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Order of Appearances

Northern Gateway Panel 4

Aboriginal Engagement and Public Consultation

Ms. Janet Holder	Mr. Paul Anderson	Mr. John Carruthers
Mr. Ray Doering	Mr. Jeffrey Green	Ms. Michele Perret
Ms. Catherine Pennington	Ms. Jan Whitney	Mr. Jeff Paetz

Examination by Ms. Tracy Campbell for Michel First Nation (continued) 29110
Examination by Mr. David De Wit, Mr. Mike Ridsdale and Chief Namoks (John Ridsdale) for the Office of the Wet’suwet’en 29530

**Examination by Ms. Tracy Campbell for Michel First Nation
(continued) 29110**

Ms. Campbell put up Northern Gateway Pipelines (NGP) response to the Joint Review Panel’s (JRP) Information Request (IR) 10.10 [[Exhibit B74-8](#)]. The IR asked NGP to provide an update on oral evidence given to the JRP as it relates to Aboriginal and Treaty

rights and NGP’s plan to address the concerns. Adobe page 85 is NGP’s evidence with respect to addresses the Michel First Nation (MFN). 29110

Use (and non-use) of Michel FN traditional use study in the assessment

Ms. Campbell asked, “Can we agree that the ESA (environmental and socio-economic assessment) was filed without input from Michel First Nation?” Mr. Jeffrey Green replied, “That’s the case. The Traditional Land Use Study (TLUS) wasn’t received until after the environmental assessment had been filed.” Ms. Campbell: “Awesome. ... Can we agree that the ESA would have benefited from input from the MFN?” Mr. Green: “More information is always good.” Ms. Campbell asked it were correct that “NGP only became aware of MFN when MFN put up their hand seeking Aboriginal consultation on this Project?” Ms. Jan Whitney: “Yes.” Ms. Campbell: “Awesome.”

Ms. Campbell asked “What are the potential impacts to the MFN rights and traditional activities due to the Project?” Mr. Green said, “Effects ... on the biological resources of importance to the MFN as indicated in their TLUS.” Ms. Campbell’s questions explored how NGP treated access issues – for hunting, for example – in this context. Mr. Green said, “We have had comments from a number of Aboriginal groups about interference with trails and the construction and clearing of the right-of-way and how that might affect their access to different harvesting sites.” To explain how NGP treated information provided as Aboriginal Traditional Knowledge (ATK) and TLUS, Mr. Green used Figure 4-1, “ATK Study Follow-up Process” [[Exhibit B2-34](#), Adobe 42] to describe the process and its steps. 29136

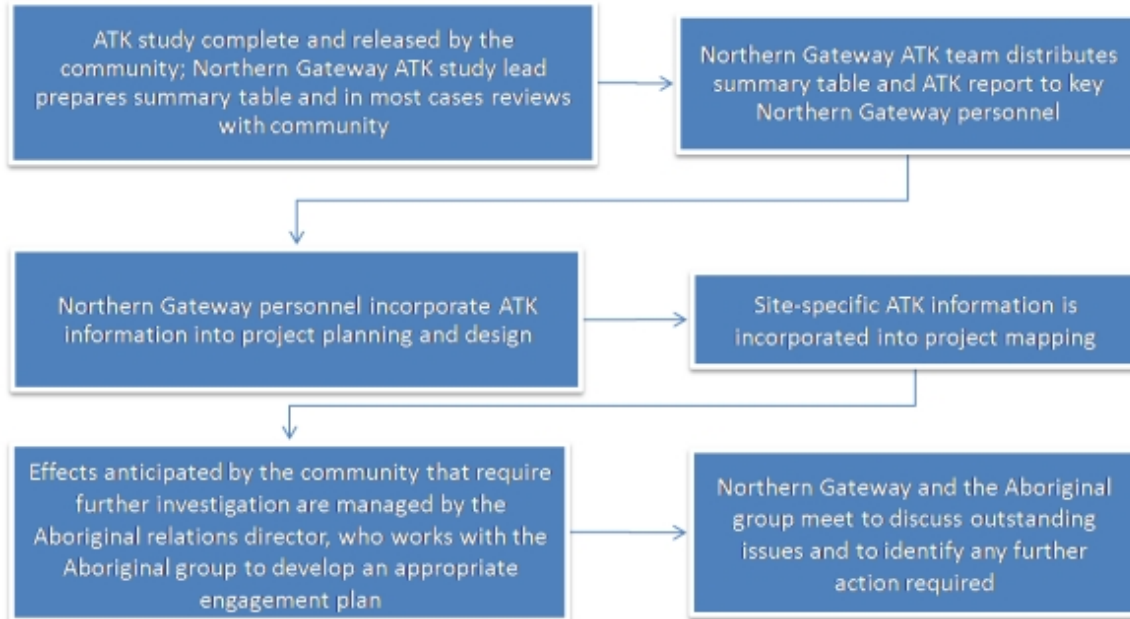


Figure 4-1 ATK Study Follow-up Process

The fifth box in the process schematic begins “Effects anticipated by the community.” Ms. Campbell asked, “Would the community identify effects the same way that NGP defines it in the ESA?” Mr. Green replied, “No. ... Quite often, what we see in TLUS are ... fairly simple statements about the types of issues. ... “One that illustrates simplicity

and complexity [are concerns] expressed about the effects of a pipeline spill and how that could affect the quality of food. ... We would take that concern or issue and ... develop the pipeline ecological and human health risk assessment. [[Exhibits B80-2](#) – B80-12] 29162

Ms. Campbell continued questioning on the process followed by NGP with TLUS generally and the MFN TLUS specifically. A detailed discussion took place with each of three paragraphs from the top of Adobe 85 in [Exhibit B74-8](#) and beginning at para 29199 in the transcript.

Construction impact to hunting

Ms. Campbell asked about disruption to traditional activities during construction. Mr. Green said that centreline surveys are intended to identify those activities and when they are occurring. “There could be a conflict. There may not be a conflict. It really depends on the time of year when the construction actually has to occur.” Mr. Ray Doering said that east of the town of Athabasca, the pipeline would be constructed under summer conditions - in the May-June timeframe and continue into the October-November timeframe, a series of activities that would occur in sequence over a period of four months or so. West of Athabasca, that would be winter construction - probably in the January to April timeframe. 29206

Ms. Campbell said, “It’s potentially an entire hunting season that would be disrupted?” Mr. Green said, “No, that’s not the case. ... NGP has made two commitments to First Nations in regards to understanding very site-specific traditional land use.” The first is a route walk, and the second is a centreline survey, both done “with selected individuals from the First Nation.” “When we come to actual construction ... in most of the terrain ... between Edmonton and Athabasca ... any one area along that line might only be affected for a period of several weeks.” Discussion continued about hunting where there is or may be human activity. They also talked about impacts on gathering plants. 29212

Basic nine-step process

Ms. Campbell summarized NGP’s basic nine step methodology for conducting the impact assessment. It follows a selection of VECs (valued environmental components), a selection of KI (key indicators), a selection of boundaries for study of those VECs, identification of effects, characterization of those effects, application of mitigation, characterization of the residual effects including the significance; and then, movement to an identification of cumulative effects.” 29242, 29256

Issues, concerns, effects

Ms. Campbell asked if “addressing issues and concerns may be different than addressing effects resulting from the project?” Mr. Green said the difference is slight, subtle. “I would typify it that issues and concerns are usually stated at a very broad and high level where effects are typically stated more specifically as a change in something with a measurable parameter.” Ms. Campbell asked, “Can we agree that NGP primarily assessed biophysical components of the environment to determine effects on rights and traditional land use?” Mr. Green said, “It was an important part of the assessment, but we also looked at traditional use.” 29277

Asked by Ms. Campbell to “identify the non-biophysical component that was studied,” In reply, Mr. Green reviewed sections of the application: Volume 6C ... looked at socioeconomic effects on population; traditional land use was in that volume as well as in Volume 5B “and throughout all of the volumes we talk about traditional knowledge and how it’s been integrated into the assessment.” In the pipeline emergency response and risk volumes, Volume 7B, were specific sections on the effects of the project on traditional land use, as well as specific mass balance models for different locations that also spoke to traditional land use. The ecological and human health risk assessment looked at the concerns expressed by Aboriginal communities in particular about the effects of spills on food quality. 29291

Mr. Green: “The intent is not to ignore peoples’ issues and concerns and not to ignore an effect. It’s to work together to find reasonable solutions to real issues.” 29308

Why Michel FN was not offered equity participation

Ms. Campbell asked why Michel First Nation did not receive an offer of equity participation [[Exhibit B24-2](#), Adobe 43]. Ms. Whitney said that MFN did not meet the eligibility requirements, as shown on Adobe 42. Following a lengthy discussion, Ms. Campbell said, “The reason that MFN didn’t meet the criteria is solely that MFN did not have a previous commitment [for equity participation] from NGP. Is that correct?” Ms. Whitney replied, “Yes.” 29312-29395

Benefits other than equity partnerships: trapping and hunting

Ms. Campbell said, “You mentioned that there were ... a plethora of benefits available to Michel First Nation. Could you describe what those are?” Ms. Catherine Pennington said, “We do have about a billion dollars’ worth of Aboriginal benefits associated with this project.” Since these have been spoken to a number of times, readers wanting the detail should go to the transcript. Benefits mentioned include business development opportunities, 15% employment targets, contracting, skills development and training. Mr. Jeff Paetz confirmed that there is trapper compensation for the treaty right to trap, but said, “We haven’t formulated that plan ... it’s ... premature for that.” This discussion is developed somewhat in the transcript, and is extended to the treaty right to hunt. 29399

Benefits: business development and employment

Ms. Campbell asked about other opportunities, while observing that these are available to the public at large and indicating concern that MFN people will have to compete for the opportunities. Ms. Holder and Ms. Pennington re-emphasized that NGP has made a 15% Aboriginal employment commitment, and that it wants to work with the community. Ms. Holder said, “There’s only one qualifier: Aboriginal groups have to be willing.” Ms. Campbell asked if “the benefits ... accrue to individuals and not the collective?” She envisioned agreements with groups, but the specific benefits to individuals. Ms. Pennington spoke about the benefits of a community member with a job are benefits that the family and entire community share in. 29453

Providing capacity to MFN

Ms. Campbell noted that MFN has a “lack of capacity to coordinate benefits among its members,” then said that the “the only capacity provided by NGP was to collect ATK information in the amount of \$40,000.” Ms. Whitney said they have provided other capacity – for meeting rooms, meals. Ms. Pennington spoke about building human and organizational capacity, not just “providing the capacity and walking out.” Ms. Holder added that NGP is insisting that its contractors have an Aboriginal participation plan. Ms. Campbell asked if NGP would consider “providing capacity” for a meeting with MFN over these concepts. Ms. Holder said, “We are more than willing, [but] we don’t typically negotiate on the stand.” 29489

Examination by Mr. David De Wit, Mr. Mike Ridsdale and Chief Namoks (John Ridsdale) for the Office of the Wet’suwet’en 29530

Mr. Ridsdale quoted from [Exhibit B174-8](#), Adobe 1 “The federal government will rely on the JRP process to the extent possible to fulfill its duty to consult with Aboriginal groups.” Then he quoted from [Exhibit B174-14](#), Adobe 30: “The Crown may delegate procedural aspects of consultation to industry proponents seeking a particular development.” He asked, “What is the federal government relying on Enbridge to do vis-à-vis the Wet’suwet’en to fulfill its duty?” 29531

Five phases in the Aboriginal Consultation Framework

Ms. Holder responded with the “Aboriginal Consultation Framework for the Northern Gateway Pipeline Project,” [[Exhibit E9-6](#), Adobe 4], which describes five phases “that offer opportunities for consultation with Aboriginal groups.” She briefly explained the five phases: 29536

- I. Initial engagement and consultation on the draft JRP agreement
- II: JRP process leading to oral hearings
- III: Oral hearing and preparation of the JRP reports
- IV: Consultation on the JRP Environmental Assessment Report
- V: Regulatory permitting

This discussion continues at some length, and should be read directly in the transcript. These notes will capture only some specific points and are not an attempt to summarize the discussion. 29549

Northern Gateway’s consultation responsibilities and duties

Mr. Ridsdale asked what are Enbridge’s responsibilities and specific duties in this respect. Mr. De Wit asked “Who does an assessment on [each community’s Aboriginal rights?” Mr. Ridsdale again, “How is NGP informed by the federal government about what is expected of them so far as engagement, consultation?” Mr. Carruthers and Mr. Anderson offered the Terms of Reference for the JRP and the scope of factors. 29560

Ms. Holder said, “While the Crown remains fiduciary in respect of consultation and alone must maintain the honour of the Crown as it relates to Aboriginal people, certain procedural aspects of the duty to consult may be delegated.” Mr. Ridsdale asked, “Is it

NGP's view that it has fulfilled all of its delegated or otherwise assumed duties so far as engagement consultation with the Wet'suwet'en?" Mr. Carruthers: "Yes, we believe that we have developed a very solid process for engagement, understanding concerns, and addressing mitigation possibilities." 29572

Mr. Ridsdale asked, "Which ones are fulfilled and which ones are still outstanding?" Mr. Carruthers said he doesn't understand what he is referring to. Mr. Carruthers suggested putting up [Exhibit B2-26](#), Adobe 13 where NGP's Aboriginal engagement program is outlined. Mr. Ridsdale asked how does NGP determine whether it has fulfilled its duties. Mr. Holder said that is up to the Crown. 29578

Mr. De Wit quoted "Northern Gateway has determined [...] the Project is not likely to cause significant adverse effects on the environment. Northern Gateway is therefore confident that the Project will not have significant adverse effects on those who depend on the land..." [[Exhibit B24-2](#), Adobe 322]. He asked, "How does Northern Gateway determine the significance of adverse environmental effects?" Mr. Green said this was the subject of Panel 2 in Prince George, and is described in Volume 6A in the Methodology section. 29592

Mr. De Wit: "How does NGP determine the significance of adverse effects on Aboriginal peoples and their Aboriginal or treaty rights?" Mr. Green said they have spoken to this, too. One approach was "where we had access to traditional land use studies. ... The second approach was [to look at] the effects on the biological and physical environment and then made a determination about effects. We concluded that there are not significant effects on the environment and, as a result, we do not believe that the resources or land that support those resources will be affected. Therefore, the effects on traditional land use should be minimal or none." 29597

At a break in a series of questions, Mr. De Wit said, "I guess it's clear that you don't know what our rights are. Our rights are very different than uses of the land, but it's clear to me that Northern Gateway does not understand that." 29617-29668

Wet'suwet'en views on seriousness of effects not the same as NGP's determination

Mr. De Wit said, "The Wet'suwet'en people's views on the seriousness of the effects on ourselves and our rights adds nothing to Enbridge's analysis and thus is irrelevant so far as NGP is concerned." Mr. Anderson said NGP is required under the Canadian Environmental Assessment Act to make a determination of significance, but that is not the same as assessing what might be serious or important to a community. Mr. Green made a similar point about the use of the word "rights" in this discussion – that under the CEA Act the rights relate to current use of land and resources. Other rights, or meanings of the word are beyond the scope of the assessment. 29670

Mr. De Wit asked about the basis for NGP's confidence that the project's adverse effects will not be significant. Mr. Green said they have spent a great deal of effort and fieldwork to assess the effects of construction and operation of the pipeline and oil spill effects. "There is a very substantial body of evidence that supports our conclusion." 29683

Discussed, or only presented?

Mr. Ridsdale took issue with the use of the word “discussed” in NGP’s representation of a meeting at the Office of the Wet’suwet’en in January 2010. [[Exhibit B24-2](#), Adobe 316]. “It was only NGP’s presentation,” he said, not a discussion. None of the witnesses were present, though Mr. Carruthers said, “Typically, when we go into communities with a presentation, we are there for the two-way dialogue.” Mr. Ridsdale asked, “Did NGP say anything in that January meeting on its Project’s potential effects on Wet’suwet’en people and our Aboriginal rights?” Considerable discussion ensued. 29688-29741

Chief Namoks quoted, “NGP and the Office of the Wet’suwet’en have discussed beginning an ATK study, but have not yet reached an agreement about the scope, work plan and budget.” [[Exhibit B24-2](#), Adobe 320] He asked why NGP reported this about ATK studies “when in fact Enbridge representatives were clearly told by the Office of the Wet’suwet’en that we were developing a rights and title submission?” Ms. Holder replied, “We did make an offer of some dollars to assist with an ATK study. So I do believe that dialogue did happen and we’re only reporting that that dialogue did happen.” 29743

Chief Namoks asked, “Why haven’t infringements to Wet’suwet’en title and Wet’suwet’en rights listed as it was part of our oral presentation and our written submissions?” Ms. Holder said NGP responded to this in IR 1010, [[Exhibit B74-8](#), Adobe 91. Ms. Laura Estep for NGP said, “The issue of infringement is a legal question and something that’s not properly put to these witnesses.” 29753

Chief Namoks: “Is Northern Gateway required to verify the accuracy of what it has to say about their information efforts towards the Office of the Wet’suwet’en prior to submitting its Aboriginal engagement update and other materials?” Ms. Holder said, “We are all under oath. All evidence ... has been sworn to. ... You have our word.” Mr. Carruthers added that any evidence goes through “many, many” internal reviews to ensure its accuracy. 29768

Chief Namoks asked how many times the route has changed, and why shape files are not being sent to the Office of the Wet’suwet’en. Mr. Anderson said they are filed as part of the public record. 29777

Assessment not specific to Wet’suwet’en territory

Referring to [[Exhibit D157-6-1](#), Adobe 27 & 28, Mr. De Wit asked, “why the assessment of the cumulative effects of past and existing activities on both Wet’suwet’en culture per House territory and the environment encompassed between KP-908 and KP-1078 did not occur for the proposed project?” Mr. Green replied, “We did assess the cumulative effects of the routine activities of the pipeline both for construction and operations and decommissioning for the entire length of the pipeline. We focused on what is required under the Act which is the current use of lands and resources.” Mr. De Wit asked if a cumulative effects assessment done for Wet’suwet’en House territory. Mr. Green said “No ... that would be outside the scope of this assessment.” 29797

Mr. Green continued, “The assessment was not specific to any First Nation. What we looked at was cumulative effects on the land and resources, the support, the current use of the resources and land and then we also looked at traditional use. And in both of those cases, we came to the conclusion, with the mitigation that’s been proposed, including things like route walks and centreline surveys with the affected First Nations, that we believe the effects are manageable and will not be significant.” 29804

Taking Wet'suwet'en rights and responsibilities to the land into account

Mr. De Wit asked if Enbridge had taken Wet'suwet'en “specific rights and responsibilities to the land into account” (which he had just described). Mr. Green suggested that the Wet'suwet'en participate in the route walks and centre line surveys. Ms. Holder said that the engagement works both ways, “It does require collaborative work.” She said that NGP has presented the opportunity “to participate in a protocol agreement which would include how the Wet’suwet’en” could participate in a Traditional Use Study. 29811

Mr. De Wit asked what difference Wet'suwet'en “specific rights and responsibilities to the land” “has made to your analysis and conclusions in regard to your Projects’ effects.” Mr. Green gave an example from the Pipeline Ecological and Human Health Risk Assessment [[Exhibit B80-2](#), Adobe 58]. Chief Namoks asked if NGP recognizes “Wet’suwet’en society and governance structure that is centralized in our feast hall?” Mr. Carruthers said “We’re aware of it. We ... try to understand it.” Chief Namoks asked “What is the evidence that Northern Gateway has considered with social structure, political organization and our distinctive relationship to the land?” eliciting replies from Mr. Anderson and Ms. Holder. 29813

Mr. Ridsdale quoted the statement that “*Northern Gateway is ... confident that the Project will not have significant adverse effects on those who depend on the land and the water.*” [[Exhibit B2-26](#), Adobe 25] and asked if NGP had taken into account aspects and attributes and values of “the state of these eight territories of the Wet’suwet’en.” Mr. Green said he could speak to the cumulative effects assessment. Mr. Anderson added to the reply. Mr. Ridsdale said, “Maybe I haven’t been really clear on this,” and rephrased his question. Mr. Anderson eventually said, “It’s very hard for us to understand information that isn’t provided.” Mr. Ridsdale again: “What is the evidence that Northern Gateway has considered Wet’suwet’en social structure, political organization and our distinctive relationship to the land?” Mr. Green: “I believe we’ve answered that question in a variety of ways here in the past hour and it’s the same. We look at what information you’ve provided to us to date and we are incorporating it. We’ve shown you examples of how that will be used.” 29836

Mr. Ridsdale asked, “So which House territories of the Wet’suwet’en were assessed in regards to traditional land use changes?” Mr. Green said, “We’ve answered that in a number of different ways which is that we don’t look specifically at Houses or even individual First Nations. We look at traditional land use and that’s been done for the entire pipeline right-of-way.” 29877

Burnie River protected area allows pipelines

From evidence [[Exhibit B3-18](#), Adobe 155], Mr. De Wit asked about the proposed Burnie River protected area, specifically about NGP's consultation with provincial authorities. Mr. Doering replied that "prior to the creation of the Burnie-Shea protected area and Burnie-Shea Provincial Park area we had dialogue with provincial authorities just as described here. ... That dialogue resulted in the province setting aside a portion of that area and describing it as a protected area specifically to allow construction of a pipeline project such as Northern Gateway or other projects that are proposing to go through this area." Mr. De Wit asked if this consultation include roads, waste rock storage, camps. Mr. Doering said "Within the new now currently created protected area, we would only have pipeline right-of-way and road access." 29896

NGP's conclusion that the Project will not contribute to cumulative effects

Mr. De Wit quoted, "*By following the mitigation requirements issued by the provinces, adverse effects are expected not to be significant and the Project will not contribute to cumulative effects.*" [Adobe 156]. He asked for evidence to support that statement. Mr. Green said that centre line surveys will be done when the pipeline is actually going to be built. "When sites are found, then mitigation is required." It will be then that consultation with the province will take place on a site-by-site basis. 29907

Mr. Green: "The survey intensity that was done by Northern Gateway was actually several times greater than any other pipeline proponent in this province to date and the archaeology branch is actually holding this up now as a standard for other pipeline proponents to say this is the type of quality of work they would like." 29945