

THE ALBERTA ENERGY REGULATOR

IN THE MATTER OF Application Nos. 1709793,
001-00247548, and 00303079
to the Alberta Energy Regulator

AER PROCEEDING
FINAL ARGUMENT

Calgary, Alberta
December 12, 2018

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1 Proceedings taken at Govier Hall, Calgary, Alberta

2

3 December 12, 2018 Morning Session

4

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7 W. Klassen Hearing Commissioner

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25 Wilderness Society Northern

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6 J. Malcolm Original Fort McMurray First
7 Nation and Clearwater First
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10 M. Gustafson Mikisew Cree First Nation
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13 R. Drummond Government of Canada
14 J. Elford Government of Canada
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16 J. Asterick Keepers of the Athabasca
17
18 C. Longacre, RPR, CSR(A) Official Court Reporter
19 A. Porco, CSR(A) Official Court Reporter
20
21 _____
21 (PROCEEDINGS COMMENCED AT 9:00 AM)
22 Discussion
23 THE CHAIR: Thank you. Please be seated.
24 Good morning, everyone. Just before we get
25 started, just a reminder that this proceeding is being
26 audio webcast. If you have any concerns, please let

1 Ms. Lacasse, Ms. Doebele, or Ms. Wheaton know what your
2 concerns are.

3 Are there any preliminary matters that we need to
4 address before we continue with final argument?

5 Seeing none, Ms. Asterick, Keepers of the
6 Athabasca, it's your opportunity for final argument.

7 MS. LACASSE: Just before we get started, I
8 was just going to attribute a number to the written
9 version of your presentation, and that will be 698.
10 Sorry. 99.

11 MR. MCMANUS: Ms. Asterick, you need to
12 press the button.

13 Final Submissions by Ms. Asterick

14 MS. ASTERICK: There we go. Is that good?

15 All right. Mr. Chairman, Panel, Keepers of the
16 Athabasca would like to acknowledge that we're
17 participating in this hearing Treaty 7 territory which
18 is home to the Blackfoot Confederacy, Tsuut'ina, and
19 Stoney Nakoda, along with Metis Nation Zone 3.

20 Thank you for this opportunity to make final
21 statements for your consideration in hopefully not
22 approving this new proposed bitumen project. As human
23 health and environmental effects in the area are
24 already severe and not adequately documented, as this
25 project is proposed to utilize the same tailings
26 management and other techniques that have produced the

1 situation, as Alberta's bitumen resource is currently
2 very much overproduced and infrastructure challenges
3 considered continue, as international challenges to
4 Canada's management of tailings contrast with current
5 work to release tailings to the environment, as
6 industrial emissions are affecting wildlife in Wood
7 Buffalo National Park and spurring more international
8 investigation, as Canada's global commitments require
9 us to produce less greenhouse gas to prevent
10 catastrophic climate change which is already strongly
11 felt in the area, we call on you not to grant approval
12 to this project. If you do approve the approval for
13 the Frontier bitumen project, you will be liable and
14 responsible for throwing the entire region into an
15 abyss of contamination and climate change. History
16 will not be favourable to this decision.

17 Through our experience participating in this
18 hearing process, Keepers of the Athabasca wishes to
19 make sure the following points are taken into
20 consideration: Number 1, the lack of Indigenous
21 knowledge utilized by Teck Resources. Contrary to what
22 Mr. Ignasiak said yesterday during the hearing, Teck
23 Resources explained on page 588 of the hearing
24 transcripts by Dr. Johnstone that they do not engage
25 directly with Indigenous knowledge keepers. While we
26 understand the process of engagement is with chief and

1 council, it is also true that Teck Resources could have
2 requested community meetings with Indigenous knowledge
3 holders.

4 We submit that Teck Resources has failed to
5 incorporate all knowledge into the development of their
6 project. By meeting specifically with Indigenous
7 knowledge holders, Teck Resources would have had
8 exceptional insight into solutions to environmental and
9 health problems that their proposal in its current form
10 will exacerbate. This oversight is further compounded
11 by the passing off of every single concern raised by
12 First Nations as described in the consultation
13 documents provided to the Panel.

14 First Nations are encouraged to pursue process
15 through LARP, through the energy regulator, and through
16 forums other than the project-specific consultation
17 process. The reason these issues were brought forward
18 to this table is that the Joint Review Panel is
19 responsible for reviewing concerns. Yourselves, the
20 Joint Review Panel, is responsible for adhering to the
21 precautionary principle as laid out in Canada's
22 Environmental Enhancement and Protection Act. You must
23 consider that passing the buck for concerns raised by
24 those closest to the land, along to other processes,
25 should not be acceptable either to the Joint Review
26 Panel or to Teck Resources.

1 As an example, diverting water into man-made lakes
2 as compensation lakes is not a solution to the
3 environmental degradation experienced regionally, as
4 these man-made lakes are not appropriate for conducting
5 traditional livelihood activities, such as trapping,
6 hunting, and fishing, even while the traditional areas
7 are destroyed.

8 Confidential agreements with small numbers of
9 First Nations leadership are not an appropriate method
10 of gaining First Nations support. As the Supreme Court
11 of Canada has been very clear, that decision-making
12 power lies with the membership of First Nation and not
13 the leadership. A better model is shown by Dene Nation
14 or Akitcho Territory negotiators. They consult with
15 the entire community of out-projects. The community
16 itself meets and give theirs thoughts and concerns to a
17 negotiator, who then meet with the project proponent.
18 Chief and council are brought in at the final stage to
19 ratify the agreement between project proponents and the
20 community.

21 Even a community referendum for projects would be
22 preferable to the system in use in this current
23 project, where community members, including traditional
24 knowledge holders with crucial information that has
25 bearing on the project have no voice. It is a mistake
26 to avoid the Indigenous knowledge of those closest to

1 the land with environmental understandings passed on
2 through generations. This lost opportunity will come
3 back to bite us.

4 Our co-chair, Jean L'Hommecourt, would like to
5 address the Panel.

6 Final Submissions by Ms. L'Hommecourt

7 MS. L'HOMMECOURT: Good morning, Panel Members.
8 Good morning to the three gentlemen at the head -- at
9 the head of the table, Joint Review Panel members.

10 I also would like to acknowledge our presence here
11 on Treaty 7 territory. My friend here is from the
12 Kainai Nation, Roxane Blood.

13 Thank you for inviting us to be a participant at
14 this hearing.

15 (OTHER LANGUAGE SPOKEN)

16 Today I stand here before you, once again, to
17 advocate for the survival of our wildlife that do not
18 have a voice and are not commonly to -- and are too
19 commonly referred to in numbers, graphs, sizes,
20 patterns, et cetera, et cetera. That is the Western
21 science methodology [sic] that has brought us to this
22 crisis of many species on being extinguished forever,
23 such as the Ronald Lake buffalo, the whooping cranes,
24 the caribou, the wolverine, the wolves, polar bears,
25 grizzly bears, blue herons, moose, otters, minx, owls,
26 et cetera, et cetera. These animals do not have a

1 voice, but I am here to represent them.

2 Our peoples -- our first peoples of this land are
3 known as "stewards of the land". This interpretation
4 comes with the acknowledgment that we are addressed as
5 "First Nations" because we inhabited this land long
6 before the Europeans discovered our peoples and our
7 territories, only to rely on our first peoples for
8 survival and to discover the rich natural resources
9 that was raped -- that was reaped for the country's and
10 worldwide economic prosperity. In exchange for our
11 natural resources, we have sacrificed our cultural way
12 of life through broken treaty agreements that we have
13 made in good faith of [sic] the government, to which
14 they have stolen our land, our language, our children,
15 our woman [sic], and eventually our men.

16 This brings me to remember a legendary story of
17 our -- of our peoples of a trickster named was Wasaki
18 Jack [phonetic] and other tribes also known as Witegoo,
19 and "Witegoo" meaning greedy. His unsatiated appetite
20 never gets fulfilled as he continuously consumes
21 everything in site until no more is available. Hence
22 our cultural teachings: Take only what you need.

23 This is the type of greed that we are facing today
24 in industrial development in our traditional territory.
25 This greed for more materialistic gain has now brought
26 us to where we now advocate for protection of Mother

1 Earth, protection of water globally, as every human
2 being depends on water for life. Without water,
3 humanity will not survive. Water is life. Water is
4 boss.

5 Those phrases are simple and straightforward, but,
6 yet, we continue to gamble with our future, our
7 children's and our grandchildren's future. Everyone in
8 this room will pass on their lineage and naturally will
9 want to protect their safety, their health, and
10 well-being. Who in this room can say that they don't
11 care for the future of your family's generations to
12 come?

13 These are now genuine worldwide concerns that are
14 being questioned as to who will ensure that this planet
15 will survive for another hundred years. The
16 devastation inflicted upon humanity worldwide has
17 reached a tipping point of no return, as scientists
18 predict catastrophic consequences that no human will
19 survive called by the dominant society as -- as the
20 Apocalypse. Our elders say (OTHER LANGUAGE SPOKEN),
21 meaning the land is gone, and that will be the end of
22 Mother Earth.

23 I want to speak to you about Teck's experts. I
24 heard the name Daryl Shevolup many times and how he --
25 how he questioned our traditional land-use territory
26 that was done in our territory. Daryl Shevolup was a

1 brother to Chuck Shevolup, who lived across the river
2 in a cabin after being removed from his home and left
3 his family with nowhere to go. This Daryl Shevolup is
4 known to us as "Dode", his nickname.

5 This person is a person that we helped when he
6 came North. When he came onto our lands, he said that
7 there would be enough buffalo to feed everybody in the
8 region, which I disagree with because when he was out
9 there with his young Indigenous woman and their child,
10 they experienced hunger, and it was left to our family
11 to feed him, to bring him food and supplies for him and
12 his family. So I don't know how he got the information
13 or -- or how he be -- came to be an expert.

14 In 1788, Fort Chipewyan, the oldest and continuous
15 oldest settlement in Alberta, was founded. 1870,
16 Hudson's Bay Company store was built in Fort Chipewyan.
17 1922, Thomas Draper was granted a lease to built the
18 McMurray Asphaltum and Oil Limited plant in what is now
19 called "Draper". And it goes on from there. 1941, the
20 Asphaltum Oil Sands Limited refinery begins operations.

21 On our river today, the Athabasca River, there is
22 a old, abandoned first mine site that is called the
23 "bitumen mine site". To this day, when we travel on
24 the river past it, we see the effects of the oil sands
25 and what they have left for us to clean up. And the
26 Government of Alberta has failed to protect our -- our

1 lands, our resources that we depend on for the very
2 survival of our cultural way of life.

3 This bitumen piece of devastation is in our face
4 every day, as we see it, and because of the -- the
5 extreme costs of trying to get it cleaned up, which
6 they couldn't do, instead, they designated it a
7 historical site with buildings dilapidated and ready to
8 collapse.

9 And the -- the contamination of the buildings
10 contain asbestos, and when we have the south winds, it
11 blows all the asbestos onto the river, and -- and,
12 therefore, the Fort Chipewyan people experience all the
13 effects of everything that goes down towards them.

14 The 24th United Nations Climate Change Summit is
15 happening, and it poses a lot of humanity advocating
16 for change, climate changes, justice to face global
17 catastrophe of severe droughts, floods, sea level
18 rising, extreme heat, and eventually poverty caused by
19 wildfires. Our land is being dried up, and our forests
20 are burnt. Our animals are suffering with no food, and
21 this is what's going to happen to us as a peoples as
22 well.

23 Last week, there was an article about the man
24 camps that are being proposed that come into our -- our
25 territory. This inflicts all forms of violence against
26 Indigenous woman and girls in -- in the area, which

1 cause -- is causing social, economical, cultural,
2 institutional, and historical causes contributing to
3 ongoing violence and particular vulnerabilities of our
4 Indigenous woman and girls in Canada, as the numbers
5 speaks for itself in the statistics of our missing and
6 murdered Indigenous peoples.

7 Merci. I will end there. Thanks very much for
8 listening.

9 Final Submissions by Ms. Asterick

10 MS. ASTERICK: I should've said for the
11 record I'm Jule Asterick for Keepers of the Athabasca.

12 The point about man camps, being that there's
13 another huge one proposed with Teck for their 7,000
14 workers. So, yeah, it would -- again, exacerbate an
15 existing known situation that has been studied and
16 shown to be very detrimental.

17 Our second issue that we'd like to talk about is
18 the principle of sustainable development as defined
19 under the Canadian Environmental Assessment Act and
20 Alberta's Environmental Protection and Enhancement Act.
21 It's not upheld in this application in that the
22 project, both alone and in conjunction with other
23 projects in the region, compromises the ability of
24 future generations to meet their needs.

25 Cumulative environmental effects and human health
26 effects in the area are already severe, as evidenced in

1 studies we presented to this Panel in Fort McMurray.
2 Increases in contaminants in water, sediment, and fish
3 downstream of industrial sources; significant air
4 emissions and major pollution incidents; and the loss
5 of over 65,000 hectares of boreal ecosystems are well
6 documented.

7 Cumulative environmental impacts have reached a
8 critical threshold based on recent studies. Studies we
9 provided and described by cochair Paul Belanger
10 describe how there is no longer any ecological buffer
11 remaining. Environmental impacts affect water quality
12 and the terrestrial animal and plant ecosystems.
13 Additionally, current and past industry air emissions
14 are and have produced acid rain showing a clear
15 cumulative impact to lakes in the boreal forest in a
16 very large area. Teck Resources asks this Panel --

17 THE CHAIR: Ms. Asterick --

18 MS. ASTERICK: Yes.

19 THE CHAIR: -- I think you have to slow
20 down a little bit. I think the court reporters are
21 having trouble keeping up.

22 MS. ASTERICK: Okay.

23 THE CHAIR: Thank you.

24 MS. ASTERICK: Teck Resources asks this Panel
25 to lower standards in evaluating environmental and
26 financial effects and considering the fate of

1 endangered species and asks that this Panel completely
2 disregard environmental regulations regarding Parks
3 Canada and Environment and Climate Change Canada
4 studies and presentations.

5 Teck asks this Panel to consider Parks Canada's
6 2014 study instead of their most recent work, another
7 example of backwards standards. Teck insists that
8 everyone else has confirmation by us, when, in fact,
9 they are obviously working only in their own interest
10 and minimizing any and all issues this proposed project
11 will exacerbate. We ask that the Panel note the
12 science wars that Teck has instigated by denying
13 science presented by others.

14 When the UNESCO world heritage committee made
15 17 recommendations to Canada in order to adequately
16 protect Wood Buffalo National Park, Recommendation
17 Number 5 asked Canada to conduct an environmental and
18 social impact assessment of the proposed Teck Frontier
19 Oil Sands Mine Project in line with the IUC and world
20 heritage advice note on environmental assessment fully
21 taking into account the outstanding universal value of
22 the property, including the Peace Athabasca Delta.

23 Keepers of the Athabasca asks that the joint
24 review panel carefully consider our international
25 obligations in protecting an already endangered world
26 heritage site and not approve the current project.

1 Approving a new bitumen project, the largest and
2 most -- most northerly bitumen mine yet, and very close
3 to Wood Buffalo National Park, will push regional
4 cumulative effects past the breaking point.

5 To illustrate our previous point, concerns raised
6 by all of the First Nations in their consultation
7 documents mentioned cumulative effects, and all of
8 these concerns are passed over to other venues via
9 these same consultation documents.

10 Keepers of the Athabasca maintains that it is
11 appropriate for the Joint Review Panel to consider the
12 exacerbation of already severe cumulative effects as
13 you are tasked with ensuring that this project conforms
14 to EPM.

15 Number 3, health effects. This project would
16 exacerbate current known, while not properly
17 documented, health effects, including rare cancers.
18 Our expert Dr. John O'Connor discussed the fact that
19 residents in Fort Chipewyan, since the late '90s, had
20 begun to experience health issues unlike any time in
21 its 200-plus years. Malignancies, auto-immune
22 diseases, diabetes were previously foreign to
23 residents. A spike in certain cancers especially was
24 quite noticeable by the early 2000s. Cancers that
25 include cancer of the biliary tract notably
26 cholangiocarcinoma, a particular cancer that was rare

1 and not expected to occur in more than 1 and 200,000 of
2 the general population occur in the Fort Chipewyan area
3 at a rate of 3 out of 850 people. The Alberta Cancer
4 Board revealed to Fort Chipewyan that cancer was at
5 least 30 percent more prevalent there, singling out
6 specific types of cancer including hepatobiliary
7 cancer. The comprehensive health study, whose terms of
8 reference were put together by a scientific team and
9 approved by all local First Nations, was abandoned when
10 bitumen industry representatives announced that they
11 would be part of the oversight committee. Teck insists
12 on talking about their health assessment, which is not
13 anything close to a health study. The much needed
14 comprehensive health study has never yet been
15 completed, and human health impacts from existing
16 projects continue increasing in severity.

17 Number 4, environmental and human health
18 monitoring. As current self-reporting practices by
19 industry are shown not to be successful in protecting
20 either the environment or human health, the approval of
21 yet another bitumen project will exacerbate these
22 issues.

23 We discussed in our presentation to the Panel the
24 fact that government monitoring efforts have also been
25 biased, referencing the CABIN study by Robert Brua --
26 spelling is incorrect in the transcript -- of

1 Environment Canada page 1,849 of hearing transcript on
2 October 4th. Third-party independent monitoring and
3 community-based monitoring is needed.

4 Funding for independent monitoring is not readily
5 available either for community monitoring programs or
6 for independent third-party scientists.
7 Community-monitoring programs will need development and
8 capacity building in order to be successful, and
9 open-source data banks are needed to file, share, and
10 compare monitoring results. There is currently no
11 independent or non-biased scientific monitoring being
12 done on a consistent basis, and past monitoring results
13 from the excellent but now dissolved cumulative effects
14 management association have been dispersed. Very many
15 people poured their time, effort, work, and heart into
16 the important work of this association for over a
17 decade to have all of that disbanded and discontinued,
18 and the results no longer available. This is not
19 acceptable and also affects community attitude toward
20 the current proposal as cynicism regarding monitoring
21 in general is setting in.

22 Number 5, financial considerations, including
23 potential overstating of royalties, income, and taxes;
24 the potential for huge costs to Canadian society in
25 case of stranding or abandonment; and the overall
26 economic viability of this project. As our expert

1 witness Dr. Gerda Kits stated, a fair and full
2 assessment of the project requires that benefits be
3 weighed against the potential costs resulting from the
4 project. Not only does Teck not provide any
5 cost-benefit analysis, it asks the Panel to disregard
6 the cost-benefit analysis that was presented.

7 Teck's submission provides only part of the
8 information necessary to determine whether the project
9 will, in fact, yield net benefits. It does not provide
10 an estimate of total revenues over the life of the
11 project necessary to determine the benefits of the
12 project. It provides estimates of private costs,
13 construction, operation, and reclamation costs, but
14 does not provide any monetized estimates of social
15 costs, such as the costs associated with climate
16 change, species loss, other environmental damages, or
17 impacts on human health, all of which are possible to
18 estimate.

19 The Oil Sands Conservation Act states that
20 projects may be approved if they are in the public
21 interest, and it is not possible to determine the
22 public interest based on the information provided by
23 Teck Resources in regards to the financial viability of
24 the Frontier bitumen project.

25 Canada's EPEA recognizes that the production of
26 the environment is essential to the integrity of

1 ecosystems and human health and to the well-being of
2 society and, finally, the principle of sustainable
3 development, which ensures that the use of resources
4 and environment today do not impair prospects for their
5 use by future generations. None of these legal
6 requirements are met by Teck Resources in their
7 application for a new bitumen mine.

8 The information we wanted to present you with in
9 our motion to call witnesses that was denied by you has
10 now hit the news. The cost of reclaiming fossil fuel
11 infrastructure in Alberta can be as high as
12 \$260 billion, much more than previous estimates. This
13 new 260 billion figure is important for the Joint
14 Review Panel to consider, following the precautionary
15 principle in looking at worst-case scenarios as you
16 evaluate adding yet another longest yet potential
17 source of liability to the already onerous list of oil
18 and gas bitumen facilities for Alberta and Canada.

19 In order for regulators, including the Joint
20 Review Panel, to properly assess the environmental
21 effect of decommissioning and restoration provisions,
22 or "DRPs", and the ability of Teck to fulfill their
23 decommissioning and restoration obligations, the
24 following recommendations need to be fulfilled.

25 And here I'd just like to point -- oh, sorry. I'd
26 just like to point out what was stated yesterday

1 about -- recommendations should actually be conditions
2 because, as we've seen, recommendations don't really
3 have any effect at all.

4 The other thing I'd like to say from our expert
5 Regan Boychuk, who has written what I'm going to read
6 now, in terms of these recommendations or potentially
7 conditions that need to be fulfilled -- he defends
8 himself -- Teck has attacked him and his expertise. He
9 says: (as read)

10 I could list at least half a dozen undisputed
11 leading experts from industry and government
12 that would vouch for my expertise and
13 formidable research on these topics. Teck's
14 team of experts could not find anything
15 substantively wrong with my 42-page paper.

16 There's a famous story attributed to Sam
17 Irvin [phonetic], a conservative American
18 senator, who once said that, as a young
19 lawyer, he had learned that if the law is
20 against you, concentrate on the facts; if the
21 facts are against you, concentrate on the
22 law; and if both the facts and the law are
23 against you, denounce your opposing counsel.

24 And that is what Teck has done in trying to discredit
25 Regan's work.

26 So on to the recommendations, possibly conditions.

1 Disclose separate values for liabilities incurred and
2 revisions to estimated cash flows.

3 Identify and correct any internal control system
4 deficiencies underlying high year over year rates of
5 revision to expected cash flows.

6 Establish an asset retirement savings plan to
7 ensure timely settlement of DRPs. The savings plan
8 should account for the possibility of significant
9 unanticipated acceleration in settlement dates.

10 Include DRP payments in the obligation table
11 reported in the annual management discussion and
12 analysis.

13 If the amounts are discounted, it is important to
14 supplement the disclosures with undiscounted figures so
15 that analysts could see the total amount of
16 undiscounted expected cash flows.

17 If amounts include inflated adjustment -- sorry,
18 inflation adjustment, this fact should be disclosed
19 along with the uninflated amounts.

20 If expected cash flows are truncated, for example,
21 disregarded beyond a certain number of years, disclose
22 the truncation period. The justification for the
23 truncation and the total period over which settlement
24 of existing DRPs is expected to occur.

25 If some obligations require perpetual asset
26 retirement activities, for example, water containment

1 or treatment, highly relevant -- both are highly
2 relevant to Teck's operations.

3 Disclose the annual undiscounted --

4 THE CHAIR: Ms. Asterick, sorry to
5 interrupt, but just slow it down a little bit --

6 MS. ASTERICK: Okay.

7 THE CHAIR: -- just for the court
8 reporters.

9 MS. ASTERICK: Thank you.

10 -- and uninflated cost of these activities.
11 Recognize that DRPs are critical accounting estimates
12 and provide useful non-boilerplate MDNA disclosures
13 that will improve forecasting.

14 Disclose the following additional information if
15 not included elsewhere, and then we have a series of
16 bullets under that one.

17 The undiscounted value of newly
18 discommissioning [sic] and restoration provisions
19 incurred during the year.

20 Separately disclose data for provisions assumed in
21 business combinations.

22 The expected number of years over which Teck's
23 existing DRPs will be settled, the expected cash flow
24 compounding annual growth rates, "CAGRs", over that
25 period, and the factors contributing to the anticipated
26 cash flow CAGRs.

1 The historical and anticipated future order and
2 pace of DRP settlement, and there's three bullets under
3 that one.

4 Absent information to the contrary it is expected
5 that similar assets will be retired on a
6 first-in-first-out basis if asset retirement costs
7 relating to newer assets will be incurred prior to
8 decommissioning and restoration provisions for older
9 assets, and the change in that order will have a
10 significant impact on the amount and timing of expected
11 cash flows; Teck should disclose this information.

12 Also, absent information to the contrary, it is
13 expected that Teck would, on average, retire one year
14 of DRPs incurred 30 to 60 years ago every year. This
15 could be called an "equilibrium pace".

16 To assist analysts in making projections in
17 historical DRP payments, Teck should disclose whether
18 recent DRP settlement costs reflect an accelerated
19 equilibrium or deferred pace of retirement.

20 The undiscounted amount of market risk premium
21 with an explanation of how this amount was determined
22 should be disclosed.

23 The discount rate to calculate the present value
24 of expected cash flows, and if the rate includes a
25 credit adjustment, an explanation of how the credit
26 adjustment was determined taking into consideration the

1 effects of all terms, collateral, and existing
2 guarantees specifically related to Teck's DRPs should
3 be disclosed.

4 Reasons for historical trends in the rate of
5 revisions to expected cash flows and expectations for
6 future revision rates should also be disclosed.
7 Historical DRP/CapEx ratios, forecasted changes in this
8 ratio, and the underlying causes of such changes should
9 be disclosed.

10 The amount and types of financial assurance
11 including restricted assets in place to secure
12 settlement of DRPs should be disclosed.

13 Details about any decommissioning and restoration
14 savings programs designed to assure the availability of
15 sufficient resources to satisfy DRPs in a timely manner
16 as they come due should also be disclosed.

17 The above information and analysis is required in
18 order for the Joint Review Panel to sufficiently
19 evaluate Teck's environmental liability management if
20 regulators intend to make an informed decision in the
21 public interest to add billions more to the
22 approximately \$260 billion in oil/gas mining
23 liabilities the Alberta public is already at severe
24 risk of inheriting from industry.

25 Any evaluation of the viability of Teck Resources
26 and any cost-benefit analysis of their proposed

1 Frontier bitumen mine -- both need to properly account
2 for their current and proposed environmental
3 liabilities, including contingent liabilities and the
4 potential for regulatory acceleration of
5 decommissioning and restoration obligations.

6 Alberta's bitumen royalty regime was formally
7 excluded from examination during the Province's 2010
8 royalty review and was effectively excluded from
9 examination during the 2015 royalty review.

10 Bitumen land sales and royalties currently collect
11 much less than a nickel for every dollar generated in
12 oil sands development. Alberta has never produced more
13 oil or bitumen -- or collected fewer royalties than it
14 does today, and this is simply not sustainable over the
15 long term.

16 A proper public interest evaluation of Teck's
17 proposed bitumen mine needs to appropriately account
18 for royalty risk. The spectrum of potential royalty
19 outcomes over the course of the Frontier Mine's life
20 need to be weighted by probability and incorporated on
21 an expected-value basis into the cost-benefit analysis
22 of whether the project is in the public interest.

23 Number 6, consideration of climate change in
24 relation to this project. Teck's stated objectives in
25 their application and subsequent responses to
26 information requests are simply not achievable.

1 Extreme weather may provide risks not listed in the
2 environmental impact statement or in Teck's answers to
3 information requests, as extreme winds, fires, and
4 floods can affect facilities, production, and plans for
5 tailings management.

6 Regarding the advisability of adding yet another
7 new bitumen mine to production after the Prosper
8 Bitumen Mine and Imperial's new expansion project at
9 Cold Lake were already approved just this year among
10 other projects, Keepers feel that your approval of the
11 largest bitumen mine yet would be a terrible mistake.

12 Scientists, including William Pelletier, head of
13 University of Toronto Centre for Global Change Science,
14 John Smol Canada's research chair in environmental
15 change at Queen's University, and David Schindler
16 professor at University of Alberta recently said
17 together: (as read)

18 Strong action must be taken in the next few
19 years [in regards to climate change]. There
20 is no time for the transitional economies
21 that some have touted to pacify fossil fuel
22 interests by investing in still more fossil
23 fuel infrastructure.

24 Additionally, approving this current project will
25 subtract more peatlands from the mix in northern
26 Alberta. Current plans dictate the replacement of

1 areas destroyed for open pit bitumen mining with upland
2 forest and tailings storage lakes amounting to the
3 destruction of over 29,500 hectares of peatland
4 habitat.

5 Peatland sequesters carbon dioxide so this loss
6 will increase our carbon emissions. Landscape changes
7 caused by mines approved only until 2011 will release
8 between 11.4 and 47.3 million metric tons of stored
9 carbon and will reduce carbon sequestration potential
10 by between 5,700 and 7,200 metric tons of carbon per
11 year, and that's through the peatland destruction. So
12 additional bitumen development, including the current
13 proposal for Alberta's largest bitumen mine yet, will
14 decrease Canada's ability to sequester and store carbon
15 dioxide exponentially.

16 Recent reports show that world carbon emissions
17 increased substantially this past year. Canada is one
18 out of only five countries in the world whose carbon
19 emissions increased. Sir David Attenborough recently
20 said: (as read)

21 If we don't take action on climate change,
22 the collapse of our civilization is on the
23 horizon.

24 We are in a struggle to provide a sustainable future in
25 this historic time, and approving Teck's [sic]
26 Resources proposal for a new largest ever bitumen mine

1 would be far worse than fiddling while Rome burns; it
2 would be like adding gasoline to the fire.

3 Number 7, tailings. Contrary to Mr. Ignasiak's
4 statement yesterday, Keepers certainly does challenge
5 Teck's tailings management plan. The proposed tailings
6 management for this project is not acceptable,
7 considering known impacts of current tailings
8 management. Planning on using the same tailings
9 management plans as other bitumen projects shows
10 insufficient research and effort by Teck Resources.

11 On page 597 and 598 of the hearing transcripts for
12 September 27th, tailings management is discussed.
13 Mr. Chiasson admits that there is not an engineered
14 clay liner or any type of liner in their tailings
15 management plan. My point is that even municipal
16 landfills must have either engineered compacted clay or
17 synthetic liners. Some larger landfills have a dual
18 liner with leak detection leachate return systems, and
19 we have this technology readily available. Why is it
20 not already in use by industry as required by -- and
21 required by the Alberta Energy Regulator?

22 The Joint Review Panel needs to weigh the
23 advisability of adding more inadequate and massive
24 tailings into the landscape. For Teck to claim that
25 they consider their proposed tailings to be full
26 containment is patently ridiculous without even a

1 liner, never mind a single tank.

2 Teck Resources describes their tailing management
3 plan similar to other industry plans as including
4 seepage walls to return tailings seepage from beside
5 the ponds. No tailings management plan, including that
6 of Teck Resources, takes vertical seepage into account
7 in which tailing leakage vertically enters groundwater
8 and moves to other locations, including the Athabasca
9 River.

10 The risk of infiltration of tailings and other
11 process water has been acknowledged by industry and
12 government since at least 1981 according to the 2008
13 Allen Report for Natural Resources Canada. This brings
14 to question self-reporting by industry regarding the
15 massive tailings leakage into groundwater that we are
16 currently experiencing. There has been much
17 obfuscation around seepage walls which does not examine
18 the issue of vertical seepage whatsoever, but actively
19 avoids it. From our knowledge, there has never yet
20 been a report of tailings leakage into groundwater.

21 We have a NAFTA challenge regarding Canada's
22 current management of tailings, and tailing ponds are
23 known to be leaking down into the groundwater and then
24 back up into the Athabasca River. No company has
25 specifically reported this, to our knowledge.

26 With this state of affairs, it is not appropriate

1 for this Panel to grant approval to a new bitumen mine
2 that intends to maintain the same poor tailings
3 management and reporting options as other bitumen
4 facilities. Approval of this project would be an
5 embarrassment to Canada and especially to this Panel.

6 Regarding groundwater tailing leakage, as
7 Dr. Wendling's study points out, the
8 hydrogeological [sic] units at the Teck site may have
9 different hydrological behaviours than similar units at
10 other oil sands project sites located tens of
11 kilometres away. Also, Teck has used assumptions in
12 their conceptual and numerical model, for example,
13 assuming the presence of impermeable layers that create
14 a barrier to groundwater flow near and under the
15 Athabasca River that have not been confirmed by field
16 investigations. These assumptions, while convenient
17 for Teck, are inaccurate and show the bias of their
18 expertise in this area.

19 Poor definition of the piezometric conditions also
20 affects the reliability and validity of both the
21 conceptual and numerical models provided by Teck. Teck
22 refers to outdated studies published as far back as
23 1979, 38 years ago, in the scientific field of surface
24 water and groundwater interaction that has evolved
25 drastically in the last 10 to 20 years.

26 Currently available tools and protocols should've

1 been used by Teck in their application to adequately
2 assess the surface water and groundwater integration in
3 the affected region.

4 Keepers note the lack of any full containment
5 options for tailings, page 606 to page 614 on the
6 transcripts from September 27th. This technology is
7 available. Pond liners, dual liners with leak
8 detection and return, tanks and other infrastructure,
9 and because of the lack of innovation -- contrary to
10 Teck's claims of their innovation -- and lack of
11 resources put into tailings management and reporting,
12 grave environmental and health effects are taking place
13 without being appropriately measured incurring
14 international challenges to Canada's approach to
15 tailings management. Long-term tailings approaches
16 threaten to undermine sustainable development as risks
17 are deferred and placed on future generations.

18 Number 8, aerial emissions. Particulate matter
19 affects human health. Studies on the effects of
20 particulate matter experienced by humans show that
21 effects can vary from irritation, eye, nose, and
22 throat, headaches, nausea, dizziness, the worsening of
23 asthma symptoms, to more severe effects like damage to
24 the liver, kidneys, central nervous system, to
25 increasing the risks of cancer. Studies show that the
26 evaporation and atmospheric oxidation of low volatility

1 organic vapours from the mined oil sands material is
2 directly responsible for the majority of observed
3 secondary organic aerosol mass.

4 The resultant production rates of between 45 and
5 84 tons per day of particulate matter make the oil
6 sands one of the largest sources of anthropogenic
7 secondary organic aerosols in North America. While
8 these regional exceedances and particulate matter are
9 well-documented, their specific effects on local human
10 health and the environment have somehow not been
11 well-documented at all.

12 Traditional knowledge holders in our membership
13 have raised the possibility of increased forest
14 flammability with over 50 tons of hydrocarbon-related
15 particulate matter landing on the northern Alberta
16 boreal forest every day. The addition of yet more
17 emissions with this largest yet bitumen mine and placed
18 even further north would be a disaster. What kind of
19 disaster could depend on ingredients such as lightning
20 and wind. As we have seen during the Slave Lake 2011
21 and Fort McMurray 2016 fire, our increasing wind speeds
22 make forest fires literally unstoppable.

23 While forest flammability may be a new idea for
24 many, it deserves to be researched and treated
25 seriously. The northerly aspect of the current project
26 demands that the Joint Review Panel think about the

1 tons of hydrocarbon particulate matter released every
2 day and, in the absence of research on forest
3 flammability, take these aerial emissions into
4 consideration in your decision.

5 We are changing the world around us, and this
6 dynamic situation we have created affects us as well.

7 Our director, Roxane Blood, would like to address
8 the Panel, and then I have a very brief conclusion.

9 Final Submissions by Ms. Blood

10 MS. BLOOD: Good morning. (OTHER LANGUAGE
11 SPOKEN). My name is Roxane Blood, and I'm here on
12 behalf of Keepers of the Water, but also speaking for
13 my children.

14 I'm the mother of four daughters, and I'm
15 concerned about the future for -- for our children, for
16 your grandchildren, and I -- I ask that you take into
17 consideration this project that's going to be
18 happening -- proposed to happen. I -- I would like to
19 acknowledge the water and how, as humans -- all of us,
20 we need the water. And what's being done to the water
21 up there is just criminal. We have places throughout
22 Canada where our First Nations people are on boiled
23 advisory.

24 I would also like to acknowledge the man camps
25 that are going up there and what's happening to the
26 women.

1 My -- my mother is from Kainai, and my father is
2 from Fort Providence, so I'm speaking on behalf of my
3 relatives that aren't here. A lot of our people have
4 not been able to participate and know what -- the
5 devastation that's coming to them. We already see it
6 with what's happening with industry that has been
7 there, and if people are able to go up and see the land
8 that's -- that is there and what's happening from an
9 aerial view, they don't even have to see it. You could
10 see it through the smog that's being produced and the
11 toxins that's -- that's out there. And that's
12 criminal.

13 So everybody talks about this money. Money,
14 money, money. But, yet, that's -- that's not going to
15 be a promise for our children in the future because the
16 air's not going to be there. If you look at what's
17 happening in China with the -- the pollution and the --
18 they have to wear masks; you can foresee that coming to
19 Canada. If this is going to be the largest
20 carbon-producing mine that's coming here, we are going
21 to be the contributors of that, and we don't want that
22 to go down in history without stopping it.

23 So my plea is for you to look at what's happening
24 and going to happen in the future if Teck goes up. And
25 I ask that you take that into consideration and to take
26 a moral stand for your children, for your grandchildren

1 to come. And so, yeah, that's all I'd like to say on
2 behalf of myself and my people. So thank you.

3 Final Submissions by Ms. L'Hommecourt

4 MS. L'HOMMECOURT: Thank you to my sister,
5 Roxane, for contributing here at the hearing.

6 I'd like to bring your attention to a media
7 release that was released on December 6th, 2018, from
8 the Fort McKay First Nation, to which I am a member of.
9 (as read)

10 The Fort McKay First Nation sues Alberta for
11 Treaty 8 infringement. Fort McKay First
12 Nation, this week, filed suit against the
13 Government of Alberta for Treaty 8
14 infringement on Fort McKay's claim. Fort
15 McKay's claim seeks an injunction to prevent
16 the authorization of any industrial
17 development in the Moose Lake area, as well
18 as other remedies.

19 Fort McKay First Nation is located at
20 the centre of the oil -- Athabasca oil sands
21 area, north of Fort McMurray, and has already
22 lost most of its traditional territory to
23 extensive industrial development.

24 Fort McKay has sought to protect the
25 Moose Lake area from encroaching developments
26 since the early 2000s. Alberta has

1 acknowledged the Moose Lake area is sacred
2 land that needs protection to support the
3 meaningful exercise of treaty rights for
4 generations to come.

5 Yet, despite the acknowledgment, Alberta
6 continues to prove -- approve oil sands
7 projects in the area, which Fort McKay says
8 breaches the Crown's solemn promises made by
9 the Treaty 8. Chief Jim Boucher, leader of
10 the Fort McKay First Nation, for decades has
11 led his people to relative prosperity as
12 active participants in the oil sands region,
13 but he also says there is a limit to what his
14 people should have to endure. "We have
15 constitutional rights under Treaty 8 that are
16 being completely disregarded. Moose Lake is
17 the last place where our people can exercise
18 those rights which were promised to our
19 ancestors in perpetuity under the treaty. We
20 will not stand idly by and let the area be
21 destroyed", says -- said Chief Boucher,
22 adding, "Fort McKay First Nation is fighting
23 for its cultural survival as one of the
24 largest industrial projects on the planet
25 devours more of our land that has been our
26 home for "millennia".

1 Chief Boucher's position is exactly in
2 line with Canadian law known to everyone
3 since 1899. Alberta can take up land for
4 industry and settlement, but there is a
5 limit, and that limit is reached when
6 industrialization and settlement prevent the
7 meaningful exercise of treaty -- of our
8 treaty rights. "The potential destruction of
9 the Moose Lake area reaches and threatens to
10 cross over that line."

11 These are the words that are said by Jack Woodward,
12 Fort McKay's legal counsel in this matter. So I bring
13 that attention to you.

14 And here we are, standing again, once again,
15 advocating for our treaty rights which has been
16 infringed upon, and the Government continues to -- to
17 approve every project that comes before them.

18 I'd also like to -- like to bring your attention
19 to the -- the mine -- the proposed mine site which they
20 indicate will create 10,000 jobs. I have a son that is
21 24 years old and has never had a job in the -- in the
22 oil industry. He has tickets for entry onto a site but
23 has never been accepted, which I am very thankful for
24 so that will look -- so he can look after his health.

25 And our ancestors are looking down on us today,
26 and I am proud to stand here to say that I have done my

1 job to advocate for our people's future, the children's
2 future, for the protection of Mother Earth. Thank you.
3 Final Submissions of Ms. Asterick

4 MS. ASTERICK: Thank you to, Jean.

5 Yeah. The relevance of the court case against the
6 Moose Lake proposal is -- is the fact that cumulative
7 effects have reached the limit. They've reached the
8 limit, and no amount of science words can change that.

9 So, in conclusion, an overview is necessary to
10 make the best decision possible. Some of our board
11 would like to encourage you, the Panel, to be heroes in
12 your decision and take a hero's stance. It is with the
13 distress of local communities that we are here today to
14 offer statements that will assist your decision
15 regarding the proposed Frontier bitumen project. The
16 ultimate outcome of your decision will soon be exposed
17 and affect us long into the future.

18 This decision will have impacts for all of life on
19 our planet for the next seven generations, whether it
20 is built or not. It is our understanding, based on our
21 experience with Teck Resources in this hearing, that
22 the preconditioned need to maintain current
23 consultation process combined with ill-informed
24 inadequacy of the project plan does not meet best
25 interests and well-being. We are considering a
26 whole-world approach. Teck misrepresents global

1 interests and needs in a fully biased and self-serving
2 way.

3 As the joint review Panel, we hold you responsible
4 for a full overview of the Frontier Oil Sands Mine
5 Project. The name itself is a fallacy and presents a
6 perspective that is very misleading. "Frontier" is a
7 word meaning international border, edge of settlement,
8 or limit of knowledge, and this word was used to
9 colonize Canada. The word "frontier" perpetuates the
10 distreatment and discriminatory concept of terra
11 nullius that there can be vacant or unproductive land
12 and that Christians have the right to remove others who
13 are there and remove the resources for their own
14 benefit.

15 Keepers of the Athabasca hereby register our
16 objection to this concept and encourage you not to
17 offer approval of this project. Thank you.

18 THE CHAIR: Thank you, Ms. Asterick.
19 Thank you. The Panel has no questions. Thank you very
20 much for your participation.

21 We'll take a short break. It's -- just a sec.
22 Let's say 'til ten after 10, and then Mikisew will be
23 up. Thank you.

24 (ADJOURNMENT)

25 THE CHAIR: Mr. Gustafson, whenever you're
26 ready.

1 Final Submission by Mr. Gustafson

2 MR. GUSTAFSON: Thank you. Good morning,
3 Mr. Chair, Panel, Panel Secretariat.

4 Today, my colleague, Karey Brooks, and I will be
5 delivering Mikisew's closing argument. Before I start,
6 two -- two items that I'd like to bring to your
7 attention. First, my colleague has some exhibits that
8 she will use in her part of the presentation, which I
9 think now have an exhibit number.

10 MS. LACASSE: Yes. That will be Document
11 Number 700.

12 THE CHAIR: Mr. Gustafson, just for the
13 record, these are all materials that are already on the
14 record that --

15 MR. GUSTAFSON: Absolutely.

16 THE CHAIR: Okay.

17 MR. GUSTAFSON: The second preliminary matter
18 is a personal one. This is Day 2 of a slight allergy
19 issue I'm dealing with, so I will be, potentially,
20 wiping my eyes or coughing more than normal. I raise
21 it so it's not a distraction and, also, as a matter of
22 professional reputation, I do worry that people might
23 think I might be having emotions, and I'm pretty sure,
24 with my law degree, I had to transfer those for my JD.
25 So I just wanted to make sure everybody's clear on
26 that.

1 Okay. So Mikisew's closing argument is divided
2 into four sections. I'll begin by situating Mikisew's
3 submission for you; and then we'll provide an overview
4 of the legal framework for this proceeding; followed by
5 Ms. Brooks, who will take you through the evidence that
6 Mikisew submits is most relevant for your review; and,
7 in closing, I will summarize the disposition sought by
8 Mikisew.

9 So, first of all -- and please let me know if I'm
10 not speaking well into the microphone -- I want to draw
11 your attention back to the introduction in Mikisew's
12 written submission back in August. Mikisew stated
13 there that they would take a different approach in this
14 proceeding; specifically, Mikisew said they would focus
15 its participation on: One, bringing forward the best
16 Western science and Indigenous knowledge information
17 available about its key interests; two, showing the
18 Panel where Teck and Mikisew have found common ground
19 on ways to reduce the risks to Mikisew's interests;
20 and, three, helping the Panel understand how those
21 issues where further mitigative actions are needed can
22 be addressed through government actions and commitments
23 prior to final approvals.

24 As Ms. Lepine stated well on the third day of
25 Mikisew's Panel evidence, quote: (as read)

26 The first two panels provided evidence about

1 our needs and our concerns with the project.
2 We provided that evidence for a very specific
3 reason. It wasn't to debate Teck; it was
4 help you, Panel and Mr. Chairman, understand
5 why our joint conditions with Teck and our
6 recommendations to government are absolutely
7 necessary and supported by strong evidence.

8 Although you will hear again today that there are
9 still areas where Teck and Mikisew disagree about the
10 level of potential effects or risks to particular
11 environmental components that support Mikisew's rights
12 and culture, those differences do not place you in a
13 position of having to make a binary decision. Rather,
14 in Mikisew's submission, the evidence for Mikisew and
15 from Teck leads you to the same two outcomes: First,
16 the evidence confirms that the joint conditions
17 developed by Mikisew and Teck must be included as
18 regulatory conditions for the project to ensure Teck
19 does everything it can do to reduce or avoid impacts to
20 Mikisew's rights and culture.

21 Second, the evidence shows that issues remain that
22 can and must be addressed by governments before their
23 final approvals are issued for the project. I
24 emphasize "their approvals" because it is up to
25 governments to address the outstanding issues.

26 Next, I'd like to comment on how this hearing has

1 been unique. I'll start with the simplest. This is a
2 unique project in terms of its risks to Mikisew's
3 treaty rights and its most cherished places and
4 resources. It is the closest open-pit oil sands mine
5 ever proposed to Wood Buffalo National Park. It is the
6 first to involve mining in a watershed that flows
7 directly into Lake Claire, a key part of the Peace
8 Athabasca Delta, and it is the first to so directly and
9 substantially disturb the habitat of the Ronald Lake
10 bison herd. As you know, that herd is the only
11 disease-free bison herd available to Mikisew for legal
12 harvest in its territory.

13 This is also the first joint review panel to take
14 place after the world heritage reactive monitoring
15 mission and the Wood Buffalo National Park strategic
16 environmental assessments both confirmed that parts of
17 the Wood Buffalo National Park are failing to meet
18 international world heritage standards, and there are
19 causal linkages to the oil sands industry. That is a
20 significant shift from where we were at in 2014.

21 Next, this hearing is unique with respect to
22 assessing effects on Section 35 rights. First, this is
23 the first oil sands hearing where a joint review panel
24 has been presented with a formal methodology, not to
25 mention one collaboratively developed by an Indigenous
26 group and a Crown agency for how to assess project

1 effects on Section 35 rights. Unlike other
2 proceedings, this JRP has been presented with a
3 valuable road map to follow for carrying out that
4 assessment.

5 Second, this is also the first oil sands hearing
6 where a First Nation has undertaken a comprehensive
7 assessment of project effects on its treaty rights
8 specifically. The fact that the terms of reference for
9 Mikisew's rights and cultural assessment were developed
10 with Teck is notable, as it speaks to the collaboration
11 between Mikisew and Teck in this proceeding.

12 And, third, this is the first oil sands hearing
13 where the federal government has submitted evidence at
14 the hearing stage about its views of project effects on
15 Mikisew's treaty rights. The evidence provided by CEAA
16 confirms the project will have a high level of impact
17 on the treaty rights of the Mikisew. In Mikisew's
18 submission, all of this means that the guesswork that
19 has stymied previous regulatory proceedings around
20 Section 35 rights is not present here.

21 Finally, this hearing is different with -- with
22 respect to the key issue of project mitigation. Here,
23 the Panel has been presented with proposed regulatory
24 conditions jointly developed by Teck and Mikisew that
25 help to reduce a number of critical project effects.
26 Those regulatory conditions came out of the negotiation

1 of a participation agreement between Mikisew and Teck
2 which further evidences the real work that has been
3 done by Mikisew and Teck to establish a constructive
4 relationship and to resolve a number of the issues
5 important to Mikisew that are within Teck's power to
6 resolve or undertake.

7 As a result of those efforts, the scope of the
8 issues that need further mitigation has been narrowed
9 and allow this hearing to be more focused on core
10 outstanding issues. For those, Mikisew has provided a
11 concise package supported by clear evidence of the
12 measures that need to be taken by governments to
13 resolve the remaining outstanding issues and risks
14 associated with the project. That is the
15 Nikechinahonan framework.

16 As an anecdote, I did try to get Elder Marvin here
17 so we could continue our Cree lesson, but was
18 unsuccessful, which is, to some extent, a relief to me
19 because I have to say the word a number of times in
20 this -- through argument.

21 There is no doubt that this Panel faces a
22 complicated task as you prepare your report in your
23 decision. But with respect to Mikisew's core concerns,
24 you have a better road map than previous panels.
25 Mikisew submits that the evidence in this proceeding
26 will not only help you follow that road map but

1 supports Mikisew's request for the joint conditions and
2 government actions as laid out in the Nikechinahonan
3 framework.

4 Now I'd like to turn to review of the legal
5 framework that must guide you in the next few months.
6 I'd like to start with environmental assessments. One
7 responsibility of you, as a Panel, is to undertake
8 environmental assessments. As a planning tool that
9 identifies and evaluates potential consequences of a
10 project, environmental assessment is an integral
11 component of sound decision-making. An environmental
12 assessment is tasked with the management of future risk
13 and, in doing so, must be guided by the precautionary
14 principle. Lack of full scientific agreement or a
15 certainty should not be used as a reason for postponing
16 measures to prevent environmental degradation or to
17 reduce potential risks.

18 Here, the Panel must carry out an assessment
19 taking into account this principle so that government
20 decision makers can make rational and informed
21 decisions with an understanding of the consequences of
22 their decision which will ultimately be borne by the
23 Mikisew.

24 In undertaking this environmental assessment, we
25 ask the Panel to be mindful of the unfortunate
26 experiences that Mikisew has had in previous

1 environmental assessments. Mikisew often finds that in
2 trying to voice its concerns, the regulatory process
3 silences its perspective or, at best, treats Mikisew
4 elders and youth as less valid and less legitimate than
5 the perspectives of people who have interacted with the
6 issues only as words on a page or who won't live
7 and breathe the results. It is critical that, in
8 coming to your decision on this project, the Panel
9 place a high and equal value on the Mikisew Cree, its
10 knowledge, its culture, and its perspectives.

11 Moving on. Part 3 of the Panel's terms of
12 reference require you to consider information related
13 to potential environmental effects of the project on
14 Wood Buffalo National Park and its outstanding
15 universal value, or "OUV". The OUV of the park is
16 based on criteria which are set out in the world
17 heritage convention, the operational guidelines for the
18 World Heritage Committee, and a number of documents
19 developed by their advisory.

20 To be clear, the OUV is not synonymous with the
21 park as a whole. It is possible to increase risks to
22 OUV without pushing the full park over an ecological
23 tipping point. In Mikisew's submission, the three
24 attributes of the park's OUV that are most at issue in
25 this hearing are: One, the great concentrations of
26 migratory wildlife, migratory birds which is designated

1 under Criteria 7; the rare and superlative natural
2 phenomena of the large inland Delta, which is the
3 "PAD", which is designated under Criteria 7; and,
4 third, the predator/prey relationship between wolves
5 and wood bison that has continued unbroken over time,
6 which is designated under Criteria 9.

7 Canada has recently undertaken an inclusive
8 process for defining the desired outcomes or objectives
9 for each of those three OUV attributes. These
10 objectives provide an important measure against which
11 you can assess risks that the project poses to the OUV.
12 In the -- the written version of this we will be
13 providing shortly after I sit down, we go through those
14 three -- the outcomes for those three criteria in
15 detail. For the sake of time, I won't do that now.
16 I'll just refer you there. The desired outcomes for
17 the OUV are set out in the strategic environmental
18 assessments. That's Registry Number 401 at pages 3-14.

19 I will, however, walk you through some of the
20 principles from world heritage guidance for how you can
21 assess effects or risks of a project on an OUV. First,
22 Criterion 7, which, again, is the PAD and migratory
23 waterfowl has both objective and subjective aspects in
24 the world heritage system, which means that
25 experiential, cultural, and spiritual values of those
26 attributes need to be considered.

1 Next, cultural understandings of the OUV from
2 Indigenous peoples should not be ignored, even where
3 the criteria are, in the world heritage system,
4 natural -- nature-based rather than culture-based.

5 Another important principle is the Indigenous
6 knowledge and the social, cultural, religious, and
7 spiritual values and practice of Indigenous peoples
8 must be understood and respected when considering
9 biodiversity and OUV values.

10 And the last one I'll mention: Conservation
11 values should be interpreted in a manner that includes
12 an understanding of the affected people, including
13 Indigenous people and their relationship with the OUV.

14 What all of this means, in Mikisew's submission,
15 is that when you consider effects on the OUV, you must
16 consider Mikisew's relationship with the OUV in that
17 assessment.

18 Next, as you've heard, I think, from every party
19 giving closing arguments, you must consider the public
20 interest in your work as -- and in your role as the
21 AER. Guidance from the Supreme Court of Canada
22 confirms that the public interest includes the specific
23 interests of Aboriginal people and the impacts that a
24 decision will have on Section 35 rights.

25 The Supreme Court has also indicated that a,
26 quote: (as read)

1 Special or heightened public interest arises
2 when there are constitutional dimensions of a
3 proposed decision.

4 As the Supreme Court of Canada has said -- stated,
5 quote: (as read)

6 A project authorization that breaches the
7 constitutionally protected rights of
8 Indigenous peoples cannot serve the public
9 interest [end quote].

10 It is, therefore, necessary that the Panel, in its
11 consideration of whether this project is in the public
12 interest, consider the impacts or risks the project may
13 pose for Mikisew's constitutionally protected rights
14 and, in Mikisew's submission, give effect to the joint
15 conditions and the Nikechinahonan framework.

16 For the court reporter, I can spell that
17 afterwards.

18 In Mikisew's submission, the public interest
19 threshold can only be met when the Panel incorporates
20 the joint conditions in its decision as the AER and
21 recommends to the Governments of Canada and Alberta
22 that they commit to the Nikechinahonan framework before
23 issuing final approvals.

24 Next, I'd like to outline the Panel's
25 responsibilities with respect to Aboriginal issues.
26 Part 3 of your terms of reference imposes two different

1 types of requirements with respect to Aboriginal rights
2 and interest, a procedural requirement to receive
3 certain types of information, and a substantive
4 requirement to consider various criteria in preparing
5 your report as they relate to Aboriginal rights.

6 You have received clear and uncontested
7 information about the nature of Mikisew's treaty rights
8 and the risks and effects that this project may create
9 for those rights. For example, Mikisew asserts that
10 its treaty right to harvest bison is engaged in this
11 proceeding. Mikisew is not asking you to decide as a
12 matter of law that it has a specific right to harvest
13 bison as a part of Treaty 8, but submits that the terms
14 of reference requires you to assess effects on
15 Mikisew's right as they are asserted.

16 Mr. Chairman and Panel, a number of factors must
17 guide you as you consider effects on treaty rights.
18 First, given the fundamental importance of Section --
19 given that the fundamental purpose of Section 35 is the
20 reconciliation of Aboriginal and non-Aboriginal
21 Canadians in a mutually respectful relationship, the
22 Panel has a duty to consider how your decision will
23 give effect to reconciliation.

24 Second, you must be mindful that there are
25 differences between the evaluation of environmental
26 effects and the consideration of effects on treaty

1 rights. It is now widely recognized that a biophysical
2 approach to assessment of impacts on Indigenous rights
3 is unduly restrictive. To really understand impacts to
4 treaty rights and what mitigations are required here,
5 the factors that influence whether and how Mikisew
6 members exercise their rights and culture must be
7 considered.

8 In addition, consideration must be given to the
9 avoidance of areas and resources that can result from
10 perceived contamination or incompatibility with
11 cultural values. Assessing impacts on treaty rights
12 also requires an understanding of the context of
13 cumulative effects in which those rights are exercised.

14 An assessment of effects on treaty rights must
15 also be based on an understanding that there are
16 historical, cultural, familial, and spiritual reasons
17 why certain areas and certain resources are
18 particularly critical. Assuming the Mikisew members
19 can, quote, "go elsewhere" in response to impacts would
20 make for a flawed assessment. It would also ignore the
21 evidence from the Mikisew members you met in Fort
22 Chipewyan, like GM, Larry, Jocelyn, and Terry, that
23 they can't go elsewhere for cultural and economic -- or
24 ecological reasons.

25 For this project, as I mentioned, a rights-based
26 methodology was jointly developed by Mikisew and the

1 Canadian Environmental Assessment Agency. It is the
2 first publicly available methodology of its kind.
3 Ms. Candace Anderson, the Crown consultation
4 coordinator from CEAA for the project, testified that
5 the rights-based methodology was, in fact, intended to
6 be used during the environmental assessment of the
7 project, not just in Crown consultation.

8 She testified that Canada recognized that a
9 structured approach to assessing impacts to rights and
10 culture was required. And the methodology was informed
11 by and consistent with case law, academic literature,
12 and best assessment practices. She also testified that
13 that methodology underwent some senior management
14 review.

15 As described by both Ms. Lepine and Ms. Anderson,
16 it was necessary to develop that methodology because of
17 inadequacies in traditional environmental assessments.

18 Ms. Anderson described the difference in this way,
19 and I'll read this quote: (as read)

20 The environmental assessment process, as set
21 out today, does focus quite extensively on
22 biophysical assessments. What makes this
23 approach particularly unique is that it
24 does -- that it does take into consideration
25 impacts on rights which could be broader than
26 what the statute sets out, things like

1 consideration of how a sense of connection in
2 place and attachment to the lands can be --
3 can better be considered through a
4 rights-based approach, and that's what this
5 methodology sets out to capture.

6 Mr. Lepine provided examples -- further examples
7 of the differences between rights-based assessments and
8 environmental assessments. For example, she explained
9 how the methodology would assess how shifts to movement
10 of the Ronald Lake bison herd would result in impacts
11 to Mikisew's culture and way of life.

12 So that it's fresh in your minds, I will walk you
13 through very briefly the three steps of that
14 methodology. The first step is to determine the
15 context in which potential impacts on rights occur.
16 That means identifying the conditions, the communities
17 identified for supporting its rights, and understanding
18 how historic, existing, and approved activities are
19 already impacting those rights.

20 The second step, and only after completion of the
21 first, is to then evaluate potential project effects on
22 rights. And there's various principles set out in that
23 methodology to help you with that aspect of your work.

24 And the third step is follow-up and evaluation.

25 The joint Mikisew-CEAA methodology provides a
26 cogent and principled approach for conducting an

1 assessment of impacts of the project of Mikisew's
2 rights that meets all legal and methodological
3 standards.

4 You will recall that the rights-based methodology
5 was applied twice; once by Dr. Candler and, second, by
6 the Canadian Environmental Assessment Agency. Both
7 assessments found that the potential for serious
8 adverse impact to Mikisew's rights and culture could
9 occur if the project is approved without further
10 mitigation measures.

11 Next, I'd like to comment on what Alberta's
12 land-use planning regime means for how you discharge
13 your responsibilities in relation to Aboriginal issues.
14 Interpreting Section 20 of the Responsible Energy
15 Development Act to constrain your consideration of
16 cumulative effects on rights would be a serious error.
17 To assume that consistency with LARP simultaneously
18 discharges your consideration of cumulative effects on
19 treaty rights would be inconsistent with the approach
20 set out by the Courts that I've just described. It
21 would also be inconsistent with statements made by
22 senior Alberta Environment and Parks officials to
23 Mikisew during this regulatory process that rights were
24 not, in fact, considered when developing LARP.

25 LARP does not purport to set thresholds or
26 measures relating to treaty rights, and nothing in the

1 statutory scheme for this Panel would allow for such an
2 interpretation. Confirming compliance with LARP does
3 not confirm compliance with the Constitution Act of
4 1982.

5 As the last part of this section, I would like to
6 flag that it is important to recognize that your duty
7 to act constitutionally also applies to your
8 recommendations. The federal court has held that the
9 obligation of an administrative body to act
10 constitutionally also arises when a body is making
11 recommendations. This means that when you are
12 considering recommendations for measures to mitigate
13 effects on rights, you must be informed by the
14 imperative of reconciliation.

15 Mr. Chair and Panel, the evidence before you and
16 the principles just described support Mikisew's
17 submission that the joint conditions proposed by
18 Mikisew and Teck and the Nikechinahonan framework are
19 essential for respecting Mikisew treaty rights.

20 As a final matter in this section, I'll turn to
21 the issue of the ACO reports. As part of discharging
22 your duties, the Panel must consider the weight to give
23 to evidence it's received. Where a party has provided
24 evidence but declined to adopt it under oath or make
25 itself available for questioning, the decision-maker or
26 trier of fact must be very cautious in attributing any

1 weight to that evidence.

2 Alberta has filed the ACO report along with the
3 more recent ACO hearing report in this proceeding. The
4 ACO reports together purport to provide opinions on
5 what actions or mitigations are required to address
6 adverse effects on treaty rights. Mikisew submits that
7 these reports be given no weight in your deliberations,
8 and that to do so would undermine the fairness of this
9 proceeding.

10 Unlike other participants in this proceeding, the
11 ACO has twice submitted materials without making itself
12 available for questions. Despite providing opinion
13 evidence, the ACO has not provided any qualifications
14 for the person providing it, nor has the ACO adopted
15 its reports under oath.

16 And there are still further reasons why the Panel
17 cannot give weight to the ACO reports. For one, the
18 findings of the reports are inconsistent with evidence
19 that is on the record regarding mitigation measures for
20 bison and project-related cumulative effects.

21 To the extent that the ACO reports rely on
22 evidence that is provided out -- has -- sorry. To the
23 extent that the ACO reports rely on evidence that is
24 from outside of this record, which appears to be the
25 case, the Panel's reliance on those reports would
26 significantly undermine the fairness of this

1 proceeding.

2 As explained by Mr. Stuckless, the original ACO
3 report relies on an approach that is inconsistent with
4 clear guidance from the Courts for considering impacts
5 to treaty rights. The absurdity of the ACO's report
6 was made clear in Mikisew's evidence which showed,
7 among other things, that the ACO ignored key reports
8 and that the ACO had confirmed to Mikisew that,
9 typically -- and this number is -- comes from the
10 ACO -- 97 to 99.5 of First Nation concerns regarding
11 impacts of oil sands projects on treaty rights are
12 determined by the ACO to not be site-specific, no
13 matter what evidence is provided by a First Nation, and
14 that includes 100 percent of concerns that are ever
15 raised in relation to water.

16 The new ACO report adopts the same fundamentally
17 flawed approach as the original report critiqued by
18 Mr. Stuckless. Importing the ACO's analysis into yours
19 would result in errors by this Panel and create
20 procedural unfairness.

21 With that, I'll turn the podium over to my
22 colleague, Karey Brooks, who will speak to Mikisew's
23 impact assessments following the steps of the rights
24 methodology.

25 Final Submissions by Ms. Brooks

26 MS. BROOKS: Thank you.

1 As Mr. Gustafson said, my comments are going to
2 provide an overview of Mikisew's assessment of adverse
3 impacts to its rights and culture and to the
4 environment generally.

5 Mikisew submits that the project has the potential
6 to result in adverse impacts to its treaty rights and
7 culture, the Ronald Lake bison herd, water quantity,
8 water quality, air quality, human health, migratory
9 birds, and the OUV of the park.

10 You've heard that Mikisew has worked diligently
11 with Teck to develop proposed conditions that will
12 mitigate or reduce many of these adverse impacts. As
13 Chief Waquan stated: (as read)

14 Mikisew leadership appreciates its
15 relationship with Teck and the work that has
16 been done through the participation agreement
17 and the joint conditions to resolve issues
18 that are in Teck's power to resolve or
19 undertake.

20 As I discuss the potential impacts, I will refer
21 to these mitigations where appropriate. However, I
22 note that they can be found in full in Mikisew's
23 initial submission CEEA Doc 497, Appendix 2.

24 As stated throughout the proceedings, some of the
25 important mitigations are beyond the control of Teck
26 and, instead, require government action. Mikisew has

1 proposed a number of government actions through its
2 Nikechinahonan framework to address outstanding risks
3 to Mikisew's rights and culture. And that framework is
4 Exhibit 621. I will also refer to these government
5 recommendations where appropriate in this presentation.

6 My presentation follows the rights methodology
7 structure referred to by Mr. Gustafson, and I will
8 start, therefore, with the conditions Mikisew members
9 need to support a meaningful exercise of their rights
10 and culture. First, Mikisew members described living a
11 bush way of life. The evidence presented made it clear
12 that the ability of Mikisew members to practice their
13 Aboriginal and treaty rights is connected to a healthy
14 land-based way of life. This includes the harvesting
15 of plants, fish, and other wildlife, such as bison,
16 moose, and migratory birds in accordance with Mikisew's
17 seasonal round. You've heard that, for Mikisew, every
18 season has a purpose. Elder Terry, Elder George, and
19 Jocelyn Marten gave extensive evidence about what
20 activities they did with their families, in what areas,
21 and at what times of year.

22 Mikisew evidence also shows that its way of life
23 is more than hunting and trapping. Relying confidently
24 on clean water and abundant land and resources in
25 familiar areas is critical for Mikisew way of life.
26 Mikisew members described in detail living on the land

1 in places where their ancestors lived previously,
2 including at cabins and camps along the Athabasca River
3 and around Lake Claire. As put by Elder Terry:

4 (as read)

5 I was born and raised out on the land. We
6 had love there. We had ownership there with
7 our parents, all our family members.

8 Everything was your friend. You're just in
9 harmony with nature.

10 She reinforced how integral the bush way of life is to
11 Mikisew identity. She's testified: (as read)

12 We are part of the land. We are with the
13 land and water as soon as the day you are
14 born. We have that identity. We have that
15 ownership right from the day we are born.

16 Second, the PAD is a key cultural landscape for
17 the Mikisew. It is a primary location for harvesting
18 social, economic, political, and cultural activities
19 that are vital to the cultural continuity of Mikisew.
20 The Athabasca River provides an essential corridor for
21 Mikisew members to travel and harvest. It also plays
22 an integral role in creating and replenishing the PAD.

23 As stated by older -- Elder George: (as read)

24 We need the two rivers to flow properly to
25 have enough water to flow, the Athabasca
26 River and the Peace River, because if they're

1 flowing when they have high water, they're
2 very, very powerful, and they bring all the
3 water into the Delta. It makes a clean,
4 healthy environment.

5 Mikisew testified that the PAD is their grocery
6 store, their classroom, their medicine cabinet, their
7 church, their highway, their photo album, and the place
8 where their most happiest memories live. Elder George
9 reflected fondly on his memories of the PAD. He
10 stated: (as read)

11 I was born in the Delta. Birch Mountain
12 country is where I was raised. I was a
13 trapper at a very young age. Everything then
14 was very nice. The water level was high. We
15 had all different types of species in our
16 Delta. Everything was alive. The humans
17 were happy, the animals, everything. We were
18 happy to live on the land.

19 Elder Larry confirmed the abundance of the
20 resources in the PAD. He said it's critical to
21 Mikisew's way of life. He said: (as read)

22 We had a lot of water. Everything was good.
23 And you mention "buffalo". They were all
24 over. The Delta was rich, the whole Delta,
25 not just one area.

26 Jocelyn described that the PAD is her therapist

1 and essential for helping youth live a healthy Mikisew
2 life. She stated: (as read)

3 When I'm going to Lake Claire, it's like I'm
4 going home to see my therapist. I'm sure a
5 lot of people here maybe have their own
6 therapist. I have my own, which is
7 Lake Claire, Gull River, Frog Creek. It's a
8 place that just takes everything away from
9 me. Again, the memories come back. It's
10 just a great feeling. It's my therapist, my
11 mother, my home.

12 The northern part of the project will cross into
13 the Buckton watershed. This watershed flows directly
14 northward into Lake Claire, into the PAD. Elder George
15 emphasized the importance of this watershed. He said:
16 (as read)

17 Buckton River is very, very important. It
18 brings the life to the environment, to the
19 habitat, to all the animals, to the rivers.
20 They're healthy. And that's what I like
21 about that area, because in other places,
22 they don't have much water, so pollution
23 settles. And with that settling, you then
24 have thistles and you have willows growing.
25 But in Buckton, you know there's still hope.
26 It's still healthy. That's my territory.

1 That's where I loved hunting for all types of
2 animals. That's where I did my trapping, and
3 that's where I made by livelihood.

4 Other Mikisew members agree that the health of the
5 Buckton watershed is necessary for the integrity of the
6 PAD and Mikisew's cultural and spiritual relationship
7 to it. Jocelyn explained: (as read)

8 The river from Birch Mountain flows into the
9 Buckton area, into the lake, and it's healthy
10 water that flows through Buckton.

11 She also stressed the importance of this place. She
12 said: (as read)

13 And I cannot leave that area because it's
14 where I grew up. That's my area. That's
15 where I'm from. It's my home. It's the
16 place I grew up. It's the place I was taught
17 my way of life. It's memories I have as a
18 child. It's important for me to go to these
19 places, to teach my children, my two girls
20 and my grandson especially, and to take other
21 families there to show them places I've been.

22 Third, a critical condition is water. It is not
23 possible to spend time in Fort Chipewyan without
24 understanding the phrase "water is boss". Clean,
25 abundant water provides for safe drinking and healthy
26 wildlife and vegetation and supports the ecosystem in

1 the PAD. It is needed for Mikisew people to travel
2 throughout the area and to have the resources required
3 for harvesting.

4 Elder Terry put it plainly: (as read)

5 In our territory, water is everything. We
6 need plentiful, healthy water to access our
7 lands and have resources to be able to
8 harvest. Everything in our territory, in our
9 land is connected to water, and that's why
10 water is boss. It is life. It gives lives
11 to humans, to our water systems, to the
12 rivers, the lakes, for accessibility, to
13 practice our rights, to live our way of life,
14 to give good, clean food for the animals, to
15 give good, clean water for the animals to
16 drink. Every living specie needs good, clean
17 water to be able to live. That's where
18 "water is boss" came from. Quality and
19 quantity of water is crucial for us to be
20 able to go into our territories, our lands
21 because the river systems and the lakes are
22 our transportation.

23 Jocelyn also stressed the importance of water.

24 She said: (as read)

25 First of all, we need healthy water before we
26 can harvest anything. It's important for the

1 birds and all other animals. We need water
2 levels to be high at the right times. Water
3 is important all year round, but in the fall
4 and spring are the most critical times for
5 the water to be able to harvest in fall or
6 spring. Floods give freshwater into the land
7 lakes that you need for healthy plants.

8 Water stays in the summer to keep healthy
9 vegetation. High springwater will tell you
10 how the year will help you with your
11 harvesting throughout that year. You can
12 predict whether it's going to be a good
13 summer, a good fall, a good winter harvest.

14 She emphasized passing down knowledge requires water.

15 She said: (as read)

16 To pass on my knowledge and my teachings to
17 my children and my grandchildren, I need to
18 access my traditional hunting, trapping,
19 fishing areas, my home. I need water. I
20 need clean water.

21 Similar sentiments were expressed by Elder George, who
22 stated: (as read)

23 I just want to refer what a wonderful life we
24 had when the water was high.

25 Fourth, bison is a key component for the meaningful
26 exercise of rights and culture. Bison is a preferred

1 meat. It is also a cultural keystone species to the
2 Mikisew with skulls used in sweat lodges, as alters,
3 and in ceremonies in many households. As stated by
4 Elder George: (as read)

5 Everybody relies on bison. Even the animals.
6 For example, the wolves. They kill bison for
7 food. Then the little birds will come and
8 feed off that carcass of the bison. The
9 foxes will come as well and eat from that
10 kill. So everybody -- all the animals had
11 food from bison. We do not kill the bison to
12 have trophies, we only kill bison for
13 survival and to bring home food.

14 The bison hunt and the practices and customs that
15 accompany the hunt are also considered by Mikisew
16 members as important opportunities for transmission of
17 culture and knowledge from Elders to younger land
18 users.

19 Dr. McCormack, Professor Emeritus at the
20 University of Alberta and ethnohistorian, filed a
21 report that describes Mikisew's reliance on bison. She
22 stated that the Indigenous treaty signatories
23 understood that the treaty promised them the continued
24 freedom to choose their way of life and to use all
25 wildlife resources in the future, including bison. She
26 stated that the, quote: (as read)

1 Treaty commissioners were -- made the
2 strongest assurances that nothing would
3 interfere with the land-based resources and
4 way of life.

5 Dr. McCormack's findings are consistent with the
6 community evidence collected by Dr. Candler and
7 detailed in his report. Dr. Candler stated: (as read)

8 It is clear that Mikisew members have relied
9 on bison, both culturally and for sustenent
10 purposes for generations. They continue to
11 rely on them today.

12 He notes: (as read)

13 Although Mikisew relationship with the use of
14 bison has remained continuous, their
15 practices have had to change because of park
16 regulation and reduced access.

17 Mikisew evidence showed that the conditions required
18 for harvesting of bison include healthy bison, abundant
19 bison, accessible bison in preferred locations, legal
20 harvest of bison, preferred means of harvest away from
21 industrial disturbances and where continuity between
22 generations can be maintained.

23 Fifth, abundance. Abundant resources are
24 critical. Treaty -- Mikisew's treaty rights depend on
25 having access to a sufficient quantity of each kind of
26 traditional resource such as moose, bison, migratory

1 birds, and fish in culturally relevant areas. Elder
2 Rita confirmed: (as read)

3 Prior to 1899, the Mikisew people, our
4 ancestors, and our families, our parents, our
5 grandparents had an abundance of everything.
6 They were very wealthy. They could harvest
7 anything they wanted.

8 Mikisew members testified that the exercise of their
9 treaty rights requires a sufficient diversity or
10 richness of resources. This allows Mikisew members to
11 maintain a seasonal round so that no resource becomes
12 depleted through overharvesting.

13 Sixth, Mikisew evidence shows that experiencing
14 environmental health and being able to trust the
15 quality of water and traditional resources is a
16 necessary condition for the exercise of Mikisew's
17 rights, and this was described through the notion of
18 certainty. Elder Terry spoke of the importance of
19 certainty in places of knowledge transfer in
20 particular. She said: (as read)

21 We need certainty to be able to go out to our
22 areas, to our land where we live in harmony
23 with nature. We need -- where we need to be
24 able to go out there and teach our young ones
25 about exactly where they came from, who they
26 are, and what they need to be able to

1 identify themselves as Mikisew Cree First
2 Nation people so they don't get lost in the
3 future or they don't know where they come
4 from. We need that. If water is polluted or
5 perceived to be polluted, confidence in the
6 resources erodes.

7 As put by Elder George: (as read)

8 When you see or notice water is not healthy,
9 you will notice that the water has a funny
10 smell, and no one wants to go there. Even
11 I'm afraid to walk in the water because I'm
12 afraid that it's all polluted, and I don't
13 want to get ill. You know how the water is
14 not healthy. You see how the grass grows. I
15 always observe how water flows. In the
16 wintertime, you can tell when the water is
17 polluted because sometimes I take my axe and
18 I make a hole in the ice, and the water looks
19 black. It's black, so I know it's polluted.
20 I'm not a scholar; however, I do know my own
21 way of life. I learn from observing. I
22 learn how the environment is.

23 Seventh, a persistent theme in what Mikisew members
24 need to exercise their rights is access. As a
25 community dependent on the Delta, adequate amounts of
26 water are needed from Mikisew members to access

1 harvesting areas where their customs, practices, and
2 traditions can occur.

3 As put by Jocelyn: (as read)

4 To pass on my knowledge and my teachings to
5 my children and grandchildren, I need access
6 to my traditional, hunting, trapping and
7 fishing areas, my home.

8 Elder Terry stated: (as read)

9 We need plentiful healthy water to access our
10 lands and have resources to be able to
11 harvest. [She summarized] Quality and
12 quantity of water is crucial for us to access
13 our territories, our lands because the river
14 systems are our transportation.

15 Eighth, sense of place and maintaining ongoing
16 relationships and connections with lands and water is a
17 necessary condition for Mikisew's rights, including
18 with respect to spiritual connections. As Elder Terry
19 stated: (as read)

20 We not only have the land as a teaching tool.
21 We have our ceremonies out there. We have
22 our own spiritual grounds. Everything that
23 you do with ceremony has to be done in a
24 very, very clean area without disturbance.
25 So we need our land to be able to teach our
26 young the way of life.

1 Sense of place is also tied to identity. Again, as put
2 by Elder Terry: (as read)

3 There is such a tremendous amount of
4 connection between the people and the land.
5 You just can't separate them. It's a good
6 feeling when you go out there. I put my hand
7 in the water and you're back home and it's
8 beautiful.

9 Mikisew indicators of a supportive sense of place
10 include solitude, lack of sensory disturbances, safety,
11 and cultural connections to an area. Conditions that
12 are inconsistent with experience required for the
13 exercise of rights include, among other things,
14 industrial sights, smells, and sounds.

15 And, finally, you heard throughout the quotes that
16 I've just referred to and in the testimony by the
17 Mikisew Cree, it's equally important for Mikisew's
18 rights and culture to pass down this way of life for
19 future generations. As Elder Terry put it: (as read)

20 We need our land to be able to teach our
21 young our way of life. That's the importance
22 of the land and our people. They're
23 connected.

24 Next, in accordance with the rights-based methodology,
25 I'd like to turn to how these current conditions that
26 we've described have been deviated from from the

1 conditions that are necessary to support Mikisew's
2 rights and culture before I go on to consider the
3 project effects.

4 The evidence confirms that industrial development
5 has contributed significantly to the negative effects
6 on Mikisew's territory and rights. Elder Larry said:
7 (as read)

8 The Delta was rich. The whole Delta, not
9 just one area. There were no oil plants in
10 those days. There was one, Suncor. I
11 remember that was the only plant out there.
12 Ever since then, we started losing water.
13 There's willow and grass. The buffalo are
14 all gone. The fish are no longer what they
15 used to be. For the water, we're right down
16 in Lake Mamawi. That's our main travelling
17 route, going out to the Delta. There used to
18 be 8 feet of water; now we're lucky if we
19 have 2.

20 What the evidence demonstrated is that, for Mikisew
21 members, the once vibrant PAD is no longer meeting the
22 conditions Mikisew members require to confidently and
23 productively exercise their rights. You heard
24 statements from the Mikisew members that the PAD used
25 to be filled with many species and water was abundant,
26 but now water levels are in significant decline, which

1 is driving away many of the species that used to live
2 in the PAD such as the muskrats and the bison.

3 Mikisew members also described how as a result of
4 low water levels, travel to different parts of the PAD
5 can be difficult if not impossible. Elder Sloan spoke
6 to this point. He said: (as read)

7 Whenever you travel, it's difficult. Last
8 summer, I was travelling in my boat, and in
9 Lake Mamawi, I barely got through. I turned
10 by boat -- my motor lower, and even then, I
11 hit dirt because the water level is too low.

12 Mikisew members no longer have certainty about the need
13 for their land and waters. Elder Larry said:

14 (as read)

15 If -- the water's not safe to drink. We
16 never drink it. Years ago we drank from the
17 creek and river, but now we have to carry our
18 own water. Water there is not safe.

19 Mikisew evidence shows that the availability of healthy
20 and accessible Wood bison has been reduced to the
21 Ronald Lake bison herd. While there are bison herds in
22 the park, Mikisew's evidence and the recent strategic
23 environmental assessment for the park show the park
24 bison are diseased, diminishing, and losing habitat due
25 to drying trends and the spread of invasive -- evasive
26 vegetation.

1 Elder George testified the buffalo are also
2 affected by low water. He said: (as read)

3 We had a lot of buffalo back in our area.

4 Now they're disappearing because of the water
5 levels. Now they have thistle, and this is
6 really taking over the Delta, and it's really
7 affecting the animals, the buffalo. They're
8 unable to survive, so they move away. The
9 muskrats used to live on goose grass. That
10 was their feeding area. Because back then,
11 the water was clean; the air quality was
12 good. Now, with low water depleting, all the
13 living species are being affected.

14 Elder Sloan also commented that the Delta is drying and
15 affecting the buffalo.

16 In addition to the bison, Mikisew's evidence shows
17 that other traditional resources in Mikisew's territory
18 are no longer available in sufficient amounts to meet
19 the harvesting levels that they require. Populations
20 of caribou are rare and declining. Populations of
21 moose are declining. This is also true of fish. As
22 stated by Elder Sloan: (as read)

23 In the past, we used to go up Birch River in
24 my trapping area, and in the fall we would
25 set nets, and we would get a lot of fish. We
26 used to hang fish for the winter. There was

1 a lot of Jackfish, a lot of whitefish. Since
2 they started mining industry, we are losing
3 our fish.

4 I remember in the wintertime, right
5 below our winter cabin, we would set small
6 nets. We would check the nets every two hour
7 [sic]. We had so many whitefish.

8 Today, there's no fish. There's more
9 dams. Water levels are very, very low. And
10 that is very, very sad to see.

11 It's also true of migratory birds. As stated by Elder
12 Larry: (as read)

13 There's very few birds that come here in the
14 springtime. They have no place to feed.
15 They just come here and go right through. If
16 you're lucky, you're in their path when
17 they're flying, and you might get a few
18 birds, not like the old days.

19 It is also true of muskrats another cultural
20 key -- another cultural keystone species.

21 Elder Larry said: (as read)

22 In the winter months, I used to see when
23 it -- the water was high. I used to see
24 muskrat -- muskrat houses in the wintertime.
25 Now you see nothing like that. It's all
26 willow and grass.

1 Loss of access is a big concern. When waters fall
2 below Mikisew's navigation threshold, members are not
3 able to travel to their preferred routes. Hazards such
4 as rocks and sand bars make it difficult and dangerous
5 to travel by boat. Aquatic weeds, grasses, and willows
6 can further increase and reduce accessibility, and low
7 water levels make it difficult to travel the harvested
8 resources back to Fort Chip.

9 Mikisew witnesses described how when the water
10 levels are too low, they have to get out of their boats
11 and push them, or they have to pull their boats to move
12 them. As stated by Elder George: (as read)

13 Today, when I try to go out to my land, I
14 find it difficult. I'm unable to recognize
15 where I used to travel. For example, Little
16 Sweet Grass Creek where I used to travel,
17 right now, there's willows growing there.

18 Other members describe similar occurrences. Mikisew
19 members also described how because the water levels are
20 lower, certain travel routes freeze over, making them
21 inaccessible.

22 Additionally, Mikisew members indicate that
23 industrial developments have resulted in a loss of the
24 sense of remoteness, solitude, privacy, and loss of
25 comfort and knowledge of the landscape. The stress
26 created by low water levels in particular are -- is

1 acute.

2 You will recall that Elder George spoke powerfully
3 about the great sense of loneliness he has when he sees
4 the current degraded state of Buckton Creek, Lake --
5 and Lake Claire.

6 Finally, it's important to note that Mikisew's
7 evidence shows that the plans, policies, and frameworks
8 and other measures developed by governments to address
9 cumulative environmental effects are not effective with
10 respect to impacts to Mikisew's Aboriginal and treaty
11 rights. Consequently, the LARP frameworks for
12 mitigating project effects on Mikisew's rights and
13 culture cannot, Mikisew submits, be relied on.

14 Alberta, in fact, has acknowledged that LARP has
15 not included effective measures to protect treaty
16 rights, contrary to the ACO report. Evidence from
17 Mikisew and Parks Canada led to the same conclusion.
18 The surface water quantity management framework cannot
19 be treated as a mitigation measure for effects on any
20 project on water quantity since it does not take into
21 account Mikisew's navigation needs. The draft
22 biodiversity management framework cannot be treated as
23 a mitigation measure for effects on bison since
24 indicator thresholds or management respondents --
25 responses for Wood bison are simply not included.

26 The surface water quality management framework and

1 air quality management framework also cannot be treated
2 as mitigation measures, since, again, there are no
3 triggers, threshold, or management responses for key
4 oil sand-related contaminants in the areas surrounding
5 the park, nor do the LARP frameworks assist with
6 mitigating effects on the OUV of the park.

7 I'd now like to turn to the potential impacts from
8 the project to Mikisew's rights and culture.

9 You've been provided with a handout of figures
10 that have been reproduced from the slide decks from
11 Panel 2, and I may refer to those from time to time as
12 a visual aid.

13 I'm going to start with bison. The ability to
14 hunt bison, and, in particular, the Ronald Lake bison
15 herd, is of utmost importance to Mikisew, its culture,
16 and its way of life. As I just detailed, Mikisew
17 members explained how they and their ancestors would
18 rely on bison for food. They also described the
19 significant decrease of bison within their territory.
20 You heard that the Ronald Lake bison herd is the only
21 healthy accessible herd to Mikisew. The bison in the
22 park are diseased and are legal to hunt. Mikisew
23 members, therefore, described how it was important for
24 them to have confidence that the Ronald Lake bison herd
25 will continue to be sustainable, healthy, and viable.

26 Mikisew submits that the project represents a

1 serious risk to the Ronald Lake bison herd. The herd
2 is a small herd of about 150 to 200. Dr. Komers
3 testified that data collected over the past four years
4 by the University of Alberta and Indigenous knowledge
5 suggests that the population of the herd is not growing
6 and has not been growing for decades.

7 The current location of the herd is depicted in
8 the yellow points in Figure 1 attached to your handout,
9 and that's taken from Dr. Kopach's slide deck. ECCC
10 reported that the project will overlap with 19 percent
11 of the range, and that's depicted in black in those
12 handouts. But because of this -- but because the
13 project will also remove connectivity to the south, the
14 project will actually affect 24 percent of the total
15 range of the herd.

16 I think you're being provided with hard copies of
17 the handouts now.

18 Dr. Candler testified that with the addition of
19 the project, 91 percent of Mikisew's preferred bison
20 harvesting areas will be removed. Dr. Candler also
21 testified that Mikisew harvers [sic] are unlikely to go
22 elsewhere, given the difficulty in recreating the same
23 kinds of cultural confidences and cultural attachments
24 in new areas.

25 Dr. Kopach testified [sic] the habitat
26 availability for the Ronald Lake bison herd. He

1 described the unique landscape features required for
2 good quality habitat for the herd based on western
3 science and Indigenous knowledge.

4 To apply his habitat availability model,
5 Dr. Kopach relied on satellite image analysis and
6 Indigenous knowledge of the current range, vegetation
7 cover, and the current known bison movement in
8 different seasons. And using this information, he
9 determined the remaining areas of quality habitat.

10 His conclusions are reproduced in the handout at
11 Figure 2. The figure shows the distribution of
12 available habitat outside the current home range in
13 summer and winter. Areas of high quality habitat are
14 shown in dark green and located to the northwest of the
15 current range inside the park.

16 Dr. Kopach noted that: (as read)

17 Although habitat is available in the south,
18 the collar data indicates that the bison
19 largely avoid this habitat likely because of
20 sensory disturbance.

21 Areas with poor quality habitat are shown in red, and
22 they are located along the McIvor River and Buckton
23 Creek. According to IK, it is more difficult for the
24 bison to cross these areas because they're relatively
25 wet, and they often contain windfall and trees, which
26 makes bison passage difficult.

1 In his conclusion, Dr. Kopach concluded:

2 (as read)

3 There's a very real risk that the bison will
4 move further into the park. If the herd
5 moves into the park, they will not be
6 accessible to Mikisew, and as noted by Teck,
7 this also creates a risk of disease from
8 mixing with the Delta herd.

9 Dr. Komers assessed the future viability of the herd
10 using a population projection software program. The
11 PDA compares the relative effects of potential
12 scenarios. It relies on data relating to birth rates,
13 mortality rates, population size, and the carrying
14 capacity of the region. Given the lack of concrete
15 data with respect to these factors for the Ronald Lake
16 bison herd, Dr. Komers assumed the herd acted in a way
17 consistent with average bison populations with the
18 exception of a slightly lower mortality rate to account
19 for Indigenous hunting. He included two carrying
20 capacity scenarios, one that assumed 200 bison, the
21 actual size, and one that assumed a hypothetical 1,000
22 bison could be sustained. He ran 100 iterations of the
23 scenarios because, as he explained, of the exploratory
24 nature of this inquiry.

25 The results of Dr. Komers' viability analysis is
26 shown in Figure 3 to our handout taken from his slide

1 deck. The solid blue line shows that, based on average
2 mortality and birth rates, the population would drop to
3 about 25 in a hundred years. The green and grey dash
4 line show that if mortality rates are increased or if
5 birth rates decrease, the population drops to zero
6 within 50 years. However, Dr. Komers noted that if
7 calf mortality rates are reduced or birth rates
8 increased, then the population can stabilize at today's
9 size as indicated by the orange and red dash lines.

10 To grow the population, the herd's survival must
11 be increased above average. Dr. Komers expressed
12 concern about the fact that the herd had not been
13 observed to be growing and said that that indicates
14 high mortality rates or low birth rates. So it's
15 particularly important that management actions be
16 directed to these efforts.

17 Mikisew submits that the project proposes a high
18 risk to the herd and to Mikisew's rights that depend on
19 the herd. Teck and Mikisew have developed a number of
20 conditions so that if Teck is correct that its
21 assessments -- then these assessments can be identified
22 in realtime -- if Teck is incorrect. For example, Teck
23 has agreed to one regulatory condition requiring for it
24 to report annually on the implementation of its Ronald
25 Lake bison mitigation monitoring and adaptive plan. It
26 has also agreed to a condition to conduct an evaluation

1 in consultation with Indigenous groups of the status of
2 the herd and to verify the accuracy of its predictions
3 as part of obtaining future approvals for the north
4 pit.

5 Teck and Mikisew have also codeveloped the minimum
6 content for Teck's wildlife mitigation and monitoring
7 and adaptive management plan, which requires
8 consideration of any species of risk recovery strategy
9 applicable to the herd, the latest available
10 information from the technical team, the latest
11 available Indigenous knowledge, and a follow-up program
12 to verify the accuracy of the EIA predictions over the
13 life of the project.

14 As part of this, Teck has also agreed to review
15 and update, as needed, its monitoring and management
16 plan in response to any new information. These joint
17 conditions reflect what Teck can realistically do.

18 However, in Mikisew's submission, they must be
19 augmented by further government action. To be sure,
20 current government efforts are not up to the task. As
21 explained by Mr. Braun, the Ronald Lake technical team
22 is not a long-term initiative and critically does not
23 have any role in relation to the management of the herd
24 or its habitat. Rather, it's an information collection
25 body. He explained that current habitat protection
26 measures are insufficient, and current cooperative

1 management proposals are nothing more than window
2 dressing.

3 In Mikisew's submission, two government actions
4 are required to reduce the risk to the herd. First,
5 protection of the remaining herd's habitat.
6 Establishing the full BSA would protect all remaining
7 habitat beyond the project footprint that does not
8 currently have legal protection.

9 Mikisew asks the Panel to recommend the
10 governments commit to implementing the full BSA by the
11 start of construction.

12 To deal with the risk of disease transmission and
13 other issues relating to increasing the herd's
14 viability, the second government action is to establish
15 a bison comanagement arrangement with Alberta, Canada,
16 and Indigenous groups. Dr. Komers emphasized the need
17 for such a comanagement arrangement and stated:

18 (as read)

19 The committee should be directed to
20 collecting data, protecting the remaining
21 habitat, protecting the connectivity of
22 habitat patches, improving female
23 reproduction, reducing mortality, and
24 preventing the bison from contracting
25 diseased -- contacted diseased bison in the
26 park. Monitoring must be done properly to

1 ensure the effectiveness of management
2 actions.

3 Mikisew asks the Panel to recommend that within the
4 next year the governments of Alberta and Canada enter
5 into, with Indigenous communities, such an arrangement
6 respecting research, monitoring, and comanagement of
7 the herd.

8 Water quantity. You heard repeatedly throughout
9 this proceeding that having enough water in the lakes,
10 rivers, and tributaries within Mikisew's territory is
11 critical for members' navigation needs. The river and
12 lake systems are to Mikisew what highways are to urban
13 dwellers.

14 Figure 4 of the handout is taken from
15 Mr. Maclean's slide deck and depicts Mikisew's key
16 transportation routes. As stated earlier, Mikisew
17 members are noticing their land, lakes, and rivers and
18 tributaries are drying up, making navigation difficult.

19 Because of the concerns about decreasing water
20 levels, Mikisew started a community-based monitoring
21 program in 2008. The purpose of the program was to
22 track changes to the PAD. The program collects data
23 about water depth and water quality twice a week, all
24 year, at eight locations. The CBM program analyzes the
25 data and tests concerns with respect to navigation and
26 water contamination. Additionally, given that

1 navigability can be impeded by shifting channels and
2 weeds, the CBM program also marks channels for safe
3 passage.

4 The CBM program also tested the water navigation
5 needs of Mikisew members. You'll recall that
6 Indigenous navigation threshold have been previously
7 set as a result of a study by Dr. Candler in 2010.
8 Based on his interviews with Mikisew members,
9 Dr. Candler determined that the Aboriginal extreme
10 flow, which is the amount of water needed to get on
11 step with the harvested moose in the boat, was about
12 400 cubic metres per second. And it's important to
13 note that the AXF refers to zero navigation, and
14 navigation challenges can arise at higher flow rates.

15 CBM findings demonstrated that this relationship
16 is valid and, in fact, said that the AXF is closer to
17 500 cubic metres per second. Further, the CBM tested
18 the relationship between flow and depth and determined
19 that the AXF results in a minimum depth of 4 feet. And
20 this relationship is illustrated in Figure 5 of your
21 handout, which is reproduced from Mr. Maclean's slide
22 deck.

23 I'm just going to pause here because I note we're
24 at the hour mark. I will be approximately 15 minutes,
25 and Mark has 5 -- Mr. Gustafson -- pardon me -- has
26 five minutes in closing. With leave of the Panel,

1 could we proceed to complete our argument?

2 THE CHAIR: Sure. Let's proceed.

3 MS. BROOKS: After five years of sampling,
4 the CBM findings showed the AXF depth was -- exceeded
5 95 times at the sites monitored during those years.
6 These findings are reproduced in chart -- in the chart
7 at Figure 6 of your handout package.

8 Dr. Carver assessed impacts to Indigenous
9 navigability on the lower Athabasca system, which
10 includes not only the main stem, but also important
11 back channels. Dr. Carver integrated various data
12 sets, including the CBM data, government water depth
13 maps, and IK hazard maps to demonstrate the existing
14 hazards distributed across Mikisew's territory and to
15 show that those hazards increase as flows decline.

16 Figure 7 in your handout is a depiction of the
17 integration of that data taken at one segment, Poplar
18 Point. And these maps show how the back channels are
19 the first at risk.

20 Dr. Carver's assessment also confirmed that the
21 AXF is a reasonable limit. When the AXF is exceeded,
22 he said, the navigability situation becomes dire,
23 particularly if you include the serious health and
24 safety issues that arise within the AXF range. In
25 terms of the future, using a watershed model that
26 simulates future flows from 1 to 200 years under

1 various climate scenarios and applying oil sands
2 withdrawals, Dr. Carver determined that the river flows
3 are predicted to be lower by 25 to 50 percent during
4 the fall and late summer seasons and that the
5 open-water seasons will be longer. For Mikisew, this
6 means significantly less water for navigation during
7 the hunting season. Additionally Dr. Carver observed
8 that as flows decline, oil sands withdrawals are
9 proportionally more significant.

10 Dr. Carver concluded that the climate change is
11 leading to a reduction in the availability of water for
12 oil sands and other activities, yet these demands are
13 projected to escalate while river flows are expected to
14 decline.

15 Dr. Carver put the future in these terms:
16 (as read)

17 We are on a collision course. Access to the
18 territory is already at risk and, as things
19 stand, not positioned to improve. We have a
20 real problem on our hands.

21 Dr. Carver noted the EIA and Alberta only assessed
22 change at one location, which he described as the
23 "one-point approach". Dr. Carver expressed concern
24 that such an approach does not capture the complexity
25 of navigability in terms of its diversity, its
26 thresholds, its rate of change with flow, and the

1 overall magnitude of the problem faced.

2 In terms of mitigations, it's important to note
3 that Dr. Carver, Mr. Maclean, and Dr. Davidson all
4 testify about the inadequacy of the surface water
5 quantity management framework as a mitigation measure
6 for potential project effects on Mikisew's navigation
7 as a result of Teck's water usage.

8 The ultimate measures Teck have agreed to to
9 reduce the risks to Mikisew's navigation was the
10 subject of extensive engagement between Mikisew and
11 Teck, and it led to a series of jointly proposed
12 regulatory conditions. These are set out in Appendix 2
13 of Document 497, but I'll just briefly touch on a few
14 of them now.

15 Teck has agreed to regulatory conditions to
16 operate the project to result in only negligible water
17 effects, effects on water quantity in Lake Claire and
18 the Ronald Lake watershed, and planned water
19 withdrawals to minimize water intake when the AXF is
20 met prior to obtaining future approvals for the north
21 pit.

22 Teck has agreed to design water diversion
23 structures so they have no greater than negligible
24 effects on water quantity in Lake Claire and the Ronald
25 Lake watershed, to update its mine water balance to
26 take into account updated climate assessment as part of

1 its detailed engineering, to design water intake and
2 storage ponds to minimize or avoid water intake when
3 the Athabasca River is below the AXF, and to ensure its
4 hydrology plan includes a credible operational plan to
5 minimize water intake when the Athabasca River is below
6 the AXF.

7 And as stated by Teck, these measures do not
8 guarantee absolute adherence by Teck to the AXF, and
9 Mikisew agrees with the recommendation of ACFN and
10 Katherine Cummings of Parks that to ensure there is --
11 there needs to be a more comprehensive effort taken to
12 protect Mikisew Navigation from the cumulative impact
13 of oil sands, and so government actions are still
14 required.

15 Accordingly, Mikisew submits that the Panel
16 recommend Alberta revise the surface water quantity
17 framework under LARP to be more protective of
18 Indigenous navigation and the OUV of the park in a
19 manner put forward by Mikisew, ACFN, and Parks Canada.

20 Water quality. Mikisew also has concerns about
21 whether the project would likely contribute to
22 increased water contamination or risk of contamination.
23 Mikisew members have reported smelling oil sands
24 contaminants in the water and observing black particles
25 around Lake Claire. Members have also observed
26 malformations in fish. Mikisew members describe that

1 they are scared to touch the water because of concerns
2 over contamination, and they have to bring bottled
3 water out on the land.

4 They also describe how decreasing water levels
5 exacerbates concerns of contamination. They indicate
6 that in areas where water levels are low, the
7 population -- the pollution settles and is not flushed
8 by the proper water flows.

9 Mr. Maclean testified that the CBM program
10 collects data on the metals and PAHs in the water.
11 Mikisew is concerned about the risk that PAHs are
12 increasing downstream of the oil sands in water and
13 sediment.

14 Mr. Maclean identified that there are a number of
15 potential oil sands contributors to PAHs in the
16 Athabasca River system, including from upgraders,
17 vehicle emissions, and mine dust. Part of the work of
18 the CBM program was to determine whether oil sands
19 development did contribute to PAHs. It sampled a
20 number of sites along the Athabasca River and in the
21 PAD near Lake Claire. To allow for such an analysis,
22 the locations chosen were upstream development, across
23 from the main development on the Athabasca River, and
24 then downstream development into the PAD.

25 The results showed higher PAH levels at Suncor,
26 Syncrude, and CNRL sites. PAHs emitted from these

1 operations were detected at the mouth of the Athabasca
2 River. Mr. Maclean stated that the results showed
3 small PAH inputs reaching the PAD.

4 Although the contamination levels are below the
5 water quality guidelines of the PAD, Mr. Maclean
6 testified that the guidelines themselves are not
7 comprehensive and leave out key contaminants that
8 comprise a large part of the total contaminant burden
9 of PAHs.

10 Further, the PMD devices --

11 THE COURT REPORTER: Can you slow down.

12 MS. BROOKS: Yes.

13 -- only collect dissolved PAHs. However, PAHs
14 dissolve poorly in water and bind to sediment.
15 Sediment then settles in the PAD. Therefore,
16 Mr. Maclean stated PMDs likely underestimate the true
17 amounts of PAHs in the PAD.

18 Mr. Maclean testified that the CBM analysis were
19 able to differentiate between the PAHs from forest
20 fires and those from oil sands based on two diagnostic
21 ratios. These tests revealed that at least two -- at
22 two culturally important locations, PAHs were
23 identified as deriving from oil sands and not forest
24 fires.

25 The joint conditions developed by Teck and Mikisew
26 include measures relating to Mikisew's water quality

1 concerns. I won't repeat them here, but, again, they
2 appear at Appendix 2 to CEAA Doc 497. The joint
3 conditions mark a clear recognition by Teck about the
4 importance of this issue to Mikisew and is of
5 considerable advancement from previous hearings.

6 However, given the importance of waters around the
7 project area to Mikisew's way of life, it is Mikisew's
8 position that any risk, regardless of the magnitude,
9 requires additional government action. Mikisew submits
10 that the additional risk created by the project can be
11 mitigated through the following set of government
12 measures.

13 First, government should enter into an agreement
14 with Mikisew and other interested Indigenous groups to
15 establish a project oversight committee so that Mikisew
16 can be part of the review of monitoring data with
17 regulatory authorities.

18 Second, governments should include more sites for
19 the management of water quality issues in the lower
20 Athabasca region and the PAD to improve the statistical
21 framework for detecting change to water quality.

22 And, third, government should provide resources to
23 Mikisew to monitor project effects, including
24 investments in the CBM equipment and infrastructure for
25 Fort Chipewyan.

26 Air quality. Mikisew members have expressed

1 concern about the extent to which their air quality is
2 being impacted by oil sands development. Ms. Olsgard
3 was retained to conduct an air quality assessment
4 focusing on the PAD and the park.

5 Ms. Olsgard testified that Alberta has reported
6 air quality in the region has currently deteriorated.
7 She stated that Alberta relies on four key contaminants
8 to assess air quality and that all four indicators have
9 exceeded management triggers and, to a varying degree,
10 require management action.

11 After determining the baseline, Ms. Olsgard
12 conducted a screening-level assessment to determine
13 potential pathways and emissions which would inform a
14 more detailed modelling. She testified that a
15 screening assessment is a simple and quick way to
16 estimate a worse-case predicted concentration.
17 Ms. Olsgard used the model AERMOD, which used a
18 50-kilometre boundary. She chose AERMOD because of its
19 near model -- near-range modelling which could then
20 inform an evaluation of a second far-range model.
21 Although Teck challenges the appropriateness of AERMOD,
22 Ms. Olsgard testified that, in her opinion, modelling
23 in EIAs must reflect both local and regional impacts
24 and that no single model can accurately or precisely
25 predict ground-level concentrations on both spatial
26 scales. Given the culturally significant places to

1 Mikisew are located within less than 50 kilometres of
2 the proposed development area, she testified that both
3 the far- and near-range model are -- was warranted.

4 And it should also be noted that Ms. Olsgard cited
5 a number of peer-review studies in her report to choose
6 her model, not just the one that was put to her under
7 cross-examination.

8 To conduct the AERMOD modelling, Ms. Olsgard
9 relied on Teck source data in -- with the exception --
10 with three exceptions. Teck assumed all existing mine
11 fleets meet Tier 4 emissions, whereas Ms. Olsgard used
12 Tier 2 standards reflecting current operations. Teck
13 assumed a bottom-up approach to emissions from tailing
14 ponds, whereas Ms. Olsgard used a top-down approach, as
15 indicated by the scaling factors collected under the
16 joint oil sands monitoring program published by the
17 ECCC researchers. Ms. Olsgard relied on a smaller
18 group of chemicals to align with the specific impacts
19 that Mikisew has reported in its territory. As a
20 result of her screening-level air-quality assessment ,
21 Ms. Olsgard found the model predicted a risk of
22 contaminants reaching the park and the PAD.

23 Ms. Olsgard's report supports the need for the
24 Panel to implement the joint conditions relating to air
25 quality that were prepared by Teck and Mikisew. In the
26 joint conditions, Teck has committed to both undertake

1 actions to verify its predictions and to include a new
2 air-monitoring station in the region.

3 Ms. Olsgard proposed mitigation measures for the
4 issues she identified, including for government to
5 improve standards for dust oppression, require mine
6 fleet upgrades in the region, prohibit future
7 development close to the park, and implement an
8 air-quality program that measures, assesses, and
9 monitors emissions.

10 In Mikisew's submissions, these recommendations
11 bolster the need for the multiple components of the
12 Nikechinahonan framework. Specifically, the proposed
13 BSA would draw the northern boundary for projects that
14 could directly impact the air shed around the park and
15 its water quality. Improved air-quality monitoring is
16 also a key component of the project oversight committee
17 and Mikisew's recommendations for new investments and
18 local monitoring capacity.

19 Health concerns. Ms. Olsgard conducted a
20 screening-level human and environmental health
21 assessment. She concluded that the risk to human
22 health predicted by the EIA for the LSA could extend
23 into the park and the PAD. Although she stated the
24 risks are small, evidence from Dr. Candler and the
25 Mikisew community members highlight the need --
26 highlights that any increased risk can further erode

1 their confidence in traditional resources.

2 While the Panel heard there are differences in
3 opinion between Teck's evidence and Ms. Olsgard, both
4 Teck and Mikisew have agreed governments can take
5 effective action in light of this possible increased
6 risk. Specifically, Teck and Mikisew have agreed on
7 two recommendations: One, governments must develop
8 with Mikisew improved community health baseline data
9 and an integrated monitoring program to evaluate
10 project and cumulative effects on community health;
11 and, two, governments must develop and implement robust
12 measures with Mikisew to maintain the integrity of
13 traditional use in the territory throughout the
14 project. The intent of these measures will be to
15 maintain confidence in species, waters, and the use of
16 land in the region to ensure the continued practice of
17 rights.

18 Migratory birds. Mikisew commissioned a report by
19 Ms. Hechtenthal to assess the impact of migratory birds
20 in the oil -- mineable oil sands region and the PAD.
21 This report will assist the Panel in its assessment for
22 birds and the OUV assessment. The potential risk to
23 waterbirds arise from exposure to contaminants, changes
24 to habitat and food availability, and changes to
25 migratory routes.

26 Ms. Hechtenthal testified that birds are exposed

1 to contaminants because they mistake tailing ponds as
2 natural wetlands during migration. She said:

3 (as read)

4 Despite the presence of bird-deterrent
5 systems, tens of thousands of migratory birds
6 are observed annually on tailing ponds.

7 These observations are based on time surveys. The
8 actual number of bird contacts could be higher,
9 estimated at over 200,000 per year, over 110 species.

10 Contact with tailings ponds can cause various
11 outcomes in waterbirds, including exposure to
12 contaminants externally and internally. The endpoint
13 for birds that come in contact with tailing ponds are
14 either mortality, a decrease in fitness, sublethal
15 effects, or no effects.

16 Ms. Hechtenthal stated that the data for on-site
17 mortality is currently unknown but could be studied;
18 the data for off-site mortality is also unknown, but
19 difficult to measure, given that waterbirds can take
20 days to die and do so miles away from the site of
21 contamination. Although Teck estimates on-site and
22 off-site mortality at 5,400 based on the number of oil
23 birds observed flying away from existing mine sites,
24 Ms. Hechtenthal testified that that number is likely
25 low. She stated: (as read)

26 It does not account for oil sheen; it does

1 not account for the difficulty in observing
2 oil on flighted birds; it does not account
3 for the times when waterbirds migrate at
4 dusk, night, or dawn.

5 Further, she said that Teck does not comprehensively
6 account for the sublethal effects to birds.

7 Habitat loss can contribute to regional population
8 declines in bird species. Ms. Hechtenthal testified
9 that the oil sands development has resulted in the loss
10 of wetland habitats from project footprints and sensory
11 disturbance and degradation. She also testified that
12 the project will continue to contribute to the loss of
13 regional diversity of wetlands. The LSA provides 15
14 different types of wetland habitat; yet, at closure,
15 Teck is claiming only two and adding two novel
16 habitats. The proposed reclaimed landscapes may not
17 achieve the level of ecosystem productivity required to
18 provide key migratory bird habitats.

19 Finally, you heard that land users have observed
20 changes in the fall and to spring migrations to flock
21 size, timing, and patterns of habitat use, and have
22 expressed concerns that birds are now diverting around
23 the MOSR and the park and the PAD to the east and the
24 west. Ms. Hechtenthal stated that such diversions are
25 plausible, given birds use a variety of sensory and
26 environmental cues to guide their migration.

1 In term of mitigations, among other proposed
2 measures, Ms. Hechtenthal testified that the project
3 oversight committee should be designed to address the
4 numerous critical information and assessment gaps, and
5 she said that an independent and systemic testing of
6 bird-deterrent systems at a mine site is required and
7 recommended for the development of the recovery and
8 rehabilitation centre for migratory birds in the oil
9 sands.

10 My two last sections relate to the OUV, and then
11 I'll make a last comment on the impact to rights and
12 culture.

13 Earlier, Mr. Gustafson provided guidance on how to
14 consider effects on the OUV of the park, and my
15 comments have -- much of my comments already about the
16 evidence will be relevant to your consideration of the
17 effects on the OUV, but I do want to add a few --
18 further few things.

19 Mikisew testified that they felt they had to go to
20 the international community to address their concerns
21 that the OUV of the park is diminishing, is at further
22 risk with increased oil sands development. You will
23 recall that Mikisew showed a video that documented its
24 petition.

25 As testified by Parks Canada, the UNESCO process
26 has led to a change in the understanding of the health

1 of certain aspects of the OUV of -- of the park from
2 the 2014 letter from Canada cited by my friend in his
3 closing argument yesterday. It is important that you
4 consider the most current evidence about the status of
5 the attributes of the park's OUV, most at issue in this
6 proceeding.

7 As the most recent state of the conservation
8 report, the one prepared three years after the 2014
9 report read by my friend, Canada acknowledged that the
10 findings of the 2016 reactive monitoring mission,
11 namely the PAD, is subject to severe concerns and that
12 the declines identified by Mikisew are not overstated.

13 My friend also mentioned a 2014 international
14 union for conservation of nature report about the state
15 of the park. As described in the affidavit of
16 Ms. Lepine, the IUC had released an updated assessment
17 in 2017 that stated the 2014 assessment had been
18 revised from "good with some concerns" to "significant
19 concerns".

20 The 2017 updated assessment determined that the
21 park has the worst conservation outlook of any Canadian
22 world heritage site and the second worst of any North
23 American site. As you heard, the recent strategic
24 environmental assessment also confirmed the PAD is far
25 from having a good conservation outlook.

26 In short, there's clear consensus that the key

1 attribute of the park's OUV are no longer meeting the
2 OUV objectives and that almost all ecological
3 indicators associated with the PAD are in decline. It
4 is also accepted that corrective actions are urgently
5 needed to restore the PAD.

6 Parks Canada is currently working on an action
7 plan to address the Mission 17 recommendations.
8 Mikisew members testified that the current draft needed
9 significant improvement if it is to help reduce the
10 risks of the project.

11 In terms of your assessment approach, Mikisew
12 agrees with Parks Canada that it's appropriate to
13 assess the risks to the OUV against the articulation of
14 the desired outcomes from the strategic environmental
15 assessment. Mikisew submits that the Panel can rely
16 the SCE -- SEA for understanding the current state and
17 the trends of the specific OUV components.

18 The risks and impacts I discussed earlier show
19 that, absent implementation of effective -- effective
20 project conditions and additional measures by
21 government, the project will have an adverse effect on
22 the OUV of the park or otherwise increase the risks of
23 the negative effects to its OUV.

24 In Mikisew's submission, the appropriate response
25 to these risks is to ensure that the systems and
26 structures are in place to proactively monitoring OUV

1 health and to ensure management actions if monitoring
2 determines that Teck's predictions were overly
3 optimistic.

4 In this regard, the key mitigation measures for
5 the OUV, beyond the joint conditions, are the project
6 committee requested by Mikisew, as well as increased
7 investments in monitoring capacity, particularly the
8 CBM program.

9 Lastly, I have already reviewed a number of
10 effects on Mikisew's rights and culture, but I would
11 like to highlight a few other important adverse impacts
12 before passing the podium back to Mr. Gustafson for
13 closing.

14 Dr. Candler testified that he prepared four
15 studies specific to the project that deal with impacts
16 to rights and culture. The rights and culture study is
17 the key study that combines the results of research
18 from his other studies. For this study, Mikisew
19 focused on a local study area, 5 kilometres from the
20 project footprint, and a larger regional study area,
21 within 25 kilometres, that extended downstream into the
22 receiving waters of Buckton Creek, the Athabasca River,
23 including Lake Claire and the Delta.

24 The LSA and the RSA show high-density use in those
25 areas. Dr. Candler testified that there are critical
26 place-based family histories connected to those areas.

1 He stated there are critical cultural relationships to
2 resources in the area; for example, the Ronald Lake
3 bison herd. He found that the study area contained
4 critical place-based Mikisew knowledge, including place
5 names and ecological knowledge. This place-base
6 knowledge is central to Mikisew's ability to pass down
7 its knowledge to future generations.

8 The rights and culture report confirm that the
9 area around the project is just simply unparalleled in
10 terms of the abundance of resources, trust in
11 resources, and uniqueness of resources. Over 350
12 Mikisew values are located within 5 kilometres of the
13 project footprint and thousands more within the RSA.
14 Mikisew's evidence shows more than 80 kill sites along
15 the portions of the Athabasca River adjacent to the
16 project and towards Birch Mountain.

17 To illustrate his main conclusions to the impacts
18 to way of life, which includes freedom to practice your
19 culture without interference, the ability to return to
20 places, the ability to maintain connections, and
21 confidence and continuity, Dr. Candler constructed a
22 cultural zone of influence. The zone of influence
23 reflects what he refers to as a "cultural footprint".
24 The zone of influence is reproduced from his slide deck
25 in your handout package at Figures 8, 9, and 10.
26 Figure 8 shows the baseline cultural footprint;

1 Figure 9 shows the density of current practice;
2 Figure 10 shows how the project is expected to
3 influence the cultural footprint based on how Mikisew's
4 way of life would be altered with the project.

5 The findings show that the inclusion of the
6 project makes a radical difference. This is because of
7 the mine's location. It's further north than any other
8 oil sands mine and includes a watershed that flows into
9 the PAD. As a result, confidence in these critical
10 areas decreases.

11 Dr. Candler found that for Mikisew to maintain its
12 way of life, it also depends on the availability of
13 harvest, and this doesn't mean any species hunted
14 anywhere. Dr. Candler said: (as read)

15 A key point of this report is that a
16 diversity, a variety of resources need to be
17 presented -- present -- present on the
18 landscape and available in the vicinity of
19 preferred areas at different seasons, at
20 different times. There needs to be variety
21 in order to have the flexibility.

22 With respect to governance and stewardship rights,
23 Dr. Candler concluded the impact on those rights
24 depends on how the project proceeds. If it moves
25 forward with deep involvement of Mikisew knowledge
26 holders, deep attention to Mikisew's stewardship

1 principles and obligations on the land, it's possible
2 that the project could actually reinforce Mikisew's
3 stewardship and governance packages.

4 However, if the project moves forward in a way
5 that is not respectful of that, it would be a very
6 serious blow to Mikisew's governance rights. And I
7 note that Canada has also agreed, as a result of its
8 rights-based assessment, that there's the potential for
9 serious impacts to Mikisew's rights and culture, and
10 that there are outstanding issues that require further
11 consultation and accommodation.

12 And on that note, I'll hand it back to
13 Mr. Gustafson to explain Mikisew's closing submission
14 on how the project can move forward in a way that
15 honour and respects its rights.

16 Final Submissions by Mr. Gustafson

17 MR. GUSTAFSON: I will do my best to stick
18 within the five-minute estimate. It may be the first
19 time I've met my estimates. Fingers crossed.

20 Mr. Chair and Panel, as you know, Mikisew has done
21 a lot of work to determine what can and must be done to
22 mitigate the effects of the project on its rights. In
23 the words of Elder Terry Marten: (as read)

24 A rights and culture mitigation approach is
25 needed.

26 There are two pillars of the rights and culture

1 mitigation approach for this project. The first is the
2 joint conditions which, as you've heard, were the
3 product of extensive engagement and include real
4 measures by Teck to do what's in its power to mitigate
5 project effects. The parties have come very far and
6 done it together.

7 The second pillar, which is the Nikechinahonan
8 framework, is directed at how government can further
9 minimize those effects or risks the project creates for
10 Mikisew's rights and culture. Elder Terry Marten
11 explained the purpose of the framework, saying:
12 (as read)

13 We need to know there is a plan in place so
14 that Mikisew people have certainty that our
15 culture and language will survive, and we can
16 deal with the risks and changes caused by the
17 project. We owe it to our elders and land
18 users now and to our future generations.

19 I would suggest that is something that everyone in this
20 room can support.

21 And to put it in the words of Councillor Waquan,
22 the Nikechinahonan framework would -- is what would
23 make it possible for decision-makers to be responsive
24 to Mikisew's stewardship values. The first component
25 of the Nikechinahonan framework is the biodiversity
26 stewardship area. In Mikisew's submission, the full

1 BSA is a mitigation because it will help alleviate
2 uncertainty in the community about the proximity of
3 development, the fate of the -- of bison habitat, and
4 shows a measure of respect for Mikisew's stewardship
5 values.

6 Mr. Chair, Panel, there is already significant
7 momentum for the BSA in large part because of joint
8 efforts by Teck and Mikisew. Your recommendation for
9 its full implementation is crucial.

10 Other parts of the Nikechinahonan framework relate
11 to the creation of engagement structures so that
12 Mikisew can be part of ongoing decision-making relating
13 to project effects. Part of mitigating the
14 uncertainties of the project creates for Mikisew is to
15 ensure that Mikisew has a real seat at the table with
16 governance and regulators. One part of this is the
17 establishment of more effective habitat protections and
18 co-management for the Ronald Lake bison herd. You
19 heard from Dr. Gibson that this is something that
20 happens in other regions and is imminently achievable.
21 Again, this is something that looks likely but needs a
22 recommendation from you.

23 Another part to the framework is the proposed
24 project committee to mitigate effects on Mikisew's
25 stewardship values. It is of crucial importance that
26 regulators and governments create a new, more effective

1 relationship with Mikisew for overview of the project.

2 This committee for Mikisew is a key part of
3 creating the ethical space between governments and
4 regulators and Mikisew that Alice -- Elder Alice Marten
5 explained to you in some detail.

6 In the words of Mr. Stuckless, quote: (as read)

7 I think it is important to note that whether
8 you agree with our experts or you agree with
9 Teck's experts, the risk to Mikisew's way of
10 life is fairly real, and it's important to
11 them. And that is why the project committee
12 is needed. We see the committee as a
13 decision-maker for our community to work with
14 the Crown to help make better decisions and
15 to help better respect the community's
16 desires to be an active part of managing
17 their lands.

18 You heard how this is the norm with projects in
19 the North and in others -- other areas of Canada.
20 Canada is supportive of the proposal, and Alberta has
21 now indicated to Mikisew that it agrees there is a
22 strong rationale for a new multi-stakeholder regulatory
23 assurance committee and that Alberta will participate
24 in the committee to the extent of its jurisdiction, and
25 this is the important part, if recommended by the Joint
26 Review Panel.

1 Finally, the last components for the
2 Nikechinahonan framework is investments by governments
3 in making Fort Chipewyan a healthy community and in
4 providing Mikisew with resources to maintain their
5 culture. If you are uncertain about what this means,
6 look no further than the words of Elder Terry Marten.
7 If the -- and these are her words: (as read)

8 If the project is approved, our culture will
9 be even more at risk than it is already.
10 This should be clear by now with the
11 information you have received. Practically,
12 that means our community will have to
13 undertake new initiatives to actively support
14 community members to continue using the PAD,
15 the Peace Athabasca Delta. The land users in
16 Lake Claire will need extra help and support,
17 as will their children and grandchildren and
18 future generations, to be able to maintain
19 those connections and activities that make us
20 Mikisew. Mikisew will also have to be
21 actively involved in monitoring so that the
22 current monitoring information can be shared
23 with the community members and regulatory
24 authorities. We will need to go through
25 great lengths to make Fort Chip a healthy,
26 viable place. Mikisew is up to the task, but

1 we need the resources and supports to
2 undertake it, and that's what we want you to
3 take in for us. We need the support from
4 both governments.

5 As Dr. Gibson explains, support for the activities
6 and measures Elder Marten described is about taking
7 back the concept of stewardship. In a region where
8 projects have disempowered communities, this part of
9 the Nikechinahonan framework can have real social
10 outcomes and real changes and self-confidence and
11 self-esteem.

12 What does all of this mean for what Mikisew is
13 asking of you, Mr. Chairman and Panel? Specifically,
14 Mikisew's submission is that: One, the Panel must
15 conclude that the project will have adverse effects on
16 Mikisew's rights; two, the Panel should recommend that
17 appropriate regulatory authorities require Teck to
18 adhere to the conditions that Mikisew and Teck have
19 jointly developed; three, the Panel should incorporate
20 the proposed conditions in your decision as the AER;
21 and, fourth, the Panel should recommend that the
22 Governments of Alberta and Canada commit, prior to
23 issuing final approvals, to implement proposed measures
24 that Mikisew has identified in its submission.

25 Mr. Chair, Panel, you have heard that this project
26 creates real risk for the Mikisew community in their

1 most cherished area, but you have also heard that this
2 proponent has, through collaborative discussions with
3 Mikisew, made project-related commitments in the form
4 of jointly developed regulatory conditions to do what
5 is in its power to reduce those risks.

6 You've also heard that Mikisew requires that
7 governments take further actions to reduce risks
8 associated with the outstanding issues we've identified
9 here, risks to water quantity, the OUV of Wood Buffalo,
10 and Mikisew's treaty rights, and their culture.

11 Mr. Chairman, in your final question to the ACFN
12 witness panel in Fort Chipewyan, you asked how the
13 Panel can reconcile ACFN's request for recommendations
14 to government, with their testimony that governments
15 have ignored many recommendations in the past. Well,
16 Mikisew wasn't asked a similar question. It is germane
17 to Mikisew. That is why I urge you and the rest of the
18 Panel to look very closely at how Mikisew worded the
19 recommendations in their slide presentation for the
20 Nikechinahonan framework. You'll see in the wording of
21 Mikisew's recommendations that they have clear
22 timelines that are tied not to your decision but the
23 decisions of both the federal and provincial
24 governments that will be made after your decision.

25 That is a major lesson from previous hearings
26 where recommendations have languished. Your

1 recommendations to governments related to effects on
2 Mikisew's rights must be closely tied to the issuing of
3 final project approvals, and the wording of your
4 recommendations must clarify that implementation is
5 needed to justify the outstanding adverse effects to
6 Mikisew's treaty rights. That will allow Mikisew to do
7 what it can to ensure there is real accountability on
8 governments before final approvals are granted.

9 Mikisew does not object to the Panel deciding to
10 approve the project under its authority as the AER, but
11 that does not let Governments of Alberta and Canada off
12 the hook for fully discharging their duties to take
13 real steps to address outstanding issues and further
14 mitigate effects on treaty rights before their
15 approvals.

16 In this regard, I want to clarify Mikisew's
17 position on the issue of free prior and informed
18 consent. Mikisew agrees that Teck has undertaken
19 significant efforts to work towards obtaining Mikisew's
20 consent for the project through the collaborative work
21 it has done with Mikisew. The participation agreement
22 and the joint conditions are allotable products of
23 those efforts. Mikisew values the relationship it has
24 built with the Teck and the efforts by Teck to listen
25 to the community and to commit to real actions within
26 its power to resolve community concerns.

1 But Mikisew has not yet provided its full consent
2 for this project. Mikisew's consent can only be
3 provided if all parties that have the power to mitigate
4 and accommodate Mikisew's concerns, including
5 governments, have made the commitments to do so. It
6 would be a truly bizarre twist for Alberta and Canada
7 to be in a position of not gaining the consent of the
8 Mikisew for industrial development over which the
9 proponent and the Indigenous nation have found
10 significant common ground. Industry and the Crown have
11 separate responsibilities to seek out and receive
12 Mikisew's consent. One aspect of consent does not make
13 the other unnecessary or inevitable.

14 The Governments of Canada and Alberta are integral
15 to those efforts given their ability to mitigate
16 Mikisew's outstanding concerns. Put differently, the
17 path to Mikisew's consent is and has always been
18 through the Nikechinahonan framework. While Mikisew
19 sees some positive signs from governments, the Crown
20 needs another push from this Panel to make good on its
21 constitutional duties.

22 And with that, I'll end with a quote from
23 Ms. Lepine. First I'll drink a sip of water. Quote:
24 (as read)

25 We [meaning Teck], Mikisew, and yourselves,
26 as decision-makers, have a real opportunity

1 to do something positive here for the land
2 users you've heard and for our future
3 generations that you've heard so much about.
4 We know the governments are listening, and we
5 know that our ancestors are listening too.

6 Thank you.

7 THE CHAIR: Thank you, Mr. Gustafson.

8 I'll suggest that was a tad over five minutes.

9 The Panel has no questions. Thank you to both of
10 you.

11 It is about ten to 12, so I guess we have a couple
12 of options. One is we could take a short break, allow
13 Canada to proceed with its final, and then take the
14 longer lunch break, and then do reply argument after
15 that; or we could take our lunch break now and come
16 back after lunch. And so we will look to Mr. Elford
17 and Mr. Ignasiak. Do you have a strong preference one
18 way or another?

19 MR. ELFORD: Mr. Chair, I'm prepared to
20 proceed without even a short break, if that would
21 assist. I've got my material, and I'm ready to go, but
22 I certainly wouldn't object to one. But I suspect I'll
23 be, hopefully, around a half hour, but I feel such
24 predictions are dangerous, but that's my current
25 estimate.

26 THE CHAIR: Mr. Ignasiak, any strong

1 preference?

2 MR. IGNASIAK: Yeah. I think it would be
3 more efficient if he proceeds, whether right away or
4 after a short break.

5 THE CHAIR: Yeah.

6 MR. IGNASIAK: And then we could take a
7 longer lunch, and that way, we'd be ready to hit reply
8 after lunch, I fully respect.

9 THE CHAIR: Okay. I'll suggest we take a
10 short break because I think the court reporters
11 probably need a bit of a break and others may as well.
12 So let's take a quick break, and then Mr. Elford will
13 proceed. Thank you.

14 (ADJOURNMENT)

15 THE CHAIR: Thank you. Please be seated.

16 Mr. Elford, just before we get started, one thing.

17 Mr. Gustafson, upon reflection, we do have a
18 question. I just wanted to confirm something we
19 thought we heard you say. I thought we heard you say
20 that -- with respect to this project committee, that
21 Alberta had kind of endorsed it and said that they
22 would implement it. So, first, I just want to confirm,
23 did we hear that correctly; and, secondarily, if we
24 did, you know, what's the basis for that? What kind of
25 communication have you had?

26 MR. GUSTAFSON: So you heard it correctly.

1 I -- I would follow up that Alberta has also said that
2 there are many more details that they need to work out
3 with the Alberta Energy Regulator, with the federal
4 government, with Mikisew, and with Teck on details,
5 terms of reference, all those components. So it's --
6 it's a conceptual level of support in terms of seeing
7 how something like that committee could provide value
8 for how people are going to talk to each other if this
9 project is approved.

10 So there have been email exchanges around that.
11 None of that, to be totally candid, is on the record in
12 front of you. There was a discussion about how to do
13 that procedurally this week between a number of
14 parties, and the result was that didn't go -- nothing
15 went into the record. So I hope that's clear.

16 THE CHAIR: Okay. Thank you.

17 MR. GUSTAFSON: Thanks.

18 THE CHAIR: That's helpful clarification.

19 Sorry, Mr. Elford. Go ahead.

20 Final Submissions by Mr. Elford

21 MR. ELFORD: Thank you, Mr. Chair. You
22 should have paper copies of our submissions. We will
23 have -- or have already sent an electronic copy that
24 could be placed on the registry.

25 MS. LACASSE: So that should be
26 Document 702.

1 MR. ELFORD: Thank you.

2 So by way of introduction, on behalf of the
3 Government of Canada, I acknowledge that we are on
4 traditional territories of the First Nations people of
5 Treaty 7, including the Blackfoot Confederacy, the
6 Tsuut'ina, and the Stoney Nakoda, as well as the Metis
7 Nation of Alberta Region 3.

8 The Attorney General of Canada appears on behalf
9 of a number of federal departments and agencies that
10 are federal authorities for the purpose of this
11 proceeding pursuant to the Canadian Environmental
12 Assessment Act, 2012. These include Transport Canada;
13 Natural Resources Canada; Fisheries and Oceans Canada;
14 Environment and Climate Change Canada, or "ECCC" as I
15 will be using throughout this; Health Canada; and the
16 Parks Canada agency. These federal authorities have
17 presented scientific or expert information or knowledge
18 in relation to their respective department's mandates
19 and their roles within those mandates that may assist
20 the Panel in rendering their assessment of the Frontier
21 Project for the purpose of CEAA, 2012. In addition to
22 this information or knowledge presented in their
23 written and oral submissions and in answers to
24 cross-examination questions or undertakings, the
25 federal authorities have also participated in the
26 hearing process leading to the appointment of the Panel

1 and the scheduling of this hearing.

2 They further participated in the supplemental
3 information request process by providing comments
4 regarding the sufficiency of the information provided
5 by the proponent based on the scientific expert
6 knowledge they possessed.

7 The Attorney General also represents the Canadian
8 Environmental Assessment Agency, which attended on
9 behalf of the whole of the federal government. It
10 appeared in a non-expert capacity to speak to a rights
11 impact assessment methodology developed jointly with
12 the Mikisew Cree First Nation, as well as its
13 preliminary assessment on potential impacts on rights
14 and recommendations for mitigation measures arising
15 from the application of that methodology. Agency
16 officials also attempted to provide the Panel with an
17 explanation of the proposed mitigation measures
18 currently being contemplated by the Government of
19 Canada and the Mikisew Cree First Nation.

20 I repeat that the agency officials who appeared as
21 witnesses before the Panel do not have any role in
22 assisting the Panel with its assessment of the project
23 pursuant to CEAA, 2012 and specifically are restricted
24 from interacting with the Panel staff in respect of
25 this assessment.

26 I will speak briefly about Canada's role in these

1 proceedings to contextualize the evidence provided and
2 will then highlight certain evidence provided by
3 federal authorities.

4 Canada's roles in these proceedings arise from and
5 is defined by Section 20(d) of CEAA, 2012. That
6 section, as it applies in this process, requires that
7 every federal authority that is in possession of
8 specialist or expert information or knowledge with
9 respect to a designated project that is subject to an
10 environmental assessment must, on request, make that
11 information or knowledge available within the specified
12 period to the Review Panel.

13 Federal authorities are not here to advocate for
14 or against the project. They have appeared as
15 impartial experts to provide information or knowledge
16 in response to the Panel's request. The provision of
17 this information is a necessary and important part of
18 this process.

19 By virtue of their mandates and resources, these
20 authorities have certain information or knowledge that
21 will assist the Panel in conducting an environmental
22 assessment. That they are here to assist in the
23 conduct of an assessment under CEAA, 2012 is key to
24 understanding their role.

25 These are complex processes involving the
26 application of scientific principles and knowledge, a

1 great deal of research and information gathering, and
2 the application of a myriad of rules, regulations, and
3 policies. As was evident from both their written
4 materials and the evidence provided at the hearing, the
5 federal authorities sought to provide the Panel with
6 the best-available information and evidence to assist
7 in conducting the environmental assessment and to
8 enable the Panel to provide its rationale, conclusions,
9 and recommendations in respect of this project.

10 It is important to stress that the scientific
11 information and scientific opinion may differ and even
12 be in conflict.

13 Teck has made a number of comments regarding the
14 evidence of Canada's witnesses. Those witnesses
15 attended the hearing to provide knowledge and
16 information. Canada will not comment at length on
17 Teck's statements, as there is no need. It is
18 sufficient to note that experts will sometimes
19 disagree. Parties should exercise caution in
20 characterizing normal disagreements as misleading or
21 containing an animus or malicious intention not
22 supported by the evidence. Further, minor mistakes, if
23 any were made, should not be inflated beyond defensible
24 proportions. The evidence of Canada's panel speaks for
25 itself and should be evaluated on its merits.

26 With regard to the evidence provided, we will

1 highlight some specific points already raised by four
2 federal authorities and the agency, the agency being
3 CEAA.

4 This should be brief; however, the brevity of this
5 highlighting should not be taken to be a minimization
6 or rejection of any of the other evidence put forth by
7 those authorities in either their written submissions
8 or at the hearing.

9 The Government of Canada continues to rely on that
10 evidence and asks the Panel to consider the evidence as
11 a whole. We will not be addressing all of the
12 recommendations or evidence set out by the federal
13 authorities, but would like to thank the Panel and its
14 staff for the consideration of the same.

15 First, with regard to Health Canada, with respect
16 to monitoring, Health Canada's evidence at the hearing
17 was that due to the inherent uncertainties of the human
18 health risk assessment, it is not possible to determine
19 whether the proponent's risk estimates are actual
20 overestimates or whether additional mitigation may be
21 required.

22 As model data cannot be confirmed unless actual
23 data is obtained to validate the exposure predictions,
24 Health Canada gave evidence and its opinion in support
25 of its recommendations that methylmercury
26 concentrations in fish be monitored in any water body

1 that could be potentially impacted by the project and
2 from which people are or could be harvesting and
3 consuming fish.

4 This monitoring, in Health Canada's view, would
5 help ensure that predictions are accurate and that
6 consumption advisories remain protective of human
7 health. Further, Health Canada recommended that Teck
8 commit to a precautionary approach and monitor changes
9 in lead concentrations in environmental media.

10 Health Canada could not comment on whether these
11 monitoring recommendations will be incorporated into
12 existing regional monitoring initiatives but is of the
13 view that it is important that monitoring be completed
14 in a consistent manner for the duration of the project.

15 On to Transport Canada. Transport Canada's
16 evidence was that it has the ability, within its
17 regulatory processes, to include terms and conditions
18 within project approvals to address impacts and
19 cumulative impacts to navigation. As was heard
20 throughout these proceedings, the Athabasca River and
21 surrounding watersheds are complex, and changes in
22 water flow and water levels may have the potential for
23 broader ecological impacts.

24 Transport Canada's evidence was that its
25 jurisdiction is limited to addressing impacts to
26 navigation. Any mitigation measures chosen to protect

1 navigation must be designed to avoid inadvertent and
2 undesirable impacts to other aspects of the ecosystem
3 such as fish and fish habitat or the sensitive
4 ecosystem of the Peace Athabasca Delta.

5 Transport Canada confirmed that it continues to
6 support a regional approach to water management, which
7 can more effectively consider all of the cumulative
8 impacts of water withdrawal for oil sands operations.
9 To support this regional approach and to further its
10 own understanding of the impacts of water withdrawal on
11 navigation, Transport Canada advised that it is working
12 to complete a navigation study in spring 2019.

13 Transport Canada also confirmed that it is committed to
14 working with the Province of Alberta. It committed to
15 sharing the results of the study not only with Alberta,
16 but also with other partners, including Indigenous
17 people -- including Indigenous groups, Parks Canada,
18 and ECCC.

19 Now, with regard to ECCC, ECCC's recommendations
20 included monitoring, baseline data collection, and
21 follow-up programs. It requests that the Panel
22 recommend that such monitoring data be made publicly
23 available.

24 With regard to mercury and methylmercury, ECCC's
25 evidence was that the removal of the organic layer from
26 the pond reservoir infrastructure will likely reduce

1 methyl -- will likely reduce mercury methylation in the
2 new reservoir, but will not remove mercury methylation
3 entirely.

4 As described in ECCC's submission to the JRP,
5 there are additional factors to be considered when
6 assessing the contribution of methylmercury production
7 in the new reservoirs that Teck has not considered.

8 ECCC would therefore highlight the recommendations
9 and methods put forward in its submissions requesting
10 that additional monitoring and modelling using
11 site-specific parameters for mercury and mercury
12 methylation be completed prior to construction of the
13 project's pond reservoir infrastructure -- and there's
14 a -- acronym's "FHCL, OSSP" -- if the project is
15 approved.

16 With regard to acid deposition, ECCC presented
17 information to The panel which showed that, based on
18 a -- 2013 emission levels for sulphur dioxide and
19 nitrogen oxides, regional aquatic critical load
20 exceedances have been reached over a sizable area of
21 northern Alberta and Saskatchewan.

22 ECCC provided data to the Panel demonstrating that
23 there are an increasing number of regional lakes with
24 acidification trends and increasing levels of
25 significance associated with these trends.
26 Additionally, ECCC's evidence demonstrated SO₂

1 concentrations continued to increase between 2013 and
2 2017. ECCC's analysis indicates that cumulative
3 acidifying emissions in the oil sands region need to be
4 reduced to prevent ecosystem damage and that these
5 emissions need to be verified using surface
6 concentration and satellite measurements.

7 Finally, we would note that Dr. Makar's paper was
8 peer-reviewed and, as such, should not lightly be
9 discounted.

10 With respect to bison, ECCC's evidence was that
11 the project represents a high risk to the Ronald Lake
12 Wood bison herd, even with the implementation of
13 proposed mitigation measures. The herd is highly
14 sensitive to disturbance, and this sensitivity alone
15 could trigger a range shift, regardless of forage
16 limitations.

17 Given the close proximity of the Ronald Lake herd
18 to diseased bison in Wood Buffalo National Park, even a
19 small shift in range caused either by forage limitation
20 or sensory disturbance could result in disease
21 transmission to the Ronald Lake herd. ECCC's evidence
22 was that the transfer of disease to Ronald Lake bison
23 would likely permanently alter the conservation value
24 of the herd and use of the herd by Indigenous peoples
25 and could impact attainment of the population and
26 distribution objectives outlined in the final recovery

1 strategy for Wood bison in Canada.

2 The mitigation measures proposed by Teck to
3 prevent movement or contact with the diseased bison in
4 the park are uncertain or are likely to be ineffective
5 and could also adversely affect other wildlife species
6 such as boreal caribou. In addition, while
7 biodiversity offset or compensation area could protect
8 some bison habitat outside the project disturbance
9 area, it would not mitigate project effects on the
10 herd, in particular, the risk of disease transmission.

11 With regard to whooping cranes, ECCC's evidence
12 was that the project represents a high risk of
13 mortality for whooping cranes. Based on telemetry
14 data, a relatively high number of whooping cranes have
15 landed in close proximity to the proposed mine during
16 migration.

17 Evidence from other oil sands mines indicates that
18 the whooping cranes can land on tailings ponds despite
19 the presence of best-available bird deterrent
20 technology and could be attracted to certain features
21 on tailing ponds, such as sandy beaches or shallow
22 water. Collectively, this evidence suggests that there
23 is a high risk that whooping cranes will land on Teck's
24 tailings ponds resulting in a high risk of bird
25 mortality. Best-available bird deterrent technology
26 such as that proposed by Teck is unlikely to mitigate

1 this risk.

2 With regard to Parks Canada. Wood Buffalo
3 National Park is a world heritage site. World heritage
4 sites are designated to protect those parts of cultural
5 and natural heritage that are of outstanding interest
6 on a global scale and, therefore, need to be preserved
7 as part of the world heritage of humanity as a whole.

8 A world heritage site can be designated using one
9 or more of four different criteria, which do not
10 necessarily relate to ecological integrity. For
11 example, a national park could be designated a world
12 heritage site if it contains superlative natural
13 phenomena or areas of exceptional natural beauty and
14 esthetic importance or outstanding examples
15 representing major stages of earth's history, including
16 the record of life, significant ongoing geological
17 processes in the development of land forms, or
18 significant geomorphic or physiographic features,
19 neither of which directly concerns ecological matters.

20 In the case of Wood Buffalo National Park world
21 heritage site, the designation criteria include the
22 great concentrations of migratory wildlife are of world
23 importance, and the rare and superlative natural
24 phenomena include a large inland delta, salt plains,
25 and gypsum karsts that are equally internationally
26 significant. That's one.

1 Next one, Wood Buffalo National Park is the most
2 ecologically complete and largest example of the entire
3 great plains boreal grassland ecosystem of North
4 America, the only place where the predator/prey
5 relationship between wolves and wood bison has
6 continued unbroken over time.

7 The next criterion, for example, is Wood Buffalo
8 National Park contains the only breeding habitat in the
9 world for the whooping crane, an endangered species
10 brought back from the brink of extinction through
11 careful management of the small number of breeding
12 pairs in the park. The park's size, 4.5 million
13 hectares, complete ecosystem, and protection are
14 essential for in situ conservation of the whooping
15 crane.

16 The designation describes ecosystem components and
17 processes is linked to the ecological -- is linked to
18 ecological integrity and specifically mentions species
19 at risk. Because of the different reasons for
20 designating a world heritage site, the only way to
21 assess the management of a site or the effects of a
22 project on it is by comparing potential impacts to the
23 reasons for the designation.

24 With respect to species at risk, Teck provided a
25 number of SARA permits as aids to cross-examination and
26 seemed to suggest that they have some relevance to the

1 proposed project. They do not. While the methodology
2 used by Parks Canada is consistent, the circumstances
3 for each permit are very different. Some permits
4 relate to the destruction of critical habitat or
5 residences, which is not at issue in this project.
6 Assessing destruction to critical habitat requires
7 additional assessment steps related to the description
8 of critical habitat, the biophysical attributes, and
9 activities likely related to the destruction listed in
10 recovery strategies and/or action plans.

11 When examining the potential for jeopardizing the
12 survival or recovery of a species, changes to habitat
13 would rarely have the same level of effect on a
14 population as would killing individuals. As such, each
15 has to be evaluated in its own context. In only two
16 permits provided to the Panel was there an identified
17 possibility of mortality to individuals. In one case,
18 the risk was identified as a "temporary" during
19 construction. In the other, the proposed mitigation
20 measures were known to be effective. Additionally,
21 impacting activity was decreasing over time while the
22 population of the species at risk was increasing.
23 While the permit rationale did not characterize the
24 risk of an individual being harmed from the activity,
25 the information indicates it was very low.

26 The Panel may also benefit from further comments

1 on Parks Canada's assessment of the effects on whooping
2 crane. The assessment can be conducted using Teck's
3 methodology or Parks Canada's methodology.

4 Parks Canada questions Teck's medium magnitude
5 assessment for the population, abundance, and
6 distribution. Teck assessed impacts to whooping crane
7 stopover habitats as a high magnitude event. It
8 initially assessed the risk of mortality as low, later
9 changing it to medium. In its methodology of combining
10 individual assessments to form an overall assessment
11 for the population abundance and distribution, Teck
12 normally took the highest magnitude ranking of habitat,
13 connectivity, or mortality. In the case of whooping
14 crane, however, Teck used the lowest of the rankings to
15 develop its overall assessment of medium, the sole
16 exception to their methodology.

17 Given ECCC's assessment of the high probability of
18 whooping crane landing on the Frontier mine tailings
19 pond and the high mortality risk to birds which come
20 into contact with tailings ponds, Parks Canada
21 questions Teck's ranking of medium risk mortality.

22 Using the methodology, it applies when issuing
23 species at risk permits, Parks Canada considered it
24 essential to consider the risk of mortality against the
25 population and distribution objectives. Given this is
26 the only self-sustaining population of whooping crane

1 on the planet, the recovery strategy indicates that the
2 population goal for the population is 1,000. The
3 current population is in the 490s. The population is
4 well below the goal. And, importantly, the growth rate
5 of whooping cranes is low, only 4 percent annually.

6 ECCC demonstrated the high probability of whooping
7 crane landing on the proposed Frontier mine tailing
8 ponds and the high mortality risk to birds which come
9 into contact with tailing ponds. This risk from
10 interactions with tailing ponds is not a one-time risk.
11 It will exist during the spring and fall migration
12 periods for up to 41 years when the tailing ponds are
13 present. On this basis, Parks Canada is concerned
14 project -- the project could slow the attainment of the
15 recovery objectives.

16 Whether using Teck's assessment methodology or
17 Parks Canada's approach, it is necessary to consider
18 additionally that whooping crane breed in Wood Buffalo
19 National Park and that their presence was specifically
20 mentioned for designating the park as a world heritage
21 site.

22 Teck presented evidence that the risk of disease
23 transmission to the Ronald Lake bison herd from the
24 Delta herd in Wood Buffalo National Park is high, but
25 it would not increase as a result of the project. ECCC
26 provided evidence illustrating that this is not the

1 case, and risk of disease transmission would indeed
2 increase should the project be approved.

3 Teck also submitted that there are multiple
4 mitigation options to reduce this risk and that the
5 responsibility to implement these mitigations sits
6 wholly with Parks Canada.

7 While there are mitigation options ranging from
8 fences, control zones, vaccination programs, and fires,
9 all of these mitigations have implementation
10 challenges, unproven effectiveness, and serious
11 ecological integrity implications.

12 While Parks Canada has initiatives to mitigate
13 disease transmission for the park as a whole, both
14 Parks Canada and ECCC reiterated that additional
15 studies of the Ronald Lake bison herd and the receiving
16 environment, including the Delta herd, are essential in
17 order to better understand the ecology of both herds
18 and identify which mitigation strategy would have the
19 fewest negative ecological consequences and the highest
20 probability of success, if any.

21 This additional work would not be required if the
22 project did not proceed. It is therefore appropriate
23 for Teck to fund this study as indicated in
24 Recommendation 5.1-1.

25 Water quantity and quality in the Peace Athabasca
26 Delta are critical to the health of the ecosystems, the

1 OUV of Wood Buffalo National Park, and for traditional
2 use of Indigenous people of the Peace Athabasca Delta.
3 This project will increase the risks to water quality,
4 and Parks Canada has highlighted the need to apply the
5 precautionary approach in identifying mitigation
6 measures.

7 With respect to water quantity, the cumulative
8 effects on water bodies receiving water from both the
9 Athabasca River and the Peace River have already been
10 recognized as significant. This project will add to
11 the problem. In that context, strong measures of
12 protection are necessary, and Parks Canada makes its
13 recommendations to identify measures important for the
14 protection of the OUV.

15 Parks Canada's OUV submissions relate to the
16 potential effects of the project on the environment as
17 defined by Section 5 of CEEA, 2012. The Panel is not
18 required to evaluate the significance of the project on
19 the whole park. As a result, Parks Canada did not
20 present evidence related to the overall condition of
21 the park or the significance of the project effects
22 with respect to the whole park.

23 However, in following the Canadian Environmental
24 Assessment Agency's operational policy statement
25 determining whether a designated project is likely to
26 cause significant adverse environmental effects under

1 CEAA, 2012, the effects on the OUV and Wood Buffalo
2 National Park on federal land which include whooping
3 crane, migratory birds, bison, and the Peace Athabasca
4 Delta are part of the context in evaluating the
5 significance of Section 5, "Environmental Effect".

6 CEAA officials were available to -- this is a --
7 for the Environmental Assessment Agency. CEAA
8 officials were available at the hearing to speak to the
9 methodology that was co-developed with the Mikisew Cree
10 First Nation to assess potential effects of the
11 project, the exercise of Aboriginal treaty rights. To
12 clarify, however, the methodology and preliminary
13 assessment provided on behalf of the Government of
14 Canada, they were not provided as expert information or
15 knowledge but as information for the Panel to consider
16 as potentially useful in its own assessment of the
17 project's impacts on the assessments of those rights.

18 The co-development of the methodology and its
19 application, as documented in the Government of
20 Canada's submission, provides for a preliminary
21 assessment of potential impacts of the project on the
22 exercise of Aboriginal or treaty rights in a manner
23 consistent with Canada's approach to reconciliation
24 with Indigenous peoples and the recognition of
25 Indigenous rights.

26 The Government of Canada has presented these

1 preliminary results to demonstrate the application of
2 the methodology and potential mitigation and
3 accommodation measures that were contemplated at the
4 time it was completed. However, the assessment is
5 still a work in progress. Any analysis conducted by
6 the Panel, whether through this methodology or
7 otherwise, and any resulting mitigation it recommends
8 which may serve as accommodation measures will further
9 inform the Government of Canada's ongoing consultation
10 activities with Indigenous groups.

11 This Panel may choose to apply this methodology to
12 its assessment of the potential impacts of this project
13 on Mikisew Cree First Nations Aboriginal and treaty
14 rights and may choose to consider the proposed
15 accommodation measures in the development of any
16 recommendations.

17 It is our understanding that Athabasca Chipewyan
18 First Nation has agreed to the application of this
19 methodology to the assessment of the effects of the
20 project on their members' Aboriginal and treaty rights.
21 If other Indigenous groups request it, Canada also
22 supports using this or a similar methodology to assess
23 the potential impacts arising from this project on
24 their Aboriginal and treaty rights. Nonetheless, we
25 must reiterate that consultation in the context of
26 environmental assessment and an environmental

1 assessment process itself are not a rights-determining
2 process.

3 As such, the whole of government preliminary
4 assessment of potential impacts on the exercise of
5 Aboriginal treaty rights does not contain and is not
6 intended to be used for a determination of rights for
7 any of the identified Indigenous groups or peoples.
8 Instead, Canada has based this preliminary assessment
9 on impacts to rights as those rights have been
10 presented to it.

11 In its August 31st, 2018, submission to the Panel,
12 the Government of Canada indicated its intention to
13 submit a document containing the general requirements
14 and principles for a project-specific monitoring
15 committee prior to the close of the Panel record. The
16 submission indicated that should the proposed project
17 proceed, the Government of Canada is of the view that a
18 project-specific monitoring committee, including the
19 federal and provincial governments, the Mikisew Cree
20 First Nation, and potentially other Indigenous groups,
21 would be appropriate to achieve Indigenous involvement
22 on monitoring related to the project, advice on
23 adaptive management, and input into regional-based
24 monitoring through existing oil sands monitoring
25 initiative.

26 It is our understanding that the Mikisew Cree

1 First Nation agrees with the Government of Canada that,
2 should the project proceed, there is a sound rationale
3 for the establishment of the committee. The Canadian
4 Environmental Assessment Agency, on behalf of the
5 Government of Canada, continues to work together with
6 the Mikisew Cree First Nation to discuss the potential
7 scope, mandate, composition, responsibilities, and
8 resourcing for the committee. Further discussion with
9 other parties, including authorities within the
10 Government of Canada, the Government of Alberta, and
11 other Indigenous groups, is also required.

12 The Government of Alberta has participated in
13 initial and preliminary discussions with the Mikisew
14 Cree First Nation and the agency regarding the creation
15 of a committee. It is the agency's understanding that
16 Alberta supports, in principle, a committee comprised
17 of representatives from government, Indigenous
18 communities, and industry to advise on environmental
19 monitoring and management should the project proceed.

20 The composition of the committee, including
21 purpose and government structure, will be determined
22 with further discussions with the relevant parties and
23 is reflected in the eventual development of a terms of
24 reference. Resources to support the committee as well
25 as linkages with existing monitoring activities, such
26 as oil sands monitoring program, remain under

1 discussion. We confirm that the Government of Canada
2 continues to consult with the Treaty 8 First Nations,
3 Metis and nonstatus Indigenous groups potentially
4 affected by Federal Crown activity in respect of this
5 project.

6 This Panel's processes will form an important part
7 of Canada's consultation activities in respect to the
8 federal Crown conduct relating to this project to the
9 extent possible. Nonetheless, Canada's consultation
10 activities will continue after the Panel issues its
11 report and will be informed by the results of that
12 report.

13 Conclusion. As noted earlier, we do not wish to
14 suggest that what has been said today compromises the
15 entirety of the Government of Canada's submission in
16 respect of the project. The federal departments and
17 agencies reiterate and rely on their written
18 submissions and oral evidence subject only to the
19 corrections made on the record. Our involvement in
20 these proceedings was to assist the Panel in its
21 environmental assessment of the project -- the proposed
22 project pursuant to the provisions of the Canadian
23 Environmental Assessment Act 2012. We hope that we
24 have done so.

25 We would like to thank the Panel and its staff for
26 their consideration of the evidence and recommendations

1 put forward by the federal authorities in the written
2 submissions at the hearing. Indeed, we thank the Panel
3 and its staff for their significant efforts over an
4 extended period for the process as a whole. We look
5 forward to receiving and reviewing the Panel's report
6 which will inform the federal government's decision-making
7 processes and activities in respect of this proposed
8 project moving forward.

9 We would also like to thank the proponent and all
10 of the other participants in this process for their
11 time and effort in this matter.

12 On behalf of the entire federal government team
13 for this project, we wish everyone the very best for
14 the season and for 2019.

15 THE CHAIR: Thank you, Mr. Elford.

16 Okay. Thank you. The Panel has no questions.
17 Thank you, both.

18 MR. ELFORD: Thank you.

19 THE CHAIR: So it is 12:35. So I'll
20 propose we take a one-hour break and resume at 1:40,
21 unless Mr. Ignasiak has an alternate suggestion?
22 You're good with that? Okay. Thank you. So we'll
23 resume at 1:40, then. Thank you.

24 _____

25 PROCEEDINGS ADJOURNED UNTIL 1:40 PM

26 _____

1 Proceedings taken at Govier Hall, Calgary, Alberta

2

3 December 12, 2018 Afternoon Session

4

5 A. Bolton The Chair

6 R. McManus Hearing Commissioner

7 W. Klassen Hearing Commissioner

8

9 M. LaCasse AER Counsel

10 A. Doebele AER Counsel

11 T. Wheaton AER Staff

12 D. Campbell AER Staff

13 A. Shukulkina AER Staff

14

15 C. Birchall Counsel to the Joint Review

16 Panel

17 D. Haddon Canadian Environmental

18 Assessment Agency

19

20 M. Ignasiak For Teck Resources Limited

21 J. Fontaine For Teck Resources Limited

22 D. Chu For Teck Resources Limited

23

24 D. Yewchuk For Canadian Parks and

25 Wilderness Society Northern

26 Alberta

1 B. Robinson For Oil Sands Environmental
2 Coalition
3 K. Stillwell For Oil Sands Environmental
4 Coalition
5
6 J. Malcolm Original Fort McMurray First
7 Nation and Clearwater First
8 Nation
9
10 M. Gustafson Mikisew Cree First Nation
11 K. Brooks Mikisew Cree First Nation
12
13 R. Drummond Government of Canada
14 J. Elford Government of Canada
15
16 J. Asterick Keepers of the Athabasca
17
18 C. Longacre, RPR, CSR(A) Official Court Reporter
19 A. Porco, CSR(A) Official Court Reporter
20
21 _____
21 (PROCEEDINGS COMMENCED AT 1:39 PM)
22 THE CHAIR: Thank you. Please be seated.
23 Whenever you're ready, Mr. Ignasiak.
24 Final Submissions by Mr. Ignasiak
25 MR. IGNASIAK: Thank you, Mr. Chair. I do
26 have some brief reply arguments. It shouldn't be very

1 long.

2 I'd like to start with the precautionary
3 principle. A number of parties, in particular, CPAWS
4 and OSEC, have referred to the precautionary principle.

5 CPAWS has suggested to the Panel that applying the
6 precautionary principle to this project means that it
7 must not accept what it termed, quote: (as read)

8 Vague adaptive management or mitigation
9 measures that Teck proposes has a way to
10 mitigate GHG related impacts [quote].

11 Katl'odeeche First Nation interpreted the precautionary
12 principle to mean, quote: (as read)

13 The outright prohibition of harmful
14 activities [quote].

15 That was in KFN's written argument.

16 However, neither of these interpretations are
17 consistent with the law. The precautionary principle
18 has actually been well-canvassed by the Courts. The
19 purpose has been stated by the Court -- this is in, for
20 the record, Pembina Institute for Appropriate
21 Development v. Canada (2008), FC 302. In that case,
22 the Court interpreted it as, quote: (as read)

23 Where there are threats of serious or
24 irreversible damage, lack of full scientific
25 certainty shall not be used as a reason for
26 postponing cost-effective measures to prevent

1 environmental degradation [closed quote].

2 And it then went on to say: (as read)

3 As the nature of Panel's task is predictive,
4 finality and certainty in an environmental
5 assessment can never be achieved [quote].

6 The Court went on to say, quote: (as read)

7 While there does exist some uncertainty with
8 respect to end pit lake technology, the
9 existing level of uncertainty is not such
10 that it should paralyze the entire project
11 [quote].

12 And, sir, that was the case involving the Kearl Oil
13 Sands Project.

14 So the extent of actions required by the project
15 proponent to satisfy the precautionary approach in that
16 Pembina case was to provide modelling predictions
17 validated by testing end pit lake technology. The
18 Court observed that that approach was broadly
19 consistent with the principles of adaptive management.

20 The Federal Court of Appeal has noted the
21 paralyzing effects of the precautionary principle and
22 has explicitly stated that the concept of adaptive
23 management is meant to counteract such effects, and
24 that was in Canadian Parks and Wilderness Society v.
25 Canada (Minister of Canadian Heritage), 2003 Federal
26 Court of Appeal 197, and that's at -- specifically at

1 paragraph 24.

2 CPAWS is relying on a recent case, a Taseko Mines
3 case, to inform this Panel's understanding regarding
4 the precautionary principle, and they suggest that
5 adaptive management should be overrode by the
6 precautionary principle. We submit, though, that CPAWS
7 is really taking that case out of its proper context.

8 Taseko Mines involved a mine proposal which was
9 under review by a Panel established pursuant to CEAA,
10 2012. That was the Prosperity mine in BC. The case
11 was an appeal of the Panel's decision to reject that
12 project. The Panel had originally denied the project
13 because there was discrepancy between the level of
14 toxic seepage predicted to occur. Specifically, the
15 proponent's predicted level of seepage was an order of
16 magnitude lower than what was predicted by Natural
17 Resources Canada. When asked by the Panel to reassess
18 the seepage to identify where that discrepancy was
19 coming from, the project proponent declined to do so
20 and instead suggested it would rely on a future test
21 program to resolve the discrepancy prior to the
22 development. And in applying that precautionary
23 principle, the Panel endorsed by the Court in that case
24 found that there were -- that where the project
25 proponent failed both to reassess the level of seepage
26 or provide concrete mitigative techniques, it was

1 reasonable for the Panel to reject Taseko's vague
2 assurances that would engage in adaptive management in
3 order to deal with those potentially adverse
4 environmental effects.

5 In order for Taseko Mines to be instructive in our
6 present case, you have to put it in context, and that
7 was a very different situation in the Taseko Mines
8 case. It was a situation where there was a significant
9 disagreement on the predicted amount of water
10 discharge. There was discrepancies, and the proponent
11 refused to or failed to confirm the predicted level of
12 discharge at the project proposal stage and failed to
13 propose any mitigative techniques at that time. The
14 proponent declined to validate its models. It deferred
15 conducting further tests, pointing to a later time
16 after project approval. And it did not provide the
17 mitigative measures that were to be assessed by the
18 Panel. So there was an incredible threshold of
19 uncertainty that was reached in that case, and the
20 Court backed the Panel's decision to reject the
21 proposal.

22 We submit that's in stark contrast to this case
23 before the Panel today. Unlike in Taseko Mines where
24 there was a significant discrepancy in predicting
25 adverse effects, Teck's estimate of greenhouse gases
26 through the life of the project remain reliable and

1 unchallenged, and without that uncertainty, that
2 central concern that arose in the Taseko case doesn't
3 arise.

4 Rather, like in the Pembina case, Teck has
5 provided the Panel with sound, reliable science on the
6 project's effects on greenhouse gases throughout its
7 life cycle, as well as mitigation measures and adaptive
8 management. It has also provided extensive evidence
9 regarding the status of and potential risk to whooping
10 crane and other migratory waterfowl, including the
11 attributes of a deterrent system to mitigate effects.

12 Teck has also proposed in this case additional
13 mitigation that goes beyond what has been incorporated
14 by the environmental assessment, including the
15 biodiversity management planning process and a request
16 to negotiate a conservation agreement to formalize how
17 appropriate biodiversity effects can be realized -- or
18 offset, sorry -- biodiversity offsets. So applied to
19 the current project, this is a very different case than
20 what was dealt with in the Taseko decision.

21 Turning to migratory birds, I'd like to address a
22 point Mr. Yewchuk and Mr. Elford made regarding the
23 propensity of birds to land on the Frontier mine site.
24 Both of them in argument -- and Mr. Yewchuk during the
25 course of his evidence during the hearing -- made the
26 point that birds were observed landing on the Frontier

1 mine site and suggested that this demonstrated an
2 increased risk for birds landing.

3 Sir, in our view, that's nonsense. The Frontier
4 mine site at present is relatively undisturbed, which
5 may explain why birds are currently landing there.
6 Once the site is developed, it's reasonable to conclude
7 that birds will be deterred from landing there, as is
8 the case with other sites that have already been
9 developed to some extent; we know those landings
10 happen. But as the evidence has shown, it's not a
11 common occurrence. So this reference to telemetry data
12 showing birds landing on an undisturbed -- what can be
13 regarded as a pristine site at the moment -- to use
14 that -- to equate that to potential risk in the future
15 when a site's developed and there's activity and noise
16 and light and whatever else, would submit that that
17 holds no water at all.

18 I'll now address the issue of greenhouse gases
19 raised in particular by OSEC in oral argument and CPAWS
20 in its written argument.

21 First, contrary to Mr. Robinson's
22 characterization, Teck has not claimed that Frontier is
23 a top quartile of oil sands mines from a GHG intensity
24 point of view. However, Teck has shown that the
25 project will be in the top quartile of oil sands
26 production, including in situ, and will have a lower

1 greenhouse gas intensity than half of all the oil
2 currently refined in the US. That has not been
3 contested in this proceeding. There's no evidence in
4 this proceeding that contradicts Teck's assertion that,
5 from a GHG intensity perspective, the Frontier Oil
6 Sands mine is a globally competitive supply source.

7 Second, Mr. Robinson stated that there are
8 inconsistencies in Teck's position regarding future oil
9 demand and future trends regarding global greenhouse
10 gas emissions. He states that this Panel must
11 determine whether demand of oil will be 110 million
12 barrels per day in 2040 or whether, on the other hand,
13 Canada and the world will meet current international
14 GHG targets.

15 That's incorrect. The Panel doesn't have to make
16 that decision. First, there is no requirement for this
17 Panel to determine how Canada, never mind the rest of
18 the world, will meet any currently established climate
19 change goals and what specific policies Canada and the
20 rest of the world will adopt to reduce global demand
21 for oil. It's beyond the Panel's mandate to do so,
22 quite simply.

23 Second, there's no inconsistency in Teck's
24 position regarding future demand. Teck has relied on
25 the International Energy Agency's estimate of
26 110 million barrels per day by 2040. Teck's reliance

1 on the International Energy Agency's estimate of future
2 oil demand is entirely reasonable because that forecast
3 from the IEA is based on global demand that is driven
4 by population increase and advances in the developing
5 world, among other factors, including lower carbon
6 economies in some parts of the world.

7 Third, Mr. Robinson is correct in identifying that
8 Teck, being the responsible company that it is, has
9 evaluated scenarios that assume a temperature increase
10 of 2 degrees Celsius and 2.7 degrees Celsius, and
11 that's in the climate change and resilience portfolio
12 document that was filed in this proceeding and is
13 referred to in Teck's September 12, 2018, reply
14 submission.

15 These scenarios are -- these scenarios assume
16 future global demand of 72.9 million barrels per day
17 and 104.9 million barrels per day respectively for the
18 2 degree and 2.7 degree scenario. These scenarios are
19 considered by Teck when planning its business.

20 It's important to note that the IEA's future
21 demand forecast of 110 million barrels per day in 2040
22 is also based on a 2.7 degree Celsius scenario.

23 The fact is neither this Panel nor Alberta nor
24 Canada can control the anticipated increase in global
25 demand for oil, and wishing away predicted future
26 demand will not make it so. It's beyond the control of

1 any of us.

2 Four, the reality is that Frontier, if approved
3 and proceeded with, will emit 0.58 percent of Canada's
4 current GHG emissions. And that's in the record in the
5 project update Section 4.6.11.3. So 0.58 percent of
6 Canada's current GHG emissions will be emitted by
7 Frontier, and therefore that'll be an insignificant
8 portion of the world's GHG emissions. Whether Frontier
9 proceeds or not will not determine whether and to what
10 extent Canada or the global community meets any
11 agreed-to GHG emission targets or what steps they take
12 to adapt to any sort of climate change.

13 Finally, Mr. Robinson has alleged that Frontier
14 may result in Alberta's 100 megaton cap being exceeded.
15 I know a number of parties have introduced new evidence
16 through the news today. I'm not going to do that.
17 But, Mr. Chair, that cap, assuming it continues to
18 exist, is managed and administered by Alberta. It is
19 not for this Panel to speculate on whether any given
20 project may or may not exceed that cap. Alberta will
21 manage that cap if it's in place.

22 And it's important to also highlight to the Panel
23 that -- and this was in evidence -- that the provincial
24 government's engagement with oil sands companies on the
25 implementation of the oil sands emissions limit and the
26 associated regulations, that's ongoing. And that was

1 testified to during our direct evidence.

2 Turning to carbon pricing, OSEC raised the issue
3 that Teck underestimates the cost of compliance with
4 the CCIR and characterizes Teck's understanding of the
5 CCIR's change through time as "speculative". It is, to
6 some degree, speculative in terms of determining what
7 the CCIR will say in the future. I think anyone who's
8 observed politics over the last five years will say
9 any -- as the Panel correctly noted, what legislation
10 will say is speculative. However, as Mr. Chiasson
11 testified when under cross-examination by Mr. Robinson,
12 Teck's understanding is based on explicit statements
13 that have been made by the Government of Alberta to
14 protect what we call "trade-exposed sectors" in order
15 to prevent carbon leakage to jurisdictions with less
16 progressive carbon regulation. Teck is confident that
17 its assumptions regarding the CCIR and its estimate on
18 costs associated with complying with the legislation
19 are sound. But in any event, this is a risk for Teck's
20 shareholders as it pertains to the economic returns
21 that can be generated from the project. It's also a
22 risk to Canada and the world as causing carbon leakage
23 to less progressive jurisdictions is corrosive to the
24 goal of coordinating global action to reduce greenhouse
25 gas emissions.

26 Turning to the mine financial security program,

1 Mr. Robinson alleged that Teck cannot rely on or assert
2 value of its resource as part of its security. This is
3 entirely incorrect.

4 As I mentioned during our argument, OSEC's own
5 witnesses critiqued the MSFP precisely because it
6 allows companies to use an asset-to-liability approach.
7 And that -- we refer to that at paragraph 343 of our
8 filed argument, which is Document 696.

9 Mr. Robinson referred you to the Conservation and
10 Reclamation Regulation, Section 21, to show that only
11 certain letters of credits and other instruments can be
12 used as a means of posting security. He's correct on
13 that point. However, the proper reference is really to
14 the AER's Mine Security Financial Program Standard,
15 which is incorporated as a regulation under
16 Section 16.1 of that Conservation and Reclamation
17 Regulation. That standard explicitly allows for the
18 calculation of MSFP assets and the taking into account
19 of that asset value before you determine the amount of
20 security that you're going to post. And that's
21 expressly in that standard published by the AER which
22 is incorporated as a regulation.

23 Mr. Robinson also challenged the adequacy of the
24 \$150 million left more post-closure monitoring and
25 other activities. Teck has had extensive experience in
26 mine projects and specifically closure and reclamation

1 activities. And all I'll say is that Teck's confident
2 that its estimates are accurate and sufficient for
3 post-closure activities. And, in any event, I would
4 point out there is a security regime to make sure that
5 that's in place for mining projects.

6 Turning to the water licences. We were a little
7 surprised when Mr. Robinson suggested that Teck's
8 application under the Water Act was incomplete because
9 it did not include mentions of diverting Big Creek or
10 Unnamed Creek 2. This is a new and somewhat perplexing
11 allegation. We didn't see it in any of the submissions
12 by OSEC so far. It wasn't raised with any of our
13 witnesses during the course of the hearing. None of
14 them were asked about that. But in any event, if you
15 look at Teck's answer to Undertaking Number 4, which is
16 CEAA Document 590, Teck's water management plan
17 includes its application under the Water Act for
18 approval to construct and operate water management
19 facilities and licences to divert water. The
20 application includes all of Teck's planned diversions
21 within the project fence line, including Big Creek and
22 Unnamed Creek 2. And that's consistent with typical
23 Water Act applications.

24 So, in our view, the Water Act application's
25 complete, and OSEC's claim should be rejected. Most
26 importantly, at this stage of the environmental

1 assessment process, however, is the fact that Teck has
2 outlined those water diversion plans and assessed them.
3 Mr. Robinson went through extensive detail of the exact
4 diversions that were being planned. All of that is set
5 out in our materials, and it's part of what we're
6 assessing here as part of this proceeding. And that is
7 the primary objective at this stage of the
8 environmental assessment process. Numerous detailed
9 regulatory applications will follow, should the Panel
10 approve this project and should Teck sanction the
11 project.

12 So would say that this demonstrates a somewhat
13 cursory understanding of the regime that OSEC has
14 demonstrated and a cursory understanding of the filed
15 material. We're concerned OSEC would raise this
16 specious issue for the first time in final argument,
17 despite not mentioning it previously in its submissions
18 or with our witnesses during the course of the hearing.

19 There was reference to the Prosper case. Sir,
20 that's an entirely different case. There was no
21 environmental assessment involved with Prosper. It was
22 a small 10,000 barrel project and under an entirely
23 different regulatory regime.

24 Some comments on the International Marine
25 Organization. The new regulations on sulphur content
26 of marine bunker fuels comes into effect in 2020. We

1 discussed this during the hearing, in particular during
2 our cross-examination of Mr. Sanzillo.

3 This is not a new issue. As a user of marine
4 transport, Teck is aware of the issue and intimate with
5 potential market impacts through ongoing monitoring via
6 Teck's market experts and reviews with Teck's board of
7 directors. While Teck agrees there will be a market
8 impact, the view that some commentators are expressing
9 are exaggerated, in our view, and the impact will be
10 short-lived. And as we showed when we introduced those
11 documents in the cross of Mr. Sanzillo, a number of
12 shippers are installing scrubbers, and heavy oil
13 refineries are expected to expand capacity to take
14 advantage of that price differential.

15 In any event, the Frontier Project will not start
16 production 'til 2026, and with that in mind, we suggest
17 our assessment of the impacts of IMO 2020 on Frontier
18 Project's socio-economic assessment are entirely
19 reasonable.

20 Of course, this is something that'll receive
21 scrutiny when the Teck board -- assuming this Panel
22 recommends approval of the project, when the Teck board
23 makes an investment decision on Frontier, at which
24 point all market conditions will -- will be assessed in
25 great detail, of course.

26 Sir, Mr. Robinson, yesterday, touched on many of

1 OSEC's recommended conditions for the project. Simply
2 put, our view is they are unreasonable and
3 inappropriate and should be dismissed by the Panel.
4 Clear examples are the recommendations related to the
5 oil sands emission limit, GHG benchmark, again, the
6 MFSP, and biodiversity offset ratios that are
7 arbitrary. To include any of them would put at risk
8 the oil sand industry's ability to advance quality
9 projects like Frontier.

10 Sir, there was -- there has been extensive
11 reference to the oversight committee. I'm not going to
12 practice my Cree right now, but we've heard it referred
13 to that way. We've seen in the Government of Canada's
14 preliminary assessment -- in the Government of Canada
15 submission reference to an "oversight committee".
16 There's reference in that document to providing further
17 detail, but we haven't -- we haven't seen that detail.

18 So MCFN, the Government of Canada, as well as ACFN
19 have all discussed the establishment of an oversight
20 committee. That is, as we see it, intended to really
21 increase capacity and participation by Indigenous
22 groups in the -- in the oil sands industry.

23 In our main argument, I indicated that Teck is
24 supportive of this, provided that there is efficiency
25 and the avoidance of duplication. It is somewhat
26 unclear to Teck at this time exactly what this would

1 look like. And, like I said, there's little on the
2 record in terms of details of how this would operate,
3 who would be on it, where it would sit, what it would
4 do precisely. However, despite that uncertainty,
5 Mr. Chair, Teck remains supportive of the initiative
6 and requests that this Panel recommend governments and
7 other interested parties, including Indigenous groups
8 and regional organizations such as JOSM, work towards
9 developing a framework that is effective and efficient.

10 To nail that down, these committees -- Teck's view
11 is these committees can provide a benefit to everyone
12 involved, but the devil's in the details. I think all
13 of us in the room know what ineffective committees can
14 do in terms of resources and taking the focus off what
15 really matters. And what we would say is: Given the
16 evidence that's in front of this Panel today, the Panel
17 should support the initiative in a general way and let
18 the parties come together, should you approve the
19 project, like I said, the governments, different
20 Indigenous groups, and other regional organizations, to
21 see the best way to implement such an oversight
22 committee that works in everyone's interests and, in
23 particular, in Alberta and Canada's interests as well.

24 Sir, just a few things about Government of Canada.
25 And we didn't have transcripts of the -- obviously, of
26 the argument provided today, but -- so I apologize in

1 advance if we misheard anything, but I think we've got
2 it right.

3 First, there was some reference by Mr. Elford to
4 the entire 4.5 million hectares of Wood Buffalo
5 National Park playing a role in the integrity of the
6 OUV of the park for whooping crane. In our view, this
7 is an example of trying to expand the meaning of the
8 OUV to one zone. And the OUV of the park criteria
9 related to whooping crane is, and I quote: (as read)

10 Wood Buffalo National Park contains the only
11 breeding habitat in the world for the
12 whooping crane, an endangered species brought
13 back from the brink of extinction through
14 careful management of a small number of
15 breeding pairs in the park [quote].

16 Sir, the breeding habitat of whooping crane is limited
17 to the northern portion of the park within the
18 Northwest Territories, as shown in Figure 2 of Teck's
19 OUV assessment, which is registry Document 364.

20 That -- that area is hundreds of kilometres north of
21 the project. So trying to extend the meaning of the
22 OUV to represent an environment -- environmental
23 concern related to the entire park is -- is not
24 appropriate.

25 And that -- that depiction of the breeding -- the
26 area that is related to breeding whooping crane within

1 the park is also depicted in some of the Parks Canada
2 submissions and documents relating to the park, and
3 you'll see it's actually a small corner of the park
4 relative to the overall size.

5 The Government of Canada reiterated many of its
6 positions and arguments as it pertains to bison, acid
7 deposition, and determining significance. Sir, during
8 our argument, we raised significant inconsistencies and
9 misrepresentations made by three witnesses on the
10 government's Panel. I should point out that, overall,
11 we thought that the Government of Canada Panel was very
12 credible and professional. However, with those three
13 witnesses, we, through cross-examination, demonstrated
14 a number of misrepresentations and inconsistencies, and
15 we note that today the Government of Canada, in its
16 argument, did not address any of these serious
17 shortcomings and those limited number of witnesses'
18 credibility. And we maintain the critiques we raised
19 and submit that the evidence of those witnesses in
20 particular should be given little, if any, weight.

21 In addition, we were surprised to hear the
22 Government of Canada state that if Frontier does not go
23 ahead, it will not take any steps regarding the risk
24 that bison in the park will transmit disease to the
25 Ronald Lake bison herd. That risk in the Government's
26 own documents already exists today. This position, if

1 true, is, in our view, entirely irresponsible, given
2 the paper published by the only ECCC expert on bison,
3 and that was Dr. Shury. In his previously published
4 paper, in his evidence in this hearing, he stated that
5 risk exists, and there are -- there are known ways to
6 deal with it if people would just do it. And as you
7 saw, Parks Canada has been saying since 2010 that they
8 would do it, and they've done nothing.

9 For them to sit here today and say if this project
10 doesn't go ahead, they don't have to deal with a herd
11 that we only discovered was disease free several years
12 ago is incredible to me.

13 So in conclusion, sir, Teck is a Canadian company
14 that wants to do business in Canada and with Frontier
15 in the oil sands. Teck has done everything that has
16 been asked of them in this regulatory process. They've
17 raised the bar for environmental assessment in the oil
18 sands with their Frontier application. That includes
19 establishing agreements with 14 Indigenous communities.
20 In conclusion, we submit the project is in the public
21 interest, and it is one that Canada, Alberta, and this
22 Panel can and should support.

23 And we thank everyone for their time. Thank you,
24 sir.

25 THE CHAIR: Thank you, Mr. Ignasiak.

26 Okay. Thank you. We have no questions.

1 So that brings us --

2 MS. LACASSE: Mr. Chair --

3 THE CHAIR: Sorry.

4 MS. LACASSE: -- one very small housekeeping
5 matter. MCFN's oral argument, the script for that,
6 will be Document 701 on the registry.

7 THE CHAIR: Okay. Thank you.

8 Before we close the hearing, is there any final
9 business that we need to consider?

10 Seeing none, thank you, ladies and gentlemen, for
11 your participation in this proceeding, for the
12 evidence, for the argument, and for all the efforts
13 you've put into providing information for the Panel's
14 consideration.

15 We'll consider the evidence and the argument of
16 all of the parties. We'll immediately, of course,
17 begin to prepare our report, including our decisions
18 and our recommendations related to the applications.

19 So the hearing and the record of the review are
20 now closed. Thank you very much, everyone.

21

22 PROCEEDINGS CONCLUDED

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1 CERTIFICATE OF TRANSCRIPT:

2

3 We, Christy Longacre and Angela Porco, certify
4 that the foregoing pages are a complete and accurate
5 transcript of the proceedings, taken down by us in
6 shorthand and transcribed from our shorthand notes to
7 the best of our skill and ability.

8 Dated at the City of Calgary, Province of Alberta,
9 this 12th day of December 2018.

10

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<Original signed by>



12

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14 Christy Longacre, RPR, CSR(A)

15 Official Court Reporter

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<Original signed by>

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20 Angela Porco, CSR(A)

21 Official Court Reporter

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