, but there's a  
8 balance there. It requires quite a high level of  
9 data and quite a high level of computational power,  
10 and, as a result, we would have to reduce the  
11 number of lakes that we assess. So we have looked  
12 at that balance. We've just stuck with the Alberta  
13 recommended and the CEMA recommended approach for  
14 now.

15 There's another quote that's in here. This  
16 is from a paper by McLinden in a journal this year.  
17 I've just provided some context here from the  
18 McLinden study. In the McLinden study, they  
19 specifically mentioned that some context needs to  
20 be put to these numbers that were put forward in  
21 their abstract. So I've provided the context that  
22 McLinden felt necessary to provide with their  
23 numbers and I won't say anymore about that study.

24 Another study that was not mentioned in  
25 Dr. Schindler's critique, this comes from the same

1 special issue in that journal, was by Wieder et al.  
2 This was a pretty interesting study. They looked  
3 at the deposition of NNS compounds. They used a  
4 variety of different chemical and biological  
5 methods. They looked at moss and they looked at  
6 some chemical exchange resins. Their findings were  
7 pretty clear, they don't see a problem at present  
8 with acidifying emissions in the Oil Sands Region.

9 Another one is Curtis et al. This is also a  
10 pretty interesting study. I know some of you might  
11 remember seeing some quotes from this back at the  
12 Total hearing two years ago. There was some back  
13 and forth over this specific study.

14 Curtis et al did find one lake that was being  
15 acidified. There was some discussion in that paper  
16 about possibly that the acidification had started  
17 in the 19th century and they felt that a rapid  
18 increase in pH decline was consistent with oil  
19 sands emissions. And so that was one of their  
20 findings, although they did state that, overall,  
21 they did not feel the oil sands developments were  
22 causing major changes to acidification in the  
23 region.

24 I should also note that the lake that they  
25 specified, had changed in pH. And this is based on

1           some sediment-core samples that they used to infer  
2           changes in pH. That specific lake is in our EIA.  
3           We also assumed that that lake has been acidified.  
4           We refer to that as "Lake 150" and it's in Appendix  
5           3.2 of our May 2012 submission. So the study is  
6           actually consistent with our EIA.

7                     Another study, by Whitfield et al, this is  
8           also another interesting study because there was  
9           some back and forth within this special issue.  
10          Whitfield disagreed with Curtis, so it was one  
11          group of scientists disagreeing with another group  
12          of scientists. Whitfield used modelling approach  
13          and they agreed that Lake NE7 had been acidified,  
14          but the Whitfield study indicated that if it had  
15          been acidified, it was not due to oil sands  
16          emissions, so that was their conclusion.

17                     This study was not mentioned in  
18          Dr. Schindler's critique.

19                     Another study that he mentioned was the  
20          Parsons et al. This was a macro-benthos study, so  
21          they were looking at insects in a range of lakes.  
22          They looked at 32 lakes, five of which are in the  
23          high deposition zone of the oil sands developments.

24                     They did find differences in the lakes, but  
25          they were clear in their conclusions that they did

1 not feel the differences were due to oil sands  
2 developments.

3 Finally, the sixth paper, which refers back  
4 to the other five, was written by the editors of  
5 that journal, so these are the folks who are  
6 essentially responsible for putting that journal  
7 together.

8 They were pretty clear in their conclusion.  
9 And I'm going to read that one. It's:

10

11 "The assessment of lakes in  
12 northern Alberta using macro  
13 invertebrate, paleolimnological and  
14 hydrogeochemical modelling  
15 approaches suggest that industrial  
16 activities associated with the oil  
17 sands presently have limited  
18 influence on lake acidification."

19

20 And, for that conclusion, they refer back to  
21 the five studies that I've mentioned.

22 Again, this was not mentioned in  
23 Dr. Schindler's critique.

24 And finally, on the acid rain issue,  
25 Dr. Schindler showed some graphs from 1990 that

1           showed a change in pH during what we call spring  
2           pulse.  These graphs were from the 1990s.  I won't  
3           dispute whether or not there was a change in pH.  
4           But those studies were, or sorry, those graphs did  
5           actually prompt specific studies by Alberta  
6           Environment by Western Resource Solutions.  We've  
7           referred to those studies by Western Resource  
8           Solutions both in our Environmental Setting Report  
9           and our EIA.

10                   As well, the graphs pre-date a lot of the  
11           emissions controls that happened in the '90s, so  
12           the relevance to this Project, to me, is  
13           somewhat unclear.

14                   Moving on, I'm going to speak a bit about the  
15           Muskeg River and its biodiversity.

16                   Dr. Schindler stated in his critique that the  
17           Muskeg River biological health had already been  
18           severely damaged by 2005.  And he stated that we  
19           ignored some of the macro-invert work that was done  
20           by Barton and Wallace back in 1979.  So that came  
21           up in his testimony as well as in his critique.

22                   He referred to this slide, which shows our  
23           aquatics modelling nodes.  These are not actually  
24           the study sites for our biological indicators.  So  
25           it's not clear to me what he was trying to say

1           about that, but those are not the nodes that we  
2           used in our assessment of biodiversity.

3           The nodes we actually used are shown here.  
4           The red lines indicate RAMP data. And the circle  
5           point is the site that was added specifically for  
6           this study. That site is called S24 and it was  
7           added to the environmental settings studies to  
8           understand the macro-invert communities in the  
9           Project area.

10          Dr. Schindler didn't include the RAMP data in  
11          his assessment. But what those RAMP data show  
12          are -- sorry, and we did include the RAMP data in  
13          our assessment. What the data show is that the  
14          species he referred to, the ephemeroptera,  
15          plecoptera and trichoptera. I'll just call them  
16          EPT species. That's how they are referred to in  
17          these studies, if that's okay.

18          The EPT studies, which he said we didn't  
19          consider, were actually considered in the EIA and  
20          the Environmental Setting Report. And he did claim  
21          that these were entirely wiped out. Quoting, you  
22          know, catastrophic decline, he said there were  
23          100 percent declines in some of these taxa. The  
24          data I'm presenting on this slide, which I think is  
25          already an exhibit, are pretty clear that that's

1 not true, they have not been wiped out in the  
2 Muskeg River.

3 And furthermore, the study sites in the study  
4 sample methods that were used by the Barton and  
5 Wallace are not comparable to what RAMP does and  
6 what we've done in the EIA. So they do, you know,  
7 all contribute to the body of knowledge, but they  
8 are not directly comparable on a, you know, this  
9 site and this date versus this site and this date.  
10 You wouldn't expect to see the same number of EPT  
11 species at either of these sites on different  
12 times; it's apples to oranges.

13 Referring to his testimony, he was speaking  
14 with Syncrude's counsel about why he disagreed with  
15 the EIA. He said:

16  
17 "I think the best evidence  
18 for that is from the fish. They  
19 report that there were never  
20 grayling in the upper reaches of  
21 that river."

22  
23 Well, he was referring to the Bond and  
24 Machniak study which actually specifically said  
25 grayling were never observed in the Muskeg River

1 upstream of Hartley Creek. Hartley Creek being  
2 another name for Jackpine Creek.

3 And I'd refer you back to some testimony  
4 between Kasey Clipperton and John Malcolm for  
5 whether or not grayling have increased or  
6 decreased, or what the reasons are for that, that's  
7 not my of expertise. But I just want to clarify  
8 that, that, you know, our EIA is consistent with  
9 the Bond and Machniak findings from the late '70s.

10 Again in this slide, Dr. Schindler was  
11 taking, you know, a snapshot in time from one  
12 sample location using biological indicators  
13 comparing to another snapshot in time from a  
14 different site using different study methods to  
15 point to, you know, "A catastrophic decline," and  
16 again, it's just not appropriate. He's also again  
17 ignored the RAMP data, which we've included in the  
18 EIA. The reasons for ignoring RAMP, I guess, I  
19 won't speculate on why, but I will say that with  
20 all the different reviews of RAMP, and all the  
21 different criticisms there may be, when RAMP has  
22 gone out and measured something and reported that  
23 in their tables, it's pretty, you know, it is  
24 reliable that what they measured on that day was  
25 actually representative of what was there on that



1 day regardless of whether or not they've met their  
2 objectives or, you know, some of the criticisms  
3 about studies do not apply to the fact that when  
4 they measure something and report it in a table  
5 that that's what was there on that day.

6 I'm going to move on to the section on PAHs.

7 MR. DENSTEDT: Mr. Chairman, maybe I'll mark  
8 a couple of exhibits, make good use of our time.  
9 Mr. Vandenberg's presentation was given a pre-filed  
10 number, and I think it was 001-112.

11

12 **EXHIBIT 001-112: MR. VANDENBERG'S REBUTTAL**

13 **EVIDENCE PRESENTATION**

14

15 THE CHAIRMAN: Thank you.

16 MR. DENSTEDT: And Shell has provided a  
17 letter for filing which pulls together the  
18 commitments Shell has made on the record in the  
19 oral part of the hearing just for the convenience  
20 of the Panel, and that's been assigned 001-113.

21

22 **EXHIBIT 001-113: SHELL'S LETTER FOR FILING WHICH**

23 **PULLS TOGETHER THE COMMITMENTS SHELL HAS MADE ON**

24 **THE RECORD IN THE ORAL PART OF THE HEARING**

25

1 THE CHAIRMAN: Thank you.

2 MR. DENSTEDT: And we should probably mark  
3 the letter that Ms. Jefferson referred to, which  
4 was April 20th, 2009, a copy of that was provided  
5 to Ms. Bishop on Wednesday, so she has that  
6 document.

7 THE CHAIRMAN: 114.

8

9 **EXHIBIT 001-114: LETTER DATED APRIL 20, 2009**  
10 **FROM MS. LINDA JEFFERSON TO MR. JAMES DRAGON**

11

12 MR. DENSTEDT: Thank you.

13 THE CHAIRMAN: Thank you.

14 MR. DENSTEDT: Mr. Chairman, again, if it's  
15 of any use, we have paper copies of the  
16 presentation and we could keep going if that's  
17 useful.

18 THE CHAIRMAN: Let's do that.

19 Mr. Vandenberg, what page are we on?

20 A. MR. VANDENBERG: Page 19.

21 THE CHAIRMAN: Go ahead.

22 A. MR. VANDENBERG: Okay, so I'm referring to my  
23 slides, slide 19. So I'm going to refer to the  
24 section on PAHs.

25 So in the EIA, we looked at PAHs using -- we

1 looked at PAH transport through four different  
2 pathways. We looked at PAH deposit into our --  
3 sorry, PAH discharge into our water models. Those  
4 were included in all of our models from all of the  
5 likely sources of PAHs that could affect water  
6 directly. We looked at human and wildlife effects  
7 due to direct deposition on soil and vegetation.  
8 We looked at aerial deposition modelling and  
9 deposition in the Lower Athabasca River and the  
10 delta sediments.

11 So the first two were not a matter of dispute  
12 in Dr. Schindler's critique or testimony, so I'll  
13 leave the record, sorry, leave those as they are.

14 But I'm going to talk in some detail about  
15 the third and fourth. And so first I'll talk about  
16 the aerial deposition.

17 Aerial deposition was addressed in the May  
18 2012 submission, specifically with reference to the  
19 papers that Dr. Schindler and Kelly et al had  
20 produced in 2009 and 2010. We've done a fairly  
21 extensive modelling effort to understand what the  
22 effect of aerial deposition on PAHs and metals  
23 would be on receiving waterbodies.

24 We've attempted to contact Dr. Schindler  
25 several times over the past few years trying to

1 collaborate and share data in an effort to validate  
2 those models. He's basically ignored us.

3 You know, the lack of response is pretty  
4 disappointing, especially considering his emphasis  
5 on transparency and data sharing that's evident in  
6 a number of his presentations and testimony.

7 So he's cited a couple of papers for his  
8 critique of the EIA. He cited Kurek and Timoney.  
9 The Kurek paper is, to the best of my knowledge,  
10 unavailable. We couldn't find it. So I can't  
11 comment on whether or not that supports his  
12 criticism of our EIA.

13 The Timoney though is kind of interesting.  
14 The Timoney and Lee 2011. The paper is based  
15 entirely on RAMP, so it's a bit unclear to me how  
16 he refers to a paper that's completely reliant on  
17 RAMP data to argue against the EIA when he's also  
18 saying that our EIA is deficient because we rely on  
19 RAMP data.

20 That was discussed a bit in the response to  
21 the Timoney papers by the Royal Society that we've  
22 submitted as evidence.

23 Sorry, I'm going on to Slide 20. So I'm  
24 going to speak now to the paper by Hall et al that  
25 we submitted on October 15th.

1           The Hall paper was based on multiple lines of  
2 evidence. It was quite powerful science, I would  
3 say, because it draws together a number of  
4 independent lines of science to reconstruct an  
5 historical record of both flow and chemistry in the  
6 Peace-Athabasca Delta. It relies on the paper by  
7 Wolfe et al that we also submitted. It's by the  
8 name group of authors. The Wolfe et al study drew  
9 together 12 separate lines of evidence using all  
10 sorts of biological indicators, chemical indicators  
11 and physical indicators. And they've reconstructed  
12 I believe they called it a "Hydro Ecological  
13 History of the Delta." They've also verified their  
14 time history using Traditional Ecological  
15 Knowledge, air photos, known changes to the delta,  
16 climate records, and a number of other, again,  
17 independent sources of data.

18           So the Hall study, it was a bit of a game  
19 changer in the scientific world because, you know,  
20 there's been quite a debate over the past five  
21 years, particularly since we submitted our EIA. In  
22 2007, we relied on a lot of the Northern Rivers  
23 Basin Studies and the Northern River Ecosystem  
24 Initiative Studies to assess what might be  
25 happening to PAHs in the delta.

1           At that time, we wrote in Section 6.5.7 of  
2           the EIA that the historical record showed that the  
3           majority of PAHs being deposited in the delta were  
4           of natural origin, and that mainly came from the  
5           Northern Rivers Basin Studies. Since that time,  
6           there were the studies by Kelly et al. and Timoney  
7           and Lee that disputed those findings over the past  
8           couple of years, and now the Hall kind of disputes  
9           those findings, and it confirms what we had  
10          originally said in 2007.

11           And it confirms that, on a number of  
12          accounts, it confirms that the PAHs have not been  
13          increasing since the '50s, or the deposition rate  
14          of PAHs in the delta has not been increasing since  
15          the '50s. And it confirms that the majority of the  
16          PAHs that are being deposited are of natural  
17          origin.

18           Now, in Dr. Schindler's testimony, he more or  
19          less dismissed that study out of hand and said it  
20          was trumped by the federal studies that we heard  
21          about yesterday or the day before.

22           Now, that was pretty surprising to me  
23          because, number one, I'm not really sure what it  
24          means to trump one study or another, but let's  
25          assume it means discredit or overrule or something.

1 I'm not really sure how the Hall study could be  
2 thought of as being trumped by, you know, an  
3 abstract that's published in a SETAC conference  
4 that's not even really on the same topic and that  
5 the responsible organization for that paper calls  
6 "not vetted, preliminary, and early findings," so I  
7 won't say any more about that.

8 But I'll move on to mercury on my last slide.

9 So there were a few papers, key papers that  
10 Dr. Schindler referred to. The first was the Evans  
11 and Talbot paper. I've got some quotes on this  
12 slide. Frankly, I just don't see how he came up  
13 with the conclusion that he put in that critique  
14 when the Evans study showed statistically  
15 significant decreases in mercury in fish tissue  
16 near the oil sands in the Athabasca Region and in  
17 the delta.

18 He also referred to a Reid et al study. That  
19 was Reid et al 2007. It was an interesting study  
20 where they've applied mercury to the entire  
21 watershed and they've measured changes in mercury  
22 concentrations in the receiving lake. And they  
23 measured an increase in mercury in the water  
24 sediment in fish. And so that was on  
25 Dr. Schindler's slide. I certainly wouldn't

1           dispute that, in fact I would say that's sort of an  
2           expected finding.

3                       But the key finding that Dr. Schindler didn't  
4           mention, was that the Reid et al study showed that  
5           99 percent or more of the mercury they applied was  
6           actually retained in the watershed and never  
7           reached the receptors.

8                       And a comparison to our modelling assumptions  
9           would show that our models are highly conservative  
10          in that regard because we assumed that almost all  
11          of the metals that land on the landscape do get  
12          washed into rivers.

13       THE CHAIRMAN:                       Excuse me, did you say that  
14          the key finding that Dr. Schindler didn't mention  
15          was that the study showed that "9" percent or more  
16          of the mercury was retained?

17       A.       MR. VANDENBERG:               "99". Well, to put it  
18          the other way, to put it in their own words, they  
19          quoted less than 1.0 percent of the mercury as  
20          being transported into the water or other media  
21          that they measured.

22                       So what that indicates is the modelling study  
23          that we've developed in response to the  
24          Kelly et al. papers is at this point highly  
25          conservative. We have highlighted in that Appendix



1           that we feel there is fairly high uncertainty  
2           around that model. We do think it's conservative,  
3           and we're hoping to validate that as soon as we can  
4           get some data, either from the Federal or the  
5           Provincial or the Kelly et al. studies, there are  
6           three studies that we've been actively trying to  
7           get the data for.

8                     Couple more points on the mercury. Actually,  
9           I'll just skip right to the end.

10                    So Panel, I apologize if this has turned into  
11           a bit of a he-said she-said argument. I certainly  
12           don't want to make your lives more difficult by  
13           having to decide who is right and who is wrong in  
14           these matters.

15                    I guess, if I could, I would encourage you to  
16           go look at three of the papers that I think are  
17           pretty pivotal to this discussion. That would be  
18           the Aherne and Shaw paper, the Evans and Talbot  
19           paper, and the Hall et al paper. And I guess just  
20           judge for yourselves whether or not those papers  
21           are indicating whether the oil sands are presently  
22           adversely affecting the environment.

23                    That's all I have.

24           MR. DENSTEDT:                    Thank you, Mr. Chairman.

25                    This panel is now available for cross-examination

1 on their rebuttal evidence only.

2 THE CHAIRMAN: Ms. Buss.

3

4 **CROSS-EXAMINATION ON REBUTTAL EVIDENCE OF SHELL CANADA,**

5 **BY OSEC, BY MS. BUSS:**

6 MS. BUSS: Yes, I understand that one or

7 two of my friends might have questions, but they

8 kindly agreed to let me go first.

9 Q. Now, it's Mr. Vandenberg; correct?

10 A. MR. VANDENBERG: Correct.

11 Q. I think I was calling you "doctor" the last time  
12 you were up there, but that was an error.

13 A. I don't recall one way or the other.

14 Q. Now, with respect to Slide 4 -- sorry, that was  
15 Slide 3, you state that Dr. Schindler  
16 misrepresented Appendix 3.2.

17 Now, isn't it true that that Appendix, and  
18 specifically Table 6.2-1 on PDF page 131, shows  
19 that at present, 21 lakes are receiving deposition  
20 greater than their background levels?

21 A. As I indicated, the modelling that's done is  
22 forecasting the Base Case. It does forecast that  
23 under a fully-developed condition, 21 lakes will  
24 receive load, potential acid input loads that do  
25 exceed critical loads, yes.

1                   So what it indicates, sorry, I'll clarify  
2                   that a bit further, it indicates at some point in  
3                   time these lakes might receive acid that exceeds  
4                   their critical loads and these lakes should be  
5                   monitored to verify whether any changes occur.

6                   Where the misrepresentation comes from is I  
7                   don't think anywhere in there it indicates that  
8                   these lakes are suffering.

9       Q.       And to be fair, the Base Case isn't the same as  
10               current, right, because it includes some projects  
11               that -- it's based on modelling, not measurements;  
12               correct?

13      A.       Correct, the Base Case is a fully-developed future  
14               scenario.

15      Q.       Now I'd like to refer you to Slide 5, page 5. And  
16               this is a reference to the McLinden article. Now,  
17               that study was looking at satellite imagery to  
18               reveal, to see what it revealed about how much  
19               sulphur dioxide and nitrogen oxide was in the  
20               airshed above the Oil Sands Region; is that an  
21               accurate description?

22      A.       Yes.

23      Q.       And the quote that Dr. Schindler used in his  
24               report, you don't dispute that that was an accurate  
25               restatement of exactly what the article said in

1           that paragraph?

2       A.     Well, there is a typo in there, but the 3.5 percent  
3           is inaccurate, that's actually error balance, but I  
4           don't dispute the general quote by Dr. Schindler.

5       Q.     Okay. And the McLinden article didn't say that  
6           emissions in Edmonton were rapidly increasing;  
7           correct?

8       A.     As I've said, the author specifically said that  
9           they wanted to provide context to these numbers.  
10          I've merely put the context forward as the authors  
11          intended. I'm not commenting on whether or not --

12      Q.     I'm interested in some other context, because  
13          you've raised the issue of context. Nowhere in  
14          that article does it say emissions in Edmonton are  
15          increasing at a rapid rate?

16      A.     I don't believe it does, no.

17      Q.     And the data that was used, the imagines that were  
18          used and analyzed in the McLinden study were for  
19          the period 2003 to 2010; correct?

20      A.     MR. SPELLER:            I can speak to that. That's  
21          correct.

22      Q.     And as of 2010, we had half as much bitumen being  
23          mined as currently approved; correct?

24      A.     Subject to check, yes.

25      Q.     And the other important context is that the city of

1           Edmonton does not provide habitat for species at  
2           risk at present; correct?

3       A.     I don't know if I could speak to its parklands and  
4           such, but most of it's been developed over the last  
5           century.

6       Q.     Most of it's covered in cement?

7       A.     Yes.

8       Q.     And under the new LARP framework, which is at  
9           Exhibit 017-016-S, Mr. Vandenberg, it's still a  
10          policy of the Government of Alberta to prevent  
11          pollution; correct?

12      A.     That sounds reasonable, but I'm not familiar with  
13          that section of the LARP.

14      Q.     Do you recall that the document says that the  
15          provincial policy direction is continuous  
16          improvement in Keeping Clean Areas Clean?

17      A.     That sounds familiar, yes.

18      Q.     All right. I'd like to turn you to Slide 6,  
19          Mr. Vandenberg. That's the reference to the Wieder  
20          study. All right? The moss. Now, what happened  
21          in that study is Wieder sampled 10 sites for  
22          sphagnum moss or peat; correct?

23      A.     MR. VANDENBERG:                   Sphagnum fuscum.

24      Q.     So it was 10 sites and the samples were taken  
25          between or studied between 2004 and 2008?

1 A. Subject to check, that sounds right.

2 Q. So when you said that that study showed that there  
3 was no impacts at present, at best it was talking  
4 about 2008 and not 2012; correct?

5 A. Correct. At the time of study, when the authors  
6 made that conclusion, that would have been the date  
7 they referred to.

8 Q. And the purpose, I can turn you to the paper, if  
9 you'd like, what the authors were concluding was  
10 that this was important baseline information with  
11 which to monitor the impact of the large expected  
12 increase in NO<sub>x</sub> and SO<sub>2</sub>. Let me see if I can find  
13 that.

14 A. I can confirm that. That was one of their  
15 conclusions. I've listed three other points here  
16 on the slide, and that's one of them. I think.  
17 But either way, yes, I would agree that they  
18 referred to this as being valuable baseline data.

19 Q. Because NO<sub>x</sub> was forecasted by them to increase to  
20 approximately 355 tons per day in the region;  
21 correct?

22 A. Sorry, could you help me out with the reference to  
23 where in the paper they said that?

24 Q. Yes, it's on page 162. And it's in the second-last  
25 paragraph. Or it starts with:

1

2

"One of the consequences of ongoing development of the oil sands reserve in the Athabasca Oil Sands Region..."

6

7

Then further on in that paragraph, it says:

8

9

10

11

12

13

14

I believe that's per "day."

15

16

17

18

19

20

21

22

23

A. Okay, so I would accept that that's what the paper said. I would have a minor dispute that they are not actually predicting an increase, they were

24

25

1           accepting that prediction from others, but I would  
2           accept that's what the paper says.

3       Q.     That was the context of the paper?

4       A.     M'mm-hmm.

5       Q.     And if we look at page 168, the authors note that  
6           there's some limitations to their study, which is,  
7           in the four years that they sampled, were drought  
8           years. And they conclude that it's possible that  
9           the sphagnum that they studied did not respond,  
10          that its responses to nitrates, nitrogen, was only  
11          manifest in years that were normal or weather  
12          conditions, or cooler weather conditions. That's  
13          found at the page 168.

14      A.     Panel, I don't dispute that there are limitations.  
15           I'm not holding this paper up to show that there  
16           will never be changes in the Oil Sands Region and  
17           that we shouldn't -- we should forget about this  
18           issue or something.

19                    I mean, all I'm saying is that this paper  
20           found that there were no changes at that point, and  
21           that Dr. Schindler didn't discuss that in his  
22           critique.

23                    So I mean, we can go through this all day,  
24           but I'm not sure --

25      Q.     Well, you raised the issue of the importance of



1 critique; correct?

2 A. Okay.

3 Q. I mean of context. You would agree with me that  
4 it's important to assist the Panel, that if you're  
5 a scientist, you want to refer to the papers that  
6 have the most validity and shed the most light on a  
7 situation; would that be fair?

8 A. That would be fair. And I do believe this is a  
9 valid paper and it sheds light on historical  
10 conditions.

11 Q. Some papers have greater importance because of  
12 their statistical strength or the breadth of their  
13 sampling and other methodology; correct?

14 A. Yes, and to that point, this is a pretty important  
15 paper, this is a unique line of evidence that shows  
16 what the evidence of the oil sands developments or  
17 the impact that they are presently having.

18 Q. You mean between 2005 and 2008 on particular  
19 species of moss?

20 A. Yes, at the time of publication, yes, it's pretty  
21 relevant stuff.

22 Q. But just generally speaking, you would agree with  
23 me that it's important for scientists to filter  
24 through all of the mass of papers and focus on ones  
25 that are most valid and useful?

1 A. I would accept that.

2 Q. Now with respect to the Curtis paper that you  
3 reference at page 3, I'm just going to direct you  
4 to the abstract. You would agree that Curtis et al  
5 found that all of the 12 lakes that they studied,  
6 all sediment cores show evidence of industrial  
7 contamination based on SCPs. I'm not sure what  
8 SCPs are, do you know?

9 A. Yeah, it's spheroid carbonaceous particles, I  
10 think.

11 Q. But it says that:

12  
13 "... there is no clear  
14 industrial signal in stable  
15 isotopes. Most lakes showed  
16 changes in diatom assemblages and  
17 sediment C:N ratios consistent with  
18 nutrient enrichment over various  
19 timescales, with potential drivers  
20 including climatic change, forest  
21 fires and anthropogenic nitrogen  
22 [sources]."

23

24 And it talks about the one lake having strong  
25 evidence of impact. And then what I wanted to

1 point out is that the analysis of mercury in the  
2 acidified lake showed increasing sediment fluxes  
3 over the past 20 years, a possible indication of  
4 industrial contamination.

5 So in the impacted lake, they did find  
6 accumulation of mercury; correct?

7 A. They did. And then they later went on to indicate  
8 that they felt that that was not due to a local  
9 source but, rather, to a regional or far-afield  
10 source.

11 Q. All right. So the lake could be affected by  
12 mercury emissions from stacks, for example, in  
13 Edmonton?

14 A. From anywhere on the planet.

15 Q. But you said regional?

16 A. I said regional or further afield.

17 Q. Okay. So the conclusion of Curtis was that  
18 separating out the relative importance of climate  
19 change and anthropogenic, meaning that's  
20 human-induced, correct, pollution? In causing some  
21 of the changes in unacidified lakes requires  
22 further study. So, again, this is part of this  
23 growing effort to tease out what exactly is going  
24 on or what is the fate of the pollution from the  
25 oil sands; correct?

1 A. I agree, and I completely support further studies.

2 Q. All right, would you agree, you've also cited this  
3 Talbot paper. Sorry, Parsons I need to go to.  
4 Again, this is another paper you refer to at  
5 Slide 9. Can you just confirm that that paper was  
6 based on five lakes sampled during a two-week  
7 period in 2006?

8 A. My understanding is that it was based on five lakes  
9 that were near the oil sands and 27 lakes that were  
10 further afield which they've referred to as  
11 "reference lakes."

12 Q. Okay, so the ones that were non-reference or  
13 background lakes were five, correct, I mean the  
14 non-reference lakes were the five?

15 A. Yes, they called them "test lakes," specifically.

16 Q. And they were sampled in 2006 in August, between  
17 August 14th and 28th?

18 A. I would accept that subject to check. I don't  
19 remember the exact dates.

20 Q. Okay. Now, we had a talk about the importance of  
21 drawing the Panel's attention to important  
22 research. But I notice that you again refer to  
23 this Aherne and Shaw document at reference at  
24 page 10 of your slide as a study not mentioned in  
25 Dr. Schindler's critique.

1                   Mr. Vandenberg, Aherne and Shaw was not a  
2                   study, correct, it was just an editorial, they were  
3                   the editors just introducing the papers?

4       A.       As I mentioned, they were the editors and they were  
5                   in a position to put forth the overall conclusions  
6                   from that entire special issue of the journal.

7       Q.       It wasn't a research, it was just a summary and  
8                   introduction to what was contained in that  
9                   particular edition of the journal; correct?

10      A.       Correct. I apologize if I've sort of implied that  
11                  it was a separate study. It was a journal article  
12                  that referenced the other five studies.

13      Q.       And it referenced Parsons, Curtis, they referenced  
14                  Parson, Curtis and Whitfield, three papers of which  
15                  Dr. Schindler referenced; correct?

16      A.       Correct, and they did point to somewhat contrary  
17                  findings to what Dr. Schindler had put forth.

18      Q.       Well, more with respect to these three papers? Or  
19                  are you just talking about general conclusions now?

20      A.       I would say that the conclusions of Aherne and Shaw  
21                  were different from the conclusions of  
22                  Dr. Schindler.

23      Q.       Aherne and Shaw were just summarizing what was in  
24                  the papers in their journal; correct?

25      A.       Yes, they were the journal editors.

1 Q. And the Whitfield, Parsons and Curtis papers, those  
2 were all attached to the OSEC submission in their  
3 entirety that was submitted to this Panel; correct?

4 A. Correct.

5 Q. And certainly my clients were, and Dr. Schindler  
6 were quite happy to have everybody, including the  
7 Panel, read the entire articles and decide for  
8 themselves what they said; correct?

9 A. I wouldn't dispute that.

10 Q. Anyway, I just want to put on the record there was  
11 no intention to mislead, correct, by putting in the  
12 full paper?

13 A. I can't speak to that.

14 Q. And one thing, speaking of context, there was also  
15 in this editorial summary by Aherne and Shaw, and  
16 Shaw was one of the, sorry, one of the editors, you  
17 didn't point out that they also summarized the fact  
18 that the papers in that journal also found that,  
19 for forest soils, there was predicted significant  
20 exceedances for the Georgia basin and the Athabasca  
21 Oil Sands Region suggesting that acid-sensitive  
22 soils in both regions are at risk of acidifying.  
23 That would be important context if we were looking  
24 at soils as well as lakes; correct?

25 A. I can't really comment, Panel. I don't

1           particularly look at soils. My domain is the  
2           aquatic rivers and lakes.

3       Q.     And would you agree on the Evans and Talbot paper  
4           that their conclusion was that their data was only  
5           based on five years of data and what they concluded  
6           was that an improved monitoring system was required  
7           in order to reach more definitive conclusions about  
8           mercury trends?

9       A.     I'm going to take that in two parts.

10            The first is the dates. The Evans and Talbot  
11            looked at all available data on mercury in the  
12            Athabasca Region. Their data went back I believe  
13            to about 1980 and close to present-day. I can look  
14            up the exact dates if you'd like, but generally  
15            spanned the last 20 or 30 years.

16            On the second part, I don't dispute that they  
17            recommended increased monitoring. I'm sure that's  
18            a general recommendation.

19       Q.     Well, in their conclusion, I realize that they  
20            looked back at a bunch of RAMP data, but in terms  
21            of the study and the investigation that the authors  
22            undertook, they in fact conclude at the last  
23            page of the article under conclusion:

24

25

"While we detected a

1 decreasing trend for mercury  
2 concentrations in walleye and lake  
3 whitefish in the oil sands  
4 development area, the  
5 interpretation of the potential  
6 factors influencing these trends is  
7 constrained by the fact that the  
8 analyses are based on only five  
9 years of data collected during the  
10 expansion of oil sands and limited  
11 data before the expansion;  
12 analytical methods have changed.  
13 Most of the monitoring has been  
14 conducted in the Athabasca River  
15 where the residence time of water  
16 is short and the dilution capacity  
17 of tributary inflows immense, and  
18 in lakes more than 50 kilometres  
19 from the developments. An improved  
20 monitoring system is required to  
21 reach more definitive conclusions  
22 regarding mercury trends in fish  
23 with the expansion of the oil sands  
24 industry and other changes  
25 associated with global warming."



1

2

So this sounds to me like these results were pretty equivocal; would you agree?

3

4

A. Yes, I should probably note that those were done by federal scientists and I fully expect that

5

6

Dr. Evans will be part of the Joint Federal/Alberta Monitoring Program that will be implemented. And I mean, I fully support that type of monitoring.

7

8

9

Yes, I fully support that.

10

Q. Somehow I missed the Hall paper. Just a moment.

11

All right, the Hall paper referred to in Slide 10, am I correct that that was based on four sediment samples in the Peace-Athabasca Delta?

12

13

14

A. Yes. So this is based on four different lakes.

15

Each of the lakes has a fairly unique time history.

16

The authors were clear that they do expect to see

17

additional studies to validate that these -- to

18

validate and confirm their findings. Yeah, it is

19

based on four lakes.

20

Q. That doesn't sound like a game changer to me, then,

21

if it's just a minor, a small study that needs to

22

be part of a bigger series?

23

A. No, I would say, going back to that game changer,

24

that relates mainly to the methods that they've

25

used and the strength in the science. They've tied

1 together many independent scientific lines of  
2 evidence to reconstruct this time series. It's a  
3 unique study. In that regard, it's a game changer.  
4 Their findings are not much of a game changer.  
5 They can confirm what we said in 2007. So I was  
6 referring to the strength of the science in this  
7 paper.

8 Q. Well, if I look at page 15 of that paper, they  
9 discuss what would cause the findings in their  
10 sediment samples and they say:

11  
12 "As a consequence, it is not  
13 possible to distinguish natural  
14 hydrological causes of changes in  
15 PAC fluxes from those potentially  
16 due to erosion and other [sources]  
17 by industrial activities because  
18 they are confounded in time."

19  
20 And then they say:

21  
22 "Rather, we contend that..."

23  
24 And then they make an argument. So it seems to  
25 me that they conclude that it's still a challenge

1 to tease out what is the difference between the  
2 impacts of anthropogenic change versus the natural  
3 in the Peace-Athabasca Delta.

4 A. Is that your interpretation?

5 Q. Yes.

6 A. Oh, okay.

7 Q. Is that a fair interpretation?

8 A. I'm not exactly sure what you wanted me to comment  
9 on there. Do you have a question?

10 Q. Yes. First of all, those authors of Hall et al,  
11 similar to RAMP and some other investigations, have  
12 recognized that it's challenging to sort out what  
13 the influence of the oil sands industry is when  
14 you've got a bitumen-rich waterway.

15 A. Absolutely. It's a challenge that goes back  
16 decades.

17 Q. All right. And one study does not solve that  
18 challenge; correct?

19 A. I would definitely agree that one study does not  
20 trump another study.

21 Q. And the Hall study was funded by Suncor; correct?

22 A. Yeah, the authors were very careful to describe the  
23 funding arrangements, and any lack of bias that  
24 that might have impinged on the research. That's  
25 all on page 1 of this article. The, you know,

1           there's a press conference you can find online  
2           where Ronald Hall states that he looked at various  
3           sources for funding, he went to government and  
4           government told him to go get it funded by  
5           industry, so that's what he did.

6       Q.    Now, in the context of talking about this paper,  
7           you referenced the SETAC abstracts, and made a  
8           comment something to the effect that these  
9           abstracts wouldn't necessarily invalidate or affect  
10          the Hall paper. Now, some of those abstracts we  
11          looked at for the recent work from Environment  
12          Canada, some of those were also taking sediment  
13          samples; correct?

14       A.   They were taking sediment samples from the lakes,  
15          but not the river.

16       Q.    Right. And is it possible, or you wouldn't know  
17          whether Dr. Schindler had more information about  
18          those particular studies than was in the abstracts?

19       A.    I definitely do not know.

20       Q.    Now finally, Dr. Vandenberg, with respect to the  
21          interpretation of these articles that you've been  
22          offering the Panel, I just note that you've only  
23          published one peer-reviewed journal, one article in  
24          a peer-reviewed journal; is that correct?

25       A.    That's correct. Although I would note that I've

1 published peer-reviewed guidance manuals and other  
2 documents that have been through rigorous peer  
3 review.

4 Q. So your guidance manuals have been part of the work  
5 you've been doing with Golder Consulting to the oil  
6 sands industry since about 2004?

7 A. As well I do some basically as academic work that I  
8 don't get paid for. That's the papers that I did  
9 in the Pit Lake Workbook for the Australian  
10 Geometrics Research Centre.

11 Q. And that didn't involve you doing original research  
12 in the field; correct?

13 A. Those guidance manuals, no, I didn't do any  
14 original research in the field for those.

15 Q. And you haven't been invited to sit on any  
16 editorial board for any journals, scientific  
17 journals?

18 A. I have been invited to be on editorial boards of  
19 conference proceedings, but not journals, no.

20 Q. Okay. All right, those are my questions. Thank  
21 you very much, Mr. Vandenberg.

22 And thank you, Panel.

23 THE CHAIRMAN: Okay. We're going to take  
24 our break for the reporter. I have 10:12. We'll  
25 be back in 20 minutes.

1

2

**(The Morning Adjournment)**

3

4

THE CHAIRMAN: I just wanted to remind

5

everyone that, as I indicated, and I don't remember

6

what day it was, we can only sit until 1:00 p.m.

7

Ms. Bishop, please go ahead.

8

9

**CROSS-EXAMINATION ON SHELL CANADA'S REBUTTAL EVIDENCE, BY**

10

**THE MÉTIS NATION OF ALBERTA REGION 1 AND THE**

11

**INDIVIDUALS AND GROUPS NAMED TOGETHER WITH**

12

**REGION 1, BY MS. BISHOP:**

13

Q. MS. BISHOP: Ms. Jefferson, I have some

14

questions for you about your evidence this morning.

15

And I just want to suggest to you that you've been

16

somewhat selective in the information provided in

17

terms of funding. You recall about 10 days ago I

18

asked for an undertaking for you to provide

19

information about capacity funding and good

20

neighbour funding and you responded that that

21

information was confidential.

22

A. MS. JEFFERSON: So I believe that was on

23

funding to the First Nations, the question.

24

Q. Then through cross-examination of ACFN you provided

25

some numbers, and I think, you can correct me if

1 I'm wrong, but \$160,000 per year for IRC funding,  
2 you put that to ACFN?

3 A. So do you have a reference there? I don't believe  
4 I actually said that. I think Mr. Denstedt may  
5 have.

6 MR. DENSTEDT: That was my question to Chief  
7 Adam, and before I asked any of those questions, I  
8 asked him if he had any concerns about  
9 confidentiality to raise, and he did at certain  
10 points, too.

11 Q. MS. BISHOP: So you must have provided  
12 that information to your counsel to ask those  
13 questions, is \$160,000 per year for IRC funding  
14 correct for ACFN?

15 MR. DENSTEDT: How is that relevant to the  
16 rebuttal evidence, sir? I'd ask my friend to ask  
17 questions about the rebuttal evidence and get on  
18 with it.

19 Q. MS. BISHOP: Can you confirm that \$160,000  
20 per year in IRC funding was given to ACFN?

21 A. MS. JEFFERSON: Yes, for 2012.

22 Q. So that was for one year, 2012?

23 A. Yes.

24 Q. And you can confirm that in addition to that, there  
25 was project-specific funding given?

1 MR. DENSTEDT: Now I'm objecting, sir. This  
2 is irrelevant to the questions that are being posed  
3 and the rebuttal evidence that was provided in  
4 respect of the MNA, and my friend has got to come  
5 up with some tenuous string of relevance to the  
6 rebuttal.

7 THE CHAIRMAN: This is rebuttal. You've got  
8 to stick to the rebuttal.

9 MS. BISHOP: Well, Ms. Jefferson provided  
10 a bunch of numberers in terms of funding given to  
11 125 and 1935, and she suggested that there were  
12 some differences between funding capacity, funding  
13 for First Nations, and for Métis groups. And I'm  
14 trying to get to the bottom of that.

15 THE CHAIRMAN: Ask questions about what  
16 evidence was provided this morning.

17 Q. MS. BISHOP: So Ms. Jefferson, you  
18 suggested that between 2007 and 2012, six years,  
19 there was \$441,000 in funding provided to Local  
20 1935, that was your evidence?

21 A. MS. JEFFERSON: That's correct.

22 Q. And 110 of that was for the *Mark of the Métis*?

23 A. That's correct.

24 Q. And the rest was Good Neighbour funding?

25 A. So what I did was I looked at the total amount that



1 we had paid out to Métis Local 1935 in that period,  
2 so some of it would have been funding under the  
3 Good Neighbour Agreement, some of it may have been  
4 consultation-specific funding, right, that I also  
5 referred to.

6 Q. So covering costs of meetings and such?

7 A. Costs of meetings, or honoraria, those sorts of  
8 costs, they would also be included in that number.

9 Q. And the First Nations would get Good Neighbour  
10 funding on top of the IRC funding; correct?

11 A. So we don't have Good Neighbour agreements in the  
12 same way with the First Nations.

13 Q. So Shell would still cover the costs of meetings  
14 and consultation with the First Nations over and  
15 above the IRC funding; correct?

16 MR. DENSTEDT: Mr. Chairman, again, the  
17 comparison to the First Nations is irrelevant to  
18 the rebuttal evidence that was provided today. If  
19 my friend has questions about the funding, which  
20 the first couple were legitimate, that's good to  
21 go. If she wants to make some comparison about  
22 between the First Nations and Métis funding, she  
23 can do so in argument.

24 MS. BISHOP: Ms. Jefferson did make some  
25 comments about consultation in terms of Métis

1 groups. She spent an awful lot of time talking  
2 about requests for capacity funding. I'm just  
3 trying to put it in perspective here.

4 THE CHAIRMAN: Well, Ms. Bishop, all I can  
5 say is you may ask questions about the evidence  
6 that was tendered this morning.

7 Q. MS. BISHOP: Okay, so I just want to speak  
8 a little bit about the, speak with you about the  
9 exhibit you filed this morning, 001-114. Do you  
10 have that in front of you?

11 A. That's the April 20th, 2009 letter from me to James  
12 Dragon?

13 Q. Yes.

14 A. I have it.

15 Q. If you look on page 11 of that document.

16 A. Yes.

17 Q. And Question 2:

18

19 "At the December meeting,  
20 Shell was asked if its people had  
21 talked to trappers? William  
22 Castor's old trap line use to be  
23 across from McClelland Lake."

24

25 And the response was:

1

2

"Shell has spoken to the

3

registered fur management area

4

holders in the areas we propose to

5

develop. We have also talked to

6

other people who are known to use

7

or have used the land in our

8

proposed development areas."

9

10

So after this meeting in and that response,

11

Shell chose not to include any of that information

12

in their Traditional Land Use Study; correct?

13

A. So in terms of talking to the trappers, Ms. Roxanne

14

Hodgson, who is with Shell, has been a liaison

15

between Shell and the trappers. She's on my team

16

now, but formerly was our senior surface landman.

17

We held meetings with the trappers. I think it was

18

probably the first time that we'd ever, a company

19

had ever brought all the trappers together to

20

understand. And the information that we had, we

21

gleaned from the trappers on the Project, we passed

22

on to the EIA and our SEIA teams and they

23

considered the information we received in doing the

24

Assessment.

25

Q. So they chose not to include it, it was Golder then

1           that chose not to include it, is that what you're  
2           saying?

3       A.    I wouldn't characterize it as they "chose not to  
4           include it." They looked at all of the information  
5           that we provided to them and they considered this  
6           information in the Environmental Assessment and the  
7           SEIA.

8       Q.    Well, Mr. Goodjohn confirmed there was no  
9           Métis-specific information in his TLU and I'm  
10          trying to get to the bottom of that. You spent a  
11          lot of time today talking about how you had spoken  
12          with Mr. Castor, and I'm trying to get to the  
13          bottom of why the information that was presented by  
14          my panel about the extensive Métis trapping and  
15          traplines in the area was not included in Shell's  
16          TLU.

17      A.    So again, I would say that the information we  
18          received was considered in the EIA. But the other  
19          thing, and I think this has been something we've  
20          talked about throughout the testimony we provided,  
21          in consultation, we really try to be responsive to  
22          the feedback and guidance we get from the party  
23          that we're consulting. And so we did understand  
24          that the Métis wanted traditional land use  
25          information. We talked about -- they told us that

1           they wanted a traditional land use study. And when  
2           we sat down and talked, and particularly with,  
3           well, with both Métis Locals. 1935, when we sat  
4           down and we talked about what that should look  
5           like, you know, the guidance was that we should  
6           contribute to the *Mark of the Métis* study, and we  
7           did that in a very substantive way, both in terms  
8           of resources and in terms of contribution-in-kind,  
9           services from Shell people. Our GIS experts. We  
10          sat down and we provided that. Mr. Mitch Goodjohn  
11          was a lead author on that study.

12        Q.     So can you explain, that leads to my next question,  
13           did you give instructions to Mr. Goodjohn not to  
14           include the *Mark of the Métis* in your TLU study?  
15           Because it's not included, you agree?

16        A.     So I'm just going to talk about that for a minute  
17           and then Mr. Speller may want to add.

18                    So absolutely not, we definitely did not give  
19           instruction to Mr. Goodjohn to not include that  
20           information.

21                    So I did actually talk to Mr. Goodjohn a  
22           couple of nights ago just to ask him about this  
23           question. And so there are a couple of key things.  
24           So the study wasn't actually published until  
25           September 2012, so what's that, two months ago.

1           And during the summer, we were -- there was  
2           extensive review. And he was trying to respect the  
3           wishes of the Métis 1935 Organizing Committee, the  
4           council that was working on this, and they didn't  
5           want this information to become public until they  
6           had their kick-off on I think it was  
7           September 19th, 2012. So he was trying to be  
8           respectful of their wishes.

9                     But the other thing, absolutely, he was the  
10           lead author for us. He and Linda Havers, I think  
11           there'd been a video out earlier in the year, and  
12           they did look at that, they reviewed the  
13           information contained in that, considered that when  
14           they did the cultural impact work.

15                    And the other thing, when I talked to Mitch,  
16           he said it contained general, general information  
17           on Métis land use. It confirmed that Métis were  
18           using the area, which was our base assumption in  
19           any event, so the information that he saw and was  
20           privy to as part of his role in the *Mark of the*  
21           *Métis*, didn't change anything in his mind in terms  
22           of the assessment and the data we had considered in  
23           the assessment.

24                    So I don't know, Wayne, is there something  
25           you would like to add?

1 Q. So Mr. Goodjohn didn't include any of the  
2 information from the 170 interviews in his TLU  
3 study because he wanted to respect the wishes of  
4 Métis Local 1925, that's what you're saying?

5 A. So I mean, certainly he was trying to be respectful  
6 to the wishes of the Métis 1935, absolutely he was.

7 Q. So did Shell ask Métis Local 1935 if they wanted  
8 the information about Castor's use and Barb  
9 Hermansen and John Grant and all the other trappers  
10 that came here to tell you that their information  
11 isn't included in the Application, did you ask  
12 them?

13 A. So I think, and as Mr. Goodjohn is not here and he  
14 could more, you know, thoroughly speak to the  
15 methodology in the TLU, but I think we were aware  
16 of the information, you know, but what we do is we  
17 look at who is actually using the Project area, who  
18 has traditional land use in the Project area, the  
19 area where there's potential for impact from the  
20 Project on the exercise of, you know, traditional  
21 land use and Aboriginal Rights. And so we're  
22 looking at who is there currently. Who is using  
23 the land currently. Who is actually in the area.  
24 That is not to say that a lot of this information  
25 isn't really important and from an historical

1 perspective, but the assessment actually deals with  
2 who's there, here, and may be affected.

3 Q. So you're saying now, you're saying who is there  
4 now, that's what Shell looked at?

5 A. That's the primary basis for an impact assessment,  
6 who may be impacted now by the project.

7 Q. But it's not the fundamental basis for a  
8 traditional land use study, you would agree?

9 MR. DENSTEDT: We're getting into  
10 information and details that should have been asked  
11 during the original cross-examination. Rebuttal  
12 evidence has addressed that Mr. Fortna's assertion  
13 that there was not capacity available.  
14 Ms. Jefferson said capacity was provided. If my  
15 friend wants to question her about whether that  
16 capacity was enough or whether it was too little or  
17 whether it never happened, I'm good with that. But  
18 to delve back into the details of the Traditional  
19 Land Use Studies which Mr. Goodjohn and Ms. Havers  
20 were available for, that's not on, that's not part  
21 of the rebuttal, rebuttal goes specifically to the  
22 issue of capacity.

23 MS. BISHOP: It wasn't my client that  
24 chose to stand up here today and provide a whole  
25 bunch of new evidence, Mr. Chair. And I would



1 suggest that Mr. Castor's name was mentioned at  
2 least three or four times by Ms. Jefferson. So in  
3 any event, I don't have any more questions on  
4 Mr. Castor. I am going to move on.

5 Q. So your submission was that I think I've heard two  
6 things from you, either that the Métis groups  
7 didn't ask for capacity, I think that basically was  
8 your evidence, right, you would have given them  
9 capacity if they'd asked; is that correct?

10 A. So we did provide capacity through the Good  
11 Neighbour Agreements, but, again, when issues are  
12 identified, we talk about it, we're responsive to  
13 the lead that we get from the party we're  
14 consulting with. So they raised issues. We talked  
15 about it. We figured out and agreed on the path  
16 forward.

17 Q. Okay. So if you look down at Question 3, there's a  
18 discussion about, the second line:

19  
20 "Concern was noted about  
21 Métis groups not being able to  
22 access information and consultant  
23 on reports that was collected from  
24 their own Elder. Does Shell  
25 provide funds for Métis groups to

1 do their own studies, like First  
2 Nations?"

3 ...

4 "Shell has made its plans and  
5 are just now coming to talk to the  
6 Métis; it will take some time for  
7 the Métis to complete their study."  
8

9 So on a reading of that, there was discussion  
10 and a request from at least Local 1935 at this  
11 meeting in 2009 for some capacity to do their own  
12 studies?

13 A. So just to clarify, the meeting -- the letter is  
14 2009, but the meeting was 2008.

15 Q. Thanks.

16 A. Right.

17 Q. But my question stands. It seems to me there was  
18 that question raised at that meeting in 2009?

19 A. Yes, it was. And I believe I talked about that in  
20 the rebuttal testimony this morning. So certainly  
21 Métis 1935 did raise with us a desire to have a  
22 land use study done. And then we talked about that  
23 more in our meetings. We met regularly with Métis  
24 1935 as part of our Good Neighbour Agreement. We  
25 talked about it more and we agreed that the form

1 and the substance of that Traditional Land Use  
2 Study would be the *Mark of the Métis* study and  
3 Shell's contribution to that. And I think I've  
4 gone through our contribution on that, which was  
5 substantial.

6 Q. Right. Okay. But you said that that information  
7 wasn't included because it was too general.

8 A. So maybe you can elaborate. I'm getting a little  
9 confused here. So they told us that the land use  
10 study was important. We talked, we agreed on the  
11 form and the substance for that land use study. We  
12 provided the funding through the *Mark of the Métis*.  
13 We, you know, we considered information that we had  
14 on Métis land use in the Assessment.

15 Q. But it's not referenced anywhere in your TLU study,  
16 Mr. Goodjohn confirmed that?

17 A. Mr. Goodjohn's not here at the moment.

18 Q. So I just want to speak a little bit about those  
19 meetings you're talking about. There were a number  
20 of meetings between Local 1935 and I have all of  
21 the meeting minutes here that Local 1935 had. And  
22 you would agree with me that all of the funding  
23 under the Good Neighbour Agreement was distributed  
24 through these meetings?

25 A. So I don't have the meeting notes that you're

1 looking at. I can tell you how we fund and provide  
2 the funding under the Good Neighbour Agreements to  
3 Métis 1935, and also to Métis 125. So there's a  
4 process where we actually have a work plan, the  
5 Métis Local develops the work plan, which they  
6 identify the things that they want to work on in  
7 the funding year, the things that are priority for  
8 them, they propose a budget attached to each item  
9 so that might be, well, the *Mark of the Métis* study  
10 would have been a line item. I think there could  
11 have been, sometimes there's -- I think there was  
12 trapper training one year, there might be youth or  
13 Elder's initiatives. And Métis 125 I believe it  
14 was had a governance project that they were working  
15 on. So they'll identify whatever it is that they  
16 want to focus on that's important to them in that  
17 given year. They'll assign a budget to it. We'll  
18 talk about it. We'll probably also agree in that  
19 work plan on the numbers of meetings that we're  
20 going to have and how Shell is also going to  
21 provide support, because we provide support even  
22 above and beyond the financial support, and once  
23 we've agreed on that, then the Local invoices Shell  
24 and Shell pays the invoice. And that's how we pay  
25 the funding under the Good Neighbour Agreements.

1 Q. So the funding comes if Shell agrees with the  
2 Projects that the Local suggests, that's the  
3 way the funding -- that's what these meetings are,  
4 right, it's a confirmation that Shell agrees that  
5 this is where the Locals can spend the Good  
6 Neighbour funding?

7 A. So if you look at the Good Neighbour Agreements,  
8 part of what we say is a part of being good  
9 neighbours, that we're going to communicate and  
10 we're going to talk and we're going to agree. I  
11 mean, the main thing is is the Métis Locals are  
12 proposing what they want to do to meet the needs of  
13 their members and we do actually, for financial  
14 controls, and rules that we're subject to as a  
15 corporation in terms of financial accountability,  
16 they need to invoice us and they need to show what  
17 the activities are, where the money is being spent,  
18 in accordance with, I guess, you know, quote  
19 unquote, the contract, which would be the Good  
20 Neighbour Agreement.

21 So I don't know what more to say.

22 Q. So this is completely different than a funding  
23 through an IRC. Those funds, the First Nations are  
24 able to use those funds as they wish. And a Good  
25 Neighbour Agreement, the funds only come if Shell

1 approves of the projects?

2 A. So I'm not going to get into the details of the  
3 First Nations agreement, but I would actually  
4 disagree with that statement based on the  
5 agreements that we had in place. Some of the  
6 structure has changed with some of the new  
7 agreements, but for this time period, the  
8 agreements we had with the First Nations, I would  
9 disagree with your characterization there.

10 Q. Okay. So in February 2011, there was a meeting  
11 between Shell and Métis Local 1935 and Métis Local  
12 asked if they could use the funding or Shell would  
13 provide operational support. And Shell responded,  
14 "Shell cannot support operation costs but would  
15 rather fund programs in the work plan."

16 A. Can you give us a bit more detail on what meeting  
17 and date and ...

18 Q. Yes, February 8th, 2011.

19 A. Well, what was the meeting?

20 Q. Métis Local 1935 meeting with Shell Canada Energy,  
21 date February 8th, 2011. In attendance: May-Britt  
22 Jensen-Jahelka, Kelly McIntyre, Dicky Dragon, Local  
23 1935. Shell Canada: Heather Taylor, Erica Miles,  
24 Taylor Windsor.

25 A. I don't have those meeting notes in front of me,

1           so.

2       Q.    You can look at mine if you want.  If you could  
3            just read in what is under the heading "Operational  
4            Support."

5       A.    Is there a chance I could see the first page as  
6            well?  Thank you.  So I would have to go back and  
7            check with Erica Miles, who works on my team.

8                    So it just looks like it's follow-up to some  
9            sort of communication or maybe it was the previous  
10           meeting we had had with the Métis Local 1935.  And  
11           Erica is providing our response to whatever the  
12           inquiry was.

13      Q.    Yes, I can help you out there.

14      A.    Can you, great.

15      Q.    Because there's meeting minutes from January 11th,  
16            2011.  And one of the action items was:

17  
18                    "Métis Local 1935 wants to  
19            know if Shell will provide  
20            operational support."

21  
22                    "Erica will check with Linda  
23            Jefferson to see if they can  
24            provide this funding."

25

1                   And then the next set of meeting minutes are  
2                   the ones that I gave you.

3       A.       Yes, I would have to talk to Erica or maybe you  
4                   know what "operational support" was. I mean, you  
5                   could define that in many ways. I wasn't at the  
6                   meeting. I would have to go back and talk to  
7                   somebody who was at the meeting to understand more  
8                   fully what the request was. But I would note,  
9                   we've provided a response to that question within  
10                  the time period, so we were following up. I don't  
11                  know specifically what the details are around the  
12                  request.

13       Q.       Shell, you can confirm that Shell provides no  
14                  operational funding to Métis Local 1935?

15       A.       I don't know what operational -- well, in here it  
16                  says "support." I don't know what "operational  
17                  funding" is, so maybe you could define that.

18       Q.       Funding to run the Local.

19       A.       So we provide the funding under the Good Neighbour  
20                  Agreements, and for 1935, a portion of that can be  
21                  used for administering the agreements. I know  
22                  we've paid some percent overhead on some of the  
23                  work we've done to help defray office and  
24                  administrative costs with consultation. So if that  
25                  counts as operational funding, then yes, we've done



1           that.  If you're meaning something more than that,  
2           then I'm not sure I can respond.

3       Q.    Well, I'll go through what the Action Plan for 2012  
4           is.  There's no operational funding in it.  There's  
5           some money for an initiative with the schools,  
6           \$10,000.  There's funding for a golf tournament,  
7           \$7500.  There's a Christmas party, \$2500.  There's  
8           mentoring governance, \$5,000 for the year.  There's  
9           administrative and action plan implementation fees,  
10          \$10,000, is that what you're referring to?

11       A.   So I don't have the 2012 Work Plan, but, you know,  
12           that sounds reasonable to me in terms of what might  
13           be in the Work Plan, and that would have been what  
14           Métis 1935 proposed to Shell.

15       Q.    Well, other than the capacity funding and the  
16           operational funding they asked for that Shell said  
17           no to?

18       A.    I wouldn't characterize it that way.  I'll give  
19           your notes back.  Sure, so.

20       Q.    Now, you also spent quite a bit of time talking  
21           about this No Net Loss, these meetings.  And I just  
22           wanted to clarify something.  You mentioned  
23           something about Peter being involved, Peter Fortna  
24           being involved in some of these meetings.  Can you  
25           explain which meetings he would have been involved

1 in with respect to the No Net Loss?

2 A. Yes. Just give me a minute.

3 Q. And maybe confirm if he was there for Local 1935 or  
4 Fort McKay Métis Local.

5 A. I believe the one I was referring to was Métis  
6 Local 1935. I know he did leave 1935 at a certain  
7 point in time, so he wouldn't have been engaged in  
8 all of the consultation all the way through, and he  
9 may have been there for Métis 63 at some point, I'm  
10 not sure.

11 So this would have been the early  
12 consultation around the No Net Loss Plan. And so  
13 this would have been the Muskeg River Mine  
14 Expansion consultation, so certainly he helped  
15 identify, it would have been, where's the date,  
16 June 4th -- no, that's the earlier one. It would  
17 have been that first meeting I think in July,  
18 June or July. I may have to get back with you on  
19 the date.

20 Q. What year? So that was 2008 and that was a  
21 different project?

22 A. It was the Muskeg River Mine Expansion, but I  
23 believe I said we were consulting the Métis on both  
24 the Muskeg River Mine Expansion and the Jackpine  
25 Mine Expansion and Pierre River Mine No Net Loss

1 plans.

2 Oh, here I have -- so this was the Muskeg  
3 River Mine Expansion No Net Loss Plan meeting which  
4 was held on July 23rd, 2009. And for Métis 1935,  
5 we had Peter Fortna, William Castor and Ernie  
6 Michael.

7 Q. Okay, so once this Project was introduced, there  
8 was a meeting February 17th, 2011. And I'm just  
9 showing you those meeting minutes.

10 A. Oh, yes, Mr. Plamondon has those.

11 Q. And it says here that the attendees were Jason  
12 Plamondon, Autumn Eaglespeaker, Rick Courtney,  
13 Cayla Windsor, Linda McNabb, for Shell. CEAA and  
14 DFO were there. Jumbo Fraser was there. Lyle  
15 Maddas and May-Britt Jahelka were there from Local  
16 1935.

17 A. Yeah, that would be Jahelka. We must have a typo  
18 on this.

19 Q. So there were no Elders there, correct? Well, not  
20 from 1935. I guess you could characterize that  
21 Jumbo would be considered a Métis Elder in the  
22 community, but from Local 1935, there was no one?

23 A. So I wasn't at the meeting. Jumbo is an Elder for  
24 sure. I don't know. Lyla? May-Britt's not an  
25 Elder.

1 Q. And if you look on page 2, at the bottom, comments  
2 or concerns (as read):

3

4 "Métis Local 125 suggested  
5 that an advisory committee meeting  
6 or something of that effect would  
7 be more beneficial than a technical  
8 meeting."

9

10 Do you see that?

11 A. I do.

12 Q. And then 1935 suggested that on the last point on  
13 the next page 3: "Métis Local 1935 expressed  
14 concern that technical meetings are not relevant to  
15 Elders." You see that?

16 A. I see that.

17 Q. And I just wanted to show you some of the slides  
18 that I've been provided from Métis Local 1935 that  
19 were provided.

20 MR. DENSTEDT: So perhaps my friend could  
21 help me with the total number of slides and where  
22 they are from and the details so we have that  
23 available.

24 MS. BISHOP: It's right up there. I  
25 didn't bring copies. But I was surprised to hear

1 Ms. Jefferson go on about how this was consultation  
2 with the Elders. So I just wanted to show some of  
3 the slides that I was provided. And it is dated  
4 February 17th, 2011. You'll see this is the nature  
5 of the presentation.

6 THE CHAIRMAN: What are we looking at,  
7 Ms. Bishop? Is this on something from the record?

8 MS. BISHOP: This is the presentation that  
9 Shell gave at that meeting on February 17, 2011.  
10 Perhaps they could confirm that.

11 A. MS. JEFFERSON: I would just like to make  
12 one comment there. You had talked about  
13 consultation with the Elders and the testimony I  
14 gave this morning in the rebuttal, the consultation  
15 with the Elders I was referring to was in response  
16 to Mr. Fortna's assertions around the December 6th,  
17 2008 meeting that we hadn't engaged with the Elders  
18 in terms of having meaningful consultation, that we  
19 hadn't talked in particular of Mr. Castor. I also  
20 provided the No Net Loss consultation as another  
21 example of where we have meaningfully consulted the  
22 Métis Locals 125 and 1935.

23 Q. But you'll agree with me in those meeting minutes  
24 that I just provided, both Locals said it wasn't  
25 meaningful to them, you'd agree?

1       A.     No, actually I wouldn't agree with that.  And  
2             Mr. Plamondon can provide a little bit more  
3             context.  He was actually at that meeting.  So I  
4             see it in the minutes.  I don't disagree that what  
5             you read out in the minutes is in the minutes, but  
6             maybe it would be helpful to the Panel if  
7             Mr. Plamondon gave you a little bit more  
8             information and context.

9       A.     MR. PLAMONDON:                    Yeah, sure, I think  
10            what's important to understand is that these  
11            meetings were, in fact, designed for the Métis  
12            Local to participate in understanding what we were  
13            doing with the Compensation Lake.  Prior to these  
14            meetings, which I would agree are quite technical,  
15            there were many meetings that dealt in particular  
16            with their specific concerns with regards to the  
17            Compensation Lake.  And those meetings would have  
18            been held in 2008 and 2009 where we addressed  
19            concerns specific to fish and fish compensation and  
20            contamination.

21                    These further meetings are just further  
22            development of our No Net Loss Plan, which is a  
23            regulatory requirement, making sure that we are  
24            continuing to keep the Locals up to date on what we  
25            were doing and how we were doing it.

1           I agree that they've made requests that  
2           technical language of this nature is not helpful to  
3           the Elders, but we did suggest that we could  
4           provide information that would be more helpful to  
5           the Elders and we committed to provide a plain  
6           language Executive Summary of the Draft No Net Loss  
7           Plan for their sharing with the Elders.

8       Q.    But Shell didn't provide capacity funding, so that  
9           they could hire experts to attend these meetings  
10          and provide feedback, Shell never did that, did  
11          they?

12       A.   I guess we were being responsive to their requests  
13          and the request was can we make it more in a way  
14          that is understandable by the Elders, and that's  
15          why we made the commitment to provide information  
16          that would be in layman's terms and something that  
17          could be shared and understood by the Elders.

18                Again, the specific concerns of the community  
19                were addressed earlier in consultation in 2008 and  
20                2009 around fish, fish habitat, fish compensation,  
21                contamination, those were addressed in those  
22                earlier consultations with Elders.

23       Q.    So you're talking about the matters that are  
24           addressed in Exhibit 001-114?

25       A.    Yes.  Some of those meetings did certainly

1 discuss --

2 Q. There was something I --

3 A. Excuse me, I just wanted to finish.

4 THE CHAIRMAN: Just one at a time, please.

5 A. MR. PLAMONDON: Those meetings again did  
6 address concerns around fish, contamination of  
7 fish. Those were the primary concerns of the  
8 Elders that were addressed at that time.

9 Q. MS. BISHOP: Right. So that's the same  
10 letter we referred to earlier where Local 1935  
11 asked for capacity and asked you to look into Métis  
12 traditional land use in the area?

13 A. Correct. And I think Ms. Jefferson responded to  
14 that.

15 Q. Now --

16 THE CHAIRMAN: Ms. Bishop, before you go on,  
17 I'm concerned about the record. Could we get an  
18 exhibit number or a CEAA Registry number so that we  
19 can know what is being referred to.

20 MR. DENSTEDT: I think before we do that, we  
21 should get some identification of this, because  
22 it's my understanding this is a presentation that  
23 was made to Fort McKay, but.

24 MS. BISHOP: No, this is -- well, the  
25 date's the same. Maybe Shell can confirm.



1 Mr. Plamondon just confirmed that this was the same  
2 meeting that was talked about in the meeting  
3 minutes and it was to local 1935 and Local 125. So  
4 I think maybe his client can confirm that.

5 MR. DENSTEDT: I guess the question from the  
6 Chairman is where in the record is this? Are we  
7 going to get copies so we can look at it? That's  
8 the standard procedure in these proceedings.

9 MS. BISHOP: I would like to enter the  
10 minutes from that meeting as an exhibit. They've  
11 been referred to.

12 THE CHAIRMAN: Could we just stay with this  
13 item for the moment, please. Could someone please  
14 identify this and give me a number so that when we  
15 look at the record, when we look at the transcript,  
16 we know what was being referred to.

17 MS. BISHOP: Yes, sir, we can mark that as  
18 the next exhibit.

19 THE CHAIRMAN: It's not on the record?

20 MS. BISHOP: It's not on the record.

21 THE CHAIRMAN: And so what are we looking  
22 at? The title page?

23 MS. BISHOP: The point was that this was a  
24 very technical and detailed presentation with many  
25 charts, very technical information, and my clients,

1 both of them, 1935 and 125, said this is really of  
2 no use to the Elders.

3 A. MR. PLAMONDON: So if I could add some  
4 context there. The presentation itself might be  
5 quite technical, but what you need to understand is  
6 the gentleman that was involved in preparing the No  
7 Net Loss Plan was in these meetings and that  
8 gentleman answered the questions that were  
9 presented in terms of providing additional detail  
10 and if they had any questions about the stuff that  
11 was being shared by the attendees at the meeting.  
12 So I think to just suggest that the presentation  
13 speaks to a level of technical detail that is  
14 difficult to understand, you know, fails to  
15 illustrate that there was an individual there that  
16 was answering questions that came up during the  
17 meeting around those technical details.

18 THE CHAIRMAN: That's helpful. Let's mark  
19 the Minutes of the February 17th, 2011 meeting as  
20 010-028. And the slide deck as 010-029.

21

22 **EXHIBIT 010-028: Minutes of February 17, 2011**  
23 **meeting**

24 **EXHIBIT 010-029: Slide deck**

25

1 Q. MS. BISHOP: So I wanted to speak to you  
2 about the *Mark of the Métis* a little bit more.  
3 Now, in the meeting minutes that I've gone through,  
4 and you seem to have spoken a lot, Ms. Jefferson,  
5 about the meetings, and I put to you that these  
6 meetings were primarily about the plan in terms of  
7 funding and getting funding approved for different  
8 projects, like trappers training and Christmas  
9 parties, but there was very little, if any,  
10 discussion about this Project?

11 A. MS. JEFFERSON: So I think the meetings  
12 you're referring to are the meetings that we hold  
13 routinely, and I'm not sure what the frequency is  
14 right now. I know back in 2007, 2008, we were  
15 meeting monthly with Local 1935. It may be every  
16 couple of months now. But those are the meetings  
17 in fulfillment of our Good Neighbour Agreement.

18 Q. But they are not to do with this Project?

19 A. So we would normally have a standing agenda item.  
20 I haven't been to one of these meetings in a while,  
21 on general updates on operations of the Project.

22 Q. So mostly they talk about golf tournaments and  
23 Christmas parties and --

24 A. Then I would say that's mostly what Métis 1935  
25 wants to talk about.

1 Q. So I want to ask you about meeting minutes, the  
2 most recent ones that I could find. And I provided  
3 those to your counsel. I don't know if you have a  
4 copy there.

5 A. I think October 2nd, 2012?

6 Q. Yes.

7 A. I have them.

8 Q. Okay. So this, in your recollection is this the  
9 last meeting that's occurred? This is October this  
10 year.

11 A. So again, I don't attend these meetings, but I  
12 would say, based on the date of October 11th, 2012,  
13 it's -- oh, sorry, that was the contractor  
14 showcase. October 2nd, I think it's likely it was  
15 the most recent meeting. Subject to check, I'll  
16 agree.

17 Q. Okay. And Shell's overview -- are these -- can you  
18 just explain how these minutes come to be?

19 A. So, I would have to go back and check with Erica,  
20 but I would say that we meet, there's probably a  
21 standard format for it, and the highlights of the  
22 discussion are put on here, and any action items  
23 identified, right. The basics of who was at the  
24 meeting, when and where and what time, and high  
25 level, what was discussed and what actions.

1 Q. And who would prepare them, Shell or the Locals?

2 A. Normally Shell would take the first draft unless  
3 the other party wanted to, and we would do a draft  
4 and circulate it to, in this case it would be Métis  
5 1935, and I assume for comment, but that would be  
6 normal practice.

7 Q. Okay. So has Alberta advised Shell that they don't  
8 have to provide capacity funding to Métis groups?

9 A. Has Alberta? I think Alberta has -- would say  
10 that -- I don't think I've heard from Alberta that  
11 we have to provide capacity funding to any  
12 Aboriginal group.

13 Q. Now, I don't want to go too far back into the  
14 evidence, but there was evidence at the hearing and  
15 you agreed with the agreement that was within  
16 ACFN's evidence, that Shell takes the role of  
17 consultation as delegated by the Government of  
18 Alberta?

19 MR. DENSTEDT: Mr. Chairman, we didn't hear  
20 any of that this morning from Ms. Jefferson. If  
21 she wants to ask her about the rebuttal, she should  
22 ask about the rebuttal. We don't have the  
23 willpower or the stamina to go for another three  
24 weeks to revisit all the evidence with my friend,  
25 and she should get on with her questions on the

1           rebuttal.

2           MS. BISHOP:                           I think everyone will agree  
3           there was a whole bunch of new evidence this  
4           morning.

5           Q.    But in any event, I want to point you to page 1  
6           here under Shell Overview, and I wonder if you  
7           could just read in the second paragraph of that,  
8           those meeting minutes prepared by Shell, beginning  
9           with "Métis Local 1935."

10          A.    It says (as read):

11  
12    "Métis Local 1935 queried the  
13           possibility of sustainability  
14           funding. Shell advised that they  
15           don't provide such funding as they  
16           aren't legislated to do so for  
17           Métis community. Any additional  
18           supplements wouldn't be addressed  
19           with this community relations  
20           team."

21

22          MS. BISHOP:                           Can I enter this as the next  
23           exhibit?

24          THE CHAIRMAN:                        010-030.

25

1                                   **EXHIBIT 010-030: Shell Overview document.**

2

3       Q.       MS. BISHOP:                   So I just have a few more  
4                                   questions and then I'm going to conclude. I think  
5                                   there are some other parties that have some  
6                                   questions for you as well this morning.

7                                   With respect to the *Mark of the Métis*, at  
8                                   these meetings there was input from Shell on to  
9                                   what the *Mark of the Métis* would become. And  
10                                  during, if you look through the meeting minutes  
11                                  you'll see that it kind of evolved into actually  
12                                  Golder and the same individual who did your TLU  
13                                  study was also working on the *Mark of the Métis*,  
14                                  and that was around 2010.

15       A.       So, yeah, Mitch Goodjohn was our lead on the  
16                                  Project EIA, on the Traditional Land Use Study, and  
17                                  I believe Golder was also Métis Local 1935's  
18                                  consultant on preparing the *Mark of the Métis* work.  
19                                  Yes.

20       Q.       So this work started out as traditional land use  
21                                  work, you'd agree, but it turned into something  
22                                  else, right, over the span of the five years since  
23                                  from its thought -- and I can point you to some  
24                                  examples --

25       MR. DENSTEDT:                   Mr. Chairman, the issue is

1           the capacity. This is how the world works in the  
2           regulatory process in front of this Panel. We  
3           provide evidence, they provide evidence.  
4           Mr. Fortna gave evidence that we were not providing  
5           capacity. Ms. Jefferson came back and rebutted  
6           that on the capacity issue. We're here to talk  
7           about that. The content of the *Mark of the Métis*  
8           is irrelevant to this stage. If she forgot to ask  
9           some questions during the course of the original  
10          hearing, then that's her problem, not ours. So she  
11          should ask questions about the capacity.

12        MS. BISHOP:                        Ms. Jefferson gave a lot of  
13          evidence about what the *Mark of the Métis* is.

14        MR. DENSTEDT:                    Please point to rebuttal  
15          evidence where Mr. Jefferson put into play the  
16          issue of what is in the *Mark of the Métis*. It was  
17          all about the capacity funding for that project.

18        MS. BISHOP:                        She talked about it  
19          repeatedly today in terms of what it is and how it  
20          was put together. In any event, I only have about  
21          two questions about this, if I might just finish.

22        THE CHAIRMAN:                    I don't know what to say,  
23          counsel. I don't have the transcript. I could go  
24          back to the transcript. I don't recall at this  
25          moment what was covered off.



1                   Ask the question and we'll see if

2                   Mr. Denstedt rises.

3       Q.       MS. BISHOP:                   So there's discussion in the  
4                   meeting minutes between, you know, which is to  
5                   document some of the meetings between 1935 and  
6                   Shell. And there's discussions about turning the  
7                   *Mark of the Métis* into a picture book, into a book  
8                   to read to children and to different types of  
9                   presentations. And I put to you that that was  
10                  discussed at these meetings.

11      A.       MS. JEFFERSON:                So I don't know what  
12                  you're looking at there. To respond to that, I  
13                  would have to go back and review the minutes and  
14                  talk to the people who were at the meetings. Just  
15                  based on that summary, I would likely -- I can't  
16                  see that we would have been talking about how to  
17                  make this a children's picture book unless that was  
18                  what Métis 1935 wanted to do.

19      Q.       Whose responsibility is it to fulfill your Terms of  
20                  Reference, Ms. Jefferson, is it Shell's  
21                  responsibility or is it Métis Local 1935's?

22      A.       Which Terms of Reference are you referring to?

23      Q.       The Terms of Reference that require you to document  
24                  the traditional land use, the land use of  
25                  Aboriginal groups in the area.

1 A. The Terms of Reference for the EIA for the Jackpine  
2 Mine Expansion that you're talking about?

3 Q. Yes, and also those from the Joint Review Panel.

4 A. That would clearly be our accountability.

5 MS. BISHOP: Those are all my questions  
6 and thank you for the opportunity.

7 THE CHAIRMAN: Thank you, Ms. Bishop.

8 Ms. Johnston?

9 MS. ANNA JOHNSTON: Thank you. I just have a few  
10 questions.

11

12 **CROSS-EXAMINATION OF SHELL REBUTTAL PANEL BY JOHN**

13 **MALCOLM, THE NON-STATUS FORT MCMURRAY/FORT**

14 **MCKAY FIRST NATION, AND THE CLEARWATER RIVER PAUL**

15 **CREE BAND #175, BY MS. ANNA JOHNSTON:**

16

17 Q. MS. ANNA JOHNSTON: Mr. Plamondon, you would  
18 agree that a defining feature of Aboriginal groups  
19 is that they have a distinctive culture?

20 A. MR. PLAMONDON: Definitely.

21 Q. So it follows that the Aboriginal groups with which  
22 you consult may have different customs, practices,  
23 norms, and values?

24 A. To what, to non-Aboriginals? I would definitely  
25 agree.

1 Q. To that of --

2 A. I was born here in Fort McMurray and I was raised  
3 in Plamondon and I grew up in and around Aboriginal  
4 groups. I was part of those cultures. So I'm very  
5 familiar with the fact that they are different than  
6 non-Aboriginal groups.

7 Q. And also among Aboriginal groups, cultures may be  
8 distinct?

9 A. I certainly agree there are distinct cultures among  
10 Aboriginal groups.

11 Q. Thank you. And so would you agree that what may be  
12 construed as disrespectful might be a matter of  
13 cultural perspective?

14 A. That's why I said in my rebuttal evidence that, in  
15 my opinion, I wasn't being disrespectful. Again,  
16 having been raised in this area of the province and  
17 within Métis culture, I understand that there are  
18 differences but I also have a very good  
19 understanding of those cultures.

20 Q. Am I correct in my understanding that one aspect of  
21 your job is to understand and be sensitive to  
22 cultural differences between yourself, Aboriginal  
23 groups, Shell Canada?

24 A. Certainly that would be expected of anyone in this  
25 role. If they are to be expected to engage with

1           Aboriginal groups, they should understand their  
2           cultures.

3       Q.    And so it's fair to say, and I think that you just  
4           did say it, but I just want to confirm, that the  
5           differences of opinion that arose between you and  
6           Ms. Malcolm were differences in perspective?

7       A.    And which difference of opinion are you referring  
8           to specifically?

9       Q.    Whether or not your communication with her was  
10          disrespectful.

11      A.    I would agree, if Ms. Malcolm feels it's  
12          disrespectful, then that's her opinion. I only  
13          presented to the Panel my perspective of our  
14          engagement that we had and my feeling that I wasn't  
15          being disrespectful to Ms. Malcolm.

16      Q.    But it is an important part of your job to  
17          understand and be sensitive to those Aboriginal  
18          perspectives?

19      A.    Again, I would definitely agree with that.

20      Q.    Thank you. I would like to move on now to just a  
21          few questions about Mr. Malcolm's feelings of being  
22          duped. You had a number of communications with  
23          Mr. Malcolm and other members of the groups that he  
24          represented; is that correct?

25      A.    I don't think that's correct. Most of my, if not

1 all, communications were with Mr. Malcolm. The  
2 only other member of his group that I recall being  
3 engaged with was Ms. Malcolm. However, if you have  
4 a record of otherwise, I could be convinced that  
5 there was other communications with other members  
6 of his group, but I don't recall.

7 Q. There were a few. Chief Mary Ann Powder faxed you  
8 confirmation that Mr. Malcolm could represent him.  
9 It's not really important here.

10 A. Yeah, no, that's true.

11 Q. Okay. And in those communications, Mr. Malcolm  
12 made clear his concerns regarding the potential  
13 impacts of the Jackpine Mine Expansion project on  
14 his groups and their rights; is that correct?

15 A. Mr. Malcolm provided some general concerns about  
16 oil sands development, but he didn't provide us  
17 with any specific concerns about our Project and  
18 how those would impact his ability to exercise his  
19 Aboriginal Rights.

20 Q. But he did demonstrate concerns to you?

21 A. I don't know how they were demonstrated. Perhaps  
22 you can help me.

23 Q. Stated, he stated concerns to you?

24 A. He stated that he had concerns in general with oil  
25 sands development, yes, and with respect to his not

1           being recognized by the Crown as a status First  
2           Nation. Those were certainly conversations we've  
3           had.

4       Q.    And you did also have conversations about his  
5           concerns related to the Jackpine Mine Expansion  
6           Project and the Pierre River Mine?

7       A.    Again, there were no specific concerns raised with  
8           respect to those projects.

9       Q.    If I might just have a moment.

10      A.    Yes.

11      Q.    So you don't recall him requesting capacity funding  
12           to hire experts or lawyers to review the  
13           documentation?

14      A.    Yes, I recall requests for funding to review the  
15           Application, but I wouldn't consider that a concern  
16           with our Project.

17      Q.    But he did request assistance in reviewing the  
18           documents because of his concerns related to his  
19           asserted Aboriginal and Treaty Rights?

20      A.    Yeah, he made the request for a consultant to be  
21           provided capacity funding to review our EIA. We  
22           directed Mr. Malcolm to the funding available  
23           through the regulatory process. And we also  
24           identified to Mr. Malcolm that, in our process, as  
25           with all Aboriginal groups, we would require some

1 identification of how the group is being impacted  
2 so that we could have conversations about what type  
3 of capacity funding would be provided.

4 Q. And so in those communications to you, he  
5 communicated that he needed assistance in  
6 understanding the information contained in the  
7 Application materials and also assistance in  
8 understanding his rights and the process by which  
9 he could engage in the Environmental Assessment?

10 A. Right. So in terms of understanding, capacity to  
11 understand the Project, what we agreed to was that  
12 we would hold an Open House for his members to  
13 learn about the Project and engage with some of our  
14 experts from the Panel, like the EIA coordinator,  
15 our mine development manager, et cetera, who would  
16 be obviously at the Open House to answer questions  
17 in respect of the Project. And we also advised  
18 Mr. Malcolm that we would be willing to sit with  
19 him and select representatives from his group and  
20 experts that he would identify to have further  
21 conversations about the contents of the EIA and  
22 specific concerns that they had.

23 Q. So he did express to you a desire to receive  
24 assistance because he had concerns that he would be  
25 able to understand the process?

1       A.     Right.  And as I've said, what we agreed to with  
2             Mr. Malcolm in a letter in January was that we  
3             would commit to a phased approach to consultation,  
4             which involved an Open House with his community  
5             members, where representatives from Shell would be  
6             able to answer questions that community members  
7             had, and that in the second phase of that  
8             consultation, we would engage directly with select  
9             representatives from his community that included  
10            Elders and experts that he had identified to have  
11            further conversations about specifics around their  
12            concerns with the Project.

13       Q.     So in those communications that you had with  
14             Mr. Malcolm, do you recall communications that he  
15             made to you in which he conveyed to you a  
16             misunderstanding in the process?

17       A.     I recall several conversations with Mr. Malcolm  
18             where he conveyed differences in language and  
19             difficulties in respect of understanding because of  
20             those differences in language.  If that's what  
21             you're referring to.

22       Q.     That's some of what I'm referring to.  I'm also  
23             referring to a letter that you wrote him dated  
24             March 16th, 2011, in which you acknowledged that he  
25             stated that the English language is very deceptive.



1           And then you go on to say -- to respond to a fax  
2           that he had sent you. And you say in your letter  
3           (as read):

4  
5                         "For clarity, Shell did not  
6                         state that your legitimate concerns  
7                         for meaningful consultation should  
8                         be dealt with in the Court of  
9                         Queen's Bench, as you have  
10                        suggested."

11  
12                        So he's also demonstrating a misunderstanding  
13                        of the overall system in which he's participating?

14        A.     I don't have that in front of me, so if I could  
15           look at that, that would be helpful. Thanks.

16        Q.     Absolutely.

17        A.     Okay, I've read it. What was the question, sorry?

18        Q.     That you acknowledge that he's also demonstrating a  
19           misunderstanding in the process in which he's  
20           attempting to engage in and his role in it?

21        A.     I think what I'm trying to do is clarify that Shell  
22           is not suggesting that his concerns for meaningful  
23           consultation should be dealt with in the Court of  
24           Queen's Bench, as he suggested.

25        Q.     You acknowledge in that letter that he's

1           misunderstood the process or misunderstood a  
2           communication from you?

3       A.    I don't acknowledge that.  I acknowledge that we're  
4           trying to provide clarity around what we were  
5           suggesting to Mr. Malcolm.  And so the clarity  
6           we've provided here is that we don't suggest that  
7           legitimate concerns for meaningful consultation  
8           should be dealt with in the Court of Queen's Bench,  
9           as he suggested.

10       Q.   And as he has made a suggestion that you're  
11           clarifying on, and that he suggested that this was  
12           something that you had said, he's obviously  
13           misunderstood a communication of yours?

14       A.    I could agree with that.  And I guess that's why we  
15           tried to provide clarity in this letter.

16       Q.    Okay, thank you.  And as you've mentioned already,  
17           there were a number of times where he made a  
18           request to you to express yourself in plain  
19           language and plain English, that English can be  
20           deceiving?

21       A.    I think I would maybe direct the Panel to my  
22           earlier comments, that Mr. Malcolm has been engaged  
23           for a number of years in these regulatory processes  
24           and to suggest that he doesn't understand the  
25           process or the English language, I'm not sure that

1 I would necessarily agree with that suggestion.

2 Q. Are you suggesting that this is a simple process?

3 A. Not at all. I'm suggesting that he's familiar with  
4 the process.

5 Q. And are you suggesting that one can either be  
6 familiar with the process or unfamiliar with it and  
7 there's no room for confusion in between?

8 A. I'm merely stating that Mr. Malcolm has been  
9 engaged in the process for a number of years and  
10 that he probably has more of an understanding with  
11 regard to this regulatory process than I do because  
12 I've been engaged in this process for three years,  
13 well, two-and-a-half years.

14 Q. Is that a fact or is that your opinion?

15 A. The fact is that I've been engaged in this process  
16 for two-and-a-half years.

17 Q. I was asking with regards to the speculation that I  
18 suggest you just made about Mr. Malcolm's  
19 understanding of the process.

20 MR. DENSTEDT: I'd suggest that we move on  
21 to something that's useful. Mr. Malcolm's  
22 intervened in five different hearings, sometimes  
23 with counsel and sometimes without counsel, he's  
24 very familiar with the process.

25 Q. MS. ANNA JOHNSTON: Perhaps I'll keep my

1           questions a little bit less geared towards what  
2           one's opinion might be, and we'll just go back to  
3           he's demonstrated a confusion and a  
4           misunderstanding of communications.

5                       And then Mr. Malcolm also made you aware of  
6           difficulties he might have in receiving faxes from  
7           you. I have a fax that he sent you in a moment,  
8           where he says that he did not receive a fax from  
9           you and he requests "please phone when faxing"?

10          A.    Yes, I can confirm that that was a request he made.

11          Q.    And you're also aware or you became aware in I  
12               believe it was April 18th, 2012, in the  
13               Consultation Logs, which is Exhibit 001-057, at PDF  
14               page 105. There's notice in there that Shell  
15               received notice of the withdrawal of Mr. Malcolm's  
16               lawyers?

17          A.    I recall that, yes.

18          Q.    Okay. So you were aware by April 2012 that  
19               Mr. Malcolm was no longer represented in this  
20               proceeding?

21          A.    Yeah, I was aware of that.

22          MS. ANNA JOHNSTON:               Thank you. I have no more  
23               questions.

24          THE CHAIRMAN:                    Thank you, Ms. Johnston.

25                       I take it that the staff have no questions?

1 MR. PERKINS: We have no questions, sir,  
2 thank you.

3 THE CHAIRMAN: Thank you.  
4 Mr. Bolton?

5

6 **QUESTIONS BY THE JOINT REVIEW PANEL, BY MR. BOLTON:**

7 MR. BOLTON: Just a quick question for  
8 Mr. Vandenberg.

9 Q. Is the Aherne and Shaw editorial summary paper that  
10 you referred to in the exhibits currently?

11 A. MR. VANDENBERG I don't believe it is, but I  
12 have a copy that I could provide.

13 Q. If you could provide a copy, that would be helpful.

14 MR. BOLTON: That's all I have.

15 THE CHAIRMAN: So should we reserve a number  
16 for that, Mr. Denstedt? It will be 001-115.

17

18 **EXHIBIT 001-115: AHERNE AND SHAW EDITORIAL SUMMARY**  
19 **PAPER.**

20

21 MR. DENSTEDT: Sorry, I was asleep at the  
22 switch there. I apologize. We'll make copies  
23 available immediately.

24 MS. BUSS: I have one copy here if that  
25 would be of assistance, I believe.

1 MR. VANDENBERG: I've got one here as well.

2 If anybody wants it.

3 MS. BUSS: I'll give it to our talented

4 organizer here, Ms. Black.

5 THE CHAIRMAN: The Panel has no further

6 questions.

7 Mr. Perkins, is there anything else left to  
8 hear today?

9 Apparently there is.

10 A. MR. VANDENBERG: I do have some "subject to  
11 checks" that we talked about. I'm not sure if this  
12 would be the appropriate time to clear this up.

13 Okay.

14 We discussed the date range of the sampling  
15 of the Parson's study and I said I would accept  
16 that subject to check. The dates of sampling were  
17 in August of 2006 for the Parson's study.

18 And for the Wieder study, we discussed a date  
19 range of 2004 to 2008. It was actually 2005 to  
20 2008. So I think that clears up that.

21 THE CHAIRMAN: Thank you. Mr. Perkins?

22 MR. PERKINS: Well, with that, sir, I can't  
23 think of any other business today.

24 MR. DENSTEDT: I don't have any redirect,  
25 but I wasn't asked. But now I know why I don't put

1 up rebuttal panels, except every 12 years.

2 THE CHAIRMAN: Thanks, everyone. Have a  
3 good weekend. And thanks again for your  
4 cooperation during this portion of the hearing with  
5 the late nights and so on.

6 We'll resume the proceeding at 8:30 on  
7 Tuesday. And I think you all know what the venue  
8 is, but Ms. Black can tell you the details of that.

9 Thank you.

10

11 **(The hearing adjourned at 11:40 a.m.)**

12

13 **(The hearing to reconvene at 8:30 a.m.,**

14 **Tuesday, November 20, 2012**

15 **at the Four Points by Sheraton Edmonton South**

16 **7230 Argyll Road, Edmonton, Alberta)**

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**REPORTER'S CERTIFICATION**

1  
2  
3 I, Nancy Nielsen, RCR, RPR, CSR(A), Official  
4 Realtime Reporter in the Provinces of British Columbia  
5 and Alberta, Canada, do hereby certify:  
6

7 That the proceedings were taken down by me in  
8 shorthand at the time and place herein set forth and  
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10 correct and complete transcript of said proceedings to  
11 the best of my skill and ability.  
12

13 IN WITNESS WHEREOF, I have hereunto subscribed  
14 my name this 16th day of November, 2012.  
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19 **Nancy Nielsen, RCR, RPR, CSR(A)**  
20 **Official Realtime Reporter**  
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